

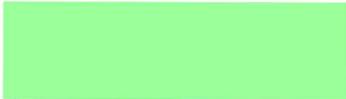
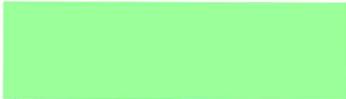


U.S. Citizenship
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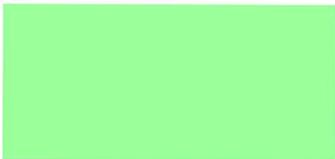


DATE: **AUG 29 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: 

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office



DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed Form I-140, Immigrant Petition for Alien Worker, to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner, a Delaware limited liability company, operates an oil and gas consulting business. It seeks to employ the beneficiary as its chief executive officer.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in a qualifying 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 totality of the record demonstrates that the beneficiary qualifies as an executive or as a function manager. Counsel contends that the director's decision was based on the fact that the beneficiary is the petitioner's sole employee and did not take into account the reasonable needs of the organization in light of its overall purpose and stage of development.

I. THE LAW

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.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate

or subsidiary of that entity, and 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), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The sole issue addressed by the director is whether the petitioner established that it would employ the beneficiary in a primarily managerial or executive capacity.

A. Facts

The petitioner filed the Form I-140 on February 7, 2013. The petitioner stated on the petition that it operates an oil and gas consulting business established in [REDACTED], with gross income of \$84,000 and one employee.

In support of the petition, the petitioner provided a letter from [REDACTED] President of [REDACTED] the petitioner's parent company in [REDACTED]. He explained the petitioner's activities as the group's subsidiary and representative office in the United States and stated that it provides the following services as outlined in the submitted Representation Agreement between the petitioner and [REDACTED]:

- Procurement services of oil and gas exploration equipment and supplies;
- Training sessions for group experts with leading training institutions in the United States;
- Investor relations with [REDACTED] Bondholders and leading U.S. based investment banks;
- Management of ongoing contracts with the U.S. based group legal advisors.

The Representation Agreement indicates that [REDACTED] will pay the petitioner \$7,000 per month as a representation fee as well as a 10% commission calculated on the value of each procurement and training contract completed.

Mr. [REDACTED] stated that the beneficiary, as the petitioner's CEO, is charged with directing and developing the business by performing the following duties:

- Furnishing the strategic business plan for the fiscal year and rolling three year plan in the area of Operations;
- Developing strong commercial relationships with US based manufacturers and suppliers of oil and gas related equipment: [The beneficiary's] activity has been primarily focused on putting together a data base and providing the necessary support to the group acquisition department for their regular tendering activities. . . . [The beneficiary] and [the petitioner] are currently focused on buying spare parts for our airboats from [REDACTED] and acquiring [REDACTED] from [REDACTED] (USA and Germany).

- Developing strong relationships with US based oil and gas related training institutions, Universities and research centers: [The beneficiary's] activity has been primarily focused on putting together a data base and define better the group needs for education and training for year 2013.
- Managing the activities with the group's legal counsels based in [REDACTED] Texas and New York ; and
- Managing the activities and public relations with the US investors in the [REDACTED]

With respect to the last two activities, Mr. [REDACTED] explained that the group has several ongoing litigation matters in U.S. courts, as well as an ongoing arbitration proceeding with the Government of [REDACTED] which seized the group's [REDACTED] oil and gas producing assets in 2010. He explained that the arbitration attorneys and many of the investors in [REDACTED] notes are based in the United States and are interested in securing their interest as the arbitration process has entered its final stage. Mr. [REDACTED] stated that the parties are in the process of negotiating a sharing agreement between [REDACTED] and the steering committee that represents the noteholders group.

The petitioner submitted a 2012 financial report, noting that its revenue is generated solely from an \$84,000 annual representation fee paid by [REDACTED]. The report indicates that the company's main activities are: (1) [REDACTED] notes restructuring talks with large US based funds (through restructuring counsel located in Texas); (2) discovery proceedings in Texas and Delaware courts against [REDACTED]; (3) management of regular procurement requests from the group's Africa-based companies (no contracts concluded); and (4) development of a group education and training plan for the 2013 fiscal year.

