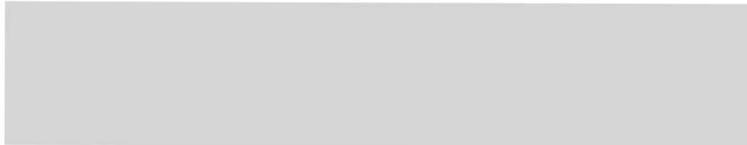




U.S. Citizenship
and Immigration
Services

(b)(6)

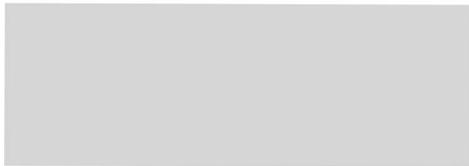


DATE: **APR 17 2015** OFFICE: TEXAS SERVICE CENTER FILE: 

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 Texas Service Center Director denied the preference visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as a multinational executive or manager 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 is engaged in the import, distribution, and sale of hand woven carpets. It claims to be a subsidiary of the beneficiary's foreign employer, [REDACTED] located in Nepal. The petitioner seeks to employ the beneficiary as its President.

The director denied the petition on April 17, 2014, concluding that the petitioner failed to establish that the beneficiary would 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 us for review. On appeal, the petitioner asserts that it provided sufficient evidence to establish that the beneficiary would be employed in the U.S. in a qualifying managerial capacity. The petitioner submits a brief and additional evidence in support of the appeal.¹

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 and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or

¹ We conduct appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)).

subsidiary of that entity, and who 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. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

- (i) directs the management of the organization or a major component or function of the organization;

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

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. ISSUE ON APPEAL

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

The issue to be addressed is whether the petitioner established that the beneficiary would be employed in a qualifying managerial or executive capacity.

1. Facts

The petitioner offered the beneficiary the position of President. In a letter of support dated July 2, 2012, the petitioner explained the duties of the proffered position as follows:

He [the beneficiary] will continue directing, planning, evaluating and implementing policies, objectives and operations, and maximizing returns on investments. [The beneficiary] acts with wide latitude in discretionary decision-making. Functioning autonomously, he is primarily responsible for managing and directing all major activities of the company as they pertain to [the petitioner's] operations in the United States.

The petitioner also stated that it employs five employees "who actually engage in the operational activities of the business and in the day-to-day tasks of providing the services for the company." The petitioner also stated that it is utilizing "independent contractors, such as accountants and graphic designers who report directly to [the beneficiary]."

The petitioner submitted, among other evidence, copies of its IRS Form 1120, U.S. Corporation Income Tax Return, for 2011. In addition, the petitioner submitted IRS Form 941, Employer's Quarterly Federal Tax Return, for all four quarters of 2011 and the first quarter of 2012 which indicate salaries and wages paid to three to five employees in 2011 and four employees in the first

quarter of 2012. The petitioner also submitted 2011 IRS Forms W-2 for the beneficiary and three other employees. Finally, the petitioner submitted a Form I-797 Approval Notice for an individual who was approved to work for the petitioner in H-1B status beginning on June 4, 2012.

In a request for evidence (RFE) dated May 16, 2013, the director requested, in part, a detailed job description of the beneficiary's specific tasks on a normal business day including the percentage of time spent on each task. In addition, the director requested an organizational chart including the names of all employees, employees' titles, a clear description of their job duties, educational levels and IRS Forms W-2 for each employee.

In response, the petitioner provided a letter from the foreign entity which included described the beneficiary's U.S. duties as follows:

1. Efficiently direct the overall business operation of [the petitioner];
2. Formulate policies and draw strategic plans to market the products of [the foreign entity] in Nepal, using a wide latitude of discretionary decision making power;
3. Effectively and systematically research and explore new market opportunities and make a sustained effort in expanding the market for the products of the parent company of [the petitioner];
4. Meets with prospective clients and negotiate contracts etc.;
5. Finalize the pricing based on the prevailing market situation in the United States[;]
6. Hire required staff for the operation and expansion of the business activities of [the petitioner];
7. Efficiently supervise the financial planning and budgetary control of [the petitioner];
8. Provide effective leadership and sound guidance to the supporting staff, particularly those at the supervisory level, to facilitate efficient day-to-day management of [the petitioner].

