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**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF CNHI-A- LLC

DATE: OCT. 20, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a manufacturer of agricultural and construction equipment, seeks to permanently employ the Beneficiary as a director and human resources business partner [HRBP] for the Petitioner's [REDACTED] brand under the immigrant classification of a multinational executive or manager. *See* Immigration and Nationality Act (the Act), § 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director determined that the Petitioner did not establish that the Beneficiary would be employed in the United States in a qualifying managerial or executive capacity, or that he was employed by the Petitioner's foreign affiliate in a qualifying managerial or executive capacity for at least one year prior to being transferred to the United States.

On appeal, the Petitioner asserts that it has submitted sufficient evidence to establish that the Beneficiary was employed abroad and will be employed in the United States in a qualifying managerial capacity.

**I. 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 the alien 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 only to those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file Form I-140 to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The regulation at 8 C.F.R. § 204.5(j)(5) states:

No labor certification is required for this classification; however, 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 letter must clearly describe the duties to be performed by the alien.

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

(A) 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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (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.

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## II. EMPLOYMENT IN A MANAGERIAL CAPACITY

The issues to be addressed are whether the Petitioner established that the Beneficiary was employed by a qualifying foreign entity in a managerial capacity for at least one year in the three years preceding his entry to the United States as a nonimmigrant, and whether the Petitioner established that he will be employed in the United States in a qualifying managerial capacity.

### A. Facts

The Petitioner filed Form I-140, Immigrant Petition for Alien Worker, on May 23, 2014. The Petitioner submitted a letter dated May 13, 2014 from [REDACTED] vice president, human resources- [REDACTED]. [REDACTED] stated that the Beneficiary had held four different managerial roles with the Petitioner's French affiliate between January 2007 and March 2010. Regarding the Beneficiary's first position, the only one of the four that lasted for more than one year, [REDACTED] stated:

From January 2007 to December 2008, [the Beneficiary] served in the managerial role of Human Resources Management Consultant for the [REDACTED] [REDACTED] & [REDACTED] commercial marketing organization, which included 300 employees across the region. In this role, [the Beneficiary] was responsible for selecting, recruiting and hiring professional or higher level sales/marketing personnel throughout the European region. He managed the compensation variable pay plans, headcount plan, annual performance and leadership assessment, training programs, and talent development plan. . . . Additionally, he was responsible for ensuring both the quantitative and qualitative adequacy of the [REDACTED] and [REDACTED] organization to meet expected business targets and the international mobility within the Europe region.

[REDACTED] explained that the Beneficiary moved into a different Human Resources Management Consultant role in January 2009 and held that position, assigned to the Parts & Service organization in the European Region, until November 2009. She described his duties as follows:

[The Beneficiary] was responsible for selecting, recruiting, and hiring for the managerial positions of the Parts & Service organization in Europe. He managed the compensation/variable pay plans; headcount plan; annual performance and leadership assessment; training programs; and talent development plan of the [company] Parts & Service Organization in Europe. In this role, [the Beneficiary] was also responsible for ensuring the Europe Region's Parts & Service organization met qualitative and quantitative objectives to support expected business targets. Additionally, he managed the international mobility of the organization's employees within the region.

[REDACTED] stated that the Beneficiary received a promotion to a Director/Human Resources Business Partner role in November 2009 and was transferred to the United States in April 2010. The Petitioner did not submit any additional information regarding the Beneficiary's Human Resources Management Consultant positions in France.

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Descriptions for the Beneficiary's other positions abroad resembled, to varying degrees, either the above description, or the description for his intended U.S. position, which the Beneficiary has occupied since April 2013. The essential elements of the two-page description are as follows:

[The Beneficiary] manages all human resources for the [redacted] equipment brand's global marketing organization . . . [and] the [redacted] marketing organization in the [redacted] region. . . .

As Director/HRBP, [redacted] [the Beneficiary] . . . provid[es] the worldwide [redacted] marketing organization with specific HR strategic plans and effective global HR management. He . . . [is in charge of] developing and overseeing recruitment, interview, selection and hiring processes. . . . [H]e manages the evaluation of the business unit's organizational performance and the development of active improvement plans. . . . He also is responsible for conducting organizational effectiveness assessments; designing and implementing flexible workforce models . . . ; identifying trends that could impact HR needs; and facilitating HR solutions across the HR system. . . .

