



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 27 2014** Office: VERMONT SERVICE CENTER

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

4 Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's status as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a New Jersey corporation, established in 2009, that is engaged in the garment import and export business. The petitioner states it is a wholly owned subsidiary of [REDACTED] located in Canada. The petitioner has employed the beneficiary as its president and chief executive officer since December 2009.

The director denied the petition, concluding that the petitioner failed to establish that it will employ the beneficiary in a qualifying 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, counsel asserts that the director denied the petition in error and failed to provide adequate support for the conclusions reached.

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(I)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (I)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the

intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. The Issue on Appeal

The sole issue addressed by the director is whether the petitioner has established that the beneficiary will be employed in a managerial or executive capacity in the United States.

In denying the petition, the director noted the petitioner's failure to submit a comprehensive description of the beneficiary's duties in response to the director's request for evidence (RFE). Further, the director concluded that the petitioner failed to substantiate that the beneficiary had sufficient subordinates to relieve him from primarily performing non-qualifying operational duties.

On appeal, counsel states that the director has provided a "confused" decision that "ignores basic statutory concepts." Counsel asserts that the director's decision includes minimal analysis of the evidence submitted and instead relies on conclusory findings. Counsel states that the petitioner submitted a comprehensive description of the beneficiary's proposed duties in the United States. Counsel further notes that the director failed to articulate why the submitted duties were not sufficiently descriptive. Counsel states that the director's focus on the petitioner's failure to submit the names and titles of his claimed subordinates abroad is irrelevant to determining whether he is acting in a qualifying capacity. In sum, counsel contends that the petitioner has established by a preponderance of the evidence that the beneficiary will be employed in a qualifying managerial or executive capacity.

As correctly stated by counsel, a petitioner must establish by a preponderance of the evidence that the beneficiary will be employed in a qualifying managerial or executive capacity. The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established by a preponderance of the evidence that it will employ the beneficiary in a qualifying 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).

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that the beneficiary "oversees import/export and distribution of garments and provides customer service to end distributor/retailer."

In a letter submitted in support of the petition, the petitioner generally explained the beneficiary's duties as follows:

[The beneficiary], the Director of [the petitioner] will continue to fill that position in 2012 and beyond. As he was in 2010, [the beneficiary] is responsible for developing and serving United States customers. He oversees the development and production of new products based upon customer demand for new silhouettes, graphics, colors, and fabrications. These duties will require [the beneficiary] to travel frequently to observe customers and their demand for consumer trends, as well as to oversee manufacturing facilities to ensure conformity with production requirements and quality control.

The petitioner submitted another job description for the position of President - Global Sales Network on company letterhead. The position duties are described as:

1. Market Management

- Market Research – Find out trends in retail and which stores are doing good [sic] and why. . . . Find out trends in products both from consumer, customer side and from vendor side. . . . Set goals per cluster, customer and vendor.
- Marketing
 - Set goals and have sound sales projection with all clusters and have it approved by management.
 - Create an ongoing sales plan on a yearly rolling scale . . . and have it approved by management.
 - Have goal to introduce new customers as per company objectives and have it approved by management.
 - Seek Balancing Demand with Supply and Vice Versa and with sales plan.
 - Plan for growth and inform what we offer new for the existing customers, strategic partners and/or to new prospects.
 - Work with group Production Offices to see what new can be offered to customers.
- Target Customer Contacts – Review List of Leads and prioritize them according to vendor structure and product sales needs with the clusters and monitor and follow up achievements. Analyze number of leads and number of contacts and number of new customer initiated and determine strategy to improve results and review monthly with management.
- Demand Development – Determine new products to be offered to customers and new services offered to customers. Plan and strategize approach to customers with overseas account managers and clusters. Analyze product offerings and close ratio per customer, vendor and product.
- Sales Initiation – Review and evaluate inquiries and determine where to price with clusters
- Initial Inquiry – Review product development performance in terms of timing correctness, accuracy and completeness.
- Solicitation for Costing – Review quotes and comparisons and review if prices meet targets. Analyze meeting customer targets per product, vendor.

2. For Contract Management

- Quotation and Samples – Develop systems to Find out customer's intentions; value inquiry such as if the bidding is for a real business (sold item) or is the customer asking price for a bidding, or shopping price for any reason. . . .
- Bidding – Analyze results per customer, vendor, product and plan sales efforts accordingly.
- Award – Make sure that orders and inquiries are entered into systems timely, completely, correctly and accurately thru overseas product managers.
- Purchase Order – Make sure that PO's are entered into systems timely, correctly, completely and accurately thru overseas product managers.

