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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **APR 26 2006**
SRC 04 211 51361

IN RE: Petitioner: [REDACTED]
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:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of Florida in December 2002. The petitioner provides consulting and web design services. The petitioner seeks to employ the beneficiary as its president. 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 determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity for the United States petitioner.

On appeal, counsel for the petitioner asserts that the beneficiary's duties are clearly managerial and/or executive; that the beneficiary manages individuals who are professional; and that the beneficiary qualifies as a functional manager based on many of his duties. Counsel submits a brief and other documentation in support of the appeal.

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).

The issue in this proceeding is whether the beneficiary will be employed in a managerial or executive capacity for the United States entity.

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 immigrant petition was filed on July 30, 2004. In an undated letter appended to the petition, the petitioner explained that its business consisted of understanding a client's business needs through a structured consulting process, determining which tools the client needed, and customizing the tools to the client's specific needs in the context of their industry. The petitioner indicated that it offered technical support/troubleshooting, virus detection, hardware upgrades, large scale computer purchases, wi-fi networking, wired networking, data backup/recovery, firewalls, parental control, customer relationship management, and content management system services through its TeraVision Tech division; and corporate image and logo design, e-marketing strategy and campaigns, a web presence including web design, search engine listing, flash animations, content management system, e-commerce, e-sales tools, and e-broadcast services through its TeraVision Media division.

The petitioner indicated that the beneficiary as general manager would be responsible for bringing together a creative team for each account, setting standards and general guidelines for the work, coordinating the teams in regards to adequate and timely service, hiring and firing staff; and, as president would be responsible for new accounts, general management and coordination of the business in the office, management of other employees, reporting to the board of directors, signing agreements on behalf of the corporation, setting the policies and guidelines for the accounting department, and for sales and purchasing. The petitioner listed the beneficiary's specific duties in its endeavors as:

Executive Duties

- Confers with board members, organization officials, and staff members to establish policies and formulate plans (5% of time)
- Reviews financial statements and sales and activity reports to ensure that organization's objectives are achieved. (5% of time)
- Review financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement. (10% of time)
- Direct and coordinate organization's financial and budget activities to fund operations, maximize investments, and increase efficiency. (10% of time)
- Analyzes operations to evaluate performance of company and staff and to determine areas of cost reduction and improvement. (5% of time)
- Monitor business and staff to ensure that they efficiently and effectively provide needed services while staying within budgetary limits. (5% of time)

Management Duties

- Establish and implement departmental policies, goals, objectives, and procedures, conferring with board members, organization officials, and staff members as necessary. (5% of time)
- Manage staff, preparing work schedules and assigning specific duties. (5% of time)

- Directs activities of organization to plan procedures, establish responsibilities, and coordinate functions among departments and sites. (5% of time)
- Assigns or delegates responsibilities to subordinates. (5% of time)
- Establishes internal control procedures. (5% of time)
- Determine staffing requirements, interview, hire, and fire US employees, and oversees [sic]. (10% of time)
- Oversee activities directly related to providing services. (5% of time)

Marketing & Sales Duties

- Develop and implement product marketing strategies including advertising campaigns and sales promotions. (5% of time)
- Plan and direct activities such as sales promotions. (2.5% of time)
- Determine services to be sold, and set prices and credit terms, based on forecasts of customer demand. (5% of time)
- Direct and coordinate activities concerned with the production, pricing, sales, and delivery of the service. (5% of time)

The petitioner indicated that the beneficiary had four U.S. based staff as well as nine Venezuelan based staff and that the Venezuelan based staff were responsible for technical support and design duties.

On March 31, 2005, the director requested, among other things, additional evidence detailing the beneficiary's proposed position with the petitioner including: the position title; a list of all duties; the percentage of time spent on each duty; the names of subordinate managers/supervisors or other employees reporting directly to the beneficiary; a brief description of their job titles, and educational levels, or if the beneficiary would not supervise other employees, the essential function the beneficiary would manage; an organizational chart specifying the beneficiary's position within the organizational hierarchy; and, who provides the product sales/services or produces the petitioner's products. The director also requested copies of the corporation's income tax for 2004, copies of the Internal Revenue Service (IRS) Forms 941, showing quarterly taxes paid for all salaried employees, and evidence of wages paid (IRS Forms W-2, Wage and Tax Statement) for all employees from the date of filing the petition.

