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U.S. Citizenship
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Services

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FILE:

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WAC 00 264 52769

Office: CALIFORNIA SERVICE CENTER

Date: JAN 31 2005

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

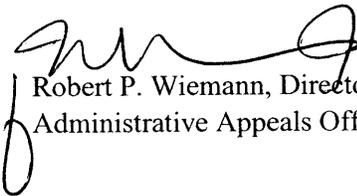
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based petition. Upon subsequent review, the director properly issued a notice of intent to revoke and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a privately held hotel management company. It operates hotels and resorts in the United States, Canada, and the Caribbean. It seeks to employ the beneficiary as its guest services manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director initially approved the petition. Upon subsequent review, the director observed that the staff members directly under the beneficiary's supervision are not considered professional based on their education; thus, the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity. The director issued a notice of intent to revoke on May 20, 2002, affording the petitioner an opportunity to offer evidence in support of the petition and in opposition to the proposed revocation.

On June 13, 2002, the petitioner asserted that the beneficiary was not a first-line supervisor but that she was the head manager of an essential function of the organization. Upon review of the rebuttal to the notice of intent to revoke, the director revoked the approval of the petition on July 17, 2002, determining that the petitioner had not established that the beneficiary had been employed in a managerial or executive capacity for the foreign entity or would be employed in a managerial or executive capacity for the United States entity.

On appeal, counsel for the petitioner asserts that the revocation decision is in gross error and reflects arbitrary and capricious action by the director.

On September 3, 2002, the director issued a notice of rejected appeal stating that the appeal was filed untimely. The AAO withdraws the director's decision regarding the untimely issue.

The regulation at 8 C.F.R. § 205.2(d) indicates that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. When the decision is mailed CIS allows an additional three days for the mailing process. In this matter, the regulation regarding the time allotted to appeal a revocation controls.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the revocation decision on July 17, 2002. According to the date stamp on the Form I-290B Notice of Appeal, it was received by CIS on August 5, 2002, 19 days after the decision was issued. The AAO observes, however, that the 18th day following the revocation decision was on a Sunday. The appeal was received by CIS on the very next day, Monday, August 5, 2002. The AAO considers that the appeal in this matter was timely filed.

Section 203(b) of the Act states in pertinent part:

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

- (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. See 8 C.F.R. § 204.5(j)(5).

CIS regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed. See 8 C.F.R. § 245.1(a). If the beneficiary of an approved visa petition is no longer eligible for the classification sought, the director may seek to revoke his approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for "good and sufficient cause." Notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

Moreover, by itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Esteime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet its burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, supra (BIA 1988)(citing *Matter of Esteime*, 19 I&N 450 (BIA 1987)).

The first issue in this proceeding is whether the petitioner has established that the beneficiary's assignment for the petitioner will be in a primarily managerial capacity. The petitioner does not request consideration of the beneficiary's position in an 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.

In an August 30, 2000 letter appended to the I-140 petition, the petitioner stated:

As [the petitioner's] Guest Services Manager, [the beneficiary] is responsible for managing a Guest Services staff consisting of eight to ten doorpersons and 12-14 bell-persons, as well as Regency Club Service Attendants. [The beneficiary's] duties include training, scheduling,

payroll, conducting performance evaluations, hiring, supervising the hotel VIP guest program, and ordering supplies for each division. [The beneficiary] also acts as the liaison for the Valet Parking department which employs a staff of 20-25 individuals, the Concierge department which employs a staff of six to eight individuals, and the Business Center department which employs a staff of four to six individuals. [The beneficiary] earns an annual salary of \$39,000 and reports directly to the Assistant Rooms Executive.

The petitioner also provided the beneficiary's resume. The beneficiary described her current position as Guest Services Manager:

This position incorporates all aspects of the Rooms Division. I am primarily responsible for the Bell Desk, Front Door and Regency Club, with an integral relationship with the management of the Front Desk.

On January 12, 2001, the director requested further evidence including: (1) evidence that the beneficiary supervised the work of other supervisory, managerial, or professional employees; (2) a day-to-day detailed description of the beneficiary's job duties; and (3) the petitioner's organizational chart, identifying the beneficiary's position on the chart and listing all employees under the beneficiary's supervision by name and job title and identifying all employees that were professionals.

