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U.S. Citizenship
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By

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FILE:

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Office: CALIFORNIA SERVICE CENTER

Date:

MAR 31 2006

WAC 00 014 51632

IN RE:

Petitioner:

[Redacted]

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, California Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with a notice of his intention to revoke the approval of the preference visa petition, and his reasons therefore. The director ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a California corporation engaged in distributing, marketing, purchasing, and selling computer components, speakers, monitors, and other hi-tech products in North America. It claims to be a subsidiary of Beijing Read Technic and Trade Development, the beneficiary's overseas employer. The petitioner seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. Upon further review of the record, the director determined that the petitioner failed to establish its ability to employ the beneficiary in a managerial or executive capacity at the time the Form I-140 was filed. The director also determined that the petitioner failed to provide sufficient evidence consistent with its claim regarding its ownership and control. Based on these two independent grounds of ineligibility the director revoked the approval of the petition.

On appeal, counsel disputes the director's findings and submits a brief in support of his assertions.

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 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 first issue in this proceeding is whether the petitioner submitted sufficient evidence to establish that it was able to employ the beneficiary in a managerial or executive capacity at the time the Form I-140 was filed.

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 support of the initial petition, the petitioner provided a letter dated October 13, 1999, which contained the following description of the beneficiary's proposed position:

We have a continued need for [the beneficiary]'s participation in our business aspects. She has an intimate knowledge about the company's structure, policies, and goals. Her job duties

will include both managerial and executive responsibilities. [She] will continue to plan, organize, direct and oversee every business aspect of the company including finances, daily operation, recruiting, training, and overseeing managers, professionals and staff, assuring compliance with all of the regulatory requirements.

The petitioner also provided its organizational chart, which shows that the beneficiary is one of the three members of the petitioner's board of directors, the beneficiary's direct supervisory body. The chart shows two positions directly subordinate to the beneficiary—an operations manager in charge of purchase and sales and a secretary in charge of administration and finance. The chart further indicates that each of the beneficiary's subordinates supervises at least one other individual.

On August 23, 2000, the director issued a request for additional evidence instructing the petitioner to provide job descriptions and educational levels for all of the beneficiary's subordinates as well as a separate list of all of the petitioner's employees and their dates of employment from the date of the company's establishment. The petitioner was also asked to provide all of its 1999 quarterly wage reports showing the names and social security numbers of the petitioner's employees during each respective quarter.

The petitioner's response included an employee list, which indicated that at the time the Form I-140 was filed, the petitioner employed a total of four individuals in the United States and claimed to employ five additional employees abroad. The petitioner's fourth quarterly wage report in 1999 also identified the four individuals that were named in the U.S. employee list.

Upon further review of the record and the information submitted by the petitioner, the director issued a notice of his intent to revoke (NOIR), dated May 15, 2005. The director discussed the petitioner's organizational chart and employee list, stating that only four of the employees named in the petitioner's organizational chart were also named in the petitioner's payroll records and that one of those four employees was receiving a salary commensurate with that of a part-time employee. It is noted, however, that the director's observation was based on his review of the petitioner's 1999 *third* quarterly wage report, which identifies the petitioner's employees directly prior to the time period during which the petition was filed. As the petition was filed during the 1999 *fourth* quarter, the petitioner's personnel structure during the 1999 *third* quarter is irrelevant. Therefore, any of the director's comments reflecting the irrelevant time period are hereby withdrawn.

Notwithstanding the error cited above, the director properly noted that the petitioner's wage reports did not corroborate its organizational chart. Accordingly, the director suggested that submission of additional evidence might overcome the grounds of ineligibility. Namely, the director requested a more detailed description of the beneficiary's duties during a typical day on the job. The petitioner was given 30 days in which to respond to the director's concerns.

In response, counsel submitted a brief dated June 13, 2005, which contained the following description of the beneficiary's position in the United States:

[The beneficiary] has been the [p]resident of [the petitioner] since December 1998. In that capacity, she has led [the petitioner] to growth and success by applying her knowledge about [the petitioner's] products. As [the petitioner]'s [p]resident, she has been spending and will continue to spend fifteen percent (15%) of her time performing executive duties such as directly collaborating with Mr. [REDACTED] [the foreign entity]'s [p]resident, as well as with

the respective [m]anagers in [a]dministration, [o]peration, [r]esearch & [d]evelopment, and [m]arketing [d]epartments at [the foreign entity]. . . .

Under the direction of [the foreign entity]'s [p]resident and [b]oard of [d]irectors, she establishes the goals and objectives of [the petitioner] so that it may continue to serve as the U.S. marketing and distribution center of [the foreign entity]. She has and continues to devise strategies, policies and procedures to ensure that the objectives are met.

