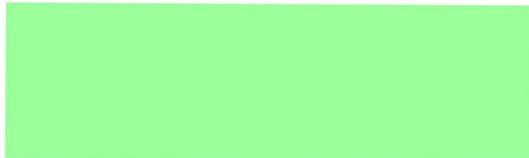
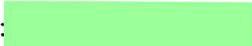


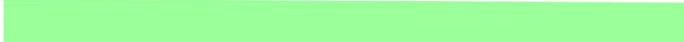


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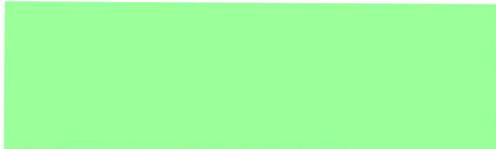


DATE: **JAN 02 2015** OFFICE: VERMONT SERVICE CENTER FILE: 

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:

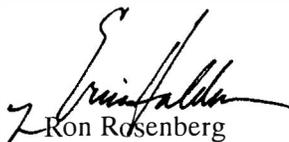


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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,



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 the Petition for a Nonimmigrant Worker (Form I-129), seeking to extend the beneficiary's status as an L-1A 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 Puerto Rico corporation established in November 2004, states that it engages in the manufacture, wholesale, and distribution of paper products. The petitioner claims to be a subsidiary of [REDACTED] located in [REDACTED] Dominican Republic. The petitioner seeks to extend the beneficiary's employment in the position of international business manager for an additional three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary is employed 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 for review. On appeal, the petitioner asserts that the "petitioner is qualified to support an executive, and [the] beneficiary is eligible, qualified and does in fact, act as an executive" at the U.S. company. The petitioner submits a brief and additional evidence on 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.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary is employed in a qualifying managerial or executive capacity.

A. Facts

The petitioner filed the Form I-129 on December 6, 2013. The petitioner stated that the beneficiary will continue to be employed as its international business manager. On the Form I-129, where asked to describe the beneficiary's duties in the United States, the petitioner stated the following:

As International Business Manager in Puerto Rico, [the beneficiary] will continue to manage, control and develop the commercial activities of [the petitioner] in PR, manage all aspects of the execution of company's business plan including, identify new business sources and growth aspects, improve performance of international trade of product lines, plan and direct international marketing strategies of products for industrial products, establish and maintain contacts with senior management of actual customers and potential customers, direct and exercise managerial discretion regarding all negotiations with corporate customers and distributors, manage company budget, training and all aspects of international trade.

In its initial letter of support, dated November 20, 2013, the petitioner described the beneficiary's duties in the United States as follows:

- Management, control and development of the Company's commercial activities in Puerto Rico.
- Manage all aspects of the execution of the [petitioner's] Business Plan, including the following functions:
 - To identify new business sources and other growth aspects . . .
 - To plan and direct international marketing strategies of products for industrial customers
 - To establish and maintain contacts with senior management of companies of actual and potential clients . . .
 - To direct and to exercise managerial discretion regarding negotiations . . .
 - Management of company budget, training and other aspects of the international trade of the company's industrial product lines

Moreover, [the beneficiary] will continue to have functional supervision of the work that may be performed by other companies who provide services to the Petitioner in all aspects related to our Company's activities.

* * *

In the managerial position of International Business Manager, [the beneficiary] will continue to function at a senior level within [the petitioner], and effectively hold the most senior position within the company's operations in Puerto Rico. She will continue to direct the operations of our company and will continue to establish its business goals and corporate policies, and exercise wide latitude in discretionary decision-making over fiscal, business and organizational matters. [The beneficiary] will report directly to the President of [the petitioner] which is the Vice President of [the foreign entity] in the Dominican Republic.

* * *

[The beneficiary] has, and will continue to have 100% of discretionary authority in the day-to-day operations of our corporation. Being the highest managerial position in our organization, the International Business Manager exercises wide latitude in discretionary decision-making authority over the direction of the company[.]

The petitioner submitted its organizational chart showing that the international business manager reports to the president, who is based in the Dominican Republic and is also the vice-president of the foreign entity. The organizational chart shows that the international business manager is the functional supervisor of "bookkeeping," which is based in the Dominican Republic, and an accountant. The organizational chart submitted does not include the names of any employees.

