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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE:

FEB 24 2014

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 (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, Texas Service Center, denied the nonimmigrant visa petition. The petitioner submitted a motion to reopen and reconsider, which the director dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Texas limited liability company engaged in "marketing & distribution of sanitary wear" that seeks to employ the beneficiary as its operations manager. 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 that it would employ the beneficiary in a qualifying managerial or executive capacity. Specifically, the director determined that since the beneficiary is the petitioner's sole employee he "inevitably needs to personally make phone calls, fill out paperwork for the orders of the merchandise, fill out paperwork to arrange for shipment, etc., and do all record keeping for all the business activities." The director found that, given the lack of support staff, the bulk of the non-qualifying tasks must be performed by the beneficiary.

On appeal, counsel asserts that the beneficiary will be employed in a qualifying executive capacity. Counsel emphasizes the beneficiary's position as the sole employee and asserts that the director failed to take into account the need for the beneficiary's executive skills. Counsel asserts that the petitioner uses independent contractors rather than employees to perform all non-executive duties, and contends that the director provided inadequate support for his conclusion that the beneficiary performs non-qualifying tasks.

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 a 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 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.

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.

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 ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that it will employ the beneficiary in a primarily managerial or 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 as a detailed description of the beneficiary's actual daily tasks tends to 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). The AAO also gives ample consideration to the job duties of the beneficiary's subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts that contribute to a comprehensive understanding of the beneficiary's actual role in a business.

In the present matter, the AAO finds that the beneficiary's job description, and the petitioner's claim that he will perform primarily qualifying duties, is not supported based on a review of the totality of the evidence in the record. The petitioner claims, and the record supports, that the beneficiary is the petitioning company's sole employee. The petitioner asserts that the beneficiary, as the operations manager, will be "responsible to oversee and direct the United States business," "to plan, organize, direct and control the business," set goals and policies," and "determine whether to hire or fire employees and whether to contract with third parties as required."

Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). According to the petitioner, the beneficiary also "reviews and analyzes corporate global results reports" and "ultimately approves strategies" though it is unclear who is creating those global proprietary reports and who is involved in the development of strategies for approval since there are no other employees and these duties are not within the parameters of the outsourced service contracts discussed below.

In response to the director's request for evidence (RFE), counsel for the petitioner asserts that the "Beneficiary's main responsibility at [the petitioner] is brand development, this involves: approve new product design, inspect manufacturing in China is kept up to company's standards, insure continuous brand positioning in existing and new markets, and constantly meet with clients to better understand their ever-changing needs." Based on these vague and expansive duties, it is unclear how the beneficiary spends his actual day and it is unclear how the day-to-day operational tasks necessary to maintain business operations are accomplished. 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).

On appeal, the petitioner provides a letter dated February 12, 2013 containing another description of the beneficiary's duties as general manager. This description provides a list of executive and non-executive duties with an allotment of time allocated for different categories of tasks. For example, the beneficiary is to spend four hours per day analyzing "all aspects of supply chain to determine the most timely cost-effective and efficient means of production and delivery." Included under this category are tasks such as "[s]upervision and approval of production drawings" and "[s]upervision and monitoring of production timing." Notably, the petitioner failed to explain who was creating the production drawings to be approved, for example. Further, the petitioner included a number of duties, both qualifying and non-qualifying, that were not previously mentioned. This most recent version of the beneficiary's duties, which focuses on the supply chain is significantly different from the prior duty descriptions, the first of which focused on overall oversight of the business, and the second of which focused on brand development and positioning.

The petitioner provides no explanation for the disparities between the submitted position descriptions. On appeal, 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 the 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Overall, the petitioner has provided three different descriptions of the beneficiary's proposed duties. While it is reasonable to believe that the beneficiary is simultaneously responsible for many aspects of the business, including the supply chain, brand positioning, and overall company performance, none of the submitted position descriptions provides a complete picture of what the beneficiary primarily does on a day-to-day basis as the general manager and only employee of the petitioner's bathroom furniture and fixture import and wholesale business. 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)).

