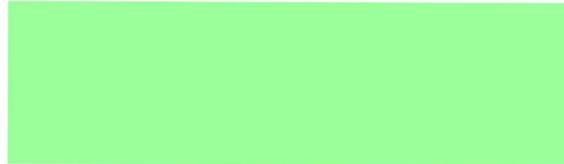
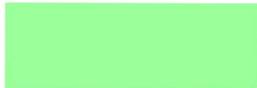


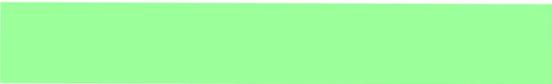
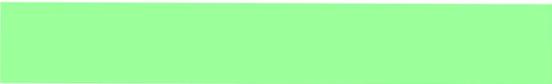


U.S. Citizenship
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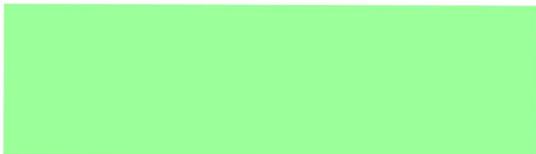
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DATE: **DEC 30 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

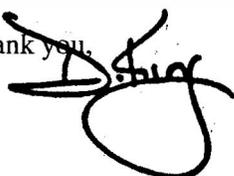
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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 Nebraska Service Center Director denied this preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a U.S. entity providing financial services and products. It seeks to employ the beneficiary in the United States as a technical services director. 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.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary was employed abroad in a qualifying managerial or executive capacity, and (2) the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

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.

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 that 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.

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. Issues on Appeal

A. Employment Abroad in a Managerial or Executive Capacity

The first issue to be addressed is whether the petitioner established that the beneficiary was employed abroad in a qualifying managerial or executive capacity in the United States.

1. Facts

The record shows that the petition was filed on May 23, 2013 with a supporting statement that indicated that the beneficiary was employed abroad from August 1987 through 2012 as a technical services director in the real estate operations and development departments of its affiliate in [REDACTED] Canada. The petitioner stated that the beneficiary had been granted L1-A status since January 2005 for "infrequent and intermittent" trips to the United States "to provide management services for our building operations and maintenance of real estate properties in the U.S." The petitioner further stated that the beneficiary's position was moved to the United States in January 2013.

The petitioner provided a short description of the beneficiary's duties abroad which were divided into eight general areas¹ of responsibility including ongoing building operations, initiating and ensuring proper administrative procedures, reviewing and evaluating drawings and specifications for conformance with building standards, and reviewing branch operating budgets.

On September 23, 2013, the director issued a request for evidence (RFE), informing the petitioner that the record lacks sufficient evidence to establish that the beneficiary had been employed abroad in a managerial or executive capacity. The director noted that the petitioner provided only a brief, generalized statement regarding the beneficiary's duties; therefore, he requested a detailed job description of the beneficiary's specific tasks including the percentage of time spent on each task when employed by the foreign company. The director requested information including an organizational chart of the foreign company and all employees and contractor information. The director also requested a description of the products and services provided and personnel necessary to produce or perform them.

In response, the petitioner submitted a new letter from the foreign entity, dated December 11, 2013, reiterating the beneficiary's general duties. The petitioner provided an undated organizational chart depicting the beneficiary as one of three directors of engineering and technical services, all of whom report directly to the managing director of asset engineering and technical services. The chart depicts no positions or employees subordinate to the beneficiary.

In a decision dated January 23, 2014, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary had been employed abroad in a qualifying managerial or

¹ As noted by the petitioner on appeal, the director's decision included the petitioner's description of the beneficiary's duties; therefore, we will not repeat them here.

executive capacity. The director found that the petitioner failed to provide specific duty descriptions with a requisite allocation of time dedicated to the beneficiary's specific tasks as requested. The director found that the petitioner failed to respond with other requested information and failed to identify a specific function that the beneficiary managed abroad.

