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U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 063 52551 Office: NEBRASKA SERVICE CENTER Date: FEB 07 2005

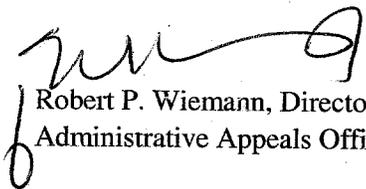
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).¹ The petitioner is a limited liability company organized in the State of Missouri that is operating as a trucking company. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer located in Zaroi, Zimbabwe. The petitioner seeks to employ the beneficiary as its manager for two years.

The director concluded that the petitioner failed to demonstrate: (1) that the beneficiary's foreign employer and the petitioning organization possess a qualifying relationship as required in § 101(a)(15)(L) of the Act; and (2) that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the director denied the petition.

On appeal, counsel contends that the director's decisions relating to the relationship between the beneficiary's foreign employer and the petitioning organization and regarding the beneficiary's employment capacity in the United States were contrary to the applicable statutes and regulations. Counsel claims that the evidence demonstrates that the beneficiary possesses ownership and control of both organizations. Counsel further claims that the beneficiary would be employed by the United States entity in both a managerial and executive capacity. Counsel submits a brief and additional evidence on appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

¹ The AAO notes that the instant petition is the fourth petition filed by the petitioner requesting employment of the beneficiary. The previous three petitions were approved by Citizenship and Immigration Services, yet the beneficiary was repeatedly denied visa issuance by the State Department. The State Department's refusal to issue the beneficiary a visa does not reflect favorably on the evidence provided in the present record.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(v), if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation;
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The AAO will first address the issue of whether a qualifying relationship exists between the beneficiary's foreign employer and the petitioning organization as required in § 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and,

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner submitted the nonimmigrant petition on December 19, 2002, noting that it is the subsidiary of the beneficiary's foreign employer. Although the petitioner noted on the petition that counsel's attached letter references the stock ownership and managerial control of each company, no additional description was provided in counsel's letter. The petitioner submitted the following documents related to the organization and ownership of the foreign entity: (1) certificate of incorporation; (2) memorandum of association; (3) amended memorandum of association; (4) articles of association; (5) corporate annual return; and (6) years 2000 and 2001 financial statements.

In a request for evidence, dated March 11, 2003, the director outlined the regulatory requirements for a qualifying organization, and noted that "[s]ince the petitioner appears to be the beneficiary of the petition, rather than an organization, it does not appear that a qualifying organization exists in the United States." The director requested that the petitioner submit evidence that it satisfies the regulatory definition of qualifying organization.

Counsel responded in a letter dated May 30, 2003, stating that the beneficiary is the sole owner of the United States corporation. Counsel further stated that the beneficiary's foreign employer "is incorporated in the names of [the beneficiary] and [the beneficiary's wife]." Counsel referred to accompanying documentation, including the petitioner's articles of organization, operating agreement and 2002 corporate tax return, and the foreign entity's memorandum of association, as evidence of both companies' ownership. Counsel also confirmed that the nonimmigrant petition was filed by the United States organization, not the beneficiary.

In a decision dated July 25, 2003, the director determined that the petitioner had failed to establish the existence of a qualifying relationship between the beneficiary's foreign employer and the petitioning organization. The director noted that the foreign entity's certificate of incorporation was registered in March 1975, at which time the beneficiary would have been approximately fifteen years old. The director further noted that the amended memorandum of association submitted for the foreign entity failed to identify the beneficiary as possessing ownership or control of the foreign entity. The director also stated that despite his request for evidence documenting the petitioner's ownership and control of both companies, the petitioner neglected to submit additional documentation. The director concluded that neither company was owned or controlled by the same parent, individual, or group of individuals, and similarly determined that the companies do not possess a qualifying relationship. Accordingly, the director denied the petition.