The petitioner's 2014 business plan, dated October 2013 and prepared by the beneficiary, provides a brief list of duties for the beneficiary's position and for the accountant. The beneficiary's position of international business manager is described as follows:

Functions:

- Manage the international marketing aspects related to [the foreign entity's] industrial clients lines.
- Develop and manage a five years [sic] business plan to keep the industrial client line of international trade of [the foreign entity], to identify new business sources and other growth aspects, and to improve the performance of the international trade of these product lines.
- Plan and direct marketing strategies of products for industrial customers.
- Establish and maintain contacts with senior management of companies clients of [the foreign entity's] industrial product line abroad to develop the commercial relationship between [the foreign entity] and these companies.
- Direct and to exercise managerial discretion regarding negotiations with corporate customers, distributors, expenses, training, and other aspects of international trade.
- Direct supervision of an Assistant.
- Functional supervision of providers of essential aspects of [the petitioner's] business plan and international trade, including Accountant, Publisher, Research, Marketing and a professional of Business Intelligence.

The petitioner submitted two letters from different clients, [REDACTED] both stating that they "carry out negotiations with the supplier [petitioner], through [the beneficiary]."

The petitioner also submitted a letter, dated June 19, 2013, and an unsigned and undated Temporary/Contract Employment Services Proposal, from [REDACTED] a professional human resources company, but did not provide evidence of any employees hired as of the date of filing the petition.

On December 13, 2013, the director issued a request for additional evidence ("RFE") in which she instructed the petitioner to submit, in part, evidence that the beneficiary's position in the United States will be in a managerial or executive capacity.

In response to the RFE, the petitioner submitted a letter, dated February 25, 2014, describing the beneficiary's duties as follows:

Since her transfer, she was given the authority and responsibility of handling all aspects of our business, including customers' relations, suppliers, finances, banking and governmental issues.

[The beneficiary] reports directly to Administrative VP in [the foreign entity] and is the only link between customers and the Area Directors in Dominican Republic that process Puerto Rico customers' orders, claims and new products developments.

In its letter, the petitioner goes on to list 23 "intricate duties" that the beneficiary performs in her position in the United States. The petitioner also submitted a single page document titled "Employees" that simply stated the following:

Employees

- Dominican Republic: 270 people
- Puerto Rico PR: 3 people

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has been and will be primarily employed in a qualifying managerial or executive capacity. In denying the petition, the director found that the beneficiary is the petitioner's sole employee and, as such, it appears she is performing all functions of the company. The director found that it is not evident that the beneficiary is relieved from performing rudimentary tasks or that the beneficiary is performing and will continue to perform primarily managerial or executive duties.

On appeal, the petitioner submits a letter describing the beneficiary's duties exactly as described in its initial letter of support and adds the following:

- Manage all aspects of the execution of the [petitioner's] Business Plan, including the following functions:

* * *

- o Functional supervision of all services providers [sic] that support and provide key services to [the petitioner], including an accountant, a lawyer and a US customers broker in Puerto Rico, in all aspects related to [the petitioner's] commercial activities in Puerto Rico.

Beneficiary . . . is the sole manager of the Puerto Rico operation, reporting directly to the President of [the petitioner]. As such, the beneficiary performs at the most senior level in [the petitioner's] operations in Puerto Rico and in that respect, she manages critical business functions. The day-to-day clerical business aspects and rudimentary tasks are not [the beneficiary's] day-to-day functions, as these are mainly performed by [the petitioner's]

administrative assistant based in [the foreign entity's] offices. Most importantly, [the beneficiary] has functional supervision over all the critical services providers [sic] of [the petitioner] in Puerto Rico, who give the day-to-day support to [the petitioner's] commercial activities in Puerto Rico. Additionally, she has the authority to negotiate and commit the company to courses of action, expenditure of funds, and other commitments, and she negotiates with the top management of client companies.

. . . any rudimentary day-to-day tasks are minimal and inconsequential, mainly so, because she relies on an assistant in [the foreign entity]; and considering also that most of the administrative task/work is also digital, internet based, and not subject to physical location.

In support of the appeal, the petitioner submitted a copy of the same annual report, business plan, and letter of support initially submitted with the petition. The petitioner also submits a job description, with a creation date of August 6, 2006 and a modification date of April 4, 2014, for a position titled "[redacted] Assistant" that reports to a position titled "Taxes & Accounting Specialist." The general purpose of the position states that the [redacted] Assistant will "perform support in the areas of accounts receivable and accounts payable."

