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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: **FEB 14 2012** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 seeking to employ the beneficiary as a 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 Michigan corporation, indicates that it is engaged in motel hospitality services. It claims to be a subsidiary of [REDACTED] located in Ontario, Canada. The beneficiary has previously been granted L-1A status for the period May 2002 through May 2009. The petitioner indicates that the beneficiary resides in [REDACTED] Ontario, Canada and commutes to Detroit, Michigan to work for the U.S. entity for 25 hours per week. Accordingly, the petitioner requests a three-year extension of the beneficiary's status so that she may continue to serve in the part-time position of president.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in the United States 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. On appeal, the petitioner asserts that the beneficiary's duties are strictly executive and that she is not involved in any managerial or lower-level functions. The petitioner asserts that USCIS has granted three prior approvals based on similar facts and that the beneficiary's responsibilities have not changed. The petitioner submits a brief 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.

II. The Issue on Appeal

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed by the United States entity 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), 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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 27, 2009. The petitioner indicated on the petition that it seeks to employ the beneficiary as president to "manage and direct day-to-day operations." The petitioner indicated that it employs a total of thirteen employees and enjoys gross annual income in excess of \$320,000 in the United States and Canada.

The petitioner indicated that both the U.S. entity and its claimed Canadian parent company are engaged in managing motels. In a letter dated May 25, 2009, the petitioner stated that the beneficiary performs the following duties in her role as president of both companies:

Human Resources (20%)

The Beneficiary has and will continue to be responsible for hiring, firing and training all managerial subordinate personnel. She has and will continue [to] develop the organization policies and goals, and implement these goals through subordinate personnel. These policies and goals include, but are not limited to quality and service standards, marketing strategies, and training procedures. She has overseen and will continue to oversee the daily operations of hotel operations, and meet with the Subordinate Managers on a weekly basis to review schedules (i.e. vacation time, sick leave, etc), and to address any and all concerns pertaining to staff, training procedures and changes.

Fiscal Operations (20%)

The Beneficiary has and will continue to confer with all subordinate staff to review activity, operating and sales reports to determine any necessary changes in programs or operations that may be required. As President, she is also responsible and will continue to be responsible to ensure that all operating statements comply with company procedures by all personnel, and further ensures that they are completed in a timely manner, so that she may review the progress of the business, implementing changes to reduce costs and generate more income. She meets and will continue to meet with the company accountant to review all of the above-stated reports, on a monthly basis.

Marketing & Customer Management (25%)

As President, the Beneficiary has and will continue to be responsible for managing and coordinating the promotion of their service to develop new markets, increase the share of the market, and obtain a competitive position in the industry. She has and will continue to develop layouts for marketing tools such as newspaper ads and flyers, to name only a few.

Quality Control (25%)

The Beneficiary has and will continue to be responsible for preparing training manuals and procedures, and now oversees the amendments to these manuals so as to maintain the standards and policies that she has established. These standards include, but are not limited

to: staff uniforms, hours of availability for service provided, customer service standards for each employee to comply with, and the cleanliness and sanitation of all rooms. In order to maintain quality control, she will without notice to her managers and her staff, perform inspections so as to corroborate and substantiate the managerial reports submitted to her for inspection and approval.

Inventory Control (10%)

The Beneficiary has and will continue to be responsible for reviewing inventory reports on a monthly basis and providing input as to its implementation viability or changes necessary for effectiveness. She reviews these reports with the Company Accountant and addresses all managerial staff concerning any changes. She further ensures that her managers and suppliers are operating in a manner consistent with just-in-time and total quality management policies.

In addition, the petitioner stated that the beneficiary "is also responsible to review service reports and customer survey feedbacks with a view toward establishing improved quality standards, decreasing costs, improving hotel accommodations and increasing overall sales. She has the authority to handle all customer service problems and negotiate contracts with hotel suppliers."