The petitioner also provided its organizational chart, which depicts the beneficiary as CEO overseeing an administrative assistant, a training officer, a procurement officer, and a public relations officer. The petitioner did not identify any employees by name or indicate that any of the positions were currently occupied. The petitioner also submitted an organizational chart for [REDACTED] which depicts the beneficiary as Commercial Vice President and CFO, overseeing a chief accountant, budget director, purchase director, sales director and new investments director.

The director issued a request for additional evidence (RFE) on July 24, 2013. The director requested that the petitioner provide a very detailed description of the beneficiary's proposed position that reflects the staffing at the time the petition was filed, as well as an estimate of the percentage of time the beneficiary would allocate to each specific duty. The director also requested a detailed organizational chart with the names, job titles and job descriptions of employees who report to the beneficiary.

In response to the RFE, the petitioner submitted a letter from Mr. [REDACTED] who explained that the beneficiary acts as an Executive Vice President for [REDACTED] responsible for several departments, including finance, accounting, internal auditing and control, procurement, legal and IT, and also supervises the operations of four group companies involved in insurance, civil construction and real estate. In addition, he explained that the beneficiary is an executive vice president and chief financial officer for [REDACTED] a subsidiary registered in the British Virgin Islands, and CEO of the petitioning company. Mr. [REDACTED] provided the following overview of the beneficiary's responsibilities:

To fulfill his job duties at [REDACTED] [the beneficiary] is required to travel internationally on a regular basis. I would estimate that on average 3 months per year, [the beneficiary] spends in our [REDACTED] based head office, the remaining 9 months he spends working for [REDACTED], in the Middle East, East Africa, Western Europe and USA. From the job duties perspective, I believe that [the beneficiary] normally spends 20% of his time on management and supervision as the group VP, 10%-15% on representation and customer relations, 30% on legal issues (because of major on-going litigation), 20% on new business development opportunities and the remaining 15%-20% on procurement of new contracts

Our USA business that [the beneficiary] was asked to set up and manage [the petitioner] focuses primarily on managing our relationships with [REDACTED] notes investors, working with our New York [REDACTED] and Houston [REDACTED] based lawyers, our New York based consultants [REDACTED] and supervises our procurement from USA (North America) vendors primarily those providing equipment and spare parts and materials for seismic operations and gas exploration activities and for drilling rigs and well investigation operations. I would estimate that during the last 2 years [the beneficiary] spent an average 5-6 months per year managing the operations of [the petitioner] from its Chicago-based office and from outside USA while being in [REDACTED] and abroad travelling for business on behalf of [REDACTED]

The petitioner also provided a letter signed by the beneficiary and Mr. [REDACTED] confirming that the beneficiary has spent on average roughly three months per year in the United States managing the petitioner from Chicago, and an additional two-three months managing the company from abroad. The petitioner stated that the beneficiary was in the United States in February, June, September and December 2012 and in January, March, July and September 2013. The petitioner emphasized that it generated revenue of \$73,000 in 2012, versus \$206,000 as of September 9, 2013. The petitioner stated that the beneficiary's time is allocated as follows:

1. General administrative issues – 10%;
2. Procurement supervision – 30%;
3. Legal Issues – 30%;

4. Networking and public relation issues – 20%;
5. New business development – 10%.

Counsel indicated that the petitioner was submitting its [REDACTED] Statements to corroborate its revenue amounts. The bank statement showed that the petitioner received regular \$7,000 wire transfers for "representation fee" in the months of January, March, and April through August 2013. The petitioner also received a \$100,000 representation fee on September 9, 2013, a \$50,000 representation fee on July 10, 2003, and a \$5,296 representation fee on February 19, 2013.

The petitioner submitted a group organizational chart which depicts the beneficiary as executive vice president of [REDACTED] overseeing a finance director, deputy finance director, accounting division, economic and finance division, and budget office, as well as the IT division, in-house counsel, procurement, civil construction, architecture and transportation divisions. The chart also lists the beneficiary's title as finance director of four group subsidiaries located in Iraq and South Sudan, and as general director of four additional foreign subsidiaries.