In an appeal filed on August 25, 2003, counsel claims that a qualifying relationship is established, as the petitioning organization is an affiliate of the beneficiary's foreign employer. Counsel claims that the beneficiary started "the trucking branch" of the foreign entity's business in 1995 and has been functioning since that time as the company's shareholder and managing director. Counsel states that as the company's director, the beneficiary "has clearly been an owner/employee of [the foreign entity] within the last three years of his application for admission into the U.S." Counsel also states "[n]umerous letters from companies in Zimbabwe state they have conducted business with [the beneficiary's] company, [and] financial records of [the foreign entity] lists [the beneficiary] as a director, which directly shows that he controls [the foreign entity]." Counsel further claims that the beneficiary has ownership and control of the petitioning organization "because he enters into contracts, acts and directs on behalf of the company." Counsel refers to the foreign entity's annual return as evidence of the beneficiary's position as the company's director, and claims that "[t]he evidence clearly shows that [the beneficiary] meets the qualifying relationship required by INA § 101(a)(15)(L)." Lastly, counsel notes that Citizenship and Immigration Services (CIS) "has approved this same business relationship on three prior petitions."

On review, the petitioner has not demonstrated that the beneficiary's foreign employer and the petitioning organization satisfy one of the qualifying relationships outlined in the regulations. The regulations and case law confirm that the key factors for establishing a qualifying relationship between the U.S. and foreign entities are ownership and control. *Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); see also *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct and indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

Here, despite the petitioner's various claims that both a parent-subsidiary and affiliate relationship exists between the beneficiary's foreign employer and the petitioning organization, the petitioner has not documented the existence of a qualifying relationship. The petitioner submitted several corporate documents, such as the foreign entity's memorandum of association and the petitioner's articles of organization and operating agreement, yet none substantiate the petitioner's claim of a qualifying relationship. The foreign entity's memorandum of association and amended memorandum of association, which are dated March 3, 1975 and February 1, 1990, identify two unknown individuals [REDACTED] and [REDACTED], as subscribers of one share each in the foreign organization. No additional information reflecting a subsequent change in ownership of the foreign entity has been submitted. With regards to the petitioning organization, Article IV of the petitioner's operating agreement indicates that the member interests are outlined in Schedule

B of the agreement. The petitioner, however, neglected to submit Schedule B. Again, no additional documentation, such as membership certificates, was provided as evidence of the petitioner's ownership. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Additionally, Schedule K of the petitioner's Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, fails to identify that any portion of the petitioner's voting stock is owned by a foreign or United States individual, partnership, corporation or estate. The petitioner has not provided any explanation reconciling the information reported on its corporate tax return with its inconsistent claims of a parent-subsidiary and affiliate relationship. 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).

Moreover, counsel's blanket claims on appeal that "a myriad of evidence has been offered that shows the petitioner meets the requisite qualifying relationship" are not sufficient in demonstrating a qualifying relationship. Counsel mistakenly believes that because the beneficiary is shown to be the director of the foreign entity, the requisite elements of ownership and control are established. In order to determine ownership and control, the petitioner is obligated to provide detailed documentary evidence, including stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N at 364-365. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. Clearly, counsel's claim that the beneficiary has control of foreign and United States entities "because he enters into contracts, acts and directs on behalf of the company" is insufficient to establish a qualifying relationship between the two organizations. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Oboighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

For these reasons, the AAO cannot conclude that a qualifying relationship exists between the beneficiary's foreign employer and the petitioning organization as required in § 101(a)(15)(L) of the Act. Accordingly, the appeal will be dismissed.

The AAO will next address the issue of whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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.

The petitioner noted on the nonimmigrant petition that the beneficiary would be employed in the United States as a manager and "would be involved in the hiring, training, supervision and management of the transport operation." In his March 11, 2003 request for evidence, the director outlined the statutory requirements for managerial and executive capacity, and asked that the petitioner submit evidence establishing that the beneficiary's proposed employment satisfies the criteria for either a manager or an executive. The director also asked that the petitioner provide evidence of its ability to support the beneficiary in an executive or managerial position, including: (1) the petitioner's organizational chart identifying the beneficiary's proposed position in the company in relation to other employees; (2) a description of the proposed nature of the petitioning organization, including the scope of the entity, the proposed number of employees, their job titles, and a statement of each employee's job duties; and (3) the size of the United States investment and the foreign company's financial ability to remunerate the beneficiary and to commence doing business in the United States.