He evaluates the business unit and designs organizational solutions to improve [its] performance. . . . [H]e coaches and trains Business Leaders to improve their leadership and effectiveness skills. He has decision-making authority in regard to implementing training programs. . . . He ensures that the business unit has the right people in key positions by hiring senior managers, creating succession plans, developing leadership skills of senior leaders, setting compensation and total reward strategies and programs, and developing workforce planning strategies. . . .

[The Beneficiary] works closely with the respective regional HR Managers . . . [and] ensures a coordinate approach. . . . Furthermore . . . , he regularly attends company meetings of managers, exercises a wide degree of discretionary decision-making, and receives only very general supervision from the Senior Vice President, Human Resources.

Organizational charts submitted at the time of filing show the company's hierarchical layers at and above the Beneficiary's level, but do not show the internal organization of the Beneficiary's department. One chart, labeled "Human Resources" shows the Beneficiary as one of fourteen HRBP employees reporting to an employee whose job title is "Human Resources." Other employees on the chart appear to have regional or functional, rather than brand, responsibilities, or to hold higher level positions. For example, [redacted] who is a vice president, is listed on the same chart at a higher tier. Other charts were provided for the [redacted] and [redacted] and [redacted] Brands and appear to show that the Beneficiary, as HRBP has an indirect reporting responsibility to management for these brands.

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The Director issued a request for evidence (RFE) on October 27, 2014, stating that the Petitioner's submitted job descriptions "are somewhat brief, vague, and may include tasks that are not managerial." The Director requested new descriptions that listed the Beneficiary's "specific daily tasks . . . and the percentage of time spent on each duty." The Director also requested clearer organizational charts or diagrams corresponding with the Beneficiary's employment abroad and his proposed U.S. position.

The Petitioner's response included a letter dated January 8, 2015, from [REDACTED] human resources manager at the petitioner's affiliate in [REDACTED] France. [REDACTED] quoted or paraphrased portions of [REDACTED] earlier letter, and also provided percentage breakdowns of the Beneficiary's duties in his various foreign positions:

**Human Resources Management Consultant, Parts & Service Europe (January 2009 to November 2009)**

- Managed the selection, recruiting, and hiring for the managerial positions of the Parts & Service organization in Europe: 10%
- Managed the talent development and organizational planning activities (succession plans, talent development plans, and career path development plans) for director-level employees . . . : 10%
- Oversaw the successful implementation of the compensation process, including ensuring that the compensation/variable pay and benefit plans for each of the above-referenced employees . . . were accurate: 5%
- Assessed organizational effectiveness and trends that could impact organization performance, and developed and directed the implementation of subsequent workforce models . . . : 10%
- Led investigations into the root causes of organizational performance problems, and created subsequent business strategies for HR teams to administer with the aim of overcoming any issues: 10%
- Manage[d] the evaluation process . . . , including ensuring that the evaluation objectives are clear and that employees' evaluations are carried out according to company policies and procedures: 10%
- Managed the international mobility of the organization's employees within the region, including overseeing change management and expat assignments: 5%

Although the Director had instructed the Petitioner not to "group individual tasks together," [REDACTED] stated that the Beneficiary devoted the remaining 40% of his time to the following nine tasks, and explained that it was difficult to assign a specific percentage of time to these tasks:

- Managed the organization's HR resources and budget as needed;
- Ensured that the European region's Parts & Service organization met qualitative and quantitative objectives to support expected business targets;

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- Oversaw the ongoing maintenance of employee headcount figure reporting to ensure that an accurate vision of the company's personnel operating in different countries was maintained;
- Effectively managed reporting tools in order to receive up-to-date information about personnel costs and ensure that the costs were split into the correct relevant cost center;
- Oversaw training processes, including verifying that people attended the courses they were required to attend . . . ;
- Along with an employee's respective manager, led the review of low performers and determine[d] effective replacement plans;
- Conducted yearly assessments of leadership across the European region, including reviewing career path options with local HR and Line Managers;
- Collaborate[d] with fellow HR managers on the local level in order to ensure[] the company's compliance with local laws . . . ; and
- Regularly attended meetings of managers.