The petitioner provided an organizational chart for the United States which indicates that the beneficiary oversees contracted legal services, a contracted accountant and tax provider, a contracted payroll provider, and a contracted web administrator/designer. In addition, the chart shows an un-named procurement officer provided by [REDACTED] and vacant positions for a training officer and an administrative assistant.

The director denied the petition on October 24, 2013, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. In denying the petition, the director focused on the petitioner's organizational chart and found that "the supervision or management of independent contractors does not permit a beneficiary to be classified as a managerial employee." The director further found that the petitioner did not establish that it has the organizational complexity to require an executive, and observed that the petitioner's descriptions of the beneficiary's duties are vague and therefore of limited evidentiary value. The director concluded that "the beneficiary may spend some of his time directing others, (subcontractors) but in order for the business to operate, the beneficiary would necessarily be involved in sales, customer service, and product delivery."

On appeal, counsel asserts that the "overwhelming evidence submitted . . . and the totality of the record demonstrates that [the beneficiary's] position is within an executive capacity and that he also manages the operations of the U.S. office exclusively with the assistance of several subcontracted employees." Counsel contends that the director based the decision on the size of the U.S. company and the number of staff, and failed to take into account the reasonable needs of the organization as a whole. In this regard, counsel emphasizes that the director should have considered the beneficiary's role as an executive with the petitioner's parent company in determining whether he would be employed in a qualifying capacity. Counsel states that the petitioner submitted evidence to establish the existence of departments and employees within the petitioner's group and notes that

the beneficiary continues to utilize the services of such employees and to exercise discretion over personnel actions.

Counsel reiterates all statements submitted by the petitioner and asserts that it is clear that the beneficiary's job duties are in an executive capacity as he "directs all of the functions" at the petitioner, advances the policy of the company by supervising and managing ongoing procurement contracts, and by working with the company lawyers. Counsel further states that the beneficiary's job duties are in a managerial capacity because he "is the only person who manages all of the operations of the U.S. subsidiary office and has the sole discretion over all decisions within [the petitioner's] organization."

In addition, counsel asserts that the beneficiary "should be considered a functional manager because he manages all of the (1) procurement services of oil and gas exploration equipment and supplies; (2) all of the ongoing contracts and accounts with U.S.-based bondholders and investment banks; and (3) oversees all of the U.S. legal services provided to [redacted] and its subsidiaries."

B. Analysis

Upon review, and for the reasons addressed herein, the petitioner has not established that the beneficiary would be employed in the United States in an executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's 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). We will then consider this information in light of other relevant factors, including (but not limited to) job descriptions of the beneficiary's subordinate employees, the nature of the business conducted, the size of the beneficiary's subordinate staff, and any other facts that may contribute to a comprehensive understanding of the beneficiary's actual duties and role in the organizational hierarchy of the entity in question.

The record establishes that the beneficiary's role as an executive vice president and chief financial officer for [redacted] is in an executive capacity. While the beneficiary will continue to serve in that overseas-based role, the petitioner cannot rely on his position with [redacted] to establish the beneficiary's eligibility as a multinational manager or executive in the United States. The petitioner must establish that the beneficiary's actual duties performed within the scope of his assignment for the petitioning company will be in a qualifying managerial or executive capacity. Furthermore, the 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).

At the time of filing, the petitioner stated that the beneficiary's duties are divided among five general areas of responsibility. While the beneficiary's responsibility for creating the petitioner's annual and rolling business plan is a qualifying duty, the beneficiary's actual duties associated with developing relationships with U.S.-based equipment manufacturers and suppliers and with oil and gas-related training institutions, as described in the record, have not been shown to be managerial or executive in nature. For example, the petitioner stated that the beneficiary's activities pertaining to procurement of contracts have been "primarily focused on putting together a data base and providing the necessary support to the group acquisition department for their regular tendering activities." The petitioner further noted that the petitioner and beneficiary are focused on buying spare parts for airboats and acquiring surveying services. The petitioner did not explain that the beneficiary delegates such duties to a subordinate staff member, contractor or overseas employee. It initially submitted an organizational chart that appears to show a planned procurement officer position that has yet to be filled. In response to the RFE, the petitioner submitted a chart indicating that a procurement officer is provided by its parent company, but it did not identify this employee or describe what duties he or she provides with respect to North American procurement. 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)).

