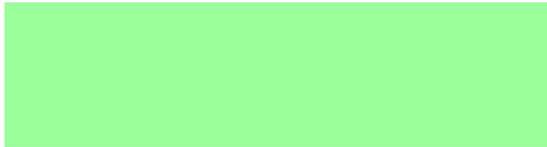




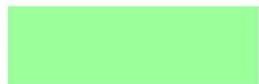
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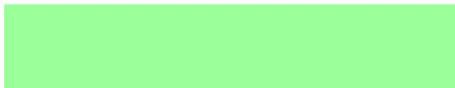


DATE: JUN 17 2013 OFFICE: TEXAS SERVICE CENTER

FILE:

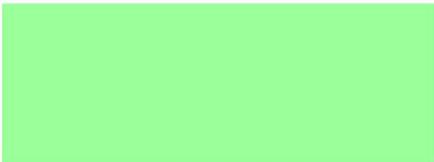


IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


/ Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, ("the director") denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a limited liability company organized in the State of Florida in May 2007. The petitioner states on the Form I-140, Immigrant Petition for Alien Worker, that its type of business is "telecommunications" and that it employs one person. The petitioner reported a gross annual income of \$120,000 when the petition was filed. It seeks to employ the beneficiary as its chief executive officer and president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

On September 18, 2012, the director denied the petition determining that the petitioner failed to establish: (1) the beneficiary had been employed in a managerial or executive capacity abroad; and (2) that it will employ the beneficiary in a managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof.

I. The Law

To establish eligibility for the employment-based immigrant visa classification, the petitioner must meet the criteria outlined in section 203(b) of the Act. Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States

in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

II. The Issues on Appeal

A. *Managerial or Executive Capacity for the Foreign Entity*

The first issue in this matter is whether the petitioner submitted sufficient evidence to establish that the qualifying foreign entity employed the beneficiary in a managerial or executive capacity for at least one year in the three years prior to the time of the beneficiary's application for classification and admission into the United States.

Facts and Procedural History

The petitioner initially did not provide any detail regarding the beneficiary's position or duties with the qualifying foreign entity. Accordingly, in a request for evidence (RFE), the director requested that the petitioner provide a definitive statement describing the beneficiary's job duties and the foreign entity's organizational chart corresponding to the beneficiary's qualifying employment abroad.

In response, the foreign entity indicated that the beneficiary had been employed in Venezuela until June 2009 as its general manager. The foreign entity listed the duties of the general manager as:

- Manage the operational and fiscal activities of the department to include: staffing levels, budgets, and financial goals.
- Plan and develop systems and procedures to improve the operating quality and efficiency of the department.
- Analyze and document business processes and problems. Develop solutions to enhance efficiencies.
- Coordinate and implement solutions from process analysis and general department projects.
- Direct staff in the development, analysis, and preparation of reports.
- Supervise staff in accordance with company policies and procedures.
- Conduct interviews, hire new staff, and provide employee orientation.
- Coach and provide career development advice to staff.
- Establish employee goals and conduct employee performance reviews.
- Responsible for staff scheduling to include: work assignments/rotations, employee training, employee vacations, employee breaks, overtime assignment, back-up for absent employees, and shift rotations.
- Assist staff to resolve complex or out of policy operation problems.
- Coordinate with Human Resources for appropriate staffing levels.
- Schedule and conduct department meetings.
- Responsible to meet department productivity and quality goals.
- Communicate with Supervisors, Managers, and Presidents.
- Complete human resource paperwork.
- Report [to] Directors Board[.]

The organizational chart provided depicted the general manager position supervising an engineering manager and a sales manager. In turn, the engineering manager supervised operation and design and the sales manager supervised projects and products. The foreign entity identified five employees subordinate to the beneficiary's position of general manager in 2009, noting that the products position was vacant. The foreign entity also noted that an "administrative area" was operated by an outside service.

The record also included a translated version of the foreign entity's incorporation documents, which identify its purpose as "carry out works and projects in engineering, architecture and urban planning, construction, electrical installations, wiring of networks, communications and fiber optics" and other activities or lawful trade. The record included a number of un-translated invoices issued by the foreign entity.

Upon review of the limited information in the record regarding the beneficiary's actual duties for the foreign entity, the director denied the petition determining the record did not establish that the beneficiary had been employed in a managerial capacity.

On appeal, counsel references the beneficiary's continuing involvement with the foreign entity as a member of its board of directors and majority shareholder; however, counsel does not further expand on the beneficiary's duties for the foreign entity while he was employed by the foreign entity in Venezuela.

