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FILE: WAC 05 110 51043 Office: CALIFORNIA SERVICE CENTER Date: **JAN 31 2007**

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:



This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a California company and claims to be engaged in the import and distribution of watches. The petitioner states that it is a wholly-owned subsidiary of Brilliant Watches Co., LLC located in Dubai, the United Arab Emirates. Accordingly, the United States entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The beneficiary was initially granted a one-year period of stay in L-1A status to open a new office in the United States and was subsequently granted an extension of stay. The petitioner now seeks to extend the beneficiary's stay in order to continue to fill the position of product development manager for a two- year period.

The director denied the petition on August 5, 2005, concluding that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a managerial or executive capacity. The director suggested that it did not appear that any of the beneficiary's subordinates were professionals, and thus the beneficiary will be primarily involved in performing the day-to-day services essential to maintaining the business.

On appeal, counsel for the petitioner states that the beneficiary is employed in a managerial capacity and asserts the director erred by denying the petition. Counsel asserts that the beneficiary manages an essential function of the entire organization including both the foreign company and the U.S. company. In addition, counsel asserts that the United States entity employs one account manager, one sales manager and one assistant to the sales manager, who are professionals that relieve the beneficiary from performing the day-to-day non-qualifying duties. Counsel submits a brief in support of the appeal and resubmits documentation previously submitted.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further 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 issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;

- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The nonimmigrant petition was filed on March 10, 2005. The Form I-129 indicates that the beneficiary will be employed in the position of product development manager for the petitioner. In a letter of support dated February 17, 2005, the beneficiary's proposed duties in the U.S. are described as the following:

[The beneficiary] has occupied the highest managerial position of the [U.S. entity] since the subsidiary was established. His responsibilities include developing the business in the Americas and working with suppliers in Hong Kong, mainland China and Dubai to fine tune and create the product line for sales throughout North and South America.

[The beneficiary] is currently responsible for directing all activities in the design and development of all of our products between our American subsidiary, our corporate headquarters and the manufacturers. [The beneficiary] will continue to occupy the highest managerial position of the American subsidiary. He will continue to be responsible for planning, formulating and implementing all administrative and operative policies and procedures. Furthermore, [the beneficiary] will continue to set strategic planning and goals for the subsidiary as well as establish strong sales growth in the America's.

The petitioner also submitted the U.S. company's IRS Form 1120, U.S. Corporation Income Tax Return, for 2004. The document indicates that in 2004, the petitioner paid \$47,175 in wages and \$48,100 in compensation to the officers. In addition, the petitioner submitted the U.S. company's California Forms DE-6, Employer's Quarterly Wage and Withholding Report for the quarters ended in December 2003, March 2004, June 2004, September 2004 and December 2004. The quarterly wage reports indicate that the United States entity employed four employees, including the beneficiary, for most of the year and one additional employee for the quarter ended in June 2004.

The director determined that the petitioner submitted insufficient evidence to process the petition. On April 6, 2005, the director requested that the petitioner submit the following documentation: (1) a copy of the United States company's organizational chart, including the name, job title, job duties, educational level and annual salary of all employees supervised by the beneficiary; (2) copies of the U.S. company's payroll summary, Form W-2 and W-3 evidencing wages paid to employees for 2003 and 2004; (3) copies of the U.S. company's IRS Form 941, Employer's Federal Tax Return for all employees for the last four quarters; and, (4) further evidence to establish that the beneficiary 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.

The petitioner submitted a response to the director's request for additional evidence on June 29, 2005. Counsel for the petitioner indicated in a letter dated June 27, 2005 that the "Petitioner is a wholly-owned subsidiary of [the foreign company] and is charged with the consolidated enterprise's Pan-American operations. As such, it is a component of the enterprise's business." According to the organizational chart submitted by the petitioner, it appears that the beneficiary is the "President of the Pan-American Operations/