As noted, beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of any subordinate employees, the presence of other employees or contractors to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

According to the petitioner, the beneficiary is the sole employee who directs the management of the company with the ultimate authority and responsibility to make executive decisions. The petitioner

maintains that "all functions which are not executive in nature are outsourced as needed." Therefore, the petitioner asserts that the business requires no additional employees because all required services are to be performed by independent contractors. The petitioner initially indicated that it utilizes the services of the following contractors:

CONTRACTOR	SERVICES PERFORMED
[REDACTED]	Bookkeeping, Tax Reporting and financial statements
[REDACTED]	Use of executive office space with mail
[REDACTED]	Logistics and Freight
[REDACTED]	Logistics and Freight
[REDACTED]	Logistics and Freight
[REDACTED]	Marketing
[REDACTED]	Marketing

The petitioner submitted a client service agreement between the petitioning company and [REDACTED] is identified as a professional corporation of certified public accountants. According to the terms of the agreement, the petitioner agreed to pay \$250.00 per month in exchange for [REDACTED] services which include the provision of: 1) a mailing address for all of the petitioner's correspondence which will be reviewed and the petitioner's representative will be notified; 2) a mailing address for package shipments which will be received and forwarded to the petitioner as instructed by the petitioner's representative; and 3) bookkeeping and accounting services to include preparation of required federal and state reports and other reports as required. The period of performance for the undated agreement submitted with the initial petition began on July 1, 2004 with yearly automatic renewals in January. In response to the director's RFE the petitioner submitted another almost identical contract except that the term was from July 1, 2004 through December 2013. The record also contains a nearly identical version of the same client service contract, also un-dated, which indicates that the agreed term was from July 1, 2004 until December 31, 2010, and this was the only version of the contract which included an original signature from the accounting firm. 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).

Further, the petitioner failed to establish that it has actually been paying [REDACTED] for its services. Based on the terms of the contract, and assuming that it did not in fact expire on December 31, 2010, the petitioner agreed to pay \$3,000 annually to [REDACTED]. A review of the petitioner's IRS Form 1120 U.S. Corporation Income Tax Return for 2010 reflects that the petitioner claimed a total of \$290.00 for the year's accounting costs, \$761 for banking costs, \$629 for rent and \$34,091 in travel costs. In 2011, for the period ended August 31, 2011 the petitioner self-reported that its operating expenses included \$419 in rent, \$311 for bank charges and \$275 for professional fees. Consequently, the petitioner has not established that it has been paying [REDACTED] monthly fee of \$250. 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)).

The record reflects that the petitioner's tax returns for the years 2009 through 2011 were prepared by [REDACTED] a company with the same address as [REDACTED]. However, absent evidence of payments according to the terms of the petitioner's alleged ongoing contract, the AAO cannot conclude that the petitioner has an accountant providing day-to-day accounting, bookkeeping, accounts payable and receivable, invoicing, etc., as claimed in the record. To the extent that the petitioner relies on external service providers for accounting purposes, such reliance appears to be limited to tax and financial statement preparation. If the petitioner claims that someone other than the beneficiary performs the company's daily operational tasks associated with invoicing, bookkeeping, banking, and other routine financial matters, it bears the burden of submitted probative evidence in support of that claim. Here, the petitioner inexplicably submitted three different versions of the same contract with the same accounting firm, and provided no corroborating evidence of any payments made to the firm. Accordingly, it has not established how the beneficiary is relieved from performing the duties attributed to [REDACTED].

The petitioner submitted a virtual office service agreement entered with [REDACTED] dated April 1, 2010 reflecting the petitioner's lease of mailbox [REDACTED] use of this business address on cards and stationary, and mail service including receiving and handling. The petitioner agreed to pay \$55.00 per month for these services and to provide 30 days written notice to terminate the agreement. It is unclear whether the \$629 the petitioner paid in 2010 for rent was paid to [REDACTED] but the petitioner did not submit evidence to show that rent was paid in 2011.