The petitioner filed an appeal with a brief, asserting, in part, that the evidence submitted was sufficient to support its claim and that the director erred in concluding that the beneficiary's duty description was brief, generalized and vague.

2. Analysis

On review, the petitioner has not established that the beneficiary was employed abroad in a managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). 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.* Here, the petitioner's description of the beneficiary's duties abroad is general and vague leaving us little insight into what the beneficiary did on a day-to-day basis. For example, one of the beneficiary's eight listed duties is his broad "responsibility for ongoing building operations for the Company's numerous properties." 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*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In addition, the petitioner failed to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. This failure is important because several of the beneficiary's duties, such as initiating and ensuring proper administrative procedures in building operations, providing technical assistance, and reviewing and evaluating tenant fit-up drawings and specifications do not fall directly under traditional managerial duties as defined in the statute. We note that despite the director's request, the petitioner resubmitted the same eight listed responsibilities in response to the RFE, and failed to provide a breakdown of time the beneficiary dedicated to any of the responsibilities. 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).

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 claimed that the beneficiary managed an essential function but it did not provide sufficient evidence to establish the precise nature of that function. Further, the petitioner's assertion that the beneficiary had no employees or contractors who reported to him was corroborated by the foreign entity's organizational chart and raised the question of who would relieve the beneficiary from performing the duties of the function.

On appeal, the petitioner's assertion that the foreign entity's four page letter describing the beneficiary's duties abroad should not be described as "brief" ignores the fact that much of the letter discusses the foreign entity's business and the beneficiary's history with the foreign entity rather than the beneficiary's actual duties. Further, the petitioner's assertion that the information that the director requested could not be provided because the beneficiary's overall responsibilities "cannot be quantified by percentages on a daily basis" does not relieve the petitioner from establishing that the beneficiary meets the requirements of this petition.

The petitioner has not established that the beneficiary was employed abroad in a qualifying managerial or executive capacity. Therefore, this petition cannot be approved.

B. U.S. Employment in a Managerial or Executive Capacity

1. Facts

The petitioner submitted a letter in support of the initial petition, dated April 13, 2013, stating that the beneficiary's position as technical services director abroad was moved to the United States on January 1, 2013 and was expanded to include management of designated branch office operations in the United States, Canada, and Asia. The petitioner stated that the petitioning company "offers clients a diverse range of financial protection products and wealth management services" and the beneficiary would be responsible for preparing and maintaining operational and development performance standards within the U.S., Canada, and Asia by providing direction on technical matters to consulting engineers, and senior staff.

The petitioner listed seven general areas of responsibility for the beneficiary including such duties as providing engineering support for designated branch office operations, managing total energy and utility use and performance, directing the design of new building development projects, monitoring

or implementing major building service agreements for outside contractors, and implementing company environmental policy. The petitioner explained that the beneficiary performed the same duties abroad but the company moved the position to the United States for increased oversight and effectiveness. The petitioner indicated that it employed 26,400 employees in the United States.

The director's RFE informed the petitioner that the record lacks sufficient evidence to establish that the beneficiary would be employed in the United States in a managerial or executive capacity. The director noted that the petitioner provided only a brief, generalized statement regarding the beneficiary's duties; therefore, he requested the following: 1) specific daily tasks with a percentage of time spent on each task; 2) list of employees and contractors along with their duties, educational level, salary and part-time or full-time status; 3) a description of products and services and the tasks and personnel necessary to produce them; 4) an organizational chart demonstrating each company's structure to include the beneficiary's position; and 5) payroll documents. The director also requested the petitioning company's tax documents.

The petitioner responded to the RFE with a letter, dated December 13, 2013, stating that the beneficiary's proposed job title was changed to "Director [of] Engineering [and] Technical Services, [of U.S.] properties" to fully describe his area of responsibility. The petitioner stated that, in this role, the beneficiary "is responsible for preparing and maintaining cost effective and environmentally compliant operational and development performance standards for the U.S. Real Estate portfolio."