Group Product Development Manager" and he supervises a sales manager who in turn supervises a saleswoman and a sales executive. It appears that the same individual fills the positions of "saleswoman" for the U.S. company and "senior accountant" for the foreign company located in Dubai. In addition, the chart indicates a second sales manager, four salesmen, a storekeeper, an "office boy" and a driver, who appear to be employed by the foreign entity, although they are depicted as being under the beneficiary's ultimate supervision. The submitted organizational chart is inconsistent with the letter of support submitted by the petitioner dated June 20, 2005. The letter by the managing director of the foreign company indicated that the U.S. company employed an "office manager, sales associates and account manager." The chart does not indicate that an office manager or an account manager are employed by the U.S. entity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the petitioner submitted a list of duties performed by each employee of the U.S. company and the foreign company, including their immigration status, educational level and salary. According to the list, the beneficiary holds the position of President, Director of Pan-America Operations/Group Product Development Manager. The beneficiary's proposed duties are described as the following:

1. OPERATION MANAGEMENT (time spent: 50%)

- Dictum: "Don't do different things, do things differently"
- Responsible for various aspects of operations for the US branch, management of staff and guiding them to achieve their respective goals.
- Logistics and distributions management.
- Investigate and understand current American, Canadian, and Latin American fashion trends and styles.
- Sales forecasting.
- Financial statements.
- Inventory control.
- Communicating with manufacturers around the world.
- International clientele relations.

2. MARKET RESEARCH & DEVELOPMENT (time spent: 50%)

- Marketing activities like trade shows, exhibitions, etc.
- Study and analyze current trends of fashions in products, with respect to various factors such as design, quality, appearance etc.
- Sales planning, forecasting and budgeting for a more beneficial turnover and inventory management.
- Detailed market research, analysis of market and development of new sales and marketing strategies in the US market.
- Exploring the potential of internet marketing.
- Administering sales growth
- Developing, planning and launching new products in the market.

- Exploring the potential of various markets.
- Expanding sales to domestic and international markets at large.
- Pioneering new trends for a more competitive market.

The foreign company submitted a letter dated June 20, 2005 further discussing the beneficiary's duties as product development manager for the U.S. entity as the following:

As reflected in the attached list of duties [see above], [the beneficiary] is currently responsible for directing all activities in the design and development of all of our products for our Pan-American component and reporting results to our corporate headquarters. [The beneficiary] will continue to occupy the highest executive position of the Pan-American component and subsidiary. [The beneficiary] has the authority to establish all goals and policies for our Pan-American component, has wide latitude in discretionary decision-making and only general supervision from me [managing director of foreign company] in Dubai. Furthermore, [the beneficiary] will continue to set strategic planning goals for our subsidiary. [The beneficiary] will continue to be responsible for planning, formulating and implementing all growth to the Pan-American component of our operations.

We did not envision a large initial presence in American, because we do not have overwhelming resources. Therefore, [the beneficiary] hired several subordinate employees specifically an office manager, sales associates and accountant to conduct the daily activities of the Pan-American component, so that he could focus on setting the policies and goals of the component, and establish the short-term and long-term business plans. [The beneficiary] works with salesmen in our Dubai office, he communicated with our manufacturers concerning design trends, and establishes the policies of our Pan-American operations. [The Beneficiary] reports those goals, plans and achievements to only me [managing director of the foreign company]. [The beneficiary] has full autonomy because [the beneficiary] understands the market at this point much better than any other executive.

The petitioner also submitted job descriptions for the two additional positions employed by the U.S. company, the sales manager and the saleswoman. The sales manager is responsible for "day to day sales in local market;" "assisting in sales planning;" "inventory management;" "assisting marketing development" and "actively involved in launching new products." The position description for the employee indicated as "saleswoman" on the chart is given the job title as "senior accountant and indoor sales" on the job description. The senior accountant and indoor sales employee is responsible for the "supervision and general administration;" "control of accounts receivable and payable;" "general accounting and bookkeeping;" "preparation of financial statements and report to management;" and "supervising indoor sales."

The petitioner also submitted its California Forms DE-6, Quarterly Wage and Withholding Reports for 2003 and 2004, which confirms that the petitioner employed four employees for most of 2003 and 2004. The four employees are indicated on the organizational chart as the beneficiary, the sales manager, the sales executive and the saleswoman.

