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Office of Administrative Appeals, MS 2090
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U.S. Citizenship
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FILE: WAC 08 200 50586 OFFICE: CALIFORNIA SERVICE CENTER Date:

OCT 19 2009

IN RE: Petitioner:
Beneficiary:



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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation, states that it is engaged in the import and distribution of wood flooring and furniture. It claims to be a subsidiary of Yihua Enterprise Group Co., Ltd., located in Guangdong, China. The instant beneficiary was previously the beneficiary of an L-1A classification petition filed by the petitioner, which was approved on April 30, 2008 for a three-year period commencing on June 1, 2008 (WAC 08 146 50866). The beneficiary was subsequently admitted to the United States in B-2 status on June 25, 2008. The petitioner filed the instant amended petition on July 11, 2008 seeking to change her status from B-2 to L-1A, so that she could assume her duties as deputy general manager of the U.S. company for the period previously granted.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity; or (2) that the beneficiary has one year of continuous full-time employment with the foreign entity within the three years preceding the filing of the petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the beneficiary's proposed duties in the United States clearly qualify as executive or managerial in nature. The petitioner also submits additional documentary evidence to establish that the beneficiary was employed by the foreign entity for the requisite time period.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate 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.
- (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.

The first issue to be addressed in this matter is whether the petitioner established that the beneficiary will be employed by the U.S. 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) 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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on July 11, 2008. The petitioner indicated that the beneficiary would serve as general deputy manager of the U.S. company, which claimed to have 17 employees as of the date of filing. The petitioner submitted a copy of the Form I-797B Approval Notice for the beneficiary's previous L-1A petition and requested that the amended petition be approved for the same dates. The petitioner did not submit supporting documentation, apart from evidence of the beneficiary's current B-2 nonimmigrant status.

The director issued a request for additional evidence (RFE) on October 28, 2008, in which he requested that the petitioner submit, among other items, the following: (1) a detailed description of the beneficiary's proposed duties, including a description of the beneficiary's daily, weekly and monthly activities, and the percentage of time she will spend on each of the listed duties; (2) a detailed organizational chart for the U.S. company which includes the names, job titles, job duties, educational level, annual salaries and immigration status for all U.S. employees; (3) copies of California Forms DE-6, Quarterly Wage Reports, for the last eight quarters; and (4) copies of the U.S. company's payroll summary and Forms W-2 evidencing wages paid to employees.

In a response dated November 24, 2008, the petitioner stated that the beneficiary's "specific duties" would include the following:

- 1) **General business management.** (10%)
 - Knowledge of business and office management principles which may include development and implementation of policies and procedures, asset management, resource allocation and metric collection and reporting.
 - Coordinate and maintain open lines of communication regarding business issues between various groups within investment management and research.
- 2) **Business process and analysis and project management.** (15%)
 - Accountable for generating innovative ideas and solutions to create, improve, or enhance new/existing furniture and flooring product services and processes, conducting and evaluating customer needs assessments, evaluating customer satisfaction and meeting quality standards for service.
 - Plan, develops and facilitates changes in procedures, forms and practices, work flows and personnel assignments.

- 3) **Be responsible for establishing and maintaining all company standards including guest service and sales. (20%)**
 - Oversee Sales Departments, supervise two [REDACTED] and [REDACTED] and be responsible for the various tasks involved in the overall operation including measuring business trends, maximizing and driving sales, freight flow, and controlling expenses and shortages.
 - Ensure that each guest receives outstanding guest service by providing a guest friendly environment which includes greeting and acknowledging every guest, maintaining outstanding company standards, solid product knowledge and all other components.
 - [REDACTED] to submit reports summarizing on-going purchasing contract progress and development on a regular basis.
 - Responsible for performance appraisal life cycle, developing, coaching, mentoring, hiring/terminating of subordinates.

