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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D7.

DATE: **AUG 10 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition to classify the beneficiary as an intracompany transferee in a managerial or executive capacity 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 manufacturing and marketing of latex gloves. It claims to be an affiliate of [REDACTED] the beneficiary's last foreign employer in Indonesia. The petitioner seeks to employ the beneficiary in the position of marketing manager for a period of three years. The beneficiary was previously granted L-1A classification for employment with [REDACTED], which has since merged with the petitioning company.

The director denied the petition after concluding that the petitioner failed to establish that it would employ the beneficiary in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that there has been no change in the beneficiary's previously-approved employment subsequent to the merger of his former L-1A employer with the petitioner. Counsel contends that the evidence establishes that the beneficiary "satisfies each and every element of being a Manager for L-1 purposes." Counsel submits a brief and additional evidence in support of the appeal.

I. THE LAW

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 three years preceding the beneficiary's application for admission into the United States. 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.

- (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 in the United States in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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.

II. FACTS AND PROCEDURAL HISTORY

The petitioner filed the Petition for a Nonimmigrant Worker (Form I-129) on April 5, 2010. The petitioner states that the beneficiary will serve as the marketing manager of the U.S. company, which claims 15 employees and gross annual income of \$25 million. The petitioner states that it is primarily engaged in the distribution and marketing of commercial quality examination latex gloves manufactured by its affiliates in Indonesia.

In a letter dated March 15, 2010, the petitioner described the beneficiary's proposed duties as marketing manager as follows:

[The beneficiary] will be responsible for setting up marketing policies and strategies with the Management, oversee and implement the policies and strategies to ensure achievement of marketing and business objectives and goals, assume managerial and supervising responsibility on a daily basis, delegate powers of authority to subordinates and other professionals under him to achieve the goals. He has the power to make hire and fire decisions within his purview or authority, make proposals to Management for the allocation of corporate resources to initiate regional or national campaigns to promote the products and expand market. He is to constantly find ways to improve or adjust marketing strategy and policies according to changing circumstances in North America, organize corporate resources and personnel to conduct market research and analysis and produce market reports, develop potential market and expand existing market to increase market share worldwide.

[The beneficiary] will coordinate marketing and related management activities or operations between the company in Indonesia and the U.S. company.

The petitioner submitted an organizational chart for the U.S. company which depicts the beneficiary as marketing manager, reporting to the company's director of marketing. The beneficiary's position is depicted as lateral to a purchasing manager position. Also depicted as reporting to the director of marketing are an international sales employee, a domestic sales employee, and a customer service employee. The chart also includes a controller who supervises five staff in logistics, warehouse and accounts payable and receivable, as well as a vice president of sales who supervises two key account/sales support employees and the customer service employee.

The director issued a request for additional evidence (RFE) on June 15, 2010. The director instructed the petitioner to submit: (1) a more detailed description of the beneficiary's duties including the percentage of time he spends in each of the specific duties listed; (2) a list of all employees under the beneficiary's direction including their job titles and position descriptions; and (3) copies of the company's California state quarterly wage reports for the last six quarters.

In a response dated July 16, 2010, the petitioner provided the following position description for the beneficiary:

- The beneficiary will be responsible for setting up marketing policies and strategies in collaboration with the Management based on past practice over the years, as well as

- experience and knowledge of the national, regional and local market conditions in the U.S. (this will take about 10% of his time)
- He will also oversee and implement the policies and strategies to ensure achievement of marketing and business objectives and goals (25% of time)
 - Supervise his subordinates on a daily basis, evaluate their performance from time to time, resolve issues on marketing and sales transactions, make hire and fire decisions or suggestions to his superior, make promotion and demotion decisions based on employees' performances (15% of time)
 - May delegate powers of authority to subordinates in order for them to carry out their duties, interface with outside stakeholders including but not limited to suppliers, customers, institutional buyers and the media to promote company and product image. Organize and participate in events including seminars or tradeshow in a bid to promote the company products, and other professionals under him to achieve the goals (15% of the time)
 - Make proposals to the Management for allocation of corporate resources to initiate regional or national campaigns to promote the products and expand market (10% of time)
 - Supervise or oversee market research and analysis and produce market reports for the top management and for the headquarters in Indonesia (10%)
 - Train or supervise sales force and resolve issues on a daily basis (10%)
 - He will also coordinate marketing and related management activities or operations between the company in Indonesia and the US company, responsible for communications between the headquarter and the U.S. subsidiary on marketing campaigns (5% of time)

(Bullets added).