The director denied the petition on August 5, 2005 on the ground that the petitioner did not establish that the beneficiary will be employed in a primarily managerial or executive capacity. The director observed

that since the United States company consists of employees who do not appear to be professionals, it is likely that the beneficiary will perform the duties required for the functions and day-to-day operations of the business, rather than oversee the functions and/or the personnel that perform those duties. The director cited from the petitioner's statements asserting that "the beneficiary manages the Pan-American operations of the consolidated enterprises, which is an essential function within the consolidated organization." The director stated that this argument is not convincing because the consolidated enterprise is not the petitioner in the instant petition and will not be considered. The director stated that "the claimed managerial duties of the beneficiary should be considered within the context of the petitioning entity, [REDACTED]

On appeal, counsel for the petitioner asserts that the beneficiary is employed in a primarily managerial capacity for the entire organization, including both the foreign company and the U.S. company. In addition, counsel for the petitioner asserts that the U.S. company employs a professional staff who relieves the beneficiary from performing non-qualifying duties. Counsel for the petitioner reiterates the job duties previously described for the beneficiary's position in the United States. Counsel further states the following:

Here, [the beneficiary] acts as the sole executive officer, like the Managing Director of Dubai, he employs an account manager to handle the approximately 300 wholesale accounts now open, and he employs a sales manager who has an assistant to handle the independent commissioned sales representatives. He also employs tax advisers and accountants who prepare financial statements and tax returns. [The beneficiary] is the sole executive of [the U.S. company] and directs its entire operations and expansion. He employs only one sales manager, and one person who manages the accounts, know in the business as an "account manager."

* * *

In light of organization's [sic] wholesale and distributor business, determining which countries to target and sell in is perhaps with most important executive determination for business expansion that could be made. The customers he contacts are the biggest wholesalers in the world. The organization's business is to make sales, and to keep its wholesalers satisfied. Therefore, on few occasions, [the beneficiary] has contacted large accounts to ensure customer satisfaction. Finally, as the sole executive directing business, [the beneficiary] is required to sign and certify financial statements and returns. He vets [sic] the information and reports this information to the Managing Director in Dubai.

On appeal, counsel asserts that the "director also states that salesmen have never been considered professional positions." Counsel argues that it is "inappropriate and tantamount to saying that no industry which is involved in sales is professional." In addition, counsel states that the director "focused only on the job titles and not the duties and responsibilities before reaching the conclusion." Counsel asserts that the petitioner submitted detailed information about three individuals employed by the U.S. entity who will relieve the beneficiary from performing non-qualifying duties.

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

Here, while the beneficiary evidently exercises discretion over the day-to-day operations of the business, the petitioner's description of his proposed duties suggests that the beneficiary's actual duties as of the date of filing were and would continue to be providing the services of the business.

The beneficiary's proposed job description includes vague duties such as the beneficiary "is responsible for directing all activities in the design and development of all of our products between our American subsidiary, our corporate headquarters and the manufacturers;" "responsible for planning, formulating and implementing all administrative and operative policies and procedures;" and "set strategic planning and goals for the subsidiary as well as establish strong sales growth in the America's." 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 job description also includes several non-qualifying duties such as the beneficiary will spend 50 percent of his time in operation management such as "responsible for investigating and understanding current American, Canadian, and Latin American fashion trends and styles;" and responsible for "sales forecasting; financial statements; inventory control; communicating with manufacturers around the world; and international clientele relations." In addition, the beneficiary will spend 50 percent of his time on market research and development which will include "marketing activities like trade shows, exhibitions, etc.;" "study and analyze current trends of fashions in products, with respect to various factors such as design, quality, appearance etc.;" "sales planning, forecasting and budgeting for a more beneficial turnover and inventory management;" "detailed market research, analysis of market and development of new sales and marketing strategies in the US market;" "exploring the potential of internet marketing;" and "developing, planning and launching new products in the market." It appears that the beneficiary will be performing non-qualifying duties associated with the petitioner's product and market research, sales promotion, purchasing and inventory of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 International*, 19 I & N Dec. 593, 604 (Comm. 1988).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of providing that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. The word "primarily" is defined as "at first," principally, or "chiefly." *Webster's II New College Dictionary* 877 (2001). Where an individual is "principally" or "chiefly"

performing the tasks necessary to produce a product or to provide a service, that individual cannot also be "principally" or "chiefly" perform managerial or executive duties.