- 4) **Review and analyze** quarterly and yearly operation and managerial reports on the business development progress in the U.S. and submit the reports to the parent company for reference and discussion in board meeting. (15%)
 - Review sales analysis reports, balance sheet statement and income statement with VP, General Manager, and Sales Managers and see if each product's inventory will be sufficient according to the sales analysis report "by product."
 - Develop and maintain policies to ensure accurate accounting and reliable internal controls.

- 5) **Review** current company's **business information and financial data**, as well as potential **partners and investors' documentation** on their financials in bilingual format (English and Chinese) prepared by Business/Financial Underwriter. Make suggestion on foreign investment according to the documents (10%)
 - Examine company's business and financial documentation. The documents to be covered include but are not limited to: balance sheet, income statement, company introduction, stock analysis and etc.

- 6) **Supervise Sales Managers and participate into all business negotiations with major customers and ensure of favorable terms and condition in all business contracts. (20%)**
 - Effectively [*sic*] in representing and negotiating the company's position on business/legal issues both internally and externally.
 - Develop contracts/amendments/notifications and collaborate with sales team in negotiations with buyers.
 - Ensure that all contracts are reflected accurately in the company business system and are set up properly for correct revenue recognition; ensure that all terms and conditions agreed to can be supported by the business system prior to signoff by working with Sales Support; and will present contract liabilities to management and present contracts to proper signing authorities.

- 7) **Prepare operational and regulatory reports** required by law, regulations and board of directors. (5%)
- 8) **Oversee three departmental managers/professionals and seven subordinates and evaluating their performance.** (5%)

In addition, the petitioner stated that the beneficiary's "daily and monthly duties" would include the following:

1. Conduct weekly meeting with the sales managers, local CSR supervisor and other sales persons to solve product related issues and try to find solutions to the problems. (15%)
2. Hold product development discussions with sales managers regarding possible improvements and development of new products or expanding existing product lines. (10%)
3. Review and discussion of weekly and monthly reports with Sales and Shipping departments to seek improvements or reward improved performance. (30%)
 - a) Tuesdays: Sales Analysis Reports by customer, by product, and by salesperson.
 - Review individual salesperson customer potentials, product selling volume, and overall performance.
 - b) Wednesdays: Inventory Reports by products and by class.
 - Review and determine if each product's inventory will be sufficient according to the sales analysis report "by product".
 - Monitor inventory management and products in stock.
 - Review returned products that have not yet been fixed or repaired. Make sure these products do not end up unwanted.
 - c) Thursdays: Purchase Order Receipts by products.
 - Review whether all ordered items have been received according to scheduled per sales/customer requests. If not, discuss possibilities for reimbursement to lower freight costs or possible loss of orders costs.
4. Meet with Business/Financial Underwriter on semi-monthly basis to explore investment environment, investment opportunity, conduct advantage and risk analysis, make investment suggestions to the management and ensure the investing operation meets the law and regulation (20%).
5. Evaluate employees' weekly/monthly performance (10%)
6. Attend meetings with those vendors that may provide better pricings, distribution, and customers. (10%).

The petitioner stated that the beneficiary's direct subordinates would include two sales managers (responsible for local and out-of-state furniture sales, respectively), and the warehouse and shipping manager. The petitioner submitted an organizational chart which indicates that the local sales manager supervises a local customer service representative supervisor and a customer service representative, while the out-of-state sales manager supervises one customer service representative. The chart also identifies sales "Rep Staff." The organizational chart indicates the warehouse and shipping manager oversees a shipping supervisor, inventory

controller and shipping assistant. The chart shows a vacant production manager position, and a business/financial underwriter, who also holds the position of accounting assistant. A total of ten employees are depicted as being under the beneficiary's direct or indirect supervision. The petitioner also submitted brief job descriptions for all employees identified on the organizational chart.

