

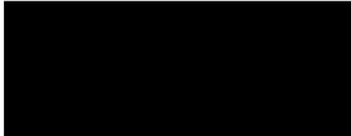
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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DATE: **JAN 11 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 aware 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 extend the beneficiary's employment 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 California limited liability company, states that it operates an automobile export and sales business. It claims to be a subsidiary of [REDACTED]. [REDACTED] The petitioner has employed the beneficiary in L-1A status since October 2007 and now seeks to extend his status so that he may continue to serve in the position of president.

The director denied the petition on two independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the petitioner has been doing business in the United States in accordance with the regulation; and (2) that the beneficiary will 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 for review. On appeal, counsel for the petitioner asserts that "the petitioner has expanded its business activities in compliance with its business plan [and that] the beneficiary is performing solely executive-level responsibilities." 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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
 - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

Pursuant to the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H):

Doing business means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

II. The Issues on Appeal

A. *Doing Business*

The first issue to be addressed is whether the petitioner established that the U.S. company is doing business in the United States in accordance with the regulations cited above.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on April 13, 2009. The petitioner is a California limited liability company established in October 2005; it indicates that it is engaged in automobile export and sales. The petitioner's initial supporting evidence included: (1) a letter of support from the petitioner; (2) a strategy outline for 2009-2010 of the petitioner; (3) the Articles of Organization for the petitioner; (4) the IRS letter assigning the federal employment identification number; (5) the office lease for the petitioner; (6) the position descriptions for current and proposed employees; (7) financial and wire transfer documents for the petitioner; (8) California state income tax returns for 2007 for the petitioner; (9) a 2008 W-2 Wage and Tax Statement to [REDACTED] for \$2185; (9) client lists for vehicles and automotive parts; (10) business agreements between the foreign company, the petitioner, and a third shipping company; (11) shipping documents from April 2006 to December 2008; (12) invoices issued by the petitioner to the foreign company from September 2007 to January 2009; and (13) legal documents establishing the foreign company.

The director denied the petition on June 23, 2009, concluding that the petitioner failed to establish that the U.S. company is doing business as defined in the regulations. The director concluded that "the petitioner is merely acting as a purchasing agent in the United States for the foreign entity... copies of invoices show that the petitioner merely buys used automobiles and automobile parts from the United States and has the merchandise shipped directly to the foreign company in Kazakhstan."

On appeal, counsel asserts that the petitioner is not merely a purchasing agent for the foreign entity. Counsel submits a business agreement for the petitioner and [REDACTED], dated April 17, 2009, to engage in the sale of specialized equipment, manufacturing and technological equipment, and replacement spare parts. Counsel

also submits one invoice for April and one invoice for May from the petitioner to [REDACTED] for a total of \$34,900 in sales along with shipping documents confirming the shipment of those goods to the buyer.

Upon review, the evidence in the record is persuasive and establishes that the petitioner is engaged in the regular, systematic and continuous provision of goods and/or services in the United States.

The petitioner only needs to establish that its business is regular, systematic and continuous; the fact that the U.S. company exports primarily to the foreign entity does not prohibit a finding that the company is doing business. The record shows that the U.S. company is engaged in the provision of services by facilitating the export of goods to the Kazakhstan market. The evidence is sufficient to meet the petitioner's burden. Accordingly, the AAO will withdraw the director's determination with respect to this issue as the petitioner has overcome this ground for denial.

B. Employment in a Managerial or Executive Capacity

The second issue addressed by the director is whether the petitioner established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Although the director's determination with respect to the above ground will be withdrawn, the AAO finds insufficient evidence in the record to establish that the beneficiary would be employed in the United States in a qualifying 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.

Facts and Procedural History

The petitioner stated on the Form I-129 that the beneficiary will be employed by the U.S. entity as president. The petitioner indicated that it is operating an automobile export and sales business with two employees and a gross annual income of \$197,072.