The petitioner submitted an organizational chart for the U.S. company which depicts the beneficiary as president, responsible for supervising a general manager. The chart indicates that the general manager supervises a guest services manager and a housekeeper/maintenance employee.

The director issued a request for additional evidence ("RFE") on September 24, 2009, in which she instructed the petitioner to submit, *inter alia*, the following: (1) a more detailed description of the beneficiary's duties in the United States; (2) a list of all U.S. employees from the date of establishment to the present, including their names, job titles, social security numbers, beginning and end dates of employment, wages, immigration status and source of remuneration; (3) a more detailed organizational chart for the U.S. company; (4) copies of the petitioner's state quarterly wage reports for the last four quarters; and (5) copies of the petitioner's payroll summary and IRS Forms W-2 and W-3 evidencing wages paid to employees.

In a response, the petitioner restated a portion of the beneficiary's initial position description, noting that she is responsible for: "the overall day-to-day direction and management of the entire corporation"; "marketing strategies and goals"; "hiring, firing and supervision of proper training of all subordinate staff"; reviewing "service reports and customer survey feedbacks"; and "has the authority to handle all customer service problems and negotiate contracts with all motel suppliers."

In response to the director's request that the petitioner provide a list of all persons employed by the U.S. company to date, the petitioner listed only the beneficiary, the guest service manager, and the housekeeper/maintenance employee. The petitioner stated that the guest service manager receives \$700 per month and performs the following duties: "Develop, implement and evaluate policies and procedures for the operation of the front Desk department, Participate in the development of pricing and promotional strategies. Recruit and supervise staff, oversee training and set work schedules. Resolve customer complaints."

The petitioner indicated that the housekeeper/maintenance worker earns \$220 per month and is responsible for cleaning rooms and linens, tending to guests' requests, and performing general maintenance duties.

The petitioner re-submitted the organizational chart provided at the time of filing, which includes the guest services manager and the housekeeping employee, but also includes the general manager, who is not listed in the response to the RFE as a current employee of the company. The petitioner's quarterly wage reports for the first two quarters of 2009 and IRS Forms W-2 for 2008 confirm the employment of only the beneficiary, the housekeeper and the guest services employee.

The director denied the petition on February 18, 2010, 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 observed that the petitioner described the beneficiary's duties in overly broad and nonspecific terms, and included marketing tasks and other job duties that do not qualify as managerial or executive in nature. The director concluded that the beneficiary would be supervising non-professional employees and providing the services of the organization, rather than acting as a qualifying executive, personnel manager or function manager.

On appeal, the petitioner asserts that the beneficiary's position is "strictly executive and is not involved in any managerial function." The petitioner acknowledges that the petitioner "has reduced its current staff to two (2) managerial employees, i.e., Guest Services Manager and Housekeeping/Maintenance Manager." However, the petitioner asserts that the beneficiary "delegates her duties and responsibilities through both of these subordinate managers" and retains responsibility for the following:

The duties of the President remain concisely overseeing managers, hiring and firing subordinate managers, reviewing personnel complaints, implementing hotel quality control procedures and standards, negotiating contracts with all suppliers and corporate customers (i.e. Truckers Companies, Travel Agencies, Sports Teams, etc.) devising the annual budget and assuring that all operations are operated within the company budget. Most importantly her day to day operations are fulfilled with a view to decrease costs and increase revenues.

The petitioner submits a revised description and breakdown of the beneficiary's duties, which indicates that the beneficiary devotes 30% of her time to negotiating contracts, 10% of her time to human resources, 20% of her time to fiscal operations, 20% of her time to marketing and customer management, 15% of her time to quality control, and 5% of her time to inventory control. The new position description refers to the beneficiary's oversight of the general manager; however, the petitioner simultaneously maintains that it does not employ a general manager. In addition, the petitioner has provided revised position descriptions for the guest service manager and housekeeper/maintenance positions.

Finally, the petitioner emphasizes that the beneficiary has been employed in the proffered position in L-1A status on a part-time basis, without interruption, since May 2002.

