

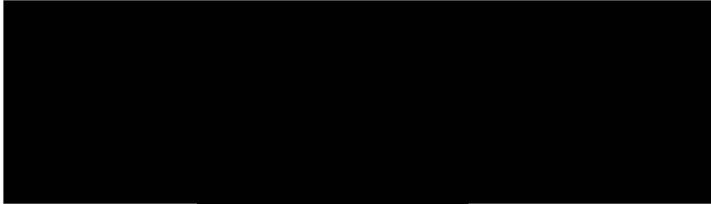


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FILE:

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Office: TEXAS SERVICE CENTER

Date:

IN RE:

Petitioner:
Beneficiary:



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, 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 August 2001. The petitioner imports swimwear and avers it is diversifying its operations to import granite and stainless steel products. The petitioner seeks to employ the beneficiary as its managing director and chief executive officer. 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. The director also questioned, without making a specific determination, whether the petitioner had the ability to pay the beneficiary the proffered annual wage.

On appeal, counsel for the petitioner submits new evidence claiming that the evidence was not available when the petition was filed. Counsel asserts that the new evidence clearly establishes the beneficiary's past, present, and future role as a manager/executive within the organization and the petitioner's ability to pay the proffered wage.

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 first 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.

In a January 14, 2005 letter on counsel's letterhead, the petitioner's president stated the beneficiary had been and currently was employed in an executive position within the organization and oversaw business operations in Brazil and Florida. The petitioner stated further:

[The beneficiary] will continue to plan and direct all aspects of company policies, objectives and initiatives, including marketing efforts for both companies. He will continue to be responsible for the short and long term profitability and growth, budget planning and administration, meeting with other professionals such as accountants and attorneys, and making hiring and firing decisions on behalf of the company. [The beneficiary] is the senior-most executive in the United States with full authority to direct the U.S. subsidiary as he sees fit.

The petitioner also provided the first page of its Internal Revenue Service (IRS) Form 941, Employer's Quarterly Federal Tax Return for the fourth quarter of 2004, the quarter ending prior to the filing date of this petition. The IRS Form 941 showed total wages paid of \$9,250.

The petitioner explained that it owned a 50 percent interest in a separate company, Brazil America Stones Inc., (BAS) which would assist the petitioner in diversifying its operations to include the importation of granite and colored stainless steel from Brazil.

On May 18, 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 evidence of the petitioner's staffing including position titles, duties, and educational level of all employees. The director further requested copies of the corporation's income tax returns for 2001 through 2004 and IRS Forms W-2, Wage and Tax Statement, for all employees for the years 2001 through 2004.

In a July 13, 2005 statement on the letterhead of the petitioner's claimed partially-owned subsidiary, BAS, appended to the petitioner's response, the petitioner provided the same job description of the beneficiary's duties as submitted with the initial petition, adding that:

[The beneficiary] is an integral part of this expansion and success of our company, due to his understanding and familiarity with the logistics of import/export procedures, his familiarity with the culture and the languages of the countries (Spanish, English, Portuguese and Italian)

with which our company has commercial ties, and his deep knowledge of international commerce.

The petitioner further added that the beneficiary "directs all the strategic decisions taken on behalf of the company," including the company's decision to enter into an exclusive agreement with a Brazilian company to import colored stainless steel products into the United States. The petitioner's president indicated: "WE [sic] are in final negotiations and are currently underway for an order of 28,000 blue stainless steel sheets with a value of approximately Four Million Dollars."

The petitioner provided its 2004 IRS Form 1120, U.S. Corporation Income Tax Return, showing \$39,623 paid in salaries; a 2004 IRS Form W-2, issued to the beneficiary for \$30,000; and an IRS Form 941, for the first quarter of 2005, the quarter in which the petition was filed, issued by BAS to [REDACTED] the amount of \$5,489.52. Counsel for the petitioner stated that the petitioner had merged with its corporate partner, BAS, and noted that BAS is the 100 percent owner of the petitioner. Counsel also indicated that the petitioner had purchased all the outstanding shares of BAS and now owned 100 percent of BAS. The petitioner provided BAS's stock certificate number 3 issued to the petitioner in the amount of 10,000 shares dated May 1, 2005.¹

On September 13, 2005, the director denied the petition, determining that the beneficiary would perform some of the day-to-day duties of the business. The director found it reasonable to assume that "this business does not need a full[-]time executive to manage two employees and to make decisions regarding the company." The director concluded that based on the evidence submitted, the beneficiary had not and would not be employed primarily in a qualifying managerial or executive capacity.