█ also provided position descriptions for the Director/Human Resources Business Partner positions the Beneficiary held in France from November 2009 until January 2010, and from January 2010 until April 2010. She described the latter position as follows:

**Director/HR Business Partner, █ (January 2010 to April 2010)**

- Developed and implemented HR strategic solutions . . . : 15%
- Managed the administration of organizational effectiveness assessments, including designing and implementing flexible workplace models . . . : 10%
- Oversaw the evaluation of the organization's human resources needs and designed organizational solutions and strategies to support optimum performance . . . : 10%
- Supervised the recruiting, selecting, and hiring of managerial level positions within the . . . organization worldwide: 10%
- Trained █ brand global marketing organization Business Leaders to improve their leadership and effectiveness skills: 10%
- Exercised global managerial responsibility for ensuring the worldwide █ Agricultural brand global marketing organization had the right people in key positions, including overseeing the hiring of key senior managers, creating succession plans, setting compensation and total reward strategies and programs, and managing the development of workforce planning and organizational development strategies: 10%
- Managed the international mobility of the organization's employees on a global scale, including overseeing expat assignments: 10%

█ asserted that the Beneficiary devoted the remaining 25% of his time to the following duties:

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- Oversaw the identification of trends that could impact HR needs and facilitating HR solutions to ensure end-to-end HR service delivery . . . ;
- Managed the development and implementation of various HR-related plans and assessments for the [REDACTED] brand global marketing organization worldwide, including compensation/variable pay plans, the annual performance and leadership assessment, and talent development and training plans;
- Indirectly supervised three (3) managerial employees within the Human Resources organization – Human Resources Management Consultants . . . for the respective European, North American and Latin American regions. With respect to these managers, [the Beneficiary] made recommendations regarding hiring, firing, promotions, and salary increases . . . ;
- Regularly attended meetings of managers . . . ; and
- Represented the company to outside agents.

In a new letter, dated January 14, 2015, [REDACTED] provided essentially the same breakdown for the Beneficiary's current U.S. position that [REDACTED] had provided for the Beneficiary's work from January 2010 to April 2010. Only some of the percentages had changed. The similarities are to be expected, because the Beneficiary served in the same position, but in a different location.

In response to the Director's request for relevant organizational charts clearly showing the Beneficiary's position, the Petitioner submitted chart labeled "HR [REDACTED] Europe: January 2009 – November 2009, Parts & Service Europe." The chart includes 19 people. At the apex of the chart is a named employee whose title is identified only as "Human Resources Europe" and all other employees listed on the chart appear to report to this individual. Some individuals appear to have individual country responsibilities, as their job titles are given only as Italy, France, UK, Belgium, etc. The Beneficiary is identified as "Parts & Service HR Mgmt Consultant" with no subordinates in the human resources organization. The chart indicates that his division included 640 "white collars" and 695 "blue collars." The Petitioner provided an employee list for the European Parts & Services organization, which included almost exclusively "sales and marketing" and "after sales" working for affiliate throughout Europe.

The Petitioner also submitted organizational charts and employee lists related to the Director/HR Business Partner positions the Beneficiary held during his last six months of employment in France. The submitted charts show him reporting to an employee whose job title is listed simply as "Human Resources," and shows that his previous manager, responsible for "Human Resources Europe," also reported to the same manager, although it appears to show that position at a higher tier in the organization. With respect to the U.S. position, the Petitioner submitted an organizational chart showing that three HR management consultants reported to the Beneficiary. The Petitioner had indicated that the Beneficiary "[i]ndirectly supervised" these individuals, but did not elaborate.

The Director denied the petition on February 3, 2015, concluding that the Petitioner had not established that the Beneficiary had served, or would serve, in a qualifying managerial or executive capacity. The Director stated that the Petitioner's response lacked "clarity," and had not "adequately described the staffing in the beneficiary's department." The Director noted that, although the RFE

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asked for a list of employees in the Beneficiary's own department, the Petitioner submitted "an extensive list of employees *for which the beneficiary supplied HR support*" (emphasis in original). The Director found this evidence to be unresponsive, because the listed employees "are not doing the HR work that [the Beneficiary] manages." The Director concluded: "without evidence of a supporting staff to carry out the services of the HR department, there is no way for USCIS to see any of the job duties as being managerial."