The petitioner submitted its California Forms DE-6, Quarterly Wage and Withholding Report, for 2007 and 2008. As of July 2008, the month in which the petition was filed, the petitioner reported 17 employees, although that number decreased to 15 by September 2008. The quarterly wage report indicates that no wages were paid to the local customer service representative supervisor or to the local furniture sales customer service representative during the third quarter of 2008. The quarterly wage report also indicates that wages were paid to five employees who are not depicted on the organizational chart.¹

The director denied the petition on December 5, 2008, concluding that the petitioner failed to establish that the beneficiary would be employed by the petitioner in a primarily managerial or executive capacity. In denying the petition, the director emphasized that the beneficiary's claimed duties are too broad and nonspecific to convey any understanding of her actual day-to-day activities, and included duties that are not clearly managerial in nature. The director acknowledged that the petitioner's organizational chart shows that several of the beneficiary's subordinates have managerial job titles; however, the director determined that the petitioner did not submit a sufficient explanation regarding the duties performed by the beneficiary's proposed subordinates. The director found insufficient evidence to establish that the beneficiary would be primarily engaged in the direction and supervision of a subordinate staff of managers, supervisors or professionals.

On appeal, the petitioner reiterates the position description previously provided and asserts that such duties are primarily managerial or executive in nature. Specifically, the petitioner states that the beneficiary's "proposed job duties involve direct management of the organization, establishment of the company goals and investment policies and exercising wide latitude in decision-making with respect to the company's operation and expansion." The petitioner further asserts that the beneficiary's proposed subordinates are "specialized workers such as the Investment Counsel or managerial level, such as the warehouse manager and sales manager." The petitioner re-submits the organizational chart and employee list submitted in response to the RFE, and emphasizes that USCIS approved the L-1A petition filed on the beneficiary's behalf in April 2008.

The petitioner also submits the minutes of a special meeting of the board of directors of the U.S. company, dated March 15, 2008, which indicates that the directors resolved at that time "to further establish more branch offices and warehouses throughout the United States in order to expand sales channels." The company directors stated that the expansion would involve "issues related to investment, finance, government policy, law and regulations," and that the beneficiary would be hired because she has a background in such areas. The directors further resolved "to set up a legal department and recruit 2-3 persons to fulfill responsibilities in expansion matters."

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

¹ Among the employees who were absent from the organizational chart was [REDACTED], who was the beneficiary of an L-1A classification petition approved in April 2008 (WAC 08 142 53292).

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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The position description the petitioner provided, while lengthy, was vague and failed to identify the specific duties the beneficiary would perform on a day-to-day basis that would qualify as managerial or executive in nature. For example the petitioner stated that the beneficiary will devote 10 percent of her time to "general business management" but did not adequately define the duties associated with this responsibility, instead indicating that the beneficiary will have "knowledge of business and office management principles," and be responsible to "maintain open lines of communication." *The petitioner further stated that the beneficiary is responsible to "ensure that each guest receives outstanding guest service by providing a guest friendly environment which includes greeting and acknowledging every guest, maintaining outstanding company standards, solid product knowledge."* This duty suggests that the beneficiary would be directly responsible for customer service or sales functions that occur on site at the petitioner's business premises. The petitioner claims to engage in wholesales only, and as such, would likely not have occasion to greet guests in its business environment. Therefore, it is not clear what these duties would entail within the context of the petitioner's business. Regardless, these "guest service" responsibilities do not appear to fall within the definitions of managerial or executive capacity.

Similarly, the beneficiary's responsibilities for generating product and service development ideas, conducting and evaluating customers' needs, evaluating customer satisfaction, participating in business negotiations, collaborating with the sales team, developing contracts, meeting with vendors, reviewing returned products, monitoring products in stock, and preparing operational and regulatory reports are also duties that have not been shown to be clearly managerial or executive in nature, as it appears that the beneficiary would directly perform these duties rather than delegating such tasks to subordinate employees. In addition, while the petitioner indicates that the beneficiary will devote a total of 25 percent of her time to financial management duties such as reviewing balance sheets, income statements, and accounting policies, the AAO notes that the submitted organizational chart indicates that the petitioner has a separate finance department headed by a controller that is not under the beneficiary's authority. USCIS records show that the petitioner also filed a petition for a chief financial officer concurrently with the beneficiary's initial L-1 petition. In light of these circumstances, the AAO questions how much time the beneficiary would realistically be required to devote to financial management responsibilities.