For example, [the beneficiary]'s experience with [the petitioner's] customers compelled her to recommend that new offices in China and Hong Kong be opened in response to customer feedback. In her role as [the petitioner]'s [p]resident, she recommended to [the foreign entity]'s [b]oard of [d]irectors that [the] said offices be established. In response, [the foreign entity] listened to [the beneficiary]'s analysis and suggestion and opened the Shenzhen and Hong Kong offices to facilitate distribution of products. . . .

In addition, because [the petitioner] is the marketing and distribution site in the United States, [the beneficiary] has been spending and will continue to spend thirty percent (30%) of her time overseeing the [m]arketing and [r]esearch [d]evelopment's research studies that the [sic] determine the needs and preferences of [the petitioner]'s clientele, existing and potential market conditions, sales reports and the potential sales of new products to help [the foreign] parent company, assess the U.S. market and understand how to develop, design, and manufacture or enhance computer and electronic components that will flourish in the U.S. market. . . .

[The beneficiary] oversees the development of [the petitioner]'s product line and receives reports and requests for approval from her employees to determine which products should be sol[d] in the United States. . . .

[The beneficiary] has been spending and will continue to spend twenty [percent] (20%) of her time determining how to further develop existing departments to allow her to plan policies that will allow [the petitioner] to operate more efficiently and effectively. . . . She has been in charge of recruiting and hiring professional staff In addition, as its [p]resident, [the beneficiary] decided to move the operations of [the petitioner] in order to manage the company's expenses. . . .

[The beneficiary] has been spending and will continue to spend thirty-five [percent] (35%) of her time overseeing, directing and conferring with the [p]roduct [m]anager in the Shenzhen office (which handles manufacturing) and acting as a liaison between [the petitioner] and the parent company.

Counsel further disputed the director's assertion, introducing a recent opinion issued by the United States Court of Appeals for the Second Circuit, *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004). In that opinion, the court in *Firstland* interpreted the third and fourth sentence of section 205 of the Act, 8 U.S.C. § 1155 (2003), to render the revocation of an approved immigrant petition ineffective where the beneficiary of the petition did not receive notice of the revocation before beginning his journey to the United States. *Firstland*, 377 F.3d at 130. Counsel asserts that the reasoning of this opinion must be applied to the present

matter and accordingly, CIS may not revoke the approval because the beneficiary did not receive notice of the revocation before departing for the United States, since he was already in the United States when the director issued the revocation.

According to the Form G-28 submitted on appeal, the petitioner is located in California; thus, this case did not arise in the Second Circuit. Even if this case did arise in the Second Circuit, however, *Firstland* is no longer a binding precedent.¹

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). See Pub. L. No. 108-458, 118 Stat. 3638 (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads:

The Secretary of Homeland Security 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. Such revocation shall be effective as of the date of approval of any such petition.

Furthermore, section 5304(d) of Public Law 108-458 provides that the amendment made by section 5304(c) took effect on the date of enactment and that the amended version of section 205 applies to revocations under section 205 of the Act made before, on, or after such date. Accordingly, the amended statute specifically applies to the present matter and counsel's *Firstland* argument no longer has merit.

Additionally, contrary to counsel's assertion that revoking approval of the petitioner's Form I-140 would be a violation of federal law, section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security 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 Estime*, . . . 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

¹ The *Firstland* opinion summarily overturned 35 years of established agency precedent. See *Matter of Vilos*, 12 I&N Dec. 61 (BIA 1967). Counsel's arguments illustrate the illogical effects of the Second Circuit's reasoning: In the present matter, the beneficiary entered the United States as an L-1A nonimmigrant on December 12, 1998, ten months prior to the filing of the Form I-140 immigrant petition and more than six years prior to the revocation of the petition's approval. Accordingly, it was physically impossible for CIS to have notified the beneficiary of the revocation before she departed for the United States. In effect, counsel's interpretation of *Firstland* would have created a situation where any alien would have an irrevocable immigrant visa petition if the alien simply waited until after he or she arrived in the United States to file the petition.

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 petitioner also provided various correspondence illustrating the beneficiary's discretionary authority with regard to issues concerning the petitioner's growth and development.

On July 11, 2005, the director revoked the approval of the petition based, in part, upon the conclusion that at the time the I-140 was filed, the petitioner lacked a sufficient organizational structure to relieve the beneficiary from having to perform the petitioner's daily operational tasks.