In a letter dated March 27, 2009, the petitioner stated that the beneficiary performs the following duties:

1. Functioning at an executive and managerial level within the company, and exercising discretionary decision-making authority over all company operations;
2. Directing and controlling the day-to-day activities of up to three administrative and sales staff, and with respect to these employees, exercising authority to recommend personnel actions such as hiring, termination, promotion, and leave-of-absence authorization;
3. Controlling the day-to-day administration, finance and marketing functions and establishing the policies and operations of each;
4. Implementing a comprehensive business plan outlining short-and long-term strategic goals and objectives;
5. Exercising broad executive and managerial control to direct all activities required for the implementation of the business plan;
6. Overseeing the implementation of departmental goals and objectives for Sales & Marketing, and Administration;
7. Exercising full budgetary authority for the company;
8. Representing the company to promote the growth and expansion of company business; and
9. Developing business partnerships with customers and distributors to increase sales and improve services.

The petitioner stated that it currently employs two staff in the United States and has plans to increase to four employees by 2010. The petitioner also submitted the following job descriptions:

Position: Sales Agent
Employee: [BLANK]
Reports to: President
Effective as of: July 1, 2007
of working hours per week: 20

Position: Administrative Assistant
Employee: [BLANK]
Reports to: President
Effective as of: July 1, 2007
of working hours per week: 40

The AAO notes that although there are job descriptions for these two subordinate positions, the employees are not named, there are no employment letters or job offers, pay stubs, contracts, or other evidence that either

position was filled at the time the petition was filed. The petitioner submitted an organizational chart for the foreign company listing the beneficiary as the "managing director" supervising three employees in director positions and one employee in a supervisor position.

The petitioner submitted a 2008 IRS Form W-2, Wage and Tax Statement, for [REDACTED] showing compensation of \$2,185. The petitioner did not submit any additional information documenting subordinate employees of the beneficiary. The petitioner also submitted a business agreement between the foreign company, the domestic company, and a third shipping company, [REDACTED]. The business agreement is dated August 17, 2007 and lists [REDACTED]. The petitioner did not submit any evidence of payments to employees or contractors during 2009.

The director denied the petition on June 23, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive position under the extended petition. In denying the petition, the director observed that the petitioner failed to provide evidence of other employees at the U.S. company, and noted that "it appears that the beneficiary's time will be spent performing many if not all the aspects of the normal operation of the business." The director further noted that the petitioner's IRS Form 941 for the fourth quarter of 2008 indicates that that the petitioner employs only the beneficiary. This is an error. The AAO notes that the petitioner's IRS Form 941 clearly indicates that the petitioner's only employee is [REDACTED] not the beneficiary.

In support of the appeal, Counsel submits a brief in which he asserts that all of the beneficiary's duties are "primarily" executive in nature. Counsel further asserts:

[T]he petitioner submitted evidence of two employees, including the beneficiary himself and one additional employee. In addition, the petitioner employs a third "de facto" employee, the office receptionist shared under contract. The beneficiary exercises executive authority on behalf of [REDACTED] and the U.S. company in all business matters, including establishing and implementing a strategic business plan and operating budget, retaining legal counsel as required, ensuring regulatory compliance with local and regional authorities, selecting financial institutions and advisors, communicating confidential business and financial information to third parties, negotiating contracts and establishing business partnerships on behalf of the company, and making personnel decisions.

The petitioner submits a job description for the position of "Buyer/Purchaser Manufacturing Equipment" that reports to the president. However, this job description does not name a specific employee nor does it provide an effective date or number of working hours per week. The petitioner also submits a single pay stub for [REDACTED] dated June 30, 2009 and indicating a current and year to date salary of \$3,000. The pay stub indicates that it represents payment for the period of April 1, 2009 through June 30, 2009. A resume for [REDACTED] lists his professional experience as follows:

[REDACTED]
2008 – Present

Car Sales Manager

- Forecast goals and objectives for sales, gross, and key expenses on a monthly and annual basis.
- Prepare and administer an annual operating forecast and budget for the used-vehicle sales direction.
- Understand, follow, and comply with federal, state, and local regulations that affect used-vehicle sales.

