

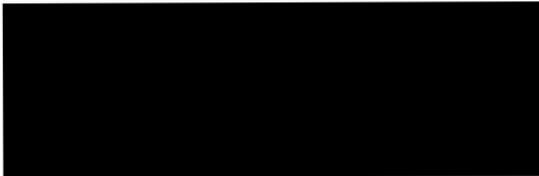
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



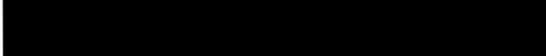
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FILE: EAC 08 119 51748 OFFICE: VERMONT SERVICE CENTER Date: **JAN 14 2010**

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:



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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the petitioner's appeal on January 30, 2009, pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v). The matter is now before the AAO on a motion to reopen. The AAO will grant the petitioner's motion and affirm its prior decision to dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its chief operating officer 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 New Jersey corporation, states that it is engaged in the construction business. It claims to be an affiliate of [REDACTED], located in Turkey. The beneficiary has been employed in the United States in L-1A status since 2003 and the petitioner now seeks to extend the beneficiary's stay for three additional years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended 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, counsel for the petitioner submitted a Form I-290B, Notice of Appeal or Motion, indicating that a brief and additional evidence were attached. However, the attached evidence in the record before the AAO consisted only of Forms I-94 for the beneficiary and his family members, and a copy of the director's decision.

On November 19, 2008, the AAO contacted counsel by facsimile and advised: "On the Form I-290B, you indicated that you would be submitting a brief and/or evidence to the Administrative Appeals Office (AAO) within \_\_\_ days. To date this office has no record that any further evidence or brief was ever received with regard to this appeal." The AAO advised counsel that he could resubmit a copy of any timely filed brief and evidence within five business days.

Counsel responded on November 19, 2008, advising that the AAO that the petitioner did not indicate on Form I-290B that a separate brief or evidence would be submitted. Counsel re-submitted a copy of the Form I-290B and stated that it "was accompanied by very voluminous supporting documentation which was approximately 6 inches thick and weighed over 5 lbs.," and was received on June 19, 2008 along with the Form I-290B. Counsel attached copies of UPS shipping documents and evidence of delivery of the package to the Vermont Service Center. Counsel suggested that the AAO "must be inadvertently referring to a different file or matter."

The AAO summarily dismissed the petitioner's appeal on January 30, 2009, noting that the petitioner failed to submit a copy of its brief or "voluminous supporting documentation" in support of the November 19, 2008 facsimile request, and therefore had not identified specifically an erroneous conclusion of law or statement of fact in support of the appeal.

The petitioner timely filed the instant motion to reopen on February 25, 2009. Counsel reiterates that a brief and supporting documentation were attached to the petitioner's Form I-290B Notice of Appeal or Motion and received by the Vermont Service Center on June 19, 2008. Counsel asserts that "the AAO's fax was erroneous in its face since the I-290B never stated that a separate brief would follow." Counsel emphasizes he believed that the AAO was mistaken about the file, and that, based on this belief, he did not re-ship the large

package. Counsel requests that the matter be reopened so that the appeal may be adjudicated on its merits. Counsel submits a copy of his 22-page brief dated June 16, 2008 and voluminous supporting documentation.

The AAO will grant the petitioner's motion and re-open the matter in order to consider the brief and evidence submitted on appeal. There is now sufficient evidence to establish that the brief and evidence were in fact submitted with the notice of appeal.

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(I)(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 (I)(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 sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed by the petitioner in a primarily managerial or executive capacity under the extended petition.

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 nonimmigrant visa petition on March 19, 2008. The petitioner stated on Form I-129 that it had four (4) employees as of that date. In a letter dated March 8, 2008, the petitioner described the beneficiary's role as chief operating officer as follows:

The beneficiary's great negotiation and contracting skills have yielded the petitioner many job orders in the past and [he] will be responsible for negotiating with general contractors and subcontractors for job orders, which negotiations deal with terms, such as price, quality and grade or goods/products used, timing as to completion, etc. and execution of contracts and orders.

