



U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: JUL 11 2006

SRC 04 171 50422

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, Chief  
Administrative Appeals Office

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

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of Florida that is engaged in acquiring real estate and agriculture investments, and providing support services in the area of construction. The petitioner seeks to employ the beneficiary as its general manager.

The director denied the petition concluding that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner refutes the director's finding, contending that Citizenship and Immigration Services (CIS) disregarded the evidence provided by the petitioner, including the beneficiary's job description, the petitioner's organizational chart, and invoices documenting the petitioner's use of contract labor. Counsel submits a brief 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 or 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, which 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.

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

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

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

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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 petitioner filed the instant immigrant petition on June 3, 2004, noting that the beneficiary would be employed as the general manager of the corporation. In an appended letter, dated June 1, 2004, the vice-president of the foreign entity addressed its desire to employ the beneficiary in the United States as a result of his work experience in the foreign entity, and provided the following description for the beneficiary's proposed position:

As [g]eneral [m]anager of our U.S. subsidiary, [the beneficiary's] duties include directing the management of the corporation to ensure its successful operation; establishing goals and policies; implementing strategies to improve productivity and reduce operational costs; and

investigating investment opportunities to expand the company's holdings. In effect, [the beneficiary] has been managing the overall operations and essential functions with our U.S. subsidiary and, in doing so, has absolute authority to exercise a wide range of discretion over company policy and decision making, including investments, expansion, planning, staffing and budget.

The foreign company's vice-president also addressed the petitioner's use of contract workers, including foreman, fruit pickers, herbicide and fertilizer sprayers, irrigation and field workers, and equipment and truck operators, to perform the tasks associated with the avocado and lemon farm owned and operated by the petitioner. The petitioner stated "[the beneficiary] has absolute authority and discretion to negotiate contracts and retain the necessary labor force to achieve the company's initial business goals . . . [and] directs and supervises the activities of the field foreman, who has authority over the day-to-day on-site operations at the farm." As evidence of its use of outside labor, the petitioner submitted invoices, dated between January and December 2003, representing work contracted for by the petitioner from "Brooks Tropical, Inc.," a grove management and maintenance company. The petitioner's 2003 corporate tax return reflected compensation in the amount of approximately \$30,000 paid by the petitioner for outside labor. Additional evidence offered by the petitioner, such as information contained on the Form I-140 and its quarterly wage reports, indicated that at the time of filing the beneficiary was the sole employee of the petitioning entity.

The director subsequently issued a request for evidence, dated March 28, 2005<sup>1</sup>, noting that it was unclear whether the beneficiary would be employed in a primarily managerial or executive capacity, particularly because the beneficiary was the petitioner's sole employee. The director asked that the petitioner provide a "definitive statement" of the beneficiary's proposed job duties, in which the petitioner would also address the following issues: (1) the beneficiary's position title; (2) the percentage of time the beneficiary would spend performing each of the named job duties; (3) the employees that would report to the beneficiary, as well as their job titles, job duties, and educational levels; (4) the qualifications required for the beneficiary's position; (5) the beneficiary's level of authority; and (6) an explanation of who performs the services offered by the petitioner. The director noted that if the beneficiary does not supervise other employees, the petitioner should specify the essential function to be managed by the beneficiary. The director also requested that the petitioner identify the beneficiary's position within the company's organizational hierarchy. As additional evidence of the petitioner's staffing levels, the director asked that the petitioner submit copies of its Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, IRS Form 941, Employer's Quarterly Tax Return, and pay stubs.

Counsel for the petitioner responded in a letter dated June 7, 2005, in which he emphasized the petitioner's use of contract labor instead of employing its own staff of subordinate workers. As evidence of the petitioner's use of independent contractors, counsel addressed the invoices initially provided at the time of filing, and submitted additional invoices dated between January and December 2004.

With regard to the beneficiary's employment in the United States, counsel referenced a letter from the foreign entity, dated June 3, 2005, in which the company's vice-president stated:

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<sup>1</sup> The director issued a second request for evidence dated October 19, 2005, asking that the petitioner resubmit the documentary evidence previously requested, as it had not been attached to the instant record. The record reveals, however, that both the petitioner's original and second response to the director's request for evidence is part of the record.

As General Manager, [the beneficiary's] duties include the following:

- Directing the management and administration of our subsidiary to ensure its successful operation. (25%)
- Establishing goals and policies relating to investments, structure organization, creation of new projects and development plans. (10% – 15%)
- Implementing strategies to improve productivity and reduce operational costs. (10%)
- Investigating investment opportunities and investing the necessary capital, as needed, to expand business holdings and operations. (15% - 20%)
- Defining and implementing operating and financial objectives. (10%)
- Developing short-term and long-term plans and proposals with supporting budget forecasts and financial estimates for each operational area of the business. (10%)
- Establishing and negotiating contracts. (5% - 10%)
- Hiring/firing of employees, independent contractors, and other personnel. (5% - 10%)
- Reporting to our headquarters in Venezuela. (5% - 10%)

In summary, [the beneficiary] holds the senior most position in our U.S. subsidiary and has been delegated with the absolute authority to exercise a wide range of discretion over company policy and decision-making, including investments, expansion, planning, staffing and budget.