The petitioner also provided the beneficiary's specific daily duties with the percentage of time spent on each duty as follows:

- Meetings with the Vice President and the Treasurer regarding company's financial position, budget allocation and public relations (15%)
- Meeting with current clients and potential clients (13%)
- Review of financial and budget reports prepared by the Treasurer (10%)
- Review of financial statements provided by the Accountant (8%)
- Attendance of various business related meetings, lunches and events (13%)
- Report company's current standing, accomplishments, issues, goals to [the foreign entity] (3%)
- Review marketing plan prepared by Vice President (8%)

- Research market trends and draw strategic plans (15%)
- Inspection of new inventory and company (5%)
- Go over employee issues (3%)
- Go over client issues (7%)

The petitioner submitted an organizational chart which indicated the beneficiary as the Executive President with two direct subordinates – a part-time Treasurer/Finance employee and the Vice President. The chart shows that the Vice President supervises a Project/Marketing Manager, a Project Assistant and a "Sales Incharge."

The petitioner provided a brief job description for the Vice President which included the following duties: "carry out strategic plans by overseeing operations"; "develop functional roles and assign responsibilities to Project Manager and Salespeople"; "oversee the job performances of the Project Manager and Salespeople"; "communicate expectations and the organization's mission to colleagues"; "determine the organization's success in terms of profitability and corporate citizenship"; and, "report the goals and accomplishments of the business."

The petitioner also explained that the Treasurer/Finance employee performs the following duties: "set up appropriate systems for book-keeping, payments, lodgments & petty cash"; "ensure that appropriate financial systems and controls are in place"; "ensure everyone handling money keeps proper records and documentation"; "present regular reports on the organization's financial position"; "present revised financial forecasts based on actual spend"; "prepare and present budgets for new or ongoing work"; and, "advise on financial implications of strategic and operational plans." The petitioner did not provide position descriptions for the project/marketing manager, the project assistant or the sales incharge employee. It provided evidence of wages paid to all employees except for the "Treasurer/Finance."

The director denied the petition, finding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

On appeal, the petitioner asserts that the director did not support his finding that the petitioner has insufficient staff to relieve the beneficiary from performing non-qualifying duties, and that the director failed to take into account the nature of the business when considering the petitioner's staffing levels. The petitioner further contends that the director appeared to require that the beneficiary perform exclusively qualifying managerial or executive tasks.

2. Analysis

Upon review, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, we review the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. *See* 8

C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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 job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the foreign company's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role within the foreign entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has the capability of maintaining its daily operations such that the beneficiary was relieved from having to primarily perform the operational tasks.

At the time of filing, the petitioner provided a list of duties that described the beneficiary's position in very generalized terms, noting that he will "efficiently direct the overall business operation of [the petitioner]"; "formulate policies and draw strategic plans to market the products of [the foreign entity] in Nepal, using a wide latitude of discretionary decision making power"; and, "provide effective leadership and sound guidance to the supporting staff, particularly those at the supervisory level, to facilitate efficient day-to-day management of [the petitioner]." The duties were overly broad and lacked any specific references to the petitioner's distribution business or to the specific tasks the beneficiary performs on a day-to-day basis. For example, the petitioner did not provide any further information regarding strategies for generating resources and revenues for the company, who the beneficiary supervises in this regard, or what specific activities the beneficiary must perform when directing the overall business. 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).

Although the petitioner provided an expanded description in response to the RFE, that description also included duties that were described in broad terms and included potentially non-qualifying duties. For example, the petitioner stated that the beneficiary would allocate 15% of his time to meeting with clients and potential clients and an additional 13% of his time to attending "various business related meetings," but did not provide sufficient explanation as to how these client and business meetings involve managerial or executive duties. The petitioner indicated that the beneficiary allocates another 10% of his time to "go over" employee and client "issues" but, again, without further explanation it is unclear whether these duties should be characterized as managerial or executive in nature. Finally, the petitioner indicated that the beneficiary allocates 5% of his time to "inspection of new inventory" and 15% of his time to "research market trends," which suggests that he directly performs these non-managerial duties rather than delegating them to subordinate staff members. Overall, these duties, which account for 58% of the beneficiary's time, cannot be classified as qualifying duties based on the limited information provided.

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 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).

While performing non-qualifying tasks necessary to produce a product or service or other non-managerial duties will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 *Matter of Church Scientology International*, 19 I & N Dec. 593, 604 (Comm. 1988). Here, while the beneficiary has the appropriate level of authority over the company as the petitioner's senior employee, the petitioner's descriptions of his duties are insufficient to establish that his day-to-day tasks are primarily managerial or executive in nature.

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 the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The petitioner submitted an organizational chart that indicated the beneficiary would supervise a Treasurer/Finance employee. However, according to the Forms W-2 for 2012 and the Forms NYS-45, Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return, for 2012 submitted by the petitioner to indicate all of its employees, no documentation indicated that the individual that held the position of Treasurer/Finance was actually employed by the company. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner indicated that the

Treasurer/Finance employee would "set up appropriate systems for book-keeping, payments, lodgments & petty cash"; "ensure that appropriate financial systems and controls are in place"; "ensure everyone handling money keeps proper records and documentation"; "present regular reports on the organization's financial position"; "present revised financial forecasts based on actual spend"; "prepare and present budgets for new or ongoing work"; and, "advise on financial implications of strategic and operational plans." Thus, without evidence that the Treasurer/Finance position was filled, it is not clear who is handling all of the financial operations of the business or that the beneficiary is relieved from performing these duties.