- Vendor Assignment – Make sure that there is a contract with vendor and terms of engagement, compliance and working rules are agreed
- Purchase Order Confirmation – Make sure that PO is received and confirmed by both the factory and the overseas offices.

3. For Vendor Management

- Advise overseas team for the needs of customer in terms of what kind of new vendors are required and for what products and purpose.
- Sell as per available capacities and commitments to vendors.
- Promote vendors to customers
- Keep samples from each vendor at the product categories with strength
- Encourage vendors for new developments
- Advise customers of new developments from a vendor

4. Systems Management

- Contribute to the development and growth in use of customs [sic] developed web based systems.
- Make sure the supply chain correct complete and on time use of systems
- Use of charts and reports for management direction

Finally, the job description stated that the offered position has the following areas of accountability: providing sales projections, shipments and expense-to-ship ratios; finding new customers; preparing lead list; preparing market report on customer activities and trends; quarterly progress reports, and adherence to policies and procedures.

The director concluded that the initial evidence submitted by the beneficiary failed to demonstrate that the beneficiary would be employed in a qualifying managerial or executive capacity and issued a request for evidence (RFE). The director requested, in part, that the petitioner submit a comprehensive description of the beneficiary's duties on a daily basis and indicate how these duties are managerial or executive in nature. Specifically, the director emphasized the petitioner must demonstrate that the beneficiary will function at a senior level within the company's organizational hierarchy and have a subordinate staff of professional, managerial, or supervisory personnel to relieve him from performing non-qualifying operational duties.

In response, the president of the foreign entity further described the beneficiary's position as follows:

Subject position is executive in nature and substance. The position requires vision, experience and in-depth knowledge of the industry at a high level, so that our strategy concerning the US market is properly executed. [The beneficiary] possesses all these requirements, have been instrumental [sic] in our efforts in the US over the past few years, and will continue to be so.

Through [the beneficiary's] vision and execution, we were able to start an ongoing business relationship with [redacted] owned retail stores, [redacted]. We are currently one [of] the major supplier[s] to these customers and our business is growing with them year-by-year. These relationships can only be established and maintained at a high level. Most recently, we have become a

strategic vendor to the North American licensee of [REDACTED] and will play a key role in their efforts to revitalize the brand in North America. This opportunity may not have materialized without [the beneficiary] taking the initiative and convincing the ownership of [REDACTED]. To this end, the position does not perform non-qualifying duties in any way or form.

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 prove 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).

Despite the assertions of the petitioner, the duty descriptions submitted for the beneficiary fail to demonstrate that the beneficiary will be primarily engaged in the performance of qualifying managerial or executive duties. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as offering and selling products to customers, reviewing generating, and following up on sales leads, reviewing and evaluating customer inquiries, reviewing vendor quotes, entering orders and tracking purchase orders, do not fall directly under traditional executive or managerial duties as defined in the statute. In fact, the petitioner states in the beneficiary's initial duty description that the beneficiary will be responsible for "serving United States customers." For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a qualifying manager or executive. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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 company'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 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 stated in support of the petition that it maintains an agreement with Santex Fashion USA (Santex) through which it acts as a "sales agent." The petitioner's business plan explains the relationship between the companies as follows:

The contract between [REDACTED] and [the petitioner] provides monthly fee and a commission based income on sales thru its director [the beneficiary] and thru sourcing activities managed by [REDACTED].

[The petitioner] acts as the sales agent and service supplier to [REDACTED] where [the petitioner] is responsible for establishing relationships with the potential apparel retailers as customers and generates sales to these retailers in the USA and further provides additional services for smooth execution of the orders to the final customers.

The petitioner also submitted a [REDACTED] as buyer and [REDACTED] and the petitioner together as "buying agent." Under the terms of the agreement, the petitioner and [REDACTED] are responsible to purchase and advise on the purchase of merchandise, fabric and trim from manufacturers, vendors, sellers and suppliers to be imported into the United States. The buying agent's responsibilities include: advising the buyer on prices, sources, styling, marketing and manufacturing aspects of proposed purchases; visiting vendors and researching the market; soliciting offers to sell merchandise to the buyer, procuring samples, etc.; assisting the buyer with purchase contracts; placing orders for purchases in accordance with the buyer's instructions and terms; notifying the buyer of the name of each vendor; monitoring and advising the buyer of the status of all orders placed; inspecting shipment;s arrangement the shipment of merchandise to the buyer, etc.