The petitioner indicated that the beneficiary supervises an international sales executive, a domestic sales executive and a customer service employee. The petitioner stated that the international sales executive is responsible for: assisting customers interesting in doing OEM for their products, including export and importing procedures worldwide (10%); maintains existing international business relationships through daily or weekly communications (30%); grow international sales revenue by finding new customers/prospects from around the globe (20%); find and develop distributorships in each country (10%); help plan and develop marketing strategies for trade shows in Europe, Asia and Latin America (10%); conduct market research and analysis and generate reports to recommend market opportunities outside the United States (10%); provide sales and marketing forecasts and assist supervisor in preparation of marketing plans for international market (10%); and may supervise first-line sales, contractors, temporary workers as needed.

The petitioner stated that the domestic sales executive is charged with maintaining and developing existing business relationships via communications, events and trade shows (20%); finding new customers to grow domestic sales through cold-calling (20%); processing orders for assigned customers (20%); helping with the planning, development and management of public relations and marketing materials for the U.S. market (10%); compiling, interpreting, evaluating and reporting the performance of public relations and marketing campaigns (10%); conducting market research analysis and generating reports (5%); providing sales and

marketing forecasts, and assisting in the preparation of marketing plans (5%); planning, developing and adjusting marketing strategies for trade shows (10%); and supervising first-line sales, contractors or temporary workers as needed.

Finally, the petitioner stated that the customer service employee answers and directs telephone calls, handles simple inquiries and requests from customers; processes customer orders and ensures timely shipping; processes sample requests from customers and outside sales representatives; and notifies customers of new pricing or new products.

The petitioner submitted copies of its California state quarterly wage reports (Form DE-6) for the first quarter of 2010 and all four quarters of 2009, which confirm the employment of the beneficiary and his claimed subordinates.

The director denied the petition on August 5, 2010, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director observed that the petitioner's description of the beneficiary's duties was too broad and nonspecific to convey any understanding of his day-to-day activities. The director further found that the duties, to the extent that the petitioner described them, are primarily comprised of marketing tasks. In addition, the director found insufficient evidence to establish that the beneficiary's position of marketing manager is at a senior level within the company's organizational hierarchy. In discussing the beneficiary's subordinates, the director noted that the sales employees the beneficiary is claimed to supervise earn higher salaries than the beneficiary and questioned why the sales employees would report exclusively to the marketing manager given the company's employment of a vice president of sales. The director further found insufficient evidence to establish that the beneficiary's subordinates are employed as managers, supervisors or professionals despite the petitioner's addition of the word "executive" to the sales employees' job titles in response to the RFE. Overall, the director found that the evidence did not clearly define the beneficiary's duties or the reporting structure within the petitioner's organization.

On appeal, counsel asserts that the beneficiary clearly satisfies each and every element of the regulatory definition of "managerial capacity." In this regard, counsel asserts that the beneficiary: (1) oversees and develops the company's marketing activities, along with the management of the company; (2) controls and oversees the work of other professional and managerial employees such as the supervisors of his division, and has the authority to exercise discretion over the day-to-day activities of the company's operations, including but not limited to formulating administrative and operational policies and procedures; (3) exercises discretionary authority over the allocation of corporate resources and initiates strategies for marketing programs; and (4) has authority to hire and fire personnel and direct senior-level employees.

The petitioner further states that the beneficiary acts as a "top executive" of the U.S. company as he "directs and coordinates the activities concerned with the marketing industry," conducts staff meetings to discuss and implement new strategies, oversees supervision of employees, develops recommendations for company expansion, and has wide latitude and discretion in exercising his decision making. Counsel asserts that the beneficiary exercises broad powers and "would not need any direction from other high-level executives."

Counsel objects to the director's finding that the beneficiary is disqualified because he would be responsible for performing aspects of the day-to-day marketing operations of the company, noting that a company with \$25 million in sales requires hands-on management.

Finally, counsel cites to an April 23, 2004 agency memorandum from [REDACTED] which states that in matters related to an extension of nonimmigrant petition validity involving the same parties and the same underlying facts, deference should be given to an adjudicator's prior determination of eligibility.¹ Counsel asserts that the director erred by failing to adhere to the guidance in the Yates memorandum and contends that there have been no material changes in circumstances in the beneficiary's employment situation.

III. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a primarily managerial or executive capacity. 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 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 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). Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The petitioner's initial description of the beneficiary's position described his duties in broad and non-specific terms which failed to clearly convey either his level of authority or to provide insight into the nature of his day-to-day duties. For example, the petitioner indicated that the beneficiary's duties include: "setting up marketing policies and strategies with the Management"; "oversee and implement the policies and strategies" to achieve business objectives; "assume managerial and supervising responsibility"; and "develop potential market and expand existing market to increase market share worldwide." The petitioner did not define any specific tasks associated with these broad areas of responsibility. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

¹ Memorandum of William R. Yates, Associate Director for Operations, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility of Petition Validity* (April 23, 2004).

The petitioner's organizational chart submitted at the time of filing depicts a director of marketing senior to the beneficiary's position, and no direct reports for the beneficiary, which raises questions regarding the extent of his authority over the establishment of marketing strategies, policies and objectives. The petitioner further indicated that the beneficiary will "organize corporate resources and personnel to conduct market research and analysis and produce market reports," but it was not established based on the initial evidence whether the beneficiary would be supervising subordinates who would relieve him from performing non-qualifying marketing tasks such as conducting market research and analysis. The organizational chart does depict two sales employees in the marketing department, but it also shows that these employees report to the director of marketing, rather than to the beneficiary.

The director requested that the petitioner clarify the nature of the beneficiary's specific duties and the organizational structure of the U.S. company. However, in responding to the RFE, the petitioner failed to add any significant detail to the duties outlined in the initial position description, noting that the beneficiary would allocate a total of 35 percent of his time to "setting up marketing policies and strategies in collaboration with management" and overseeing and implementing these policies and strategies. Again, the petitioner failed to delineate any specific tasks associated with these responsibilities. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in describing his overall responsibility for marketing strategies and policies. 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 added that the beneficiary would "interface with" customers, suppliers, buyers and media, and organized and participate in seminars and tradeshow to promote the company's products and image, produce marketing reports, propose marketing campaigns, and coordinate with the foreign entity on marketing campaigns, but it did not explain how these tasks, which comprise an additional 30 percent of his time, fall within the statutory definitions of managerial or executive capacity, as opposed to being typical marketing and promotional tasks.

While some of the responsibilities vaguely described by the petitioner may fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the beneficiary's actual proposed responsibilities. The provided position descriptions alone are insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

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 submitted an organizational chart at the time of the filing which depicts the beneficiary as a direct subordinate of the company's director of marketing, with no subordinates of his own. The reporting lines depicted show that the international sales, domestic sales and customer service employees report to the marketing director rather than to the marketing manager, while other sales staff report to the vice president of sales. In response to the RFE, the petitioner identified the international sales and domestic sales employees as "sales executives" and stated that they report directly to the beneficiary, but it did not submit a revised organizational chart or any explanation as to why the original chart depicts a different reporting structure within the marketing department. 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).

On appeal, counsel maintains that the beneficiary "controls and oversees the work of other professional and managerial employees such as the supervisors of his division," and also states that he "oversees supervision of employees engaged in sales work, taking of inventories and preparing activity reports." Even assuming, arguendo, that the petitioner had consistently indicated that the beneficiary supervises the international and domestic sales employees, the record does not corroborate counsel's claim that these employees are managers or supervisors, despite the addition of "executive" to their job titles in response to the RFE. Neither employee is depicted as supervising any subordinate staff.

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'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

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. The petitioner has not established that a bachelor's degree is actually necessary to perform the primarily sales-related duties attributed to the international and domestic sales employees, nor has it indicated or provided evidence that either of these employees possesses a degree.

The petitioner has not consistently corroborated its claim that the beneficiary oversees subordinate personnel, nor has it shown that the beneficiary's alleged subordinates are supervisory, professional, or managerial employees, as required by section 101(a)(44)(A)(ii) of the Act.

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). 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. Furthermore, in the case of a function manager, where no subordinates are directly supervised, other factors USCIS may consider include the beneficiary's position within the organizational hierarchy, the depth of the petitioner's organizational structure, the scope of the beneficiary's authority and its impact on the petitioner's operations, the indirect supervision of employees within the scope of the function managed, and the value of the budgets, products, or services that the beneficiary manages.