The petitioner submits a letter from [redacted] Certified Public Accountant, dated November 19, 2011 and signed by the petitioner on November 20, 2011, which proposes the terms of his engagement as an independent accountant of the petitioner and a follow-up letter, dated March 22, 2012, proposing and confirming the terms of the previous letter. The petitioner also submits a proposal and Customs Power of Attorney from [redacted], dated May 30, 2013, where the company agrees to "provide [the petitioner] with a detailed evaluation of the products imported and based on that . . . inform all Federal and local government regulations regarding the goods."

On May 13, 2014, the petitioner supplemented its evidence in support of the appeal and submits a new copy of its business plan, still dated October 2013 and prepared by the beneficiary, which contains a revised organizational chart. The new organizational chart adds an "Assistant" under the beneficiary's supervision and amends her subordinates to show that she is the functional supervisor of a "CPA Accountant," a "Broker," and a "Transportation Company." There is no indication as to the physical location of the assistant and the three subordinates are listed as outsourced. The business plan also adds a single duty for the assistant position and states that the assistant will provide "special support in the administrative operation to International Business Manager."

The petitioner also submits an additional organizational chart, outside of its business plan, depicting the beneficiary at the top tier as international business manager supervising outsourced services listed as "legal," "trade and customs brokerage," "technical and sales support," "transportation," and "accounting and finances." The "legal" and "transportation" services include the names of individuals and companies for which contracts or agreements have not been submitted. The "trade and customs brokerage" and "accounting and finance" services include the names of companies for which the petitioner submitted agreements. The "technical and sales support" service states, "[foreign entity's] business units: Industrial clients, Notebooks, Massive consumption." The chart also identifies an "administrative and operations support" employee and appears to depict that this employee supports both the petitioner and the foreign entity.

The petitioner asserts that the director placed undue emphasis on the petitioner's staffing levels and did not take into account the fact that many of the company's functions are outsourced. Further, the petitioner emphasizes that the beneficiary was previously granted an extension of her L-1A status and asserts that USCIS policy guidance provides that deference should be given to that prior approval absent a finding of material error, substantial change in circumstances, or new material information that adversely affects the beneficiary's eligibility.

2. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary is employed 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). 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, 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 definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary owns or 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 first characterized the beneficiary's role as international business manager and described her duties in very broad terms, noting that she will manage, control, and develop its commercial activities in Puerto Rico, manage all aspects of the execution of its business plan, identify new business sources and other growth aspects, plan and direct international marketing strategies of products for industrial customers, establish and maintain contacts with current and prospective employees, direct and exercise managerial discretion regarding negotiations, manage its budget, training and other aspects of the international trade of its industrial product lines, have functional supervision of the work that may be performed by other companies who provide services, direct its operations and establish its business goals and corporate policies, and exercise wide latitude in discretionary decision-making over fiscal, business, and organizational matters. The initial description indicated that the beneficiary would perform a combination of qualifying and non-qualifying duties, as listed above.

In response to the RFE, the petitioner provided a different list of job duties for the beneficiary's position that primarily consisted of sales and marketing responsibilities, such as, oversee all activities related to sales of company products; manage and coordinate daily operations; establish control mechanisms to guarantee customer satisfaction; elaborate proposals and negotiate contracts with potential and existing clients; identify new business sources and growth aspects; direct and coordinate activities related to production, pricing, sales, and distribution of company products; establish sales quotas; plan and direct international marketing strategies; ; , determine goods to be sold and set pricing and credit terms; locate, select, and procure merchandise for resale; maintain relationships with stakeholders; and establish and maintain contacts with clients; The petitioner did not include any additional details or specific tasks related to each duty, nor did the petitioner indicate how such duties qualify as managerial or executive in nature. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Further, while the petitioner indicated that the beneficiary may have functional responsibility over some outsourced workers, the petitioner did not indicate who, other than the beneficiary, is responsible for sales, marketing and business development activities in Puerto Rico.

While the AAO does not doubt that the beneficiary will exercise discretionary authority over the U.S. company as its general manager, the petitioner has not provided sufficient information detailing the beneficiary's duties at the U.S. company to demonstrate that these duties qualify her as a manager or executive. 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. at 1108 *supra*.