On appeal, counsel for the petitioner submits new evidence and asserts that the new evidence clearly establishes the beneficiary's past, present, and future role as a manager/executive within the organization. The documentation submitted consists of five contracts entered into by the petitioner's claimed wholly-owned subsidiary, BAS, all dated subsequent to filing the petition in February 2005. Counsel contends that because of the increase in the petitioner's business, it will hire additional employees, including a full-time general contractor. Counsel claims that the beneficiary was responsible for generating the additional business and that "[h]is executive function is to oversee the execution of all of the projects." Counsel notes "[t]hese types of projects do not evolve overnight from thin air. [The beneficiary] has been planting these 'seeds' for over one year, negotiating and planning these deals into fruition." Counsel contends that the beneficiary's work to plan, negotiate, and broker these contracts sheds light on the beneficiary's duties and responsibilities at present and during the last year. Counsel also provides a revised organizational chart showing the beneficiary

¹ It is not clear from counsel's inconsistent statements whether the petitioner is claiming to own the new company, BAS, or whether the petitioner no longer exists as a viable company and has merged with a new entity. Stock certificate number 3 issued by BAS suggests that the petitioner now owns 100 percent of BAS. However, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

as president, identifying a general manager, and listing several departments that do not include the names of any employees.

Counsel's assertions are not persuasive. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner has not established that the beneficiary's position was or would be in a managerial or executive capacity when the petition was filed. The petitioner's plans to hire additional employees and the contracts submitted are not relevant when considering the beneficiary's position when the petition was filed.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). The petitioner's initial description of the beneficiary's duties was general and did not provide a comprehensive understanding of the beneficiary's daily duties. Statements such as, "plan and direct all aspects of company policies, objectives and initiatives, including marketing efforts for both companies," "responsible for the short and long term profitability and growth, budget planning and administration, meeting with other professionals such as accountants and attorneys, and making hiring and firing decisions on behalf of the company," and is "the senior-most executive in the United States with full authority to direct the U.S. subsidiary" are insufficient. 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.). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1103.

The petitioner's response to the director's request for additional evidence also failed to establish that the beneficiary was performing primarily managerial or executive duties. Again, the petitioner referenced the petitioner's broad business plans and objectives but did not sufficiently define the beneficiary's role within the organization. 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 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. General oversight exercised by an owner of a business or a sole employee of an organization is not evidence that the beneficiary will perform primarily managerial or executive duties for the petitioner.

On appeal, counsel for the petitioner hints that the beneficiary had been negotiating for agreements to import a different product and brokering contracts for a claimed subsidiary company to install the different products. However, the beneficiary's duties in this regard are not managerial or executive; at most the beneficiary's tasks in this regard are marketing the petitioner's services or performing the very services necessary for the petitioner to continue its operations. Neither the petitioner nor counsel explain how the petitioner is continuing its swimwear operation, if in fact it is, without the beneficiary's involvement in the routine operations of the company, as the petitioner does not employ any other employees. 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). Likewise, the petitioner and counsel fail to establish that the beneficiary's entrepreneurial dealings to start up a separate company and import a different type of product comprise primarily managerial or executive tasks on behalf of this petitioner.

Counsel should note that the statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. In this matter, the petitioner has provided evidence that it employed only one individual, the beneficiary; thus the record does not establish that the beneficiary directs the management of the organization.

Although the petitioner does not specifically claim that the beneficiary is a managerial employee, the record is also insufficient to establish that the beneficiary's daily tasks fulfill the criteria of a manager as defined by the statute. The record presented does not substantiate that the petitioner employed anyone other than the beneficiary when the petition was filed. The AAO acknowledges that the petitioner claimed on its Form I-140 that it employed three individuals but the record does not include evidence substantiating this claim. 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 statute does not require that the beneficiary necessarily manage other employees, however, the record also fails to establish that the beneficiary is 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). 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. In this matter, the petitioner has not provided evidence that it employs anyone, other than the beneficiary, to carry out the routine operational and administrative tasks associated with continuing its operations as a viable business. 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 the beneficiary manages an essential function.