Analysis

The evidence of record does not establish that the beneficiary worked in a managerial or executive capacity for the foreign entity. The record does not include sufficient probative evidence establishing the beneficiary's actual day-to-day duties for the foreign entity.

In examining the executive or managerial capacity of the beneficiary, United States Citizenship and Immigration Services (USCIS) will look first to the description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Published case law clearly supports the pivotal role of a clearly defined job description, as the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *see also* 8 C.F.R. § 204.5(j)(5). That being said, however, USCIS reviews the totality of the record, which includes not only the beneficiary's job description, but also takes into account the nature of the business, the employment and remuneration of employees, as well as the job descriptions of the beneficiary's subordinates, if any, and any other facts contributing to a complete understanding of a beneficiary's actual role within a given entity.

In this matter, the petitioner provided a broad list of generic duties that do not apply specifically to the beneficiary's actual duties while employed by the foreign entity. Such vague references to managing the operational and fiscal activities of the department and planning and developing systems and procedures do not convey an understanding of the beneficiary's actual role within the foreign entity's organization. Similarly, generic duties such as directing and supervising staff are insufficient to establish that the beneficiary primarily performed in a managerial or executive capacity for the

foreign entity. Turning to the nature of the foreign entity's business, neither the petitioner nor the foreign entity provide probative evidence of the actual daily activities of the business. The articles of incorporation provide a broad overview of the purpose of the foreign entity. Similarly, the invoices provided do not include sufficient translated information to determine whether the foreign entity primarily sells equipment or services.¹ The record is deficient in establishing the type business the foreign entity operates. A review of the job titles for the beneficiary's subordinates while he was employed by the foreign entity, likewise, does not provide sufficient information regarding the activities in which these employees engage on a daily basis. Although the director requested a description of the duties of the beneficiary's subordinates at the foreign entity while the beneficiary was employed there, neither the petitioner nor the foreign entity provided such information. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Counsel does not address this issue on appeal, other than to reference the beneficiary's continuing duties as a member of the board of directors and a shareholder. As this issue requires a review of the beneficiary's actual duties and responsibilities while working for the foreign entity in at least one of the three years prior to the beneficiary's application for classification and admission into the United States, such information is not helpful in establishing the beneficiary's prior role for the foreign entity.

As the record does not provide probative evidence of the beneficiary's actual job duties while working in Venezuela for the foreign entity, the record does not support a conclusion that the beneficiary performed duties in either a managerial or executive capacity in one of the three years preceding the time of the alien's application for classification and admission into the United States. For this reason, the petition may not be approved.

B. Managerial or Executive Capacity for the Petitioner

The next issue in this proceeding is whether the petitioner has established that it will employ the beneficiary in a qualifying managerial or executive capacity.

Facts and Procedural History

The initial record included the petitioner's offer of employment to the beneficiary as chief executive officer/president. The record also included the petitioner's Florida Department of Revenue Employer's Quarterly Report (UCT-6) for the four quarters of 2010. The UCT-6 for the fourth quarter of 2010, the quarter prior to filing the petition, showed the petitioner employed three individuals, including the beneficiary.²

¹ Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

² It is not clear why the petitioner stated on the Form I-140 that it employed only one person. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also included the petitioner's business plan for 2009 to 2012. The petitioner incorporated the duties of the CEO/president in the business plan indicating that the primary responsibilities of the position include:

- Develop a strategic plan to advance the company's mission and objectives and to promote revenue, profitability, and growth as an organization.
- Oversee company operations to insure production efficiency, quality, service, and cost-effective management of resources.
- Plan, develop and implement strategies for generating resources and/or revenues for the company.
- Identify acquisition and merger opportunities and direct implementation activities.
- Approve company operational procedures, policies, and standards.
- Review activity reports and financial statements to determine progress and status in attaining objectives and revise objectives and plans in accordance with current conditions.
- Evaluate performance of executives for compliance with established policies and objectives of the company and contributions in attaining objectives.
- Promote the company through written articles and personal appearances.
- Represent the company at legislative sessions, committee meetings, and at formal functions.
- Build a fundraising network using personal contacts, direct mail, special events, and foundation support.
- Present company report at Annual Stockholder.
- Direct company planning and policy-making committees.
- Oversee foreign operations to include evaluating operating and financial performance.