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in the United States 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'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 definitions of executive and managerial capacity 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 demonstrate 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). While the petitioner indicates that the beneficiary exercises executive-level powers and broad decision-making authority with respect to the U.S. company, the record does not establish that the beneficiary allocates the majority of her time to qualifying managerial or executive level duties.

The AAO concurs with the director's observation that the petitioner's initial description of the beneficiary's duties, while lengthy, is vague and non-specific, and therefore fails to illustrate what the beneficiary actually does on a day-to-day basis as the petitioner's president. For example, the petitioner states that the beneficiary is responsible for hiring and firing subordinate personnel, developing the organization's policies and goals, overseeing the daily operation of the motel, and reviewing activity, operating and sales reports. The petitioner emphasized that the beneficiary has "unrestricted authority and answers to no one." These broad characterizations of the beneficiary's duties convey the position's level of authority, but provide no insight into what specific tasks the beneficiary performs in her role as the petitioner's president. 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 the course of her 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).

In addition, as noted by the director, the petitioner's initial description of the beneficiary's duties included a number of tasks which do not fall under the statutory definitions of managerial or executive capacity. For example, the petitioner indicates that the beneficiary handles customer service problems, negotiates contracts with the motel's suppliers, and develops marketing documents such as advertisements and flyers. As the petitioner did not indicate how much time the beneficiary allocates to several of these non-managerial duties, the petitioner's initial description of the beneficiary's job duties did not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). 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'r 1988).

Accordingly, the director reasonably requested a more detailed description of the beneficiary's duties and advised the petitioner to be specific in describing her actual tasks. In response, the petitioner provided an

abbreviated version of the initial description that the director had already viewed and found to be insufficient to establish the beneficiary's eligibility. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The director properly determined that the petitioner's description of the beneficiary's duties did not demonstrate that her duties would be primarily managerial or executive in nature.

The petitioner now provides a slightly expanded and revised description of the beneficiary's duties in support of the appeal. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted position description to be considered, it should have submitted it in response to the director's request for evidence. *Id.* Further, the AAO notes that the petitioner has altered the percentages of time allocated to the beneficiary's various areas of responsibility without providing any explanation for the deviation from the percentages provided at the time of filing.

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 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 has provided evidence that it employs a guest services manager and a housekeeper/maintenance employee. The petitioner also consistently depicts a subordinate general manager on its organizational chart, but has not provided evidence that this employee actually works for the company or provided a list of the position's responsibilities.

The petitioner previously stated that the guest service manager develops and implements policies and procedures for the front desk department, supervises and trains staff, and sets work schedules; however, the petitioner does not claim that it employs any other front desk staff. On appeal, the petitioner states that the guest service manager is responsible for registering and checking out motel guests, answering inquiries from customers, answering phones, compiling daily records and receipts, monitoring answering machines, and completing cash and credit card transactions. In other words, the guest service manager performs the duties of a front desk clerk. With respect to the housekeeper/maintenance employee, the petitioner initially stated that he directly performs routine housekeeping, room cleaning, and maintenance tasks within the motel. On

appeal, the petitioner suggests that he is responsible for hiring maintenance subcontractors and supervising subcontracted housekeepers in addition to the duties previously described. However, the petitioner has not provided any evidence that it uses the services of subcontracted housekeeping or maintenance staff. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Overall, the evidence submitted does not establish that either of the beneficiary's subordinates could be considered a manager, supervisor or professional.

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 clearly 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 provided evidence that the beneficiary manages an essential function. Other than ambiguously referring to the beneficiary's responsibility for overall management of the company, the petitioner has not claimed that the beneficiary manages an essential function of the company. Furthermore, as discussed, the petitioner has not provided a detailed description of the beneficiary's actual job duties, nor has it provided a credible claim regarding the amount of time the beneficiary devotes to managerial versus non-managerial duties. 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 section 101(a)(15)(L) of the Act. See 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). The petitioner has neither articulated nor substantiated a claim that the beneficiary qualifies as a function manager.