On appeal, the Petitioner submits copies of previously submitted materials and asserts, in a legal brief, that "the Director did not address this extensive documentation in the Denial." The Petitioner contends that "[t]he Beneficiary is not engaged in low level administrative duties. Rather, he manages the administration of organizational effectiveness assessments and supervises the recruiting, selection, and hiring of managerial level positions." The Petitioner asserts that USCIS owes deference to its prior decision granting the Beneficiary L-1A nonimmigrant status.

Upon review, and for the reasons stated below, we find that the Petitioner did not establish that the Beneficiary's proposed position with the Petitioner or his former positions abroad with its affiliates fill a qualifying managerial capacity.

#### B. Analysis

As indicated above, the two primary issues to address here are whether the Petitioner provided sufficient evidence to establish that the Beneficiary was employed abroad, and would be employed in the United States, in a qualifying managerial capacity. In general, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary's proposed job duties with the petitioning entity. *See* 8 C.F.R. § 204.5(j)(5). Published case law has determined that the duties themselves will reveal the true nature of the beneficiary's employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). We then consider the beneficiary's job description in the context of the petitioner's organizational structure, the duties of the beneficiary's subordinates, and any other relevant factors that may contribute to a comprehensive understanding of the beneficiary's actual duties and role within the petitioning entity.

In addition, while performing non-qualifying tasks necessary to produce a product or service 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. *See* Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that her/his duties are "primarily" managerial.

The Petitioner, on appeal, contends that the Director did not give due consideration to the exhibits submitted in response to the RFE. In addition to the employee lists, which the Director did acknowledge in the denial notice, the Petitioner submitted what [REDACTED] called "copies of the job descriptions for the employees in [the Beneficiary's] immediate department." The submitted job descriptions are not for positions in the HR department and did not show HR-related duties. Instead,

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the descriptions were for positions such as “Parts & Service Technical Support,” “Commercial Operations Director,” and “Pricing Specialist.” The Petitioner has not explained how these individuals, or the listed employees who work in several different countries, are all in the Beneficiary’s “immediate department” as claimed.

The Petitioner contends that this evidence “clearly demonstrated the managerial duties of the Beneficiary,” but does not explain how further discussion of these documents would have led to the approval of the petition. Although the Petitioner submitted position descriptions for several individuals, the Petitioner did not submit job descriptions for the regional HR management consultants, who were the only individuals said to be under the Beneficiary’s indirect supervision. Further, the Petitioner has not claimed that the Beneficiary director or indirectly supervised any subordinates while employed as a Human Resources Management Consultant in France, and this is the only position he held for more than one year in the three years preceding his entry to the United States in April 2010.

The Petitioner asserts: “The Beneficiary is not engaged in low level administrative duties. Rather, he manages the administration of organizational effectiveness assessments and supervises the recruiting, selection, and hiring of managerial level positions.” This statement repeats assertions from previously submitted letters, but it does not address the Director’s concerns.

The Director, in the denial notice, had stated:

[Y]our job description for the beneficiary [in the RFE response] is no less vague than the description given with your initial evidence. In describing the tasks, you have stated that the beneficiary “led,” “managed,” “oversaw,” “collaborated,” “ensured” and “trained.” However, you still have not told USCIS what employees did the daily work of what the beneficiary oversaw, managed, etc.

The Petitioner, on appeal, repeats or paraphrases earlier descriptions, citing to appellate exhibits 1 and 4. Exhibit 1 is a copy of the Petitioner’s initial submission; exhibit 4 is a copy of the RFE response. The Petitioner maintains that the previous descriptions “listed the Beneficiary’s prior and current job duties in great detail.”

The job descriptions were not lacking in length, but, as the Director observed, the Petitioner stated that the Beneficiary “managed” various activities, without explaining who performed the activities being managed. For example, ██████████ stated that the Beneficiary “[m]anaged the development and implementation of . . . compensation/variable pay plans, the annual performance and leadership assessment, and talent development and training plans,” but the Petitioner did not specify who performed the administrative work of developing and implementing those plans. If the Beneficiary performed those tasks himself, then he was not simply “managing” their development and implementation. Thus, the descriptions lack crucial details about the Beneficiary’s role in the activities described, particularly in his management consultant role, which was clearly at a lower level in the organizational hierarchy.

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. 1108.