The petitioner also asserts that the beneficiary is one of two employees working directly for the company, the other being an administrative assistant hired in 2012. The petitioner states that the administrative assistant was hired to relieve the beneficiary from performing "daily administrative tasks." An organizational chart submitted in support of the Form I-129 reflects that the beneficiary has four subordinates, including the aforementioned administrative assistant, a director of operations at [REDACTED], an employee at [REDACTED]. Later in response to the RFE, the petitioner provided another organizational chart demonstrating that the beneficiary has the subordinates listed above, along with an additional subordinate with [REDACTED] another employee with [REDACTED] Bangladesh, and another with [REDACTED]. On appeal, the petitioner states that the beneficiary has six professional subordinates abroad in addition to his administrative assistant in the United States, including a director of merchandising and operations in Turkey, a senior merchandiser in Turkey, a director of quality assurance and systems in Turkey, a country manager in Bangladesh, an operations manager in Hong Kong, and a quality assurance manager in Hong Kong. Further, the petitioner states on appeal that the beneficiary has three subordinates in its New York office, two of which are affiliated with [REDACTED] and that he also manages various freelance designers and artwork specialists.

On appeal, the petitioner and counsel contend that the identification of subordinates, and supporting evidence to demonstrate their existence, is not relevant to establishing that the beneficiary will be employed in a qualifying managerial or executive capacity. The AAO does not find this argument persuasive. Indeed, as previously referenced herein, the company's organizational structure, the duties of the beneficiary's subordinate employees, and the presence of other employees to relieve the beneficiary from performing operational duties, are all considered to gain a complete understanding of a beneficiary's actual duties and role in a business. As discussed, the petitioner's descriptions of the beneficiary's duties included non-qualifying tasks and did not clearly convey what proportion of his time is allocated to qualifying managerial or executive duties.

The petitioner has submitted contradictory organizational charts upon each opportunity to submit evidence. In fact, the petitioner has added subordinates both in response to the RFE and on appeal. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Furthermore, it is important to note that the petitioner claimed that the beneficiary oversees professional subordinates. As such, it is not reasonable to now assert that evidence related to these employees should not be considered in determining whether the beneficiary acts in a qualifying capacity. In fact, it is altogether relevant for USCIS to expect the petitioner to substantiate the existence of any claimed subordinates. 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)).

Upon review, the petitioner has not sufficiently substantiated the existence and availability of staff to relieve the beneficiary from performing non-qualifying duties. The petitioner has provided evidence that the beneficiary hired an administrative assistant during the fourth quarter of 2012. However, the petitioner has submitted no supporting evidence to demonstrate that he oversees six professional employees abroad or that such employees relieve the beneficiary from performing non-qualifying duties associated with the services the petitioner provides in the United States. Additionally, the petitioner's assertion that the beneficiary has two subordinates working for [REDACTED] is not supported by the record. The petitioner provided evidence that the petitioner serves as a sales agent for [REDACTED] and that the petitioner and [REDACTED] together serve as buying agents for [REDACTED]. The petitioner has not submitted a copy of any agreement with [REDACTED] that would give the beneficiary supervisory authority over [REDACTED] employees or explain how such employees relieve the beneficiary from performing the petitioner's day-to-day operational duties.

Indeed, the preponderance of the evidence suggests that the beneficiary is primarily engaged in the provision of the petitioner's services. The petitioner indicates that it is a sales agent for [REDACTED] and is responsible for establishing relationships with potential apparel retailers and generating sales to U.S. retailers for [REDACTED]. It also submits a "Buying Agency Agreement" pursuant to which the petitioner and [REDACTED] provide agency services to [REDACTED] including advising [REDACTED] as to prices and sources of merchandise, visiting vendors on behalf of the customer, assisting and advising [REDACTED] as to the preparation and negotiation of contracts, advising [REDACTED] as to the status of orders, inspecting shipments executed by the petitioner on behalf of [REDACTED], and arranging for the shipment of merchandise. As compensation for these services, the petitioner received a seven percent commission payment on any sales arranged. Consistent with this contract, emails submitted on appeal demonstrate that the beneficiary is acting as a buying agent for [REDACTED]. For instance, the emails indicate that the beneficiary holds himself out as a representative of [REDACTED] in each case. In fact, the beneficiary is referred to as the [REDACTED] in emails and these same emails reflect that the beneficiary is using a [REDACTED] email account to coordinate with customers. Furthermore, the vast majority of the invoices submitted by the petitioner reflect commission payments made from [REDACTED] as a result of the beneficiary's services. 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

In response to the RFE, the petitioner submitted an additional support letter stating that the beneficiary's position is "executive in nature and substance." 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.*

The petitioner has not submitted sufficient evidence to demonstrate that the beneficiary will be employed in a qualifying executive capacity. In fact, as noted, the evidence submitted indicates that the beneficiary has been, and likely will be, primarily performing non-qualifying duties as a buying or sales agent for [REDACTED] and other fashion companies. Furthermore, the petitioner has not provided detail as to how the beneficiary will establish the goals and policies of the organization, or exercise wide discretionary authority. In fact, to the extent specifics are provided, the evidence indicates that the beneficiary has little discretionary decision making authority. The beneficiary's duties regularly indicate that he is tasked with reporting to foreign management to seek approval for most of his decisions and the petitioner's agreement with [REDACTED] suggests that the beneficiary is under the direction of [REDACTED] with respect to buying and pricing decisions.