The nature of the beneficiary's position is further obscured by the petitioner's submission of two separate lists of duties accompanied by two separate breakdowns of her proposed duties, one purporting to describe her "daily and monthly duties" and one purporting to describe her "specific duties." Since the petitioner indicates that both different sets of duties will require 100 percent of the beneficiary's time, it is difficult to determine what duties she will primarily perform on a day-to-day basis. As noted above, both position descriptions include several duties that would be considered operational or administrative, rather than managerial, tasks. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Finally, the AAO notes that, on appeal, the petitioner has submitted a corporate resolution issued in March 2008, indicating that the role the beneficiary is intended to fill in the United States would be related to the petitioner's expansion activities. Specifically, the petitioner's officers determined that the purpose of the beneficiary's transfer is in connection with the petitioner's planned expansion activities and "issues related to investment, finance, government policy, law and regulations." The information contained in the resolution suggests that the beneficiary would be placed in a newly established legal department that would be staffed in the future. There is no indication in the meeting minutes that the petitioner intended to transfer the beneficiary to the United States to serve in a deputy general management position responsible for oversight of the sales and warehouse departments.

Overall, the petitioner has provided three varying accounts of the beneficiary's proposed position. The AAO is not in a position to determine which, if any, most accurately reflects the nature of the role. 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).

As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Furthermore, the petitioner bears the burden of documenting what portion of the beneficiary's duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Given the lack of a detailed, consistent description of the beneficiary's duties and the amount of time she will devote to qualifying duties on a day-to-day basis, the record does not demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity.

The petitioner's primary argument in support of the beneficiary's claimed managerial or executive capacity is its claim that she will supervise "specialized workers" and management-level personnel. 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). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The petitioner indicates that the beneficiary's direct subordinates are two sales managers responsible for local and out-of-state furniture sales, and a warehouse and shipping manager. In comparing the petitioner's Form DE-6 for the quarter in which the petition was filed, and its organizational chart, it is evident that the two employees claimed to be reporting to the local sales manager were not employed at the time of filing. The petitioner claims that the petitioner utilizes the services of outside sales representatives, but no evidence has been submitted in support of this claim. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm.

1972)). Overall, the petitioner has documented the employment of a total of three sales staff (two managers and one customer service representative), responsible for furniture sales. The petitioner has not documented the employment of any staff responsible for sales of wood flooring, the company's other main product line.

When examining the managerial or executive capacity of a beneficiary, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

The AAO acknowledges that two of the beneficiary's subordinates have the job title "sales manager." An employee will not, however, be considered to be a supervisor simply because of a job title, or because he or she is arbitrarily placed on an organizational chart in a position superior to another employee. Given the structure of the sales departments, and the petitioner's failure to establish who is performing the day-to-day furniture and flooring sales, it cannot be concluded that the sales managers are primarily performing supervisory or managerial duties. In addition, the AAO notes that the job descriptions for both sales managers indicate that they are required to "maintain excellent business knowledge with respect to the paint industry." As discussed above, the petitioner sells furniture and wood flooring products. The reference to the "paint industry" raises questions as to whether the submitted job descriptions accurately reflect the employees' duties. 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. 582, 591 (BIA 1988).