- Analysis [*sic*] and monitoring of potential buyers by developing, implementing a sales control system.
- Maintain vehicle inventory.
- Monitor customers' preferences, and dealership sales history and conduct local market analysis to determine a sales strategy.
- Establish and enforce product-knowledge standards.
- Communicate daily with the president of the company regarding units needed for used-car inventory.
- Appraise all incoming used vehicles.
- Ensure that cosmetic and mechanical reconditioning are performed within the cost and time limitations.
- Keep abreast of auto auction activity and prices.
- Handle paperwork from auctions and provide proper documentation to the office for purchases.

1992 – Present

President

- Solely responsible for successful operation of the entire dealership.
- Establish personal income goals and devised a strategy to meet those goals.
- Assume responsibility for the entire sales process, including: meeting the client and asses individual needs.
- Monitoring incoming inventory, features, accessories, etc., and their benefits to clients.
- Deliver and ship vehicles to customers in both domestic and international markets.
- Work with car repair shops to ensure that vehicles are reconditioned as required and per schedule.

Counsel contends on appeal that the director violated 8 C.F.R. § 103.2(b)(8) by failing to request further evidence before denying the petition. The cited regulation states, "[i]f the record evidence establishes ineligibility, the application or petition will be denied on that basis." *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. The regulation does not state that the evidence of ineligibility must be irrefutable. If the petitioner has rebuttal evidence, the administrative process provides for a motion to reopen, motion to reconsider, or an appeal as a forum for that new evidence. In the present matter, the initial evidence did not establish the beneficiary's eligibility as a manager or executive, therefore pursuant to 8 C.F.R. § 103.2 (b)(8)(ii), the denial was appropriate, even though the petitioner believes that it has evidence to rebut the finding. Such evidence will be considered by the AAO.

Discussion

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.* 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 AAO does not doubt that the beneficiary will have the appropriate level of authority over the petitioner's business as its owner and president. However, the fact that the beneficiary owns and 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"). The petitioner must still establish that the beneficiary's duties are primarily managerial or executive in nature. *See* sections 101(a)(44)(A) and (B) of the Act.

In the instant matter, counsel and the petitioner describe the beneficiary's proposed position in very broad terms, noting he will be "[f]unctioning at an executive and managerial level [...] and exercising discretionary decision-making authority over all company operations"; "[d]irecting and controlling the day-to-day activities of [...] staff [...] exercising authority to recommend personnel actions such as hiring, termination, promotion, and leave-of-absence authorization"; "[i]mplementing a comprehensive business plan outlining short- and long-term strategic goals and objectives"; and "[c]ontrolling the day-to-day administration, finance and marketing functions and establishing the policies and operations of each." These duties merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

On appeal, counsel further describes the beneficiary's duties in equally general and vague terms, noting that the beneficiary owns both the U.S. company and the foreign entity and he "exercises complete and total executive control over the operations of both companies. The beneficiary is the founder and owner of both the company abroad, which employs nine full-time and two part-time staff, and the Petitioner." However, counsel and the petitioner fail to establish that the foreign employees relieve the beneficiary from any involvement in the U.S. company's day-to-day operational duties. Thus, while most of the beneficiary's described duties would generally fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the beneficiary's actual day-to-day responsibilities as the sole full-time employee of the automobile purchase and export business in the United States. 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 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 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).