In a response received on June 17, 2005, the petitioner provided the same job description of the beneficiary's duties as submitted with the initial petition. The petitioner noted however, that the beneficiary's U.S. based staff included six individuals and one sub-contractor as well as fifteen Venezuelan based staff and one sub-contractor. The petitioner's organizational chart depicted the beneficiary in the position of general manager over a marketing and sales director and a technology director. The organizational chart also showed the marketing and sales director over two sales engineers and a sales manager. The petitioner also noted that it employed an administrative assistant although the individual was not listed on the organizational chart. The organizational chart indicated that in addition to the two sales engineers and sales manager, the marketing and sales director's subordinate employees included several individuals employed by the Venezuelan entity and that the technology director also had subordinate employees employed by the Venezuelan entity.

The petitioner described: (1) the marketing and sales director's duties as developing product marketing strategies, including advertising campaigns and sales promotions, planning and directing sales promotions, directing advertising and purchasing, determining services to be sold, setting prices and credit terms, and directing and coordinating activities concerned with production, pricing, sales, and delivery of the service; (2) the technology director's duties as including management of technical staff and managing the team that keeps the company's servers running; (3) the sales manager's duties as managing, coordinating and implementing activities concerned with the production, pricing, sales, and delivery of service, preparing estimates, and meeting with possible and existing clients; and (4) the sales engineers' duties as providing technical sales support to the sales manager, evaluating client's business problems, and proposing technical solutions.

The petitioner also provided its Florida Form UCT-6, Florida Department of Revenue Employer's Quarterly Report, for the first three quarters of 2004, including the Florida Form UCT-6 for the quarter in which the petition was filed. The third quarter Florida Form UCT-6, indicates that the petitioner employed only four employees in July 2004, the month the petition was filed, five employees in August 2004, and six employees in September 2004. The Florida Form UCT-6 confirmed the employment of the beneficiary, and the individuals in the positions of marketing and sales director, technology director, sales manager, administrative assistant, and an individual not identified on the organizational chart for the month of September 2004. The record does not depict which of the petitioner's employees were added to its payroll in August and September 2004. The petitioner's IRS Forms W-2 for 2004 were issued to nine individuals and showed the beneficiary and the sales and marketing director, each receiving \$33,600, the sales manager receiving \$20,000, and the technical director receiving \$17,550. The remaining five employees received as little as \$122 to as much as \$4,458 for the 2004 year.

On July 11, 2005, the director denied the petition and on August 17, 2005, affirmed her decision on the petitioner's motion to reopen and reconsider. The director acknowledged that the beneficiary exercised discretion over the day-to-day operations of the activity, but noted that the beneficiary also performed some of the day-to-day duties of the business. The director determined that the record was not persuasive in demonstrating that the beneficiary's primary assignment had been or would be directing the management of the organization or directing or supervising a subordinate staff of professional, managerial, or supervisory personnel who would relieve him from performing non-qualifying duties. The director concluded that the record did not demonstrate eligibility for the multinational executive or manager immigrant classification and that the petition could not be approved.

On appeal, counsel for the petitioner asserts that the beneficiary spends a majority of his time on managerial and executive duties and notes that the reasonable needs of an organization must be considered in light of the overall purpose and stage of the organization. Counsel points to the descriptions of the beneficiary's subordinates' job duties and contends that most, if not all, the tasks that are less than managerial or executive duties have been assigned to other members of the beneficiary's staff. Counsel re-states the petitioner's description of the beneficiary's job duties and avers that the beneficiary works through his executive level and management level employees and does not perform duties necessary to produce the products or provide the services of the company. In addition, counsel asserts that both of the directors subordinate to the beneficiary and all six of his managers have university degrees and several years of experience, thus the beneficiary's supervision of these individuals qualifies as supervision of professionals. Counsel, citing an unpublished

AAO decision, argues that the beneficiary may also be considered a "functional manager." Finally counsel provides an August 5, 2005 opinion letter submitted by an individual who is an adjunct professor teaching management courses at a Florida university. This individual opines that based on the petitioner's description of the beneficiary's duties, the beneficiary is performing in an executive and managerial capacity.