In the documentation accompanying counsel's May 30, 2003 response to the director's request for evidence, the petitioner outlined the following proposed job duties of the beneficiary:

1. Manage the local business. Enter into contracts for hauling. Manage office operations and all financial aspects of running a business.
2. Recruit, hire, supervise and fire employees to drive the trucks and perform the terms of hauling agreements.
3. Train employees and locate/train a manager/office personnel to handle the business while Owner/[the beneficiary] is out of the country.
4. Responsible for all management decisions, including purchase of equipment, taxes, contracts, compliance with all State/Federal/Department of Transportation regulations, and policy decisions for the business.
5. Responsible for purchases of vehicles to be transferred to Africa – including customs, shipment details and subsequent sales of the vehicles.

Counsel submitted a proposed organizational chart for the petitioning organization identifying the beneficiary as the president/manager with the following subordinate employees: accountant, attorney, consultant, secretary services, mechanical services, cleaning services, two full-time drivers, and one part-time driver. The petitioner noted on the chart that starting in the year 2004 the company would hire an additional driver each year until 2006.

The petitioner also provided a business plan for its proposed operations in the United States, noting the following:

[The beneficiary] plans to stay on top of his business operations through sound advice from his attorney Mr. Kendall Vickers, by joining National Association of the self employed (NASE) and by fully utilizing [sic] the University of Missouri outreach and extension services. [The beneficiary] will manage the day to day running expenses, invoicing, cash book and computer input but will require the services of an accountant to keep him ahead of any problems that may arise. [The beneficiary] [will] initially be employing three permanent and one part time local drivers. [The beneficiary] will also keep in touch with the Ft. Scott community college to keep up dated on various transport advances. [The beneficiary's] future plans include employing a mechanic, assistant and secretary.

With regard to its plan for operating in the United States, the petitioner stated:

[The petitioning organization] is a start up company that will provide a dump truck service in road construction and maintenance. [The beneficiary] is the proprietor of the company who will be contributing US \$100 000.00 of his own capital as well as significant transport experience, knowledge and business skill. [The beneficiary] already operates a successful transport business in Zimbabwe and has a very good reputation. His expertise and reputation will give [the petitioner] a competitive service advantage. [The beneficiary] will not need to borrow finances from any financial institutions and consequently will not be a liability to the state or country. The business will initially operate in the Nevada, Eldorado Springs Rich Hill and Springfield area in Missouri, as well as Ft. Scott area in Kansas.

The petitioner further explained that its marketing plan would include servicing businesses in Missouri that are working to upgrade and maintain the state's road network, and would also involve exporting second-hand trucks to Zimbabwe. The petitioner noted that it intends to subcontract to a local trucking company, and that the beneficiary would source his own government contracts through the use of the University of Missouri's procurement assistance center.

The petitioner submitted two letters from companies that indicated an intent to utilize the petitioner's services in the United States and as an importer of goods to Africa. The petitioner also provided its projected cash flow statements for years 2003 through 2006.

The director determined in his decision that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director clarified the need for CIS to distinguish between one who operates a business from one who manages an organization. The director noted that according to the petitioner's business plan the petitioner had not hired any employees at the time of filing the petition and used the services of an accountant, attorney and consultant who were not employed by the petitioner. The director stated that as the owner and sole employee of the petitioning organization, the beneficiary would be performing the day-to-day duties of the business rather than managing the daily duties as claimed by the petitioner. The director also stated that the beneficiary's primary assignment could not include supervising a subordinate staff of professional, managerial or supervisory employees, as the beneficiary is the sole employee. The director further determined that the beneficiary would not operate at senior level within the organizational hierarchy, and stated that "[CIS] is not persuaded that Congress intended this provision to serve for self-employed individuals or entrepreneurs." Accordingly, the director denied the petition.

On appeal, counsel claims that the beneficiary's proposed employment in "a managerial/executive capacity" is clearly outlined in the petitioner's business plan. Counsel states that similar to his position abroad, the beneficiary's employment in the United States "[would] involve significant authority over the policy and operations of the U.S. company" beyond that of a supervisor. Counsel states that as a manager, the beneficiary would:

1. Manage the start-up and initial operation of [the petitioning organization].
2. He will *hire*, supervise and control employees, he will train employees – train a manager and office personnel to conduct the business when [the beneficiary] returns to Zimbabwe. [The beneficiary] will also be required to enter into contracts and make sure the contracts are properly executed, which is an essential function within the organization.
3. Recruit, hire, supervise and terminate employees and subcontractors. Even if [the beneficiary] were not to hire any employees he would still qualify because as President/Manager of the U.S. company and shareholder/managing director of the Zimbabwe company he functions at a senior level within the company hierarchy. (See organizational charts) (Ex. 11)
4. He will be responsible for exercising discretion over the day-to-day operations including but not limited to: all management decisions, including purchase of equipment for the U.S.

company and Zimbabwe company, which requires management of customs, shipment details and subsequent sales of the vehicles, management of taxes, contracts, compliance with all State/Federal/Department of Transportation regulations, and policy decisions for the business.