The beneficiary continues to be in full charge of all policy and decision-making. He also plans to contract with independent and general contractors to perform construction and renovation work. As the business is developing, he hopes to concentrate his time more in

local construction job orders. The beneficiary's managerial tasks include the hiring and firing of all personnel, supervision of construction workers, carpenters and other lower level employees, asset purchase decision, contracting with home owners and other contractors, execution of business decisions, conducting the financial affairs of the company, and exercising the day-to-day operations of the company.

At this time, the petitioner continues to have three other employees under its employ.

The petitioner further stated:

The beneficiary's duties are solely to manage the company, and oversee operations, as well as contract with customer and general contractors to provide subcontracting services, such as the one with SEARS. . . . All day-to-day operations are performed by its employees as listed in the organizational chart. Petitioner's services are in areas of high competition and require his constant attention as far as entering into binding contracts which are cost effective, but yet attractive to the consumer and profitable to the petitioner. As such it requires a manager with binding authority who can make split second decisions as to whether petitioner ought to enter into a contract or not. . . .

The petitioner indicated that the beneficiary allocates approximately 90 percent of his time to the duties outlined, most of which is spent "negotiating with and meeting wholesalers and companies contemplating using the services of the company."

The petitioner submitted a two-page document titled "organizational chart" in which it provided the names, position titles and duties of its alleged employees. The petitioner identified seven subordinate employees including:

[REDACTED]

The petitioner also provided copies of its IRS Forms W-2, Wage and Tax Statement, for 2007. During 2007, the petitioner paid salaries and wages to [REDACTED] (\$3,963); [REDACTED] (\$7,800); [REDACTED] (\$11,389), and the beneficiary. The petitioner's IRS Forms 941, Employer's Quarterly Federal Tax Return, indicate that the company had two workers in the first quarter of 2007, three workers in the second quarter, four workers in the third quarter, and zero workers in the fourth quarter.<sup>1</sup>

On March 27, 2008, the director issued a request for additional evidence (RFE), in which he instructed the petitioner to submit: (1) a comprehensive description of the beneficiary's duties; (2) a list of U.S. employees which identifies each employee by name and job title; and (3) complete position descriptions for all employees in the United States, including a breakdown of the number of hours devoted to each employee's job duties on a weekly basis.

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<sup>1</sup> Although the petitioner's Form 941 for the fourth quarter of 2007 indicates that the company had 0 workers as of December 12, 2007, the form does indicate that the petitioner paid salaries and wages in the amount of \$15,655.17 during the quarter. Counsel indicates in his brief that the Form 941 contained a typographical error and that the petitioner actually paid three workers.

In a response dated April 15, 2008, the petitioner reiterated the beneficiary's duties as stated in its initial letter and indicated that the company "continues to have seven other employees under its employ." The petitioner re-submitted the employee list provided at the time of filing.

The director denied the petition on May 20, 2008, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. In denying the petition, the director noted that the record contains a discrepancy regarding the number of employees working for the company. The director observed that the petitioner, despite identifying five to seven employees subordinate to the beneficiary, did not provide evidence of wages to more than four people. In addition, the director observed that two of the four employees paid in 2007 earned wages consistent with part-time employment. The director noted that neither the beneficiary's position nor the subordinate positions appear to be professional in nature, and questioned whether the beneficiary's proffered salary of \$30,000 is "commensurate with a bona fide manager or executive in a major metropolitan business market."

The director concluded that, as it is not clear who is actually providing the goods and services of the organization, it "seems likely that the beneficiary has performed or will perform or help to perform these duties," rather than performing primarily managerial or executive duties.

While the AAO finds that the director's adverse determinations were warranted based on the evidence of record, it is noted that the director's underlying analysis, in part, was flawed, as the director issued an adverse finding on the basis of the beneficiary's salary. The AAO notes, however, that a beneficiary's salary is an admissibility factor and not a criterion to be used in determining his or her prospective employment capacity. The director's finding with regard to the latter is not supported by any statute, regulations or precedent decision.