Furthermore, some of the beneficiary's described duties in relation to the sales function are more akin to those of a first-line supervisor than those of an employee who manages multiple tiers of subordinate sales staff. For example, the beneficiary is responsible to "collaborate with sales team in negotiations with buyers," and "review individual salesperson customer potentials, product selling volume and overall performance. The petitioner also indicates that beneficiary is responsible to "present contract liabilities to management" and "present contracts to proper signing authorities," which suggests that she does not have the authority to sign off on contracts herself. In light of the above, the AAO is not persuaded that the beneficiary will be primarily supervising management-level sales staff or exercising a high level of discretionary authority over sales matters.

The beneficiary's other claimed subordinate, the warehouse and shipping manager, does appear to supervise lower-level personnel in the shipping department. However, the job descriptions submitted for the beneficiary suggest that she would spend no more than 10 percent of her time overseeing warehousing, shipping and inventory functions. The petitioner indicates that the beneficiary will instruct the warehouse manager to submit reports summarizing purchase contracts. On the other hand, the petitioner states that the beneficiary will personally review and determine sufficiency of product inventory, monitor inventory and products in

stock, review returned products, and review whether all ordered items have been received by customers on schedule, rather than delegating these non-managerial duties to the warehouse manager or other staff in the warehouse and shipping department.

Overall, the record does not establish that the beneficiary's primary duties will be directing and controlling a subordinate staff of managerial or supervisory employees. In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. Here, the petitioner indicates that the beneficiary's direct subordinates have at least a bachelor's degree. However, the petitioner has not established that a bachelor's degree is actually necessary, for example, to perform the described duties relating to the sales and warehouse functions.

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 detailed position description that describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). 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. The petitioner has not articulated a claim that the beneficiary will manage an essential function in her proposed role as deputy general manager. The fact that she is claimed to oversee two departments of the company does not establish that she should be deemed a "function manager" responsible for managing the sales or warehouse functions. Furthermore, as discussed above, the petitioner has not submitted a description of the beneficiary's duties sufficient to establish that her duties would be primarily managerial in nature.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of

managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. On appeal, the petitioner claims that the beneficiary's proposed position will be in an executive capacity, but offers no support for this claim. Upon review, the AAO finds no evidence that the beneficiary's proposed role would be primarily focused on the broad goals and policies of the organization.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner established that the beneficiary 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. 8 C.F.R. § 214.2(l)(3)(iii).

The petitioner stated on Form I-129 that the beneficiary was employed by the foreign entity from February 2007 until February 2008. As noted above, the petitioner did not submit supporting documentation with the initial filing.

In the request for evidence issued on October 28, 2008, the director requested that the petitioner explain why the beneficiary "did not appear for her interview for her L-1 visa in China and entered the U.S. in B-2 status instead." The director also requested details and documentation regarding any visa refusals by a U.S. consular official in China.

In response to the RFE, the petitioner stated that the beneficiary has never been refused a visa. With respect to the beneficiary's entry to the United States in B-2 status, the petitioner stated:

The alien beneficiary has been busy with several China domestic business trips and business conference recently and often traveled around, which left her no time to appear for the L-1 visa interview in China. In addition, her supervisor in China forgot to notify her that the L-1A application filed by us was approved on April 24, 2008.

In denying the petition, the director stated:

The record does not establish that the beneficiary has met the "one continuous year" requirement for L-1 classification. Although the petitioner claims that the beneficiary was employed in an executive or managerial capacity for one continuous year, the record does not support the petitioner's assertion. It appears the beneficiary attempted to avoid a consular interview after the L-1A petition WAC-08-146-50866 was approved. The petitioner's explanation that the beneficiary's supervisor in China "forgot to notify her that the L-1A application was approved" is not believable. The more likely reason for not interviewing for an L-1A visa is that it would have revealed the beneficiary to have neither the experience nor training to perform the duties of an executive or manager. Instead of obtaining an L-1A visa

at the Guangzhou consulate, the beneficiary entered the U.S. as a B-2 visitor. Another inconsistency is that at the consular interview for her B-2 visa, the beneficiary indicated she was a university student. This contradicts the claim that she was an employee of the parent company.