Here, the record does not sufficiently demonstrate that the beneficiary had any full-time subordinate employees as of the date of filing. Job descriptions are not sufficient to establish employment of a subordinate. Although the petitioner submitted the IRS Form 941 for the fourth quarter of 2008 indicating that [REDACTED] was the sole employee and a 2008 Form W-2 for [REDACTED] reflecting the same amount as the Form 941, the petitioner does not submit employee letters or job offers, consecutive pay stubs, payroll records, or contracts for any subordinate employees. The resume and single pay stub submitted on appeal for [REDACTED] is not sufficient to establish his permanent employment with the petitioner; the single pay stub is dated after the denial of the petition. Additionally, [REDACTED] is the president of the shipping company contracted to work with the petitioner. While it appears that he provides services to the petitioning company on an intermittent basis, the record does not support a finding that he is a full-time sales manager.

The AAO notes that the beneficiary is listed as "managing director" of the foreign company and supervises three directors and one supervisor; however, any job duties relating to the foreign company cannot establish eligibility for the nonimmigrant visa extension with the domestic company. Regardless, the petitioner does not explain how the foreign company's employees relieve the beneficiary from performing day-to-day operational and administrative duties associated with the U.S. business.

The petitioner has not established, in the alternative, that the beneficiary is employed primarily as a "function manager." The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Here, the petitioner did not indicate that the beneficiary performs as a function manager. The petitioner did not articulate the beneficiary's duties as a function manager and did not provide a breakdown indicating the amount of time the beneficiary spends on duties that would clearly demonstrate he manages an essential function of the U.S. company.

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.* The beneficiary in this matter has not been shown to be employed in a primarily executive capacity under the extended petition. The petitioner failed to demonstrate that the beneficiary's duties will primarily focus on the broad goals and policies of the organization rather than day-to-day operations. In fact, the petitioner has not established that the beneficiary has sufficient subordinate employees to relieve him from performing non-qualifying duties.

The AAO further 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). In reviewing the relevance of the number of employees a petitioner has, however, 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 (9th 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 four-year-old automobile sales and export company that claimed to have a gross annual income of \$197,072. The company employed the beneficiary as president and one sales manager. The AAO notes that all of the employees have managerial or executive titles. The petitioner did not submit evidence that it employed any subordinate staff members who would perform the actual day-to-day, non-managerial operations of the company. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president and one managerial employee. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

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

III. Prior Approval of L1 Petitions

The record does show that USCIS has approved two prior L-1A classification petitions filed by the petitioner on behalf of the instant beneficiary. Counsel specifically refers to a 2004 USCIS memorandum to support her assertion that it is USCIS policy that prior approvals of petitions involving the same parties should be given deference. See Memorandum of William R. Yates, Associate Director for Operations, USCIS: *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)("Yates Memorandum"). The memorandum provides that exceptions to this policy should be made where: (1) it is determined that there was a material error with regard to the previous petition approval; (2) a substantial change in circumstances has taken place; or (3) there is new material information that adversely impacts the petitioner's or beneficiary's eligibility. *Id.* It is noted that the Yates Memorandum is addressed to service center and regional directors and not to the chief of the AAO.

The AAO notes that prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of the petitioner's or beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a

subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm'r. 1988).

Each nonimmigrant petition filing is a separate proceeding with a separate record of proceeding 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). In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for an extension of the nonimmigrant visa petition's validity based on the petitioner's failure to submit evidence that satisfies the regulatory criteria at 8 C.F.R. § 214.2(l)(3)(iv). In the denial of the petition, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. 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.

USCIS records confirm that one of the petitioner's prior L-1A petitions on behalf of the beneficiary was favorably adjudicated without a request for additional evidence. Much of the evidence in the current record consists of vague position descriptions for the beneficiary and limited evidence of any subordinate employees who will relieve the beneficiary from performing non-qualifying duties. Unless the initial filing included substantial evidence that has not been provided for review in this matter, it is likely that the initial petition and subsequent extension were approved without sufficient evidence of eligibility in the record. Such approvals would constitute material and gross error on the part of the director. Neither the director nor the AAO is 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).

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 approves the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous petition approvals by denying the instant petition.

IV. Conclusion

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. 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.