Additionally, as previously noted, the petitioner has provided conflicting evidence with respect to the beneficiary's claimed subordinates, and also insufficient supporting evidence to establish their existence as necessary to establish that he operates within a complex organizational hierarchy. As such, the evidence submitted does not demonstrate that the beneficiary will be primarily engaged in the setting of goals and policies and the management of the company or that he will have wide discretionary authority. Again, 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)).

Alternatively, the petitioner states that the beneficiary qualifies as a personnel manager through the supervision of professional subordinates. As noted, the petitioner contends that the beneficiary's sole subordinate in the United States, the administrative assistant, is a professional and that he also has six professional subordinates abroad in Turkey, Bangladesh, and Hong Kong. Further, the petitioner states on appeal that the beneficiary oversees three professionals in New York, two of which who work for the petitioner's customer [REDACTED]. 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).

In the present matter, the petitioner has not established that the beneficiary will act primarily as a personnel manager. First, the petitioner does not assert that any of the beneficiary's proposed subordinates reporting are managers or supervisors. 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). Although the

petitioner has demonstrated that its administrative assistant has completed a course of study in textile engineering from [REDACTED] the record does not indicate that an advanced level of knowledge or a specific baccalaureate degree is required for entry into the administrative assistant position. Also, the duties of the administrative assistant, such as preparing sales reports, maintaining files, data entry, and managing invoicing and payables, is not reflective of an advanced level of knowledge as contemplated by the regulations. The petitioner has also not submitted any educational information or supporting evidence to establish that the claimed foreign company employees, or other independent contractors, asserted as reporting to the beneficiary are professionals. In fact, as previously noted the petitioner has not submitted any evidence to demonstrate that these individuals work in a capacity subordinate to the beneficiary or that they regularly provide services in support of the U.S. operations or fulfill the terms of the petitioner's sales agent and buying agent agreements.

Finally, the petitioner's descriptions of the beneficiary's duties do not indicate that he will spend a majority of his time overseeing managers, supervisors or professionals. In fact, as previously discussed, the duties suggest that the beneficiary will devote a significant portion of his time to performing non-qualifying operational duties and the preponderance of the evidence demonstrates that the beneficiary will devote a majority of his time acting as a sales and buying agent for [REDACTED] not managing other professionals as suggested. Therefore, the petitioner has not established with sufficient evidence that the beneficiary will be employed as a personnel manager.

Lastly, the petitioner suggests that the director improperly considered the nature and size of the petitioning company in concluding that it will not employ the beneficiary in a managerial or executive capacity. For instance, the petitioner states on appeal that it is not fair to assess the beneficiary's position "purely based on revenue and the number of personnel he manages." The petitioner correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, 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.

Here, the petitioner the petitioner indicates that the beneficiary has only one direct subordinate, and it has provided inadequate support for its claim that he supervises overseas employees or employees of [REDACTED] As noted above, it is entirely appropriate for USCIS to consider the lack of such employees in considering the beneficiary's proposed managerial or executive capacity, particularly in the instant matter, where the beneficiary's job descriptions includes various operational tasks without supporting employees to relieve the beneficiary from performing these tasks. As such, our determination is not based solely on the size of the petitioner, its level of revenues or its personnel size, but on the prevalence of operational duties in the beneficiary's duty description, evidence demonstrating that the beneficiary is primarily performing operational duties as a buying agent, and a lack of evidence to demonstrate that the beneficiary has sufficient subordinates to relieve him from primarily performing non-qualifying tasks.

Therefore, in conclusion, the petitioner has not established that the beneficiary will be employed in an executive or managerial capacity. For this reason, the appeal must be dismissed.

III. Prior Approval and Conclusion

The AAO acknowledges that the beneficiary was previously granted L-1A status in order to open a new office in the United States and was subsequently granted a two-year extension of that status. It must be emphasized that that each petition filing is a separate proceeding with a separate record. 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).

While USCIS previously approved two petitions for L-1A status filed on behalf of the beneficiary, the prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approvals by denying the present request to extend the beneficiary's status.

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). 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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.