The petitioner also listed the primary responsibilities for its general manager. The description was nearly identical to the description submitted for the beneficiary's prior role as general manager for the foreign entity, only removing the general manager's duty of reporting to the board of directors. The business plan also included an overview of the duties of the petitioner's sales manager and engineering manager positions.

The petitioner identified its services in the business plan as:

Commercializ[ing] products and services necessary to construct, operate and maintain the continuous operation infrastructure, without faults interruptions, the facilities that lodge the equipment of technology and computer communications such as of moderate and great size, equipment of networks, wiring, optical fiber, equipment of uninterrupted electrical support of high availability.

Also [offering] services of installation and operative maintenance of these equipment and facilities, such as maintenance of facilities such as Datacenter, Call Centers, wiring of networks, optical fiber wiring, electrical systems and grounding.

The petitioner noted that its services included: data centers, design, construction management and equipment; call centers, design, construction management and equipment; electrical high readability installations; structures communications cabling; and optical fiber, installation.

The petitioner identified its products in the business plan as: power converters; uninterruptible power systems; batteries; generators sets; power protection products; electrical and communication supplies.

The petitioner's organizational chart depicted a CEO/president supervising a general manager who in turn supervised an engineering manager and a sales manager. The organizational chart also depicted an operations supervisor and technical staff as subordinate to the engineering manager's position and a sales staff subordinate to the sales manager position.

Upon review of the evidence in the record, the director issued a request for evidence (RFE) instructing the petitioner to submit additional evidence establishing that it will employ the beneficiary in a managerial or executive capacity.

In response the petitioner provided a business information report prepared by [REDACTED] indicating that as of October 20, 2011, the petitioner operated an electrical repair shop, specializing in telecommunication equipment. The petitioner provided the same descriptions of duties for the CEO/president, general manager, sales manager, and engineering manager as provided in the petitioner's business plan. The petitioner also included a list of job titles that included the name of the employee holding the position and the year the position was created. The petitioner stated: that the beneficiary had held the position of CEO/president since June 2009; that it had created the position of general manager in 2010 and that the position had been filled in 2011; that the engineering department had employed an individual in 2010 and 2011; that the sales department had employed an individual since June 2009; and that an administrative service company had provided administrative services since June 2009.

The petitioner resubmitted its Florida UCT-6 Forms for the four quarters of 2010. The UCT-6 for the fourth quarter of 2010, listed: the beneficiary's name; the name of the individual employed in the engineering department; and the name of the individual employed in the sales department.

Upon review of the limited evidence in the record, the director denied the petition, determining that the petitioner had not established that it will employ the beneficiary in primarily a managerial or executive capacity.

On appeal, counsel for the petitioner asserts that although the petitioner is a small company, the duties listed for the beneficiary are in every way comparable with a larger organization. Counsel notes that the petitioner has been certified as a [REDACTED] according to the Code of [REDACTED]. Counsel contends that it is error to hold the petitioner to the same level of management oversight as in a large corporation. Counsel avers that the engineering manager and sales manager are professional positions as their duties and responsibilities imply and that the individual in the position of general manager holds a bachelor's of science degree. Counsel references the detailed application required by the [REDACTED] organization to obtain acceptance into

its small business program and attaches a copy of the acceptance letter. Counsel asserts that the proffered position satisfies the criteria set out at section 101(a)(44)(A) of the Act.

Analysis

Upon review of the petition and evidence, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's actual activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

As the director observed, the definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Although counsel on appeal asserts only that the petitioner has satisfied the criteria set out in the statutory definition of managerial capacity, the petitioner references and labels the proffered position as an executive position. Accordingly, we also consider whether the duties and responsibilities of the proffered position demonstrate employment in either a managerial or an executive capacity.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise.

In this matter, although the beneficiary is listed as head of the organization, the record does not include documentary evidence that the beneficiary has a subordinate level of managerial employees to direct. Although the petitioner claims that it now employs a general manager, the record does not include evidence substantiating that employment. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Moreover, the petitioner does not indicate when this individual was hired. Accordingly, it is not possible to discern whether the individual was employed when the petition was filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

Although the petitioner has provided evidence that it employed two individuals, one in the engineering department and one in the sales department, who are subordinate to the beneficiary's position, the petitioner does not identify either of these individuals as managers. Even if either of these individuals performs in a position that is labeled manager, the generic descriptions of the duties of the sales and engineering manager positions are insufficient to demonstrate that the actual daily duties comprise primarily managerial tasks. As the record does not include evidence that the petitioner employs any individuals subordinate to these two individuals, it is reasonable to believe that these two individuals primarily perform the non-managerial duties of the sales and engineering department.