The petitioner submitted the following evidence to establish its relationship with the remaining five independent contractors: (1) invoices from [REDACTED] from 2006 to 2008; (2) a single 2011 invoice for services from [REDACTED] (3) four 2011 and one 2012 invoice from [REDACTED] (4) two 2010 invoices from [REDACTED] for the petitioner's purchase of labels, business cards and other printed materials, and (5) a single invoice for graphics provided by the [REDACTED] in 2009. Notably, only five invoices reflect charges for services in 2011. As noted, the petitioner reported minimal expenses in on its IRS Form 1120 for 2011, including \$73 in automobile and truck expenses, \$3,025 in legal and professional fees and \$320 in miscellaneous fees. It did not provide evidence that it regularly uses the services of independent contractors or outside service providers to meet its day-to-day operational needs.

After the director found that the petitioner had not established that it had sufficient employees or independent contractors to handle the day-to-day tasks of running the petitioning company, counsel for the petitioner responded to the director's RFE with a brief stating that the petitioner is "focused on sanitary-ware wholesale distribution" and has maintained its competitiveness by reducing operational costs. Further, counsel explained that the petitioner created a "simplified scheme of production through which the Beneficiary is relieved from the day-to-day minutia by outsourced resources." Specifically, counsel asserts that the scheme "involves hiring independent contractors to perform all necessary functions in order to import and sell its products in the United States. The

beneficiary directs all contractors as needed and oversees their performance, hence working through other employees." The petitioner submitted one new support agreement dated February 9, 2009 with a company not previously identified to handle limited legal services. Two previous service agreements were resubmitted with minor changes. The petitioner also submitted invoices from the foreign entity requesting payment for "product supplied, logistics and international coordination."

On appeal, the petitioner submits an organizational chart dated June 2005 which depicts the beneficiary as managing director with seven direct reporting entities as follows: 1) Office Administration - [REDACTED] 2) Warehousing - [REDACTED] 3) Accounting & Controller - [REDACTED] 4) Logistics - [REDACTED] 5) Legal - [REDACTED] 6) Sales - [REDACTED] - the beneficiary; 7) Sales - [REDACTED]

The petitioner provides descriptions of duties and services provided by each of the entities identified on the organizational chart. However, the petitioner provides no additional evidence to establish that it has current agreements with the newly-named entities or evidence to establish recent payments to these entities. The petitioner has not reported any warehousing, marketing or sales commission expenses on any of the submitted corporate tax returns. Nor has the petitioner explained why the petitioner did not claim to use outsourced warehousing services or contracted marketing and sales service providers either at the time of filing or in response to the RFE. As the organizational chart is dated 2005, it is reasonable to believe that the contractors listed therein do not represent the petitioner's staff as of the date this petition was filed in December 2011. 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).

Based on the nature of the services claimed to be provided by contractors, and the minimal evidence submitted to establish that the petitioner actually uses the services of contractors, the petitioner did not support its assertions that all of the "day-to-day minutia" associated with operating its business has been and can be handled by independent contractors and service contracts. In the brief, counsel explained that when an order is placed by a client through the petitioner in the United States, the petitioner directs the foreign company to order product manufacturing. The foreign company later invoices the petitioner for services rendered. The petitioner makes payments and contracts with one of the sea-freight service providers, such as [REDACTED] to transfer the product to the United States. The petitioner may also engage the services of an intermediary or freight forwarding company such as [REDACTED]. According to the petitioner, the beneficiary directs all of these contractors.