The petitioner's letter also stated that the beneficiary's position is essential to managing the complex technical service operations and engineering functions for the company's real estate holdings in the United States. The petitioner further described the beneficiary's proposed duties including the following: 1) reviewing proposals; 2) monitoring building system improvements or retrofits for U.S. properties; 3) evaluates the purchase of major building equipment and services; 4) provides financial analysis for implementation and installation of major building equipment and services; 5) directs efficiency evaluations; 6) monitors or implements major building service agreements for outside contractors; 7) implements environmental policy and ensures due diligence compliance; 8) directs design of new building development projects with outside consultants; monitors all applicable building codes, regulations, and statutes; 9) advises company investment project managers on technical and engineering viability of potential new property; 10) reviews existing property condition reports and environmental reports in coordination with the investment project managers; 11) develops the program requirements for overall building design for architects and their consultants; and 12) reviews construction progress and issues deficiency reports. The petitioner stated that the beneficiary "meets with the property management firms, building managers and senior building operating staff to provide direction on engineering support for issues that arise on a day to day basis." The petitioner further stated that "[t]his interface involves supporting approximately 125 employees, property managers, consultants and others related to the overall operations of each property."

In denying the petition, the director concluded that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. The director

determined that the petitioner failed: to provide specific duty descriptions, and a corresponding allocation of time dedicated to the beneficiary's specific tasks, as requested. The director found that the petitioner failed to identify a specific function that the beneficiary managed in the United States.

On appeal, the petitioner asserts that the beneficiary's job duties were not vague and that they were related to an essential function. The petitioner further asserts that the beneficiary's position is essential to manage the function that "is a complex process involving directing and implementing all goals, policies and the overall objectives of senior executive management for its real estate assets." The petitioner states:

[T]he Beneficiary's position entails authority for overseeing the overall technical services operations for this immense real estate portfolio, including all decision making authority in the areas of building maintenance, energy efficiency, capital expenditures, assessment of new major acquisitions, hiring external contractors and architects, negotiation and implementation of major building service agreements, compliance with Canadian and U.S. building codes, and hiring of building managers for 90 properties.

The petitioner asserts that its overall complexity, value, structure and size demonstrate that the function discussed above is essential and requires the services of a manager. The petitioner asserts that the beneficiary is a function manager "in the overall technical services operations of \$5.1 billion U.S. Real Estate holdings." The petitioner further asserts that the beneficiary's duty descriptions are sufficient to establish its claim. The petitioner refers to the "6-page detailed and highly specific job description" provided in the record and claims that the beneficiary manages an essential function. The petitioner asserts that the nature of the beneficiary's position involves "responding to a constantly changing agenda" and "requires the incumbent to quickly respond to highly variable day-to-day issues." Moreover, the petitioner asserts that the beneficiary's position "requires planned and unplanned travel for meetings with building managers and senior staff, interviews, negotiations, review/approval of work proposals and other items which need to be reviewed onsite sometimes on a critical and immediate basis."

2. Analysis

Upon review, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity in the United States.

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 claimed that the beneficiary was a function manager, charged with oversight of the petitioner's real estate properties but the petitioner did not clearly describe the essential function to be managed by the beneficiary. For example, the petitioner initially stated that the beneficiary would be responsible for preparing and maintaining operational and development performance standards yet, in response to RFE, the petitioner asserted that the beneficiary was primarily responsible for preparing and maintaining cost effective and environmentally compliant operational and development performance standards. On appeal, the petitioner describes the essential function as "a complex process involving directing and implementing all goals, policies and the overall objectives of senior executive management for its real estate assets." This description is vague; therefore, the petitioner has not articulated the essential nature of the function with sufficient specificity.