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his or her duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. The petitioner failed to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner listed the beneficiary's duties as including both managerial and administrative or operational tasks, such as sales and marketing, but failed to quantify the time the beneficiary would spend on them. This failure of documentation is important because several of the beneficiary's proposed daily tasks, as noted above, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the petitioner has not established that the beneficiary would primarily perform duties in a managerial capacity. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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. *See* 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Here, the petitioner indicates that it outsources certain services to relieve the beneficiary from performing administrative and other operational tasks, and that the beneficiary will supervise the companies or individuals hired to perform those services. In support of this contention, the petitioner submitted an unsigned and undated temporary employment services proposal from [REDACTED] a human resources company, but failed to provide a ratified contract with the company or any evidence that it has used [REDACTED] services or hired any employees. In response to the RFE, the petitioner made a vague reference to the beneficiary reporting to the vice president of the foreign entity and being the "only link between customers and the area directors in Dominican Republic that process Puerto Rico customers' orders, claims, and new products development." The petitioner did not elaborate or make a solid claim or provide any evidence that the foreign entity's employees provide support to the beneficiary in her position in the United States. Further, even if the foreign entity does process customer orders and claims from Puerto Rico, the petitioner did not indicate that the Dominican Republic staff are responsible for relieving the beneficiary from selling and marketing the company's products in Puerto Rico. The petitioners also submitted a solitary statement that it has three employees in the United States, but failed to indicate the positions held or provide evidence of wages paid to any employees in the U.S. The petitioner stated on the Form I-129 that it has one employee.

On appeal, the petitioner submits an updated organizational chart and evidence that it has contracted an accountant/CPA and a customs broker. The new organizational chart also indicates that it has hired legal representation and transportation services, but evidence of those contracts or agreements were not submitted. On appeal, the petitioner states that the beneficiary does not perform day-to-day tasks as she is assisted by an assistant at the foreign entity, physically located in the Dominican Republic. The petitioner submits a job description for an "[REDACTED] Assistant" position which indicates that the assistant is supervised by a "Taxes and Accounting Specialist," not the beneficiary, and the list of job duties does not specifically include any duties related to support of the beneficiary at the U.S. company or any duties that would indicate the assistant works remotely for a subsidiary overseas. On appeal, the new organizational chart lists "technical and sales support" services and states that the foreign entity's business units for industrial clients, notebooks, and massive consumption, perform this role for the beneficiary. However, the petitioner has not submitted any evidence as to what these units do and how they support the beneficiary in relieving her from performing non-qualifying operational duties in the United States. As noted, the petitioner stated that the beneficiary serves as the "only link" between Puerto Rican customers and the foreign entity's area directors.

The petitioner's evidence must substantiate that the duties of the beneficiary and her proposed subordinates correspond to their placement in the organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position. In the instant matter, the petitioner failed to submit credible evidence of a current organizational structure that would be sufficient to a qualifying managerial or executive position. Furthermore, the petitioner has failed to submit evidence that the beneficiary has subordinate employees, contractors or foreign staff to relieve her from primarily performing non-qualifying operational duties, such as customer service, sales, and marketing.

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). 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 position description that 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. Here, the petitioner did not indicate that the beneficiary qualifies 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 would devote to duties that would clearly demonstrate that she would manage an essential function of the U.S. company.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within an organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. See 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.* While the definition of "executive capacity" does not require the petitioner to establish that the beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the petitioner's burden to establish that someone other than the beneficiary carries out the day-to-day, non-executive functions of the organization. Here, the beneficiary's position has not been shown to be in a primarily executive capacity. The petitioner failed to demonstrate that the beneficiary's duties will primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations.

We note 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, 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)).

The petitioner did not submit evidence that it employed subordinate staff members or sufficient contractors who would perform the actual day-to-day, non-managerial operations of the company, nor did it adequately articulate how staff members of its foreign parent company relieve the beneficiary from performing routine sales, marketing and customer service functions, in addition to her managerial responsibilities. 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 international business manager, the claimed outsourced service providers, and an assistant based outside Puerto Rico. 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) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Based on the deficiencies discussed above, the petitioner has not established that the beneficiary has been and will be primarily employed in a qualifying managerial or executive capacity or as a function manager. Accordingly, the appeal will be dismissed.

III. PRIOR APPROVAL OF L1 PETITIONS

The record shows that USCIS has approved two prior L-1A classification petitions filed by the petitioner on behalf of the instant beneficiary. The petitioner specifically refers to a 2004 USCIS memorandum to support its 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.

We note 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. 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. Further, as discussed above, the petitioner has submitted vague evidence as to the beneficiary's subordinates and any relief she may have from performing non-qualifying operational duties, such as customer service, sales, and marketing. If the prior petitions were approved without evidence of the beneficiary's employment in a qualifying capacity, 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). 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.

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

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.