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U.S. Citizenship
and Immigration
Services

By



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 24 2006
WAC 01 030 52999

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based petition. Upon subsequent review, the director issued a notice of intent to revoke approval and ultimately revoked approval of the petition. The petitioner submitted an appeal to the Administrative Appeals Office (AAO) that was rejected as untimely filed on February 23, 2005. The matter is now before the AAO on a motion to reopen and reconsider the previous decision. Counsel's motion is granted and the matter will be reopened for further consideration. The appeal will be dismissed.

The petitioner was originally incorporated in August 1996 in the State of Arizona under the

The company amended its articles of incorporation in August 1999 changing its name to . It exports electronics and computers. It seeks to employ the beneficiary as its export sales executive. 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 on January 7, 2001. Upon further review of the record and evidence submitted in conjunction with the beneficiary's Form I-485, Application to Register Permanent Resident or Adjust Status, the director issued a notice of intent to revoke approval on October 16, 2002. The director ultimately revoked approval on November 17, 2003, determining that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity for the U.S. petitioner. Counsel for the petitioner submitted a Form I-290B, Notice of Appeal on December 19, 2003. The AAO rejected the appeal on February 23, 2005 as the appeal was filed 32 days after the decision was mailed. The AAO cited the regulation at 8 C.F.R. § 205.2(d) which requires that revocations of approvals must be appealed within 15 days (15-day rule) after the service of the Notice of Revocation.

On motion, counsel for the petitioner asserts that if the AAO exercises appellate jurisdiction over the revocation, the 15-day rule found in the regulation at 8 C.F.R. § 205.2(d) does not apply and that the rules in Part 103 (the 30-day rule) apply. Counsel also asserts that even if the 15-day rule applies, counsel filed the appeal within 11 days of receipt. Counsel attaches an U.S. Department of Homeland Security, Citizenship and Immigration Services envelope post-marked December 8, 2003, addressed to counsel, referencing the beneficiary of this matter. Counsel also notes that the top right corner of the Notice of Decision bears the handwriting "Remailed" in red ink. The AAO observes that the record contains counsel's change of address notification received on November 12, 2003, five days prior to the date of the director's notice of decision. Finally, counsel asserts that regardless of the filing deadline, the petitioner's due process rights were violated by the AAO's refusal to consider the merits of the appeal.

Preliminarily, the AAO will address counsel's assertions regarding the 15-day rule and the violation of the petitioner's due process. The revocation of an approval requires an appeal within 15 days as stated in the pertinent regulation at 8 C.F.R. § 205.2(d). Regarding the issue of the petitioner's due process, the AAO notes that the notice of decision was mailed to the petitioner at the petitioner's record address. Although the director did not timely mail the decision to the petitioner's counsel of record, the petitioner had notice of the revocation decision. However, the AAO will reopen and reconsider the merits of the petitioner's appeal, as counsel of record did not timely receive notice of the revocation.

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 petitioner has established that the beneficiary will be employed in a managerial or executive capacity for the U.S. petitioner.

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.

In a May 18, 2000 letter submitted in support of the petition, the petitioner indicated:

As Export Sales Executive, the beneficiary sought new manufacturers of electronic products, set marketing goals, negotiated contracts, managed inventory and wholesale purchasing, and he maintained full responsibility for the success of the export process. He exercised wide latitude and complete day[-]to[-]day discretionary authority over the American office. As export sales executive, the beneficiary has been responsible for the bottom line profitability and expansion of the American office.

In the same letter, the petitioner indicated that the beneficiary had negotiated a single purchase order valued at \$1.2 million to \$2 million in 1998, had added new principles to the petitioner's product line, and identified and targeted two new major clients in 1999, as well as adding new distributors.

The petitioner also provided a copy of its 1999 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, showing \$827,812 in gross sales, salaries and wages paid of \$21,697, a commission expense of \$87,756, and a net income of \$2,982.