Further, the director based the decision, in part, based on a finding that the beneficiary and his subordinates are not professionals, and based on a finding that the petitioner's business would not require the services of professional workers. A beneficiary need not supervise professionals in order to qualify as a manager or executive unless his primary role is that of a first-line supervisor. *See* section 101(a)(44)(A)(iv) of the Act. Nor is there any statutory or regulatory requirement that the beneficiary himself qualify as a professional.

In the appellate brief, counsel emphasizes that the beneficiary has been approved for employment in L-1A classification on three prior occasions, and contends that "there should be no question as to whether or not the beneficiary is acting as a bona fide manager or executive." Counsel states that there have been no major changes in the business practices of the petitioning company and the beneficiary's duties remain identical to the previous duties. Counsel asserts that the beneficiary's "main function is to negotiate contracts with various general contractors to perform subcontracting services," and that "this duty alone is a full time position," requiring approximately 90 percent of the beneficiary's time.

With respect to the number of employees working for the company, the petitioner states that "the employee numbers fluctuate constantly," and that the company currently has four employees. Counsel acknowledges that two of the individuals who worked for the company in 2007 no longer work for the company, but emphasizes that the petitioner has "always had numerous employees." Counsel indicates that the beneficiary's subordinate staff includes a "manager, foreman, salesperson, laborers and office staff."

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

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 in either an executive or a managerial capacity. *Id.* The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive"). While the AAO does not doubt that the beneficiary exercises discretion over the petitioner's day-to-day operations, the petitioner has failed to show that his duties will be primarily in a managerial or executive capacity.

The petitioner's descriptions of the beneficiary's duties, while lengthy, are repetitive and fall significantly short of specifically defining how much time the beneficiary devotes to managerial or executive tasks on a day-to-day basis. For example, the petitioner indicates that the beneficiary's duties "are solely to manage the company, and oversee operations, as well as contract with customers and general contractors to provide subcontracting services." The petitioner further states that the beneficiary is responsible for "asset purchase," "conducting the financial affairs of the company," "negotiating with buyers and retailers of its products and services on a daily basis," and "exercising the day-to-day operations of the company." The petitioner does not explain what specific tasks the beneficiary performs to "manage the company," "exercise the day-to-day operations of the company," or in "conducting" the company's financial affairs. Furthermore, without additional explanation, it cannot be concluded that the beneficiary's responsibility for "negotiating with buyers," and purchasing assets are managerial duties, rather than routine sales or purchasing functions. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner claims that the beneficiary's primary duty is to negotiate contracts with general construction contractors to provide subcontracting services and that such responsibility requires most of the beneficiary's time. The petitioner has submitted letters from five business associates who confirm that they have hired the petitioning company as a subcontractor. The petitioner's recent invoices indicate that the company provides rain gutter installation services to construction and roofing companies, gutter cleaning companies, and individual homeowners. There is insufficient evidence to support the petitioner's claim that the beneficiary is primarily engaged in negotiating complex contracts with general contractors. Three of the petitioner's 2008 invoices (#754, #715, #709) include Independent Contractor's Labor Statements for subcontract work the

petitioner performed for the general contractor Home Remodelers. The statements identify the beneficiary as the petitioner's installer for all three customer projects. As the petitioner did not include installation of gutters among the beneficiary's job duties, this evidence raises reasonable questions regarding whether the description provided is inaccurate, or, at best, incomplete. 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).

Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner claims that "all day-to-day operations" are performed by the company's subordinate employees.