Further, the record does not support the petitioner's claim that the beneficiary is 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 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. 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 this case, the petitioner has not explained how the beneficiary would spend the majority of her time focused on the broad goals of the organization. The beneficiary's duties as described by the petitioner include

administrative duties, marketing and promotional tasks, purchasing duties, and direct supervision of non-professional personnel. The petitioner's claim that the beneficiary will perform primarily, or in this case, exclusively, executive duties, must be supported by evidence that the petitioner actually employs staff or contractors who would be able to relieve the beneficiary from performing the day-to-day duties associated with operating a motel.

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, 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. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. See *Systronics*, 153 F. Supp. 2d at 15.

The petitioner indicates that it operates a motel. At the time of filing the petition, the petitioner claims to have employed the beneficiary as its part-time president, one "guest service manager" who performs the duties of a front desk employee, and one housekeeper/maintenance worker. The guest service manager and housekeeper, based on their monthly wages of \$700 and \$220 per month, also work on a part-time basis.

The petitioner reasonably requires staff to perform a number of routine operational duties associated with operating a motel, including handling guest reservations and inquiries, staffing the front desk during regular business hours and after-hours, to check guests in and out of rooms, to maintain the cleanliness of rooms and facilities, to order hotel and office supplies, to make arrangements with outside service providers, to perform bookkeeping duties, to market and promote the motel to potential customers, and to perform administrative and clerical duties associated with operating any business. Upon review, it does not appear that these non-managerial duties could be performed entirely by one part-time front desk employee and one part-time housekeeper. The nature of the business would reasonably require sufficient staff to operate the hotel seven days per week and would also reasonably require more than one employee in each department in order to provide adequate service to its guests on a daily basis. Accordingly, it is reasonable to conclude, and has not been shown otherwise, that many of the non-managerial tasks associated with operating a motel on a day-to-day basis would necessarily be performed by the beneficiary.

The AAO does not dispute that small companies require leaders who plan, formulate, direct, manage, oversee and coordinate activities; the petitioner has not, however, demonstrated that the beneficiary would spend the majority of her time performing duties at the managerial or executive level. The petitioner must establish with specificity that the beneficiary's duties are primarily managerial or executive in nature and are not primarily routine operational or administrative tasks. Here, the lack of a detailed position description for the beneficiary, and the lack of staff to perform the routine duties inherent to operating a motel, precludes a finding that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

Beyond the decision of the director, a remaining issue in this matter is whether the petitioner established that the United States and foreign entities maintain a qualifying relationship. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign

employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner claims to be a wholly-owned subsidiary of [REDACTED] a Canadian corporation. The petitioner submitted a copy of its stock certificate #1 indicating that 1,000 shares of the U.S. company's stock was issued to the foreign entity on October 29, 1998. The petitioner's stock ledger submitted at the time of filing indicates that 1,000 of the company's 60,000 shares of authorized stock were issued to the foreign entity on that date. In response to the RFE, the petitioner submitted the minutes to the annual meeting of shareholders of the U.S. company held on October 29, 1998. This document indicates that the petitioning company issued 1,000 shares of stock to the beneficiary on that date, and was accompanied by a different version of the company stock ledger which indicates that the beneficiary, and not the foreign entity, was the original and only shareholder of the company. In addition, the petitioner's corporate tax returns also identify the beneficiary as the company's sole shareholder. The petitioner has not submitted evidence of the ownership of the foreign entity.

The petitioner has not explained why it submitted two different versions of the company's corporate stock ledger. 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). Accordingly, due to the discrepancies noted, the petitioner has not corroborated the claimed parent-subsidiary relationship between the U.S. and foreign entities.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. 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); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

The AAO acknowledges that USCIS previously approved three L-1A petitions filed on behalf of the beneficiary by the petitioning company. It must be emphasized that 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). If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals 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'r 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).

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.

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.