On the basis of this limited evidence, the director approved the petition on January 16, 2001.

On November 8, 2001 in conjunction with the beneficiary's Form I-485, the director requested among other things, the petitioner's current organizational chart describing its managerial hierarchy and staffing levels. The director indicated that the beneficiary must be included on the chart, as well as the number and names of employees under his supervision, their titles, their educational degrees, and a brief description of their job duties. The director also indicated that since the business was "so small" all the employees must be depicted on the organizational chart.

In a January 29, 2002 response, counsel for the petitioner indicated that the beneficiary's position was executive in nature and that in the United States and in India the beneficiary had been in charge of international export sales. Counsel asserted that the beneficiary could only accomplish his task by evaluating and directing the work of the marketing manager in the U.S. as well as the marketing managers of the two foreign offices. Counsel added that the beneficiary would oversee the marketing departments of all foreign affiliates and act as a liaison between the foreign affiliates. Counsel attached copies of the petitioner's eight most recent quarterly wage statements. The petitioner's IRS Form 941, Employer's Quarterly Federal Return, for the fourth quarter of 2000, the quarter in which the petition was filed, showed that \$10,450 had been paid in salaries.

The organizational chart submitted depicted the beneficiary in the position of export sales executive over the petitioner, the Hyderabad, India office, and the Bangalore, India office. The chart showed the petitioner employed a marketing manager and a sales associate; the Hyderabad, India office employed a marketing manager, a sales engineer, an office supervisor, a sales coordinator, an accountant, and an office assistant; and the Bangalore, India office employed a marketing manager, a sales and technical engineer, and a sales associate. The petitioner indicated that the U.S. marketing manager as well as the two foreign-employed marketing managers,¹ sought potential customers, engaged in market analysis, kept the sales executive informed of the results of market analysis, provided sales reports, and introduced new products and book orders. The petitioner also provided brief job descriptions for the second U.S. employee and the employees holding positions in the India offices.

On October 16, 2002, the director issued a notice of intent to revoke approval, observing that: (1) the petitioner did not have a reasonable need for an executive because it was a small two-employee import/export business; (2) the petitioner's type of business did not require or have a reasonable need for an executive because it only imported electronic components; (3) because the petitioner only had two other employees, the beneficiary would necessarily be assisting in the performance of menial tasks; (4) the beneficiary's position was at most a first-line manager position that was not over managerial or professional employees; and, (5) the beneficiary was not a functional manager as the record suggested that the beneficiary was involved in sales duties rather than managing a function of the business.

¹ When describing the beneficiary's subordinates' duties, the petitioner indicated that the individual identified as the marketing manager in the Hyderabad, India office was employed in the Secunderabad office.

In a November 8, 2002 rebuttal, the petitioner's president stated that the U.S. business did not operate in isolation from its affiliates but that the international nature of the export business required the beneficiary to act in an executive capacity simultaneously for the two offices located in India as well as the office in the United States. The petitioner indicated that while the beneficiary was physically in the United States, he oversaw and directed the foreign offices via written correspondence, email, facsimile, and teleconference. The petitioner further explained that the U.S. office located American manufacturers of small electronic components; purchased the components; sold a portion of the components to U.S. companies; and exported the remaining portion to India, where the two Indian offices sold the American components to Indian companies.

The petitioner also elaborated on the description of the beneficiary's duties. The petitioner indicated: (1) the beneficiary reviewed reports from India to determine which products would sell, once a product was identified directed the U.S. marketing manager to locate the American manufacturers of the product, and then negotiated the distribution agreement and directed the petitioner's attorney to draft the appropriate contract; (2) the beneficiary set marketing goals for both the U.S. and Indian offices which are implemented by the marketing managers and through the sales associates/engineers; (3) the beneficiary manages the inventory by making decisions on inventory changes over \$20,000; (4) the beneficiary manages wholesale purchasing by making decisions on terms of any purchase above \$50,000; and, (5) the beneficiary has ultimate responsibility for the bottom-line profitability of both the U.S. and Indian operations. The petitioner added that it utilized independent contractors who served as technical advisors in the United States and in India.