As noted by the director, the petitioner has not clearly explained or documented the number or types of workers it employed at the time of filing. The petitioner stated on Form I-129 that it had four workers. The petitioner's IRS Forms W-2 confirmed that the company paid a total of four workers during 2007, although counsel indicates that there were three workers during the last quarter of that year. Nevertheless, the petitioner submitted an organizational chart at the time of filing which included eight employees. With the exception of the beneficiary, none of the workers listed on the organizational chart received wages from the petitioner in 2007. In May 2008, when the petitioner responded to the RFE, the petitioner indicated that the petitioner employs seven employees. In June 2008, counsel stated that the petitioner currently has four workers. Counsel simultaneously stated that the beneficiary's subordinates include a manager, foreman, salesperson, laborers and office staff. Neither the petitioner or counsel have offered any explanation for these discrepancies, other than noting that employee numbers "fluctuate" and that the company always has "numerous employees." The AAO cannot determine that the number or types of employees working for the petitioner based on the conflicting evidence submitted. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. 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. *Id.* at 591.

Given that the petitioner appears to have no more than three employees working subordinate to the beneficiary, it is essential that the petitioner provide a clear and credible description of their actual duties so that USCIS can determine whether the subordinate employees could reasonably relieve the beneficiary from performing the non-managerial functions of the company on a day-to-day basis. The only employees depicted in the petitioner's photographs appear to be the beneficiary and gutter installation workers.

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). Here, the petitioner does not claim that the beneficiary supervises any professional workers, and its claims that the beneficiary's subordinates include a subordinate manager and foreman/supervisor are not corroborated by any evidence. At most, the beneficiary appears to supervise the employees who install gutters for the petitioner's customers.

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 description of 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. § 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.

On appeal, the petitioner asserts that the beneficiary is primarily engaged in negotiating contracts with general contractors. However, as discussed the beneficiary's duties have not been described in sufficient detail and therefore, it cannot be affirmatively determined that his duties are primarily managerial in nature. Furthermore, as noted above and discussed further below, the petitioner has not substantiated its claim that the beneficiary's subordinates relieve him from performing non-managerial duties. 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. Section 101(a)(44) of the Act. Whether the beneficiary is a "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial.

Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties would be managerial or executive, nor can it deduce whether the beneficiary is primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The AAO notes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9<sup>th</sup> Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). It is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would

perform the non-managerial or non-executive operations of the company, or a “shell company” that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

At the time of filing, the petitioner was a three-year-old construction company which employed the beneficiary as chief operating officer. The petitioner has not documented the exact number of employees working for the company at the time of filing, but, it appears that the petitioner employed, at most, three installation employees. The petitioner has not substantiated its claim that it employs a manager, a supervisor/foreman, a finance manager, a sales employee or a secretary, as there is no evidence of wages paid to any of these employees. The petitioner reasonably requires employees to purchase materials and tools, handle sales calls from homeowners and general contractors, obtain customer specifications and estimate project costs, issue invoices, install rain gutters, handle bookkeeping and banking, and perform administrative and clerical tasks associated with operating a business. The evidence of record does not demonstrate who would perform the majority of these responsibilities, and suggests that the beneficiary himself is involved in directly providing the petitioner's services, given that he is identified on some of the submitted invoices as an “installer.” 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 Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

While USCIS previously approved three petitions for L-1A status filed on behalf of the beneficiary, the prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, the AAO notes that the most recent prior approval was granted in April 2006 to a different petitioner, [REDACTED], the petitioner's predecessor company, and the instant petition was filed as a change in previously approved employment.

If the previous nonimmigrant petitions were approved based on the same contradictory and unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approvals by denying the present request to amend and extend the beneficiary's status. As discussed above, the evidence submitted fails to describe the beneficiary's actual job duties in detail as required by 8 C.F.R. § 214.2(l)(3)(ii), includes numerous unresolved inconsistencies regarding the staffing of the company, and is insufficient to establish that the beneficiary would be employed in a managerial or executive capacity.

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). 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 petitioner has not submitted evidence on appeal to overcome the director's determination that the beneficiary will not be employed in a managerial or executive capacity. Accordingly, 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.

**ORDER:** The appeal is dismissed.