The foreign company's vice-president explained the beneficiary's "key and vital role" in the petitioner's growth, noting that under the beneficiary's "leadership and direction," the company acquired its 100-acre avocado and lemon farm and 11,200 square foot warehouse. He further noted the beneficiary's participation in the negotiation of a \$20 million contract to provide construction and consulting services for a project in the Dominican Republic, stating that despite the cancellation of the project, the beneficiary performed "extensive research and reporting" that allowed the foreign company "to make an informed and educated decision to go forward with such a significant investment of capital."

The petitioner submitted its organizational chart reflecting the beneficiary's subordinate staff as consisting of independent contractors in the positions of corporate attorney, accountant, foreman, truck operators, fruit pickers, herbicide and fertilizer sprayers, and irrigation field workers.

In a decision dated December 6, 2005, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Following an outline of the beneficiary's job duties, the director stated that the "vague and general" description failed to provide "an accurate portrayal" of the day-to-day job duties to be performed by the beneficiary. With regard to the petitioner's workforce, the director noted that both the petitioner's invoices and tax returns reflect a "minimal" amount of compensation paid by the petitioner to outside laborers. The director noted that the petitioner had not provided IRS Form 1099 reflecting the wages paid to its purported independent contractors, and further stated that it was unclear how many workers were utilized by the petitioner to perform the tasks associated with the farm. The director stated that as a result, the petitioner had not demonstrated that the beneficiary would be relieved from performing the tasks of the petitioner's business. Consequently, the director denied the petition.

On appeal, counsel for the petitioner claims that CIS did not consider the documentary evidence submitted, which counsel states demonstrates the beneficiary's proposed employment as a function manager. Counsel challenges the director's finding as to the vague and general job description, contending that the record provides an accurate description of the beneficiary's daily job duties. Counsel restates the job duties that were outlined in the foreign company's June 3, 2005 letter, and again notes "the beneficiary's leadership and direction" in acquiring both the avocado and lemon farm and warehouse. Counsel claims that the beneficiary is managing the petitioner's essential functions, stating:

[T]he beneficiary is the only individual within the organization who can manage, and is authorized to manage, the following functions: establishing and negotiating contracts and other related matters; hiring/firing employees and independent contractors (e.g., foremen, laborers, accountant(s), attorney(s), etc.); establishing goals and policies with respect to all significant issues affecting business operations; and investigating business and investment opportunities and expending capital to expand business operations and holdings.

Counsel contends "only a true executive could establish a new business in [the United States], investigate, arrange and make significant investments totaling \$2 million with a short period of time, and have the company succeed." Counsel references two unpublished AAO decisions, as well as several decisions from the Board of Immigration Appeals, in support of the claim that the beneficiary would be employed as a function manager. The AAO notes that 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.

Counsel further contends that the director erroneously focused on the size of the petitioning organization and the fact that the beneficiary was the sole employee. Counsel stresses that the classification as a multinational manager or executive is not restricted to large corporations. Counsel also disputes the director's finding of minimal documentation related to the petitioner's workforce, stating that each invoice submitted for the record "reflect[s] labor services and materials provided to the petitioner." Counsel claims common sense would suggest that "numerous workers" are required to maintain the petitioner's 100-acre farm, whose employment is reflected in the invoices from Brooks Tropical. Counsel states that in light of the "sizeable" labor force, the beneficiary would not be performing the day-to-day functions of the company, and stresses that the beneficiary would hold "the most senior position in the [petitioning entity]."

Counsel also emphasizes that CIS has previously approved three L-1A nonimmigrant visa petitions filed on behalf of the beneficiary as the petitioner's president. Counsel states that each petition was based on the same facts and parties as in the instant matter.

Upon review, the petitioner has not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The petitioner is obligated to submit documentary evidence "clearly describ[ing] the duties to be performed by the [beneficiary]." *Id.* As properly noted by the director, the limited job description offered by the petitioner does not identify the specific day-to-day managerial or executive tasks to be performed by the beneficiary as the company's general manager. The record does not thoroughly document the tasks to be performed by the beneficiary, specifically with

regard to his "management and administration of the U.S. company," his supervision of the purported independent contractors and the "new projects" to be created by him. *See 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) (requiring that the petitioner submit "concrete evidence" of the beneficiary's employment in a primarily managerial or executive capacity, such as how, when, where and with whom the beneficiary's job duties occurred). The AAO notes that despite having two opportunities to submit a more thorough outline of the beneficiary's job duties, the petitioner provided similar vague job descriptions in both its June 7, 2005 response and on appeal. 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. *Id.* Additionally, the petitioner has not addressed the beneficiary's specific role with regard to the management of the avocado farm or warehouse, or in connection with the petitioner's additional function of providing support services to businesses in the construction industry. 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)).