On November 17, 2003, the director revoked approval of the petition, determining that: it was not the intent of the regulation to have the beneficiary employed as a manager or executive for the foreign entity as well as the U.S. entity; it was reasonable to believe that the beneficiary would be involved in the day-to-day non-supervisory duties commonplace in the industry; and, the beneficiary's two subordinates in the United States did not hold positions that would require a professional degree. The director concluded that the evidence of record did not show that the beneficiary's duties involved significant authority over generalized policy of an organization or a major subdivision of an organization and that the U.S. entity's business function did not allow the beneficiary to comply with the managerial and executive definitions.

On appeal, counsel for the petitioner asserts that the beneficiary directs the management of the organization, including three marketing managers (one in the United States and two in India), an attorney who drafts contracts, and technical advisors who conduct training sessions when necessary. Counsel contends that the beneficiary establishes goals and policies of the organization and exercises wide latitude in discretionary decision-making, including deciding which products will be sold in India, setting sales targets, making final decisions regarding product pricing, managing the export process, approving larger inventory changes, negotiating the terms of large wholesale purchases, setting budgets for each of the three offices, and deciding on design improvements and training. Counsel indicates that the beneficiary reports only to the president and thus is receiving minimal supervision from the highest executive and controlling stockholder of the organization. Counsel asserts that the beneficiary is not engaged in the sale of electronic components.

Counsel argues that the regulations do not require that the beneficiary confine his services to services in the United States and that the beneficiary's oversight of the employees and independent contractors in all three offices should be considered. Counsel also contends that the three marketing managers, three technical advisors,

accountants, and attorneys hold professional positions, that two of the three marketing managers supervise individuals with engineering degrees, and that all three marketing managers supervise other employees.

Counsel observes that the size of the petitioner's business is not determinative and cites several unpublished decisions and a district court decision in support of this observation. Counsel argues that Citizenship and Immigration Services (CIS) improperly revoked approval of the petition and that the nature of the petitioner's business alone is not sufficient reason to determine that the beneficiary cannot perform as a manager or executive.

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 the initial description, the petitioner described the beneficiary's duties as a product buyer who negotiated contracts for goods and maintained responsibility for the petitioner's export process. The petitioner noted the beneficiary's accomplishment of negotiating a substantial order in 1998 and adding new clients and distributors in 1999. The description of the beneficiary's duties suggested that the beneficiary was providing the petitioner's routine operational services. The director's approval of the beneficiary's multinational managerial or executive classification was clear error.

In a January 2002 response to the director's request for evidence in conjunction with the beneficiary's Form I-485 application, counsel indicated that the beneficiary's position was an executive position and that the beneficiary was in charge of international export sales both in the United States and in India. Counsel claimed that the beneficiary could only accomplish his task by evaluating and directing the work of the marketing manager in the U.S. as well as the marketing managers of the two foreign offices. Counsel, however, does not clarify how the employees working in India require the beneficiary's presence in the United States as a multinational executive. The record does not contain evidence establishing that the beneficiary's alleged oversight of foreign marketing departments and activity as a liaison between the two companies comprise executive tasks. 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)). Moreover, the record does not contain substantiating evidence of the foreign entity's employment of the individuals in India. The AAO declines to consider the beneficiary's claimed oversight of foreign employees as tasks comprising executive duties for the petitioner based on the unsubstantiated information in the record.

In rebuttal to the director's notice of intent to revoke, the petitioner again claims that the beneficiary is acting in an executive capacity for both the United States and Indian offices; however, the petitioner fails to differentiate the duties of a first-line supervisor who reviews reports, directs a subordinate to locate products, and sets marketing goals for that subordinate and the duties of an executive who directs the management of these tasks. Claiming that the beneficiary is an executive or a manager is not sufficient. Moreover, 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). Materially changing a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities does not establish managerial or executive capacity when the petition was filed.