Overall, the record does not establish that the beneficiary's duties are restricted to management or oversight of the procurement services the petitioner provides under the terms of its representation agreement with its parent company. Rather, to the extent that the petitioner provides these services, it is more likely than not that the beneficiary is performing them. The petitioner indicates that the beneficiary allocates 30 percent of his time to procurement activities.

Similarly, the petitioner indicates that the beneficiary's responsibility for "developing strong relationships with US based oil and gas related training institutions, universities and research centers" includes "putting together a data base and define better the group needs for education and training in 2013." The petitioner has one training officer position that remains vacant and has not established that the beneficiary has delegated non-managerial duties associated with implementing the group's training program and provision of these services to other group companies under the terms of the representation agreement. The petitioner does not indicate how much time the beneficiary allocates to these issues, but does state that he spends an additional 10% of his time on "general administrative issues" which have not been adequately defined. Given that the petitioner has a vacant position for an administrative officer/assistant position who would be responsible for "company's administrative activities, as well as procurement contracts," it is reasonable to conclude that the beneficiary currently performs the duties of this position in addition to his own.

The petitioner indicates that the beneficiary allocates another 30% of his duties to "legal issues." In an annex to the beneficiary's job description, the petitioner explained that this responsibility includes "working with our in-house and outside legal counsels" on arbitration and litigation matters, and specified that the work includes "collection and provision of respective documents and proves, interviews with the counsel, contribution to the drafting of statement of claim and rejoinder, witness statements, hearings." The petitioner indicated that the beneficiary also works with counsel

on agreements, assignment agreements, loan agreements, settlement agreements with the [REDACTED] noteholders, and any other legal documents the petitioner's group needs. The petitioner submitted copies of letters and e-mails evidencing the legal activities conducted by U.S. attorneys, but this evidence does not support the managerial nature of the beneficiary's duties.

The petitioner indicates that the beneficiary will also manage public relations with respect to the U.S. investors, but again, the company also has a vacancy for a public relations officer and has not fully explained whether or how the beneficiary would delegate non-managerial functions associated with this area of responsibility. While the petitioner indicates that it has subcontracted an accountant, a payroll services provider, immigration counsel and web administrator, it has not shown that the subcontracted employees directly contribute to providing the services of the organization.

Overall, the petitioner's description of the beneficiary's duties reflect that he allocates his limited time in the United States to a combination of qualifying executive and managerial duties and non-managerial duties that will eventually be assigned to other employees. The petitioner indicates that it operates as a consulting company providing procurement, legal and public relations services to other group companies, but has not established that anyone other than the beneficiary is available to perform services under its representation agreement. The beneficiary undoubtedly serves in an executive capacity in his role with the wider group, but the record does not establish that the petitioner has a need for him to primarily perform managerial or executive duties within the scope of its operation at the present time. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The definitions of executive and managerial capacity 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). Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

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. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in

discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Here, the beneficiary is the sole employee of the U.S. company, which was in a preliminary stage of development at the time of filing. The record does not establish that the beneficiary focuses primarily on the broad goals and policies of the petitioning company, as it does not have anyone else to perform the services required under the terms of its representation agreement. The beneficiary has the appropriate level of decision-making authority, but the record does not establish that he would initially be primarily focused on the broad goals and policies of the organization given its overall purpose and current structure. As such, the petitioner has not established that it will employ the beneficiary in an executive capacity.

The petitioner alternatively asserts that the beneficiary qualifies for the benefit sought as a function 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).

On appeal, counsel emphasizes that the beneficiary is the only person who manages all of the operations of the petitioner's office and has sole discretion over all decisions, such as hiring contractors to meet the reasonable needs of the company. Counsel asserts that the beneficiary should be considered a function manager because he manages all of the (1) procurement services of oil and gas exploration equipment and supplies; (2) all of the ongoing contracts and accounts with U.S. based bondholders and investment banks; and, (3) oversees all of the U.S. legal services provided to [REDACTED] and its subsidiaries." Counsel emphasizes that the beneficiary is charged with overseeing the expansion of the petitioner's oil consulting business in a new market.