In a February 9, 2001 response, the petitioner provided its organizational chart stating the beneficiary's position was a "departmental head" position within the "rooms division." The petitioner listed a bell captain, 12 bellman, a dispatcher, a head doorman, six doormen, and four regency club staff under the beneficiary's supervision. The petitioner noted that the senior members in each division were considered professional because of their experience. The petitioner also listed the beneficiary's "peer departmental heads" within the "rooms division" as the executive housekeeper, front office manager, reservations manager, director of security, and director of communications. The petitioner further noted the assistant department heads within the room division although there were no assistant department heads reporting to the beneficiary. The petitioner did observe that the beneficiary assisted with front office related queries and issues if a manager was not available. Finally, the petitioner noted that the beneficiary "oversees the departments and acts as hotel liaison" with the concierge, business center, and valet staff, departments that were contracted out with their own supervision.

The director approved the petition on this information on March 6, 2001. On May 20, 2002, the director recited the regulatory definitions of both managerial and executive capacity in a notice of intent to revoke. The director observed that the staff members under the beneficiary's supervision were not considered professionals; thus the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity.

In the petitioner's June 13, 2002 rebuttal, counsel for the petitioner asserted that the director's determination was incorrect because the beneficiary was not a first-line supervisor, but rather "is the head manager of an essential function of the organization." Counsel claims that whether "the individuals under [the beneficiary] may or may not be 'professionals' is superceded when using the Service's definition of managerial capacity

because she manages an essential function of the organization." Counsel adds that the guest services department is a primary component of the hotel's operations, that the department is essential to the overall operations of a luxury hotel; that [the beneficiary] has the authority to hire and fire or recommend personnel actions and functions at a senior level within the organization with respect to the guest services department; and that she exercises direction over the day-to-day operations of the guest services department.

Counsel also includes a letter from the petitioner's human resources division detailing the beneficiary's duties. In brief, the petitioner states that the beneficiary: establishes, maintains, and trains on standard operating procedures with management and employees; serves as the primary contact for the corporate head office on all matters pertaining to consumer affairs and quality control and for guest-related concerns; is the senior manager on duty; is responsible for the short term and long-term goals and policies pertaining to guest services; is a member of a team that disseminates information and communication tools to all managers within the hotel; assists other managers as the guest services department is a primary component of the hotel; handles staff and management emergencies and special circumstances; handles human resource and payroll concerns for guest services staff; and is responsible for the Regency Club. The petitioner indicated that the guest services manager position is a senior department head position and that assistant managers under the supervision of other department heads fell under the beneficiary's daily supervision. The petitioner listed the beneficiary's daily responsibilities in summary as:

- Ensuring correct staffing levels;
- Identifying and correcting concerns;
- Ensuring that contracted services and preferred vendors maintained and executed their services;
- Monitoring and taking action on the daily P&L statement;
- Accounting for accurate revenue generation and resolving inconsistencies; and,
- Setting up the daily rooms inventory regarding occupancy.

The petitioner concluded that its explanation and confirmation of the beneficiary's managerial position satisfactorily established the beneficiary's managerial position.

The director determined that the petitioner had not established that the beneficiary: had been or would be managing or directing the management of a function, department, subdivision or component of the petitioner; had been or would be functioning at a senior level within the organizational hierarchy; would be managing a subordinate staff of professional or managerial personnel; or would be managing a function.

On appeal, counsel for the petitioner contends that whether the beneficiary supervises professionals or not is not relevant as the beneficiary has responsibility for the bell desk, front door, and Regency Club and that the bell captain and the head doorman are direct supervisors of the line employees. Counsel also claims that the beneficiary serves as the liaison between the hotel and the independent contractors who provide the concierge, business center, and valet services. Counsel asserts: that there is one level of supervision between the beneficiary and the front-line employees; that the beneficiary's job description establishes that she exercised managerial authority; that she has the authority to hire, fire, and recommend personnel actions; and that she

makes planning and scheduling determinations, analyzes room availability and room turnover, rate integrity and arrival and checkout rates, thus exercising discretion over day-to-day operations.

Counsel's assertions are not persuasive. 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. § 204.5(j)(5). The petitioner's initial description of the beneficiary's duties listed her responsibilities as "managing" a staff of eight to ten doorpersons and 12-14 bell-persons, as well as Regency Club attendants. The petitioner also described the beneficiary's liaison role with the valet parking contractors, the concierge department, and the hotel's business center. The petitioner's description of the beneficiary's duties included the beneficiary's responsibility for training, scheduling, payroll, conducting performance evaluations, hiring, supervising the VIP program, and ordering supplies for each division. The beneficiary confirmed her responsibilities in her resume. The duties described are indicative of the duties of a first-line supervisor who also has responsibility for operational tasks and customer service. A first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. 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. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

In response to the director's request for evidence, the petitioner indicated that the beneficiary was a departmental head overseeing a bell captain, 12 bellman, a dispatcher, a head doorman, six doormen, and four regency club staff. The petitioner indicated that several of the employees under the beneficiary's supervision were professionals due to their lengthy experience. However, 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). The positions of bell captain and head doorman are not considered professional positions.