Beyond the required description of the beneficiary's job duties, CIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In the case of a function manager, where no subordinates are directly supervised, these other factors may include the beneficiary's position within the organizational hierarchy, the depth of the petitioner's organizational structure, the scope of the beneficiary's authority and its impact on the petitioner's operations, the indirect supervision of employees within the scope of the function managed and value of the budgets, products, or services that the beneficiary manages.

The petitioner has failed to establish any clear distinctions between the proposed qualifying and non-qualifying duties of the beneficiary. Specifically, the petitioner submitted no information to establish the percentage of time the beneficiary actually performs or will perform the claimed managerial or executive duties. It has been noted in the record that there are only two employees working in the petitioner's United States office. This brings into question how much of the beneficiary's time can actually be devoted to managerial or executive duties. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Furthermore, the petitioner bears the burden of documenting what portion of the beneficiary's duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Given the lack of these percentages, the record does not demonstrate that the beneficiary will function primarily as a manager or executive.

In this matter, counsel's contention that the beneficiary establishes goals and policies, exercises wide latitude in discretionary decision-making does not demonstrate that the beneficiary's duties comprise executive duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Moreover, counsel's indication on appeal that the beneficiary's role involves deciding which products will be sold in India, setting sales targets, making final decisions regarding product pricing, managing the export process, approving larger inventory changes, negotiating the terms of large wholesale purchases, setting budgets for each of the three offices, and deciding on design improvements and training is more akin to an individual providing the petitioner's operational services. 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. *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Counsel's claim on appeal that the beneficiary manages subordinate employees who are professionals is not persuasive. When evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study. *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). In this matter, the record does not support counsel's claim that the positions subordinate to the beneficiary require

individuals with professional credentials. 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. Moreover, the petitioner heretofore has seemingly requested consideration as an executive; counsel's attempt on appeal to broaden the beneficiary's duties to that of a first-line supervisor of professional employees is not persuasive.

Counsel's citation to unpublished decisions is not probative. Counsel has not furnished evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. The petitioner in this matter has not provided evidence that the beneficiary's subordinates' duties comprise duties that obviate the need for the beneficiary to primarily conduct the petitioner's export business.

Counsel's citation to a federal court decision holding that the size of a company is not determinative is noted and the district court's decision has been given due consideration. The AAO acknowledges that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In this matter, the petitioner has not established that the beneficiary's duties comprised primarily managerial or executive duties when the petition was filed. For this reason, the petition will not be approved.

Although the appeal will be dismissed, the AAO notes that the director referenced the nature of the petitioner's business in the notice of intent to revoke and improperly indicated that the petitioner did not have a reasonable need for an executive because it was a small two-employee import/export business and that the petitioner's type of business did not require or have a reasonable need for an executive because it only imported electronic components. The director's comments are inappropriate. Although CIS must consider the reasonable needs of the petitioning business if staffing levels are considered as a factor, the director must articulate some rational basis for finding a petitioner's staff or structure to be unreasonable. See section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). The fact that a petitioner is a small business or engaged in a particular industry will not preclude the beneficiary from qualifying for classification under section 203(b)(1)(C) of the Act. In this matter, upon review of the totality of the record, the description of the beneficiary's duties, the lack of evidence regarding the proportion of time the beneficiary spends on qualifying and non-qualifying duties, and the lack of information substantiating that the beneficiary would be relieved from performing primarily non-qualifying duties, requires that the petition not be approved.

Counsel's reference to the petitioner's successful petitioning for the beneficiary for an L-1A classification is noted. 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. 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 revoking approval of 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.

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).

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).

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

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 his 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, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Esteime*, 19 I&N 450 (BIA 1987)).

The approval of the petition will be revoked for the above stated reason. 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.