(Emphasis in original).

Counsel states that as an executive, the beneficiary would primarily:

1. Direct the management of the company by locating, training, and creating a management staff. He will also enter into and negotiate contracts, which is a major component of the company. The company must have hauling contracts in order to be successful.
2. Establish the goals and policies of the Zimbabwe company by sourcing more affordable trucks. Establish the policies, set and establish goals of the U.S. company in order to get it operational.
3. Exercise wide latitude in decision making. [The beneficiary] has the authority to make any decision concerning the business that is necessary.
4. Receive little or no supervision because he is the President/Manager of the company; however, his wife, who is a member of the company may give some general supervision.

Counsel also challenges the director's statement that Congress did not intend for the L classification "to serve for self-employed individuals or entrepreneurs." Counsel notes that "case law expressly recognizes that a corporation and a director are separate entities and that a sole stockholder can be eligible for an L-1 visa classification." Counsel states that because the petitioning organization is not yet operational, it does not employ any workers. Counsel claims that "even if [the beneficiary] is the only employee of the corporation he is still eligible for an L-1 visa." Counsel further notes that § 101(a)(44)(C) of the Act restricts CIS from solely considering staffing levels when determining managerial or executive capacity. Lastly, counsel notes that the petitioner has previously filed three petitions for an L visa, all of which CIS has approved.

On review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans, organizational structure, and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(1)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the executive or managerial services to be performed by the beneficiary. *Id.*

While the petitioner provided in both its response to the director's request for evidence and on appeal a description of the beneficiary's proposed managerial and executive job duties, it does not demonstrate that within one year of filing the petition the beneficiary would be employed in a qualifying capacity. The petitioner's business plan, which is relevant to determining the scope, organizational structure and financial goals of the company, indicates that following the first year of approval of the petition the beneficiary would be performing the daily operations of the business. The business plan reflects an initial staff comprised of the beneficiary, three full-time drivers and one part-time driver. The plan further indicates that in the business' fifth year of operation the petitioner anticipates employing a total of eight drivers, a mechanic, an assistant, and a secretary. The petitioner's cash flow projections for the first four years of operation also indicate that the petitioner would employ a limited staff to perform the non-qualifying functions of the business during this period. During the first two years of operation, the petitioner budgeted salaries for the beneficiary and drivers, and included compensation for professional services. The petitioner does not account for salaries to be paid to any additional subordinate workers, such as a manager, administrative secretary or assistant, during any of the four years of projected cash flow. The evidence therefore supports a finding that the beneficiary would continue to perform the daily non-qualifying tasks of the business following the first year of filing the petition. These non-managerial and non-executive job duties would include handling the company's administrative operations, finances, contracts and purchases. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Additionally, the petitioner's business plan and projected cash flow statements cast doubt on counsel's claim on appeal that the beneficiary would hire a manager and office personnel to run the business during the beneficiary's absence. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Moreover, counsel's claim on appeal that the beneficiary would manage or direct an essential function of the business is not supported by the record. 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). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must 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. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. Here, counsel contends that the beneficiary's authority to enter into contracts for the petitioning organization "is an essential function within the organization." Counsel's claim of the beneficiary's limited

authority is clearly insufficient to substantiate the beneficiary's proposed employment as a function manager. In this matter, counsel has not provided evidence that the beneficiary manages an essential function.

Lastly, counsel notes on appeal that three petitions previously filed by the petitioner requesting L classification have been approved by CIS. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same limited and unsupported assertions that are contained in the current record, the approval would constitute clear and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. at 597. It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

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

Based on the foregoing discussion, the petitioner had failed to establish that the beneficiary would be employed by the petitioning organization in a primarily managerial or executive capacity. For this additional reason, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.