On appeal, the petitioner asserts that the beneficiary has held the position of Deputy Manager with its Chinese parent company since February 2007, and that she started working for the foreign entity in September 2006. Specifically, the petitioner states:

Chinese universities require all students to partake in practical training during their last year in order to graduate. [The beneficiary] did her practical training internship with our parent company, and our parent company promoted her to Deputy Manager or Assistant Manager of the Management Department in February 2007 due to her performance and promise.

The petitioner asserts that the beneficiary's B-1/B-2 visa application was prepared and submitted by a travel agency on behalf of the beneficiary, and that the error, i.e., indicating that the beneficiary was merely a university student, was made by the third party. The petitioner asserts that the beneficiary has pursued her studies as a university student, and later as a law student at Sun-Yat-Sen University "concurrently working for our parent company and pursuing her study after work."

The petitioner stated that it is attaching the beneficiary's salary record to establish that she has been employed by the foreign entity for the requisite time period. The attached documents, "Management Department Employee Salary Record," appear to be for the period from February 2008 until November 2008. The petitioner also submits an attendance record pertaining to the beneficiary for the month of August 2007.

The petitioner has also provided a signed statement from the beneficiary, who confirms that she received her bachelor's degree in law in July 2007 and enrolled in graduate school in August 2007. She states that she served as an intern for the foreign entity beginning in September 2006, and was promoted to the position of Vice Manager in February 2007. She further states that, prior to her graduation in July 2007, she devoted most of her time to the job with the foreign entity, which decided to send her to the United States in January 2008. The beneficiary does not comment on her B-2 visa application.

Finally, the petitioner submits: (1) an "Employee (Recruitment) Information Card" pertaining to the beneficiary, which indicates that the foreign entity agreed "to arrange practical training in management department" beginning on September 9, 2006; and (2) an appointment letter from the foreign entity naming the beneficiary to the position of Vice Manager of Management Department for the period February 1, 2007 until December 31, 2009.

Upon review, the petitioner has not established that the beneficiary has completed one year of continuous, full-time employment with the foreign entity.

The AAO notes that the fact that the beneficiary was a university student during the dates in which she is claimed to have been employed in a managerial capacity with the foreign entity, at a minimum, raises questions as to whether the beneficiary's employment with the foreign entity was on a full-time basis.

Furthermore, there is insufficient objective evidence of the beneficiary's full-time employment with the foreign entity during the requisite time period. The petitioner submitted a single "attendance record" for the month of August 2007. The record does not have any information identifying the foreign entity or the beneficiary's job title. If the foreign entity does require its employees to submit such detailed information regarding their work hours on a daily basis, then it could establish the beneficiary's full-time employment by submitting such records for the full year of claimed full-time employment. The petitioner has submitted neither attendance records, payroll records, nor other evidence of the beneficiary's full-time employment with the foreign entity between February 2007 and February 2008. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner has also not adequately explained why the beneficiary did not apply for an L-1 visa at the U.S. consulate in Guangzhou upon approval of her L-1A visa petition and instead sought admission as a B-2 visitor and a change of status in the United States. The petitioner has also not fully explained why the beneficiary would have indicated her occupation as "student" in 2007 if she was employed on a full-time basis by the foreign entity at that time. The petitioner's claim that this statement can be attributed to the travel agency who completed the visa application is not entirely credible, as all nonimmigrant visa applicants are required to sign their visa application.

Overall, the AAO finds insufficient evidence was submitted to establish that the beneficiary had one year of continuous full-time employment with the foreign entity within three years preceding the filing of the petition.

The AAO acknowledges that USCIS approved a previous L-1A nonimmigrant petition that had been previously filed on behalf of the beneficiary. It must be emphasized that 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 that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The prior approval does not preclude USCIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

If a previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material 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. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS 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). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous petition approval by denying the instant petition.

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).

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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.

ORDER: The appeal is dismissed.