Based on counsel's description of the petitioning company's process and in consideration of the outsourced requirements, someone employed by the petitioner must receive the orders placed by clients and direct the foreign company to order product manufacturing. It does not appear that either of these tasks have been outsourced. Therefore, the only person available to perform the tasks is the beneficiary. Further, the beneficiary's name is repeatedly included on numerous

invoices as the point of contact person for the petitioning company. Again, as the sole employee and point of contact, the beneficiary will necessarily be responsible for these tasks which were not initially identified in the beneficiary's vague duty description. Further, while the petitioner claims on appeal that it utilizes the services of three to four companies to perform the sales function, including production promotion and marketing, processing of purchase orders, preparation and participation in trade shows, and store visits and public relations, the record is completely devoid of any supporting evidence of the company's use of these sales service providers. As such, it is unclear how the beneficiary would be relieved from the sales and marketing of the petitioner's products.

Notably, even if the petitioner's independent contractors and services contracts were sufficient to handle all of the company's reasonable requirements, the expenses reflected on the petitioner's tax returns are not consistent with the service contracts the petitioner has presented in support of this petition. As discussed, the petitioner has reported minimal or no expenses for freight, warehousing, accounting and legal services, sales commissions, marketing expenses, contractors expenses, and outside labor. 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. at 591-92.

On appeal, counsel for petitioner asserts that the director was arbitrary and capricious in finding that the beneficiary could not function primarily in an executive capacity as the petitioner's sole employee. As required by section 101(a)(44)(C) of the Act, 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. 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 size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *See Systronics*, 153 F. Supp. 2d at 15. As discussed there are a number of unresolved discrepancies in the record regarding the petitioner's claimed use of contractors for sales, marketing, warehousing, accounting and administrative functions

At the time of filing, the petitioner was a seven year-old marketing and distribution company that claimed to have a gross annual income of \$296,728. The firm employed the beneficiary as its operations manager and sole employee. The petitioner claimed no subordinate staff members who would perform the actual day-to-day, non-managerial operations of the company. Rather, the petitioner claimed that all required day-to-day tasks would be outsourced to independent contractors. Nevertheless, the petitioner stated that the beneficiary is the only employee "with the authority to quote fees and extend credit to clients and review and approve all payments." The petitioner presented some evidence establishing service contracts and agreements with companies but minimal evidence of payment to such companies, and no evidence that the beneficiary would be

relieved from marketing, sales, administrative, and order processing functions. The only independent contractors or service providers whose services were well-documented in the record were those providing freight and transportation services. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary alone and independent contractors providing these types of services. Rather, it is evident from the record that the beneficiary is the only individual available to handle any and all administrative duties or problems that arise on a day-to-day basis.

Therefore, it is reasonable to believe, and has not been shown otherwise, that the beneficiary is performing all functions and duties not otherwise contracted out and that those duties would reasonably include non-qualifying tasks which may demand a majority of the beneficiary's time. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility based on its failure to provide a consistent, detailed description of the beneficiary's actual job duties and its failure to adequately document the petitioner's use of the independent contractors claimed to perform the non-executive functions of the business.

Reading section 101(a)(44) of the Act in its entirety, the "reasonable needs" of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See Brazil Quality Stones v. Chertoff*, 531 F.3d 1063, 1070 n.10 (9th Cir., 2008).

Counsel also refers to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity even though he was the sole employee of the petitioning company. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, non-precedent decisions are not similarly binding. The AAO has consistently required the petitioner to establish that the beneficiary's position consists of primarily managerial or executive duties and that the petitioner will have sufficient personnel, either employees, contractors or other staff, to relieve the beneficiary from performing operational and/or administrative tasks. While it is possible for a sole employee to qualify for the requested classification, any such claim must be supported by a detailed, consistent and credible description of the beneficiary's duties, and probative evidence that someone other than the beneficiary will perform the majority of the non-qualifying duties associated with the type of business the petitioner operates. Our holding is based on the petitioner's failure to meet these evidentiary requirements rather than on the size of the company.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a

preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Based on the foregoing discussion, the petitioner has not met this burden and the appeal will be dismissed.

Counsel's reference to United States Citizenship and Immigration Services' (USCIS) previous approval of L-1A nonimmigrant petitions filed on behalf of the beneficiary is noted. However, many 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*, 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 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 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 of managerial/executive capacity 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.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate 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.