As the United States company had only three other employees in total at the time of filing, one of which appears to also be employed by the foreign company as a senior accountant, it is reasonable to assume, and has not been proven otherwise, that the beneficiary is directly performing promotion, purchasing, client relations, marketing and financial development, and all or many of the various operational tasks inherent in operating a business on a daily basis, such as acquiring products, and maintaining inventory, and performing market and product research, paying bills, and customer service. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. Accordingly, the director reasonably concluded that the beneficiary will be performing the day-to-day operations and directly be providing the services of the business rather than directing such activities through subordinate employees.

On numerous occasions, the petitioner indicated that the U.S. company employs an account manager. However, there is an inconsistency in the organizational chart that indicates an employee as "saleswoman," and on the job descriptions that provides that same employee with the job title of "senior accountant and indoor sales." In addition, it appears that the individual employed as "senior accountant and indoor sales" employee is also employed by the foreign company as one of the two "senior accountants" for the that company. The petitioner has not explained how this employee can perform the duties as a senior accountant and indoor sales employee for a U.S. company while also performing the duties as senior accountant for a company located in Dubai. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As noted, the director based his decision partially on the size of the enterprise and the number of staff. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

At the time of filing, the petitioner was a three-year-old import and export company that claimed to have a gross annual income of \$2.3 million. The firm employed the beneficiary as product development manager, one sales manager, one sales executive and one senior accountant who apparently also performs some sales duties. 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 product development manager and three additional employees. The petitioner has not identified any employees to perform its purchasing, import, warehouse activities, and although the petitioner repeatedly referred to an office manager, the record contains no evidence of such an employee, or any other employee to perform the company's day-to-day administrative and clerical tasks. Collectively, the evidence raises serious questions as to how much of the beneficiary's time could realistically be attributed to qualifying managerial or executive duties. 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.

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. The record does not demonstrate that the beneficiary has a sufficient number of employees in the United States employed full-time who could perform the non-managerial tasks associated with operating a multi-million dollar business. The petitioner's general description of the beneficiary's duties and the lack of sufficient personnel to perform these tasks make it impossible to conclude that the beneficiary would plausibly perform primarily managerial or executive duties.

In addition, although the beneficiary is not required to supervise personnel, if it is claimed that he is employed in a managerial capacity based on his supervision of employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the sales functions of the sales manager and sales executive, or the bookkeeping responsibilities of the "senior accountant and indoor sales" employee, who are among the beneficiary's subordinates.

Furthermore, on appeal, counsel for the petitioner indicates that the beneficiary manages an essential function for the organization. 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 written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). 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. 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. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

As discussed above, the totality of the record supports a conclusion that the beneficiary would be required to perform primarily non-qualifying duties associated with the petitioner's day-to-day functions, as the petitioner has not identified sufficient staff within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to operating the business. The fact that the beneficiary has been given a managerial job title and general oversight authority over the business is insufficient to elevate his position to that of a "function manager" as contemplated by the governing statute and regulations. Again, the actual duties reveal the true nature of employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1103.

Finally, on appeal, counsel for the petitioner states that the U.S. company "employs a sales manager who has an assistant to handle the independent commissioned sales representatives. He also employs tax advisers and accountant who prepare financial statements and tax returns." Although counsel states on appeal that the petitioner has contractual employees in the areas of sales and accounting, the petitioner has neither presented evidence to document the existence of these employees nor identified the services these individuals provide. Additionally, the petitioner has not explained how the services of the contracted employees would obviate the need for the beneficiary to primarily conduct the petitioner's business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

Based upon the lack of a comprehensive job description, and the lack of evidence of the company's staffing levels, it cannot be concluded that the beneficiary will be employed by the U.S. company in a managerial or executive capacity. Based on the foregoing discussion, the appeal will be dismissed.

The prior approval of two nonimmigrant petitions filed by the petitioner on behalf of this beneficiary does not preclude CIS from denying an extension of the original visa based on a 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).

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 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).

In addition, 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). Based upon the lack of required evidence in the current record, and due to the petitioner's failure to submit requested evidence, the AAO finds that the director was justified in departing from the previous petition approvals and denying the instant request for an extension of the beneficiary's status.

The petition will be denied 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.