Counsel emphasizes the petitioner's use of contract workers to perform the day-to-day tasks of the United States business, and notes the use of attorneys and accountants to render professional services. While the record contains documentary evidence that the petitioner compensated day laborers for work performed at its avocado and lemon farm, the petitioner has not accounted for the performance of its warehousing functions, or for its use of professionals. The record is devoid of pay slips or invoices documenting wages paid to warehouse workers or compensation paid to an accountant or attorney. In fact, neither counsel nor the petitioner specifically addressed the purpose of the warehouse. While it is possibly being used to store agricultural products harvested from the farm, the beneficiary's role with regard to this particular project is unclear. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

Counsel stresses on appeal that the beneficiary would be employed as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a 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. 8 C.F.R. § 204.5(j)(5).

Counsel states that as the sole employee of the organization, the beneficiary exercises authority over the management of the petitioner's functions, including "investments, expansion, planning, staffing and budget." A critical review of the record, however, undermines counsel's claim that the beneficiary possesses managerial or executive authority over the petitioner's functions. Specifically, both counsel and the petitioner reference the beneficiary's purported "leadership and direction" in the petitioner's acquisition of an avocado farm and warehouse as evidence of his managerial position. The warranty deeds associated with the purchase of these properties, however, are dated more than eight months before the beneficiary entered the United States under an L-1A nonimmigrant visa petition for employment in the petitioning entity. The AAO also

notes that neither settlement statement is signed by the beneficiary. In fact, the settlement statement related to the purchase of the warehouse identifies the petitioner's corporate secretary as the borrower. The beneficiary is not identified as a representative of the petitioning entity on either document. As a result, it would appear that in fact, the beneficiary was not involved in managing the petitioner's investment and expansion functions, as claimed by counsel and the petitioner. 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 Dec. 582, 591 (BIA 1988).

Moreover, the record suggests that even while employed in the United States, the beneficiary would not possess the authority to manage or direct the United States organization. Specifically, in the June 1, 2004 letter, the foreign entity's vice-president stated that "[the foreign entity] [has] made an informed decision to contract outside labor for our subsidiary's business activities." He further stated in the June 3, 2005 letter that "[i]t was only through [the beneficiary's] extensive research and reporting that we [the foreign entity] were able to make an informed and educated decision to go forward with [investing \$2 million in the United States subsidiary]." These statements suggest that the decision-making authority is not held by the beneficiary, but rather by the foreign corporation. It appears that despite the beneficiary's employment in the United States, the foreign entity ultimately determines the petitioner's goals and policies, and, in effect, manages the organization. The record does not establish that the beneficiary would manage or exercise direction over the petitioning organization or its functions. See 101(a)(44)(A). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Counsel correctly observes on appeal 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). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Here, the record contains numerous inconsistencies that would suggest that the petitioner's reasonable needs would not be met through the employment of the beneficiary and the laborers contracted to work on the petitioner's farm. As already discussed above, the petitioner has not demonstrated its use of professionals for the performance of such administrative functions as payroll, bookkeeping, bill paying and the preparation of its quarterly tax returns, as well as the performance of any functions related to the petitioner's warehouse, such as receiving and stocking goods, inventory, or distributions, and the associated paperwork. Again the petitioner did not address or document the use of outside contractors in its warehouse or explain who performs the duties associated with providing support services to the construction industry. As such, the petitioner has not demonstrated that its reasonable needs would be met by the services of the beneficiary as its general manager and its claimed contract workers.

The vague job description offered by the petitioner, as well as the inconsistencies addressed above, prevents a finding that the beneficiary would be employed by the United States entity in a primarily managerial or

executive capacity. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification. As a result, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not demonstrated that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity. The petitioner noted that the beneficiary was employed as the foreign entity's operations manager. The limited job description offered by the petitioner in both its June 1, 2004 and June 3, 2005 letters, however, fails to describe the specific managerial or executive tasks performed by the beneficiary in the position of operations manager. The petitioner stated that the beneficiary "was responsible for overseeing and directing the purchase, allocation, maintenance and repair of our company's equipment and machinery," aided in restructuring the company's operations department, and supervised fifty-nine employees, including three managers. The petitioner did not explain what job duties the beneficiary performed on a daily basis that would establish his role as a manager or executive. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to 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. at 1108.

Additionally, the petitioner failed to demonstrate that the beneficiary held a managerial or executive position in the foreign entity's organizational hierarchy. The petitioner's blanket statement that the beneficiary directed fifty-nine workers, of which three were managers, is not sufficient to demonstrate his employment in a primarily managerial or executive capacity. The AAO notes that the organizational chart depicted in the foreign entity's brochure does not identify the beneficiary's former position of operations manager. In addition to the lack of evidence related to the beneficiary's job duties, the record does not establish that the petitioner managed or directed a support staff that would perform the functions of the operations department. The AAO notes that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). For this additional reason, the petition will be denied.

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 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Counsel stresses on appeal that CIS has previously approved three nonimmigrant L-1A visa petitions filed for the benefit of the beneficiary. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. 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 addition, unless a petition seeks extension of a "new office" petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and CIS normally accords the petitions a less substantial review. *See* 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). Because CIS spends less time reviewing L-1 petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30 (recognizing that CIS approves some petitions in error).

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 prior nonimmigrant approvals do not preclude CIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory 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). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approvals by denying the present immigrant petition.

Finally, 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.