The petitioner also noted that the beneficiary's peers within the organizational hierarchy were the executive housekeeper, front office manager, reservations manager, director of security, and director of communications. The petitioner observed that the beneficiary would assist the front office when the front office manager was not available and acted as hotel liaison with the concierge, business center, and valet staff, departments that were contracted out with their own supervision. The petitioner's description of the beneficiary's place within the organizational hierarchy does not elevate the beneficiary's position to a position higher than that of a first-line supervisor. Although the bell captain and the head doorman are senior employees within their team, the record does not support counsel and the petitioner's later contention that these two positions are supervisory positions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of*

California, 14 I&N Dec. 190 (Reg. Comm. 1972). The beneficiary's role of liaison with outside contractors also does not establish that the beneficiary is supervising or managing the employees in those departments.

When the petition was filed, the petitioner had not established that the beneficiary would primarily perform managerial duties. Instead, the record demonstrated that the beneficiary performed as a first-line supervisor who, when called upon, also assisted others in their supervisory roles, and performed some undefined tasks as the liaison between the hotel and outside contractors. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In the petitioner's rebuttal to the director's notice of intent to revoke, counsel for the petitioner asserted that the beneficiary should be considered the head manager of an essential function of the organization. Counsel noted that the guest services department is a primary component of the hotel's operations and is essential to the operations of a luxury hotel. In this matter, the beneficiary directly and primarily supervises the guest services department's employees and does not function at a senior level within the organizational hierarchy or with respect to the function managed. Although counsel asserts that the beneficiary is a function manager, the beneficiary's daily tasks involve primarily supervisory duties of the guest services department's employees, duties that are specifically excluded from the managerial definition unless the employees hold professional positions.

The petitioner in its rebuttal letter expanded on the beneficiary's daily supervisory responsibilities including duties related to monitoring and taking action on the daily P&L statement, accounting for accurate revenue generation and resolving inconsistencies, and setting up the daily rooms inventory regarding occupancy. The petitioner's second iteration of the position has the beneficiary responsible for the short-term and long-term goals and policies pertaining to guest services, serving as the primary contact for the corporate head office on all matters pertaining to consumer affairs and quality control and for guest-related concerns, and acting as the senior manager on duty. However, the petitioner does not further define the expanded duties and the petitioner's initial description appeared to limit the beneficiary's position to a first-line supervisory role.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in rebuttal to the director's notice of intent to revoke did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description and altered the beneficiary's supervisory role to that of managing an essential function. The AAO analyzes this issue on the basis of the job description submitted with the initial petition, and not on the altered description of the beneficiary's duties as primarily a function manager.

The AAO observes that on appeal, counsel for the petitioner reverts to the initial claim that the beneficiary is primarily a supervisor and does not claim that the beneficiary is a function manager. On appeal, counsel contends that there is one level of supervision between the beneficiary and the front-line employees, that of bell captain and head doorman; that the beneficiary's job description establishes that she exercised managerial authority; that she has the authority to hire, fire, and recommend personnel actions; and that she makes planning and scheduling determinations, analyzes room availability and room turnover, rate integrity and arrival and checkout rates, thus exercising discretion over day-to-day operations. The AAO acknowledges that the beneficiary supervises eight to ten doormen, 12-14 bell-persons and several Regency Club attendants as well as training, scheduling, conducting performance evaluations, hiring, and figuring payroll for these individuals. The AAO does not find that the petitioner has provided sufficient evidence to determine that the petitioner employs an intermediate level of supervision between the beneficiary and the doormen and bell-persons. The petitioner has not provided an organizational structure substantiated by the record sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisory role.