As previously noted, the record initially indicated that the beneficiary would prepare and maintain operational and development performance standards in the U.S. and abroad by periodic reporting and providing direction to consulting engineers, senior head office, and branch office staff. In its response to the director's RFE, the petitioner changed the job title and stated that it expanded the beneficiary's duties to more fully describe his responsibilities. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request also provided additional information relating to the beneficiary's duties but it is not clear whether the additional job duties were applicable at the time this petition was filed. Certainly, the beneficiary's job title has been changed since the petition was filed therefore the analysis of this criterion will be based on the job title submitted with the initial petition. We also note that a review of the record indicates that the beneficiary initially had the responsibility for oversight of 74 real estate properties though, on appeal and without explanation, the petitioner now claims it to be 90 properties. 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).

Looking to the beneficiary's duties, we note that the petitioner lists the beneficiary's duties as managerial, but it fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's responsibilities such as evaluating purchases, making recommendations, implementing policies, overseeing equipment replacements, reviewing reports, consulting/advising, and directing others indicate that he is performing the duties of a function rather than managing a function and do not fall directly under traditional managerial duties as defined in the statute. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, we cannot determine what proportion of his duties would be managerial or executive, nor can we deduce whether the beneficiary is primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Further, we find that although the director specifically requested a breakdown of the beneficiary's time related to his duties, the petitioner failed to provide it. Rather than provide the information requested, the petitioner asserted that the record supported the petitioner's claim and that the nature of the beneficiary's work did not make such a calculation possible. 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). On appeal, the petitioner states that the beneficiary's job "cannot be quantified by percentages on a daily basis." The petitioner further asserts that the beneficiary's "decision-making job functions, by their very nature, involve responding to a constantly changing agenda based on high level priorities of the properties under management or consideration of acquisition." Notably, this assertion does not lend support to its claim. Instead, the assertion highlights that the beneficiary is essentially "on call" with little control over his own agenda as he exercises the daily functions. We recognize the beneficiary's substantial accomplishments in his role, but the petitioner's assertion that the beneficiary only manages this function while relying on other unnamed individuals to perform the actual functions is not supported by the record.

We note that the petitioner referred to branch operations in the beneficiary's duty description but there is no discussion as to who, other than the beneficiary, would perform these non-qualifying duties. The petitioner has not clearly set out the beneficiary's daily tasks and we are unable to discern to whom the beneficiary is directing to carry out the operational tasks associated with the functions claimed. We note that the petitioner states that many of the beneficiary's duties and responsibilities result in the work by others but the petitioner has provided insufficient evidence to establish the claim. Moreover, the petitioner claims that the beneficiary will direct, advise, and oversee others but provides no documentation to establish that the beneficiary has the authority to do so since the petitioner claims no employees or contractors subordinate to the beneficiary. 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)). On appeal, the petitioner asserts that the beneficiary has no employees because he is primarily responsible for asset management. The fact that the beneficiary has managerial control over all aspects or functions of

the business does not establish that he qualifies as a function manager. While such authority is consistent with the statutory definition of managerial capacity, it is not sufficient to establish that the beneficiary is employed in a managerial capacity.

Upon review, the petitioner has not provided sufficient, comprehensible evidence to conclude that the beneficiary will be employed in a primarily functional managerial capacity. The descriptions of the beneficiary's job duties are general and fail to sufficiently describe his actual day-to-day duties. The petitioner has not established that the beneficiary will be employed in a primarily functional managerial capacity.

Accordingly, the petition cannot be approved and the appeal will be dismissed.

We acknowledge that USCIS had approved an L-1A classification petition filed on behalf of the beneficiary prior to denying the instant immigrant petition. 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).

We note 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(1)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

Furthermore, our 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, we 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).

In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for this immigrant visa petition based on the petitioner's failure to establish eligibility. In both the request for evidence and the final denial, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. If previous

petitions were approved based on the same minimal evidence of the beneficiary's eligibility, the approval would constitute gross error on the part of the director.

The petitioner refers to an unpublished decision in which we determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. The petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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).

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.