Moreover, a review of the petitioner's generic description of the beneficiary's duties fails to describe the beneficiary's actual duties within the organization. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava, supra*. Upon review of the totality of the record, including the description of the beneficiary's duties, the duties of subordinate personnel employed when the petition was filed, and the nature of the petitioner's self-identified business as an electrical repair shop, specializing in telecommunication equipment, the petitioner has not provided probative evidence that the beneficiary primarily performs duties in an executive capacity. The record is simply deficient in this regard.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act. If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Section 101(a)(44)(A)(iii) of the Act.

The petitioner in this matter has not established that the beneficiary primarily performs the duties of a personnel manager. A review of the petitioner's description of the beneficiary's duties does not reveal that the beneficiary primarily supervises and controls the work of other supervisory, professional, or managerial employees. Again, the description is generic and could apply to any number of positions. The description does not provide the specific day-to-day tasks that demonstrate what the beneficiary is doing for the petitioner. Nor does the petitioner allocate the amount of time the beneficiary spends on any particular task. The overly broad position description does not assist in a determination that the beneficiary primarily performs duties as a personnel manager.

In addition, the petitioner provided evidence of only two individuals subordinate to the beneficiary's position who were employed when the petition was filed. As determined above, the record is insufficient to establish that either of these individuals are managerial employees. As the record does not include evidence of staff subordinate to either of these positions, these two individuals are not supervisory employees. Although requested to do so, the petitioner also failed to provide evidence of

either of these individuals' educational levels. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Moreover, the petitioner does not provide definitive descriptions of the actual duties these individuals perform on a daily basis. As such, it is not possible to ascertain whether the actual duties performed by these individuals incorporate duties that are professional in nature. Accordingly, the record shows that at most the beneficiary is acting as a first-line supervisor of non-professional, non-supervisory, and non-managerial employees. The petitioner has not established that the beneficiary will primarily perform the duties of a personnel manager.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

In this matter, the petitioner does not articulate any specific function that the beneficiary will manage. It is not sufficient to state generally that a beneficiary will manage "functions"; rather the petitioner must describe the function with specificity and identify the employees who will perform the duties of the function. In this matter, the petitioner has not identified any employees who perform the everyday routine operational tasks, including the duties of a first-line supervisor, thus relieving the beneficiary to primarily perform managerial duties. The beneficiary's business acumen in performing the essential tasks to operate the business, while undoubtedly valuable to the company, is not synonymous with an individual managing an essential function(s).

Counsel's assertion that it is error to hold the petitioner to the same level of management oversight as a large corporation is noted. We observe that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). A company's small size does not obviate the need to establish that a beneficiary is not primarily performing the duties of the organization. To establish such, the petitioner must fully and definitely

describe the actual duties the beneficiary and his or her subordinates perform. Further, the petitioner must establish that the company currently has a reasonable need for the beneficiary to perform duties that are primarily in a managerial or executive capacity as those terms are defined in the statute. In this matter, the petitioner has failed to provide this essential evidence.

We also acknowledge that the petitioner has become part of the small business community in [REDACTED] in Florida. However, acceptance into this organization does not demonstrate that the beneficiary primarily performs in an executive or managerial capacity as those terms are defined in the statute. Counsel notes that the petitioner provided the [REDACTED] organization a detailed application to become certified as a [REDACTED]. However, the record does not include a copy of that application or other evidence sufficient to demonstrate that the reasonable needs of the petitioner currently require the beneficiary's performance of primarily managerial or executive duties.

Upon review of the totality of the record including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, and the nature of the petitioner's business, the petitioner has not established that the beneficiary's actual duties incorporate primarily executive or managerial functions. The petitioner has not established that the duties of the proffered position are duties that are primarily executive or managerial.

III. Prior Approval

The AAO acknowledges that USCIS previously approved an L-1A nonimmigrant petition filed on the beneficiary's behalf, a classification which also requires the petitioner to establish the beneficiary's duties comprise primarily managerial or executive tasks. It must be noted, however, that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava, supra*. Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

Moreover, in making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In the present matter, the director reviewed the record of proceeding and concluded that the petitioner had not established the beneficiary had been or would be employed in a primarily managerial or executive position. In both the request for evidence and the final denial, the director articulated the objective statutory and regulatory requirements and applied them to the matter at hand. If the previous

nonimmigrant petition(s) was approved based on the same evidence as submitted in this matter, the previous approval(s) would constitute gross error on the part of the director. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.