We acknowledge that the petitioner has established that it employs the vice president, who reports to the beneficiary and is claimed to supervise the three lower-level staff. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). Here, while the beneficiary may allocate some of his time to qualifying supervisory duties, the record does not establish that he primarily supervises and controls the work of subordinate managers or professionals. As discussed, nearly 60% of his time, according to the petitioner's breakdown of his job duties, is allocated to duties unrelated to personnel supervision. The petitioner has not established that the beneficiary qualifies as a personnel manager and has not claimed that he manages an essential function of the company.

The petitioner stated that it is "an importer and distributor of woven high end handmade and hand knotted carpets, and pashmina shawls produced by its parent company in Nepal." The petitioner submitted a copy of its lease, which indicates that it operates a store selling home decorations, clothing and carpeting. As noted above, it appears that the petitioner employs five individuals. The evidence of record does not demonstrate that the petitioner employs a Treasurer/Finance employee. Further, although it has provided evidence of wages paid to the vice president, project/marketing manager, project assistant and sales incharge employee, it has not provided job descriptions for three of these positions. As such it is unclear that the petitioner has sufficient employees that would perform the various operational tasks inherent in operating the business on a daily basis, such as market research, ordering inventory, handling the financial and administrative operations, shipping, customs, negotiating contracts, and routine sales. The petitioner has failed to provide a sufficiently detailed explanation, along with credible and probative supporting documentation, establishing the U.S. entity's overall organizational structure, staffing levels, and the scope of its business activities at the time of filing. The record is unclear as to the beneficiary's actual role will be, and as to the petitioner's actual staffing levels.

The petitioner 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 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. Here, the petitioner provided a vague description of the beneficiary's duties that included a number of potentially non-qualifying tasks. It did not provide position descriptions for lower-level staff, nor did it document its employment of all of the staff named on its organizational chart. There is simply insufficient evidence to establish how work is allocated among the petitioner's five person staff to supporting a finding that the beneficiary performs primarily qualifying managerial or executive duties.

The petitioner cites *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.5 (5th Cir. 1989), and *Mars Jewelers, Inc. v. INS*, 702 F.Supp. 1570, 1573 (N.D. Ga. 1988), in support of its assertion that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. First, we note that the petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *National Hand Tool Corp.*, where the Fifth Circuit Court of Appeals decided in favor of the legacy Immigration and Naturalization Service (INS), or *Mars Jewelers, Inc.*, where the district court found in favor of the plaintiff. In addition, as noted in our decision, the petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis and which includes several non-qualifying duties. In addition, the petitioner did not provide sufficient information of its employees, the job duties performed by each employee and the work schedules maintained by each employee. 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)).

With respect to *Mars Jewelers*, we are not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

In both *National Hand Tool Corp.* and *Mars Jewelers, Inc.*, the courts emphasized that the former INS should not place undue emphasis on the size of a petitioner's business operations in its review of an alien's claimed managerial or executive capacity. We have interpreted the

regulations and statute to prohibit discrimination against small or medium-size businesses. However, consistent with both the statute and the holding of *National Hand Tool Corp.*, we require the petitioner to establish that the beneficiary's position consists of primarily managerial or executive duties and that the petitioner will have sufficient personnel to relieve the beneficiary from performing operational and/or administrative tasks. Like the court in *National Hand Tool Corp.*, we emphasize that our holding is based on the conclusion that the petitioner failed to establish that the beneficiary is primarily performing managerial duties; our decision does not rest on the size of the petitioning entity. 889 F.2d at 1472, n.5.

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary will perform. While the petitioner has provided a breakdown of the percentage of time the beneficiary will spend on various duties, the petitioner has not articulated whether each duty is managerial or executive.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See sec. 291 of the Act, 8 U.S.C. 1361; see also *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).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Here, the submitted evidence does not meet the preponderance of the evidence standard. As noted in the director's decision, the petitioner did not provide sufficient evidence to establish the petitioner meets the regulatory requirements to establish eligibility for the I-140 immigrant visa petition. Accordingly, the appeal will be dismissed.

B. Prior Approvals

The petitioner emphasizes that the beneficiary has been previously been granted extensions of his L-1A status as an intracompany transferee in a managerial or executive capacity. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant I-129 L-1 petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 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.

Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for the benefit sought. 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. For the reasons addressed above, the decision was appropriate based on the evidence submitted in support of the instant petition.

III. 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 the petitioner has not met that burden.

ORDER: The appeal is dismissed.