Further, the record in this matter is flawed in that the petitioner has presented evidence of a separate entity in which the petitioner initially claimed a 50 percent interest.² The petitioner has presented evidence that the separate entity employed one employee when the petition was filed. See the IRS Form 941 for the first quarter of 2005 filed by BAS. However, the petitioner has not sufficiently explained the beneficiary's relationship with the petitioner's claimed subsidiary. The AAO cautions that each corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). The petitioner's subsidiary operates as a separate and distinct entity from the petitioner with a separate federal tax identification number. The petitioner has not explained how the petitioner's 50 percent interest in a separate entity that employed one individual when the petition was filed elevates the beneficiary in this matter to a managerial or executive position. Moreover, the petitioner has not explained why *it* claimed to employ three individuals on the Form I-140. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (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. The totality of the record in this matter raises questions regarding the legitimacy of the beneficiary's position. Upon review of the record in

² The AAO notes that the petitioner claims to have purchased the separate entity's remaining outstanding shares in May 2005, three months after filing the petition. However, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Further, the petitioner's submission of the separate entity's stock certificate number 3 is insufficient to establish ownership. Stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. Moreover, the relevance of a separate entity's business to this petition has not been sufficiently demonstrated.

this matter and as discussed above, the petitioner has not established that the beneficiary's duties and those of any claimed subordinates elevate the beneficiary's position to a primarily managerial or executive position. For this reason, the appeal will be dismissed.

Although the director questioned the petitioner's ability to pay, the director's decision did not make a specific determination. The AAO finds, beyond the decision of the director, that the petitioner has not established its ability to pay the beneficiary the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The AAO observes that the petitioner on the Form I-140, Immigrant Petition for Alien Worker, indicated that the beneficiary's proffered wage would be \$580 per week or \$30,160 annually, while counsel in a January 14, 2005 letter appended to the petition indicated that the beneficiary would receive \$35,000 annually. Upon examination of the record, whether considering that the petitioner offered \$30,160 or \$35,000 annually, the AAO finds that the petitioner's proffered wage was not a "realistic" or credible job offer, based upon the petitioner's financial ability. *See e.g. Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg. Comm. 1977). Although the petitioner claims to have paid the beneficiary \$30,000 in 2003 and 2004, the petitioner also had a net taxable income of negative \$38,538 in 2003 and negative \$16,593 in 2004. In addition, the petitioner had negative net current assets in both years. Upon review of the totality of the record, the petitioner realistically did not have the ability to pay the beneficiary the proffered wage when the petition was filed. As observed above, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. at 49. For this additional reason, the petition will not be approved.

In addition, the petitioner has not established that the beneficiary performed primarily managerial or executive tasks when employed at the foreign entity. The petitioner initially provided a list of the foreign entity's claimed employees. The list identified seven individuals by name and included each person's title in Spanish.³ In response to the director's request for further evidence, the petitioner provided an undated statement on the foreign entity's letterhead describing the beneficiary as the foreign entity's sales manager who spent 50 percent of his time overseeing the creation and production of the advertising and the advertising media development and 50 percent of his time establishing new clients and new suppliers of media production

³ Because the petitioner failed to submit certified translations of the positions held by these employees, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

products. The statement also indicated that there were two employees, a graphic designer and an editor who reported directly to the petitioner. In contrast to this statement, the foreign entity's organizational chart submitted in response to the director's request for evidence indicated that the beneficiary held the position of director with a sales and finance department subordinate to him and a creative production team of graphic design, editor and supplier resources subordinate to the sales department and a clerk subordinate to the finance department. The organizational chart, however, also contained a statement that the beneficiary directed production through the graphic designer, the editor, and various media venues.

Upon review of all the information in the record on this issue, the record does not establish that the beneficiary performed primarily managerial or executive tasks. First, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Second, at most, the record shows that the beneficiary performed a routine sales function as well as some first-line supervisory duties of non-professional employees. The record is insufficient to establish that the beneficiary's tasks for the foreign entity comprised primarily managerial or executive tasks. 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 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The AAO acknowledges that CIS previously approved L-1A nonimmigrant 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.

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.