The Petitioner states:

In his Notice of Denial, the Director asserted that the Petitioner did not list the employees who did the daily work that the Beneficiary oversaw and managed. However, the Petitioner did include detailed job descriptions for these employees, which are senior managers within the company who oversee divisions. Each manager was responsible for their own hiring and staffing concerns; while the Beneficiary managed all the Human Resources concerns for all of these staff and any higher level issues that arise. . . . This position was the quintessential function manager position.

The job descriptions that the Petitioner had submitted previously were for positions such as the "Distribution & Transport Flows Director," the "Parts & Service Expediting Manager," the "Network Development Specialist," and the "Territory Sales Manager." The Petitioner does not explain how "the Beneficiary oversaw and managed" their "daily work."

The Petitioner repeats the prior claim that the Beneficiary "indirectly supervised" three regional HR management consultants who "were responsible for managing the function for specific geographic areas" while "the Beneficiary was responsible for overseeing and managing the [broader] Human Resources function." Because the petitioner did not submit their job descriptions after the director requested job descriptions for the "employees . . . in the beneficiary's immediate division, department, or team," the Petitioner has not established the extent, if any, to which these consultants relieve the Beneficiary of operational tasks related to staffing and training. 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 Petitioner states:

[T]he regulation does not require that the managerial position involve the management of professional personnel. . . . [T]he manager may qualify if he oversees a function or component of the organization and functions at a senior level within the organization. . . . Although the positions do not each have an extensive full-time subordinate staff, the Beneficiary's management of the human resources function is vital to the management of the organization.

The Petitioner is correct that the Beneficiary can manage a function rather than specific personnel, but the Petitioner also maintains on appeal that the Beneficiary "also had personnel management responsibilities." Either way, the Petitioner must still establish that the Beneficiary is not primarily performing operational or administrative tasks rather than managerial ones. The assertion that the Beneficiary had, and has, ultimate authority over HR decisions is not adequately supported, particularly with respect to his foreign position, and is not supported by sufficient evidence of how

the group's human resources function is organized. For example, the overall "Human Resources" chart submitted for the record identifies the head of the organization simply as "Human Resources" and identifies at least 13 other HRBP positions, as well as some positions which appear to be senior to HRBP-level positions, include vice presidents.

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 has not provided evidence that the Beneficiary primarily manages an essential function.

The Petitioner states: "the Director's denial is in violation of a clear agency directive . . . that prior legal determinations of an agency adjudicator 'should be given deference,' where no material error or substantial change in circumstances has taken place." The Petitioner contends that "the Yates Memo<sup>1</sup> is a substantive rule with the force of law" and "creates an obligation on the part of adjudicators to defer to prior legal determinations of the agency."

The Yates Memorandum states: "In matters relating to an extension of nonimmigrant petition validity involving the same parties (petitioner and beneficiary) and the same underlying facts, a prior determination by an adjudicator that the alien is eligible for the particular nonimmigrant classification sought should be given deference." *Id.* at 1. The matter now under consideration is not an extension of nonimmigrant petition validity. Rather, it is a separate petition with its own record of proceeding, and must be decided on its own merits. See 8 C.F.R. § 103.8(d). The Petitioner, on appeal, has cited no authority to support the proposition that approval of a nonimmigrant petition obligates USCIS to approve a subsequent immigrant petition.

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<sup>1</sup> Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQOPRD 72/11.3, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity* (Apr. 23, 2004), [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/Archives%201998-2008/2004/readjud\\_042304.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2004/readjud_042304.pdf).

Furthermore, the same memorandum states that “[US]CIS has the authority to question prior determinations. Adjudicators are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous.” *Id.*, citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). The Petitioner asserts that the Director has not identified any specific error in the prior approval of the nonimmigrant petition. This proceeding, however, is not an adjudication of the nonimmigrant petition, and the Director need not revisit the merits of that petition. Furthermore, by identifying grounds for denial which would also have applied to the nonimmigrant petition, the Director has, by implication, identified those errors.

Accordingly, we find that the Petitioner has not provided sufficient relevant, probative evidence to establish that the Beneficiary was employed abroad, or will be employed in the U.S., in a qualifying managerial capacity. For this reason, the appeal will be dismissed.

### III. CONCLUSION

We will dismiss the appeal 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, the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of CNHI-A- LLC*, ID# 14060 (AAO Oct. 20, 2015)