In response to the RFE the petitioner stated that the beneficiary reports directly to the president and manages the "entire essential function" of marketing for the U.S. company. On appeal, counsel asserts that the beneficiary "oversees and develops the company's marketing activities, along with the management of the company," and allocates corporate resources and initiates strategies to develop programs potentially worth millions of dollars. While the beneficiary appears to exercise some authority over the company's marketing activities, the record does not establish that the beneficiary "functions at a senior level within the organizational hierarchy or with respect to the function managed." Section 101(a)(44)(A)(iii) of the Act. The petitioner's illustration of its organizational hierarchy depicts the beneficiary as a subordinate to the director of marketing, with no direct reporting line to the president, as claimed by the petitioner. The petitioner has not provided a position description for the director of marketing, but it is evident that the beneficiary holds the less senior of the two marketing positions within the company, and the AAO cannot conclude that he performs at a senior level with respect to this function or within the hierarchy as a whole. This conclusion is further supported by the petitioner's statements that the beneficiary's authority extends to making marketing proposals to and working in collaboration with "the Management," rather than exercising discretion over all activities of the function. Finally, while the petitioner indicates that the company's two sales executives perform some marketing-related duties, their responsibilities are focused primarily on sales, and the record does not establish how the beneficiary would be relieved from performing non-qualifying marketing duties. The AAO cannot conclude that the beneficiary manages the marketing function or performs primarily managerial duties associated with this function.

For similar reasons, the petitioner has not established that the beneficiary will be employed in an executive capacity. 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 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. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

In response to the RFE, the petitioner specifically described the beneficiary as one of its "mid-level managers responsible for global & U.S. marketing for the company," rather than as an executive. On appeal, counsel states that the beneficiary is "a top executive" as he "directs and coordinates activities concerned with the marketing industry," develops recommendations for company expansion, "has broad powers to make decisions as he deems necessary," and "would not need any direction from other high level executives."

Counsel essentially paraphrases the statutory definition of executive capacity, and his assertions on appeal run counter to the petitioner's previous claims regarding the beneficiary's level of responsibility in the company. The beneficiary reports to a higher-level employee in the marketing department, and the record fails to establish that he operates at a senior level with respect to this function or department.

While the petitioner indicates that the beneficiary recommends or develops marketing policies and strategies, the petitioner also indicated that the beneficiary performs duties such as interfacing with clients to promote the company's products, publicizing the company image, and other marketing duties that have not been demonstrated to be executive in nature. Furthermore, as with a function manager, the petitioner must establish that the beneficiary is relieved from performing the day-to-day operations of the functions or divisions for which he is claimed to hold oversight responsibilities, even if he does not directly supervise staff. As discussed, the only organizational chart submitted shows that the beneficiary does not directly supervise staff, nor does the chart depict any dedicated marketing staff in the marketing department, other than the beneficiary himself.

In light of the above, the AAO concurs with the director's finding that the petitioner failed to establish that the beneficiary has been or will be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

IV. PRIOR APPROVAL AND CONCLUSION

Counsel asserts that it was improper for the director to deny the petition after previously approving an L-1A classification petition filed by the petitioner's U.S. affiliate, which has since been merged into the petitioning company. Referring to the above-referenced April 23, 2004 USCIS interoffice memorandum from [REDACTED] [REDACTED] counsel claims that the director was required by current USCIS policy to give deference to the prior approval. Counsel states that only a finding that there had been a material error with respect to the initial approval, or a determination that there had been a substantial change in circumstances, would warrant the denial of the extension request, and that such factors were not present in this matter.

Counsel's assertion is not persuasive. Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *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). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

Further, the petitioner did not file this petition as a simple extension of the beneficiary's previously approved L-1A petition, but rather as an amendment and a change in previously approved employment. The beneficiary's original period in L-1A classification was granted for a different company. The director's close analysis and detailed request for evidence were appropriate in light of the referenced memorandum and the petitioner's evidentiary burden, as this matter did not in fact involve the exact same parties and facts as the previous petition.

While USCIS previously approved a petition for L-1A status filed on behalf of the beneficiary, the prior approval does 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). If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval 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 approval 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(1)(3)(ii), contains inconsistent descriptions of the company's managerial hierarchy and reporting structure, and is insufficient to establish that the beneficiary would be employed in a primarily 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 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).

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.