Counsel's assertions are not persuasive. While the beneficiary's level of authority as a manager or executive is not in question, the petitioner has not established how his actual duties associated with the petitioner's provision of procurement services, legal services, contracts and consulting services qualify as primarily managerial. In order for the beneficiary to qualify as a function manager, the petitioner must establish that someone other than the beneficiary performs any non-managerial duties associated with these functions, whether they are direct employees, foreign staff or

contractors. The petitioner has neither explained nor documented who, other than the beneficiary, actually performs the services set forth in the petitioner's representation agreement.

Counsel correctly observes 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).

The petitioner was established to provide specific services to other members of its international group of companies in accordance with the submitted Representation Agreement in exchange for a fee and commissions. The petitioner indicated at the time of filing that it would eventually support a training officer, an administrative officer, a public relations officer and a procurement officer, and that it may expand its services to serve customers outside of its own group. However, at the time of filing, it employed only the beneficiary on an intermittent basis, and several contractors, none of which were contracted to perform duties directly related to the provision of the company's services. A petitioner must establish eligibility at the time of filing. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

As of the date of filing, and for the reasons discussed above, the petitioner did not establish that it has a reasonable need for an executive or manager to perform primarily qualifying duties. Rather, the record as a whole reflects that the petitioner, as of February 2013, was still in or barely out of the start-up phase and therefore was required to rely on the beneficiary in order to carry out its services under its agreement with [REDACTED]. Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements for this visa classification. Based on the evidence furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

III. DOING BUSINESS

Although not addressed in the director's decision, the record does not contain sufficient evidence to establish that the petitioner had been doing business for at least one year at the time the petition was filed, as required by 8 C.F.R. 204.5(j)(3)(i)(D). "Doing business" means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.

The petition was filed on February 7, 2013. Although the petitioner was established in Delaware in [REDACTED] the beneficiary did not come to the United States until February 2012. The petitioner stated that beneficiary "came to the United States in February 2012 to set up the company bank account and to resolve some other issues related to [the petitioner's] partnership with [REDACTED] (TX). [The beneficiary] returned to the United States in early June 2012 after all other issues regarding the company office rent for the Chicago office, tax returns, and ADP/payroll services were resolved." The petitioner submitted copies of various e-mail correspondence between the beneficiary and the petitioner's U.S. attorneys, but none of this evidence dates back one full year prior to the date the petition was filed.

There is no also evidence that the petitioner received its \$7,000 fee under the terms of the representation agreement with [REDACTED] during the twelve months preceding the filing of the petition. The petitioner's [REDACTED] monthly states reflect no \$7,000 monthly payments from the foreign entity prior to June 2012. Further, Mr. [REDACTED] and the beneficiary signed a letter in which they state that the beneficiary was in the United States in February, June, September and December 2012 and January 2013. As he is the only employee and there are no full-time contractors, it is unclear how the petitioner was doing business on a regular, systematic and continuous basis for the year preceding the filing of the petition. Again, 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)).

For this additional reason, the petition cannot be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

IV. PRIOR NONIMMIGRANT APPROVALS

We acknowledge that USCIS had approved two L-1A classification petitions filed on behalf of the beneficiary prior to denying the instant immigrant petition. The first was a new office petition filed pursuant to 8 C.F.R. § 214.2(l)(3)(v) and was valid from January 4, 2012 until October 15, 2012. The beneficiary was granted a one-year extension of status in October 2012.

Each visa petition filing is a separate proceeding with a separate record and a separate burden of proof. 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).¹

¹ In matters relating to an extension of nonimmigrant visa petition validity that involve the same petitioner, beneficiary, and underlying facts, USCIS will generally give some deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a

The AAO notes that I-140 immigrant visa petitions are frequently denied after USCIS approves prior nonimmigrant visa 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*, 724 F. Supp. 1103 (E.D.N.Y. 1989). 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 the present immigrant E-13 visa petition, which would permit the beneficiary 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).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

As previously discussed, regardless of any prior approvals granting the beneficiary L-1A nonimmigrant status, the petitioner has not met its burden of proof in this immigrant proceeding and the denial was the proper result under applicable statute and regulations. Accordingly, the claim is without merit.

V. 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, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988).