The second issue in this proceeding is whether the foreign entity employed the beneficiary in a managerial or executive position for one year prior to the beneficiary entering the United States as a nonimmigrant. In this matter, the petitioner indicated that the foreign entity employed the beneficiary from February 26, 1996 to January 12, 2000. The beneficiary started employment for the foreign entity as the manager of the health club, and in 1997 was promoted to communications center manager and later to assistant front office manager responsible for managing the business center, the health club, and front desk operations. In September 1999, less than one year prior to entering the United States in April 2000, she was promoted to the position of front office manager. The beneficiary lists on her resume that she was employed in the capacity of reservations manager from October 1, 1998 through August 31, 1999 at which time she was promoted to front office manager. CIS must examine the beneficiary's duties for the full year prior to entering the United States as a nonimmigrant. In this matter, the foreign entity employed the beneficiary either as an assistant front office manager or a reservations manager in April 1999 and promoted her to front office manager eight months prior to entering the United States in April 2000. 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 response to the director's request for evidence regarding the beneficiary's role for the foreign entity, the petitioner provided a list of the beneficiary's duties as assistant front office manager including:

- Planning and preparation of the daily and future staffing schedules.
- Having an intimate knowledge of the reservation system (Fidelio and Spirit). Check rate integrity and rooms inventory. Analyze daily arrivals and checkouts and action specific requests and VIP needs.
- Have a working knowledge of the housekeeping department. Keep close contact with Executive Housekeeper for update on house status (availability of vacant clean rooms and pace of turnover).
- Check group resumes and prepare accordingly.

- Handle any billing and Gold Passport related questions for current and past guests. Handle all guests [sic] comments and complaints and action appropriately.
- Manage payroll and employment related issues. Filling positions, handling disciplinary procedures and managing holidays.
- Training all new and current employees to be to Hyatt standards. Formal training sessions on specific systems used and day-to-day training about Guest Services.
- Manage incentive programs for staff.
- Manage ordering of stock and all expense related items (e.g.: staff uniforms).
- Maintain all equipment and ensure scheduled maintenance takes place. This includes internal office [sic] equipment as well as guest supplies.

The petitioner also listed the individuals under the supervision of the front office manager as two assistant front office managers, two team leaders and nine front desk agents working the front office, a team leader and six agents working the business center, a chief concierge, team leader and 12 doormen, bellmen, and drivers working the concierge/bell desk, a manager and three attendants working the health club, and an assistant guest services manager and three regency club captains working the Regency Club. The petitioner did not specifically identify the number of employees directly under the supervision of the assistant front office managers and simply indicated that the assistant front office manager was the final stepping stone before assuming the position of front office manager and that the assistant front office manager assumes the duties of the front office manager when the front office manager was not on duty.

The director did not reference the managerial or executive capacity of the beneficiary for the foreign entity in his notice of intent to revoke. However, in his revocation decision, the director determined that the record did not substantiate that the beneficiary's position for the foreign entity included all managerial duties or that "substantially all of the employee's duties are at the managerial or executive level."

On appeal, counsel for the petitioner questions the director's introduction of a new issue in the revocation decision. Counsel observes that the petitioner did not have the opportunity to provide rebuttal evidence on this issue. Counsel does contend on appeal, however, that the beneficiary was more than a first-line supervisor for the foreign entity. Counsel asserts that there are two levels of management between the beneficiary and the foreign entity's front-line employees.

Counsel's assertions are not persuasive. In this matter, the beneficiary's highest position for the foreign entity for one year prior to entering the United States as a nonimmigrant was not as a front office manager. The petitioner and beneficiary both acknowledge that the beneficiary was not promoted to this position until September 1999 and that the beneficiary entered the United States in April 2000. As such, the beneficiary was not employed as a front office manager for one year prior to entering the United States. The AAO thus focuses its analysis on the beneficiary's position as either an assistant front office manager or as a reservations manager. In either circumstance, the record does not show that the beneficiary's duties were more than that of a first-line supervisor. The petitioner has not adequately described the duties of the team leaders under the beneficiary's supervision as an assistant front office manager. A "team leader" is generally not considered a direct line supervisor, but rather a more experienced senior employee. The petitioner has not provided

evidence that the foreign entity's "team leaders" under the beneficiary's supervision were professional, supervisory, or managerial employees.

The petitioner's description of the beneficiary's duties for the foreign entity is not definitive. The description generally is more indicative of an individual providing staffing and customer services to the foreign entity. 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. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). In this matter, the petitioner has not clarified the beneficiary's actual duties for the foreign entity for the year prior to her entering the United States as a nonimmigrant. The actual duties themselves 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N at 591.

The petitioner has not provided evidence on appeal and the record does not contain sufficient evidence to overcome the director's decision on this issue.

Finally, the petitioner's reference to the past approvals of the beneficiary's status as an L-1A intracompany transferee is not relevant to this proceeding. For the record, it must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

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, supra*. 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).

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.