The AAO acknowledges counsel's claim that the director did not clearly explain the reasons for denying the petition. The director's decision makes no specific reference to any of the evidence submitted. The AAO notes preliminarily that when denying a petition, a director has an affirmative duty to explain the specific reasons for denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act. 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). Upon review of the director's decision, the AAO concurs that the reasons given for denial are conclusory with no specific references to the evidence entered into the record. As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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). In this matter, the petitioner has provided a lengthy description of the beneficiary's duties that is repetitive and general in nature. For example, the petitioner indicates that the beneficiary confers with board members, organization officials, and staff members to establish policies and formulate plans as well as to establish and implement departmental policies, goals, objectives, and procedures (10%). The petitioner also indicates that the beneficiary reviews financial statements and activity reports and analyzes operations to ensure the organization's objectives are achieved and to determine areas needing cost reduction and program improvement and funding for operations to maximize investments, and increase efficiency (30%). The petitioner further notes that the beneficiary monitors the business and the staff to ensure efficiency and effectiveness, prepares work schedules, assigns specific duties, coordinates functions among departments and sites, delegates responsibilities to subordinates, and oversee activities directly related to providing services (25%). The various duties described as managerial or executive duties are vague and do not provide an understanding of what the beneficiary does on a daily basis. 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 answer a critical question in this case: What does the beneficiary primarily do on a daily basis? 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).

Moreover, the petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on the totality of the record whether the description of the beneficiary's duties presents 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 full-time employees in the United States employed full-time who could provide consulting services, promote the petitioner's services, determine client's needs, negotiate contracts, supervise the petitioner's contracts with other services, or provide the vast array of the petitioner's technical and web design services. The petitioner's general description of the beneficiary's duties and the lack of sufficient full-time personnel in the United States to perform the

petitioner's client-based customer service tasks, based on the petitioner's IRS Forms W-2, are insufficient to establish that the beneficiary will primarily perform managerial or executive tasks.

While the petitioner's organizational chart is impressive, it does not fully correspond to the facts provided in the record. The petitioner essentially employs the beneficiary, the marketing and sales director, who also co-owns the foreign entity, and a sales manager in the United States full-time. The technical director and other employees are either employed part-time or intermittently. The described duties, titles, and position on the organizational chart of the individuals employed in the United States also do not correspond with the salaries listed in the petitioner's IRS Forms W-2. Thus, counsel's assertion that the beneficiary works through his executive-level and management-level employees and does not perform duties necessary to produce the products or provide the services of the company is not supported in the record. Ascribing a managerial or executive title to an employee does not imbue the employee with managerial or executive capacity. The general description of the beneficiary's duties and the time allocated to the ill-defined duties do not establish that the beneficiary will be performing primarily executive or managerial duties. The record is simply insufficient to establish that the beneficiary will be relieved from participating in the provision of consulting services, negotiating operational agreements, providing client services, such as assisting with the purchase of computers, establishing network connections, and assisting with client's corporate image, logo design, e-marketing strategy and campaigns, and web presence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO acknowledges that the petitioner may outsource some of its web design and technical troubleshooting to its Venezuelan subsidiary, but the petitioner has not substantiated the number of individuals employed by the subsidiary and whether those individuals are employed full-time or intermittently. Moreover, the petitioner has not satisfied its obligation to quantify the conduct of the petitioner's business in the United States or the petitioner's depth of outsourcing, if indeed the petitioner outsources some of its technical services. The record is incomplete when considering that the petitioner's purpose in the United States is to provide consulting and web design services. The petitioner has not provided evidence of a sufficient number of employees to provide the petitioner's services without the beneficiary's involvement in routine and non-qualifying tasks. The petitioner in this matter has not carried its burden in establishing that the beneficiary's daily duties comprise duties that are primarily executive or managerial.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). Instead, an executive's duties must be the critical factor. However, if CIS fails to believe the facts stated in the petition are true, then that assertion may be rejected. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In this matter, the general and repetitive tone of the beneficiary's job description raises concern regarding the beneficiary's actual daily duties. The AAO fails to understand the necessity of the beneficiary's role for the United States entity if not to generate the petitioner's business. While the beneficiary's entrepreneurship is commendable, entrepreneurship is not an element set out in the criteria of the

definition of managerial or executive capacity. Moreover, the quantity of the petitioner's business conducted in the United States, the petitioner's organizational chart, and the absence of evidence substantiating the employment of all the petitioner's claimed employees, except part-time or intermittently, cast doubt on the legitimacy of the beneficiary's purported employment in a qualifying managerial or executive capacity.

Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner cannot excuse a beneficiary who spends the majority of his time on non-qualifying duties. In this matter the record is not sufficient to determine that the beneficiary's time is spent primarily performing qualifying duties.

The petitioner does not allocate a significant percentage of the beneficiary's time to supervising employees, which undermines counsel's claim that the beneficiary is a supervisor of professional employees. Even if the beneficiary's position required that he primarily supervise employees, the description of the employees duties in the United States do not demonstrate that the positions held are professional positions. As observed above, the positions subordinate to the beneficiary in the United States who are employed full-time are the marketing and sales director's position, the technical director's position, and the sales manager. These individuals purportedly promote and sell the petitioner's services, negotiate contracts on its behalf, monitor its website advertising, and provide technical support/troubleshooting services; however, the record does not support that these positions require more than technical skill. The record does not establish that the beneficiary's position requires his supervision of professional employees.

Counsel's reference to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee does not support the beneficiary's eligibility as a functional manager. First, counsel does not furnish evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Second, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Third, to establish that the beneficiary's position satisfies the criteria of a functional manager or an executive who directs the management of a function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, 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 or directing the management of the function. 8 C.F.R. § 204.5(j)(5). 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. Again, 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. at 604. In this matter, the petitioner has not provided evidence that establishes that the beneficiary satisfies the criteria of an executive who directs the management of a function or of a manager who manages an essential function.

Counsel's submission of an "expert opinion" likewise is not probative. The AAO may, in its discretion, use advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with

other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this matter, the letter submitted as expert testimony states only that the description of the beneficiary's duties has been reviewed; however as observed above, the description provided is not sufficient to detail the beneficiary's daily duties and does not establish that the beneficiary spends the majority of his time performing managerial or executive functions. The AAO declines to assign any probative value to the letter submitted as expert testimony, as its purview is limited to the nonspecific description of the beneficiary's job duties and does not take into account the petitioner's organizational structure, and number of subordinate employees and their duties.

When examining the managerial or executive capacity of a beneficiary, CIS reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy. Upon review of the record in this matter, the petitioner has not established that the beneficiary's duties and those of his claimed subordinates elevate the beneficiary's position to a primarily managerial or executive position. For this reason, the petition will not be approved.

The AAO acknowledges that CIS approved L-1A nonimmigrant intracompany transferee petitions that had been previously filed on behalf of the beneficiary. With regard to the similarity of the eligibility criteria, the AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant 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.

In general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. Accordingly, many Form I-140 immigrant petitions are denied after CIS approves prior nonimmigrant Form 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). Because CIS spends less time reviewing Form I-129 nonimmigrant petitions than Form 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).

Moreover each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. *See* 8 C.F.R. § 103.8(d). The approval of a nonimmigrant petition does not guarantee that CIS will approve an immigrant petition filed on

behalf of the same beneficiary. As the evidence submitted with this petition does not establish eligibility for the benefit sought, the director was justified in departing from previous nonimmigrant approvals by denying the immigrant petition.

In addition, if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval 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).

Further, 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). The petitioner has not provided evidence or argument on appeal sufficient to overcome the director's decision.

Finally, the AAO observes that as the director was justified in departing from the previous nonimmigrant approvals in this matter; the director should review the previous nonimmigrant approvals for revocation pursuant to 8 C.F.R. § 214.2(l)(9)(iii).

Beyond the decision of the director, the petitioner has not established that the beneficiary's employment for the foreign entity comprised primarily managerial or executive duties for one of the three years prior to entering the United States as a nonimmigrant. The petitioner provided a vague description of the beneficiary's for the foreign entity, similar to the description provided for the beneficiary's position in the United States. In addition, the petitioner did not provide an organizational chart or other evidence establishing the foreign entity's number of employees, or the beneficiary's placement in the foreign entity's organizational structure for the time period the beneficiary was employed by the foreign entity. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In addition, the AAO observes that the beneficiary's employment for the foreign entity began in December 2001 and the beneficiary entered the United States in a nonimmigrant status December 18, 2002, although indicating that the beneficiary was employed by the foreign entity until March 2003. Thus the record is unclear that the foreign entity employed the beneficiary for one full year prior to his entering the United States as a nonimmigrant. For this additional reason, the petition will not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d at 1002.

The petition will be denied for the above stated reasons. 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.