On appeal, counsel asserts that the employees listed in the petitioner's organizational chart are the same employees that are listed in the petitioner's quarterly tax return for 1999. However, counsel makes no distinction between the relevant quarterly wage report, which names the petitioner's employees during the fourth quarter in 1999, and the remaining quarterly wage reports, which are not relevant in the instant proceeding, as they pertain to a time period prior to the filing of the Form I-140. Contrary to counsel's assertion, the sales manager, who is depicted in the organizational chart as one of the beneficiary's subordinates, is not named in the petitioner's fourth quarterly wage report. In fact, according to the employee list provided by the petitioner in response to the director's August 2000 RFE, the individual shown in the organizational chart as the petitioner's sales manager was only employed by the petitioner from May 1999 to September 1999. Thus, while this individual was named in the petitioner's third quarterly wage report, he was not included in the *fourth* quarterly wage report, as he was no longer employed by the petitioner at the time the Form I-140 was filed with the U.S. Citizenship and Immigration Services (CIS).

Similarly, the petitioner's 1999 fourth quarterly wage report does not include the individuals named as the petitioner's accountant/secretary, accountant assistant/warehouse employee, and one of two U.S. sales representatives, respectively. As such, only four out of a claimed eight U.S. employees were actually documented as having been employed by the petitioner during the relevant time period. While the petitioner claimed that an additional five employees were carrying out duties abroad on its behalf, this claim is without merit, as these individuals were on the foreign entity's payroll. If the AAO were to accept the petitioner's flawed reasoning, any petitioner would be free to claim its foreign affiliate's work force as part of its own U.S. organizational hierarchy in order to enhance the size of a beneficiary's support staff and further its claim that it is able to relieve a beneficiary from having to perform nonqualifying duties.

Furthermore, the petitioner's claim that the beneficiary can successfully manage employees who actually perform their work thousands of miles away suggests that the beneficiary could also manage the petitioner's U.S. employees while actually remaining in China, thereby eliminating all need for any petitioner to file an I-140 to permanently employ anyone as a multinational manager or executive. In sum, the petitioner's claim that the beneficiary supervises overseas employees has no probative value in establishing the petitioner's eligibility to classify the beneficiary as a multinational manager or executive.

The petitioner has failed to provide an accurate illustration of its actual organizational hierarchy during the relevant time period, which, according to the fourth quarterly wage report for 1999, included the beneficiary, a purchasing manger who supervised one technician, and a single U.S. sales representative, who was most likely supervised by the beneficiary, as the petitioner did not employ a sales manager (as shown in the

organizational chart) at the time the petition was filed. Contrary to the claims made in the organizational chart submitted on appeal, the record does not show that the petitioner had an accountant/secretary, an accountant assistant/warehouse employee, any research and development personnel, or anyone aside from Rachel Wei assisting with the sales efforts in the United States. Based on the beneficiary's limited support staff, the AAO has serious doubt that at the time the petitioner filed the Form I-140, it was able to employ the beneficiary in a position that would have involved primarily managerial or executive duties.

Moreover, even if the petitioner were able to submit sufficient documentation to support the illustration of its organizational hierarchy, the regulations require that the petitioner provide a clear description of the beneficiary's proposed job duties establishing that the beneficiary will be employed in a primarily managerial or executive capacity. *See* 8 C.F.R. § 204.5(j)(5). In addition to the job description provided in response to the NOIR, the petitioner provided the following supplemental description on appeal:

- Conduct official meeting with manager[ial] level employees every month to discuss the degree of progress of the purchases, sales, budgets and financial situation. In addition to specific topics, the essential points that [were] mentioned in [the] previous month along with discussions of the overview of sales in [the] current month are also mentioned during monthly meetings.
- Conduct necessary meeting[s] other than monthly meetings with all employees of the company . . . to announce and communicate all company plans, operations, goals, and policy issues. To understand fully regarding [sic] company's all [sic] aspects [sic] operations.
- Examine the [a]ccountant's financial reports and activity data to determine the strategy and progress of the company's business.
- Conduct temporary meeting[s] to emphasize the importance of keeping business confidential [sic] information and provid[ing] good customer service to maintain good business reputations [sic].
- Discuss with department heads to make final decisions on attending trade shows to meet with varies [sic] suppliers and create more business opportunities.
- Check e-mails or other source[s] of correspondence with overseas employees.
- Attend local Chamber of Commerce meetings, meet with other business associates, plan for the network sales and establish good connections with bankers for possible new project loans
- Set policies of budgets for business trips.
- Structure company policies to meet safety standards.
- Evaluate manager[ial] personnel and employees['] work performances every quarter end.

- Recruits [sic], train, evaluate, promote or terminate the managerial personnel based on their job performance[s], qualification[s] and contributions.
- Represent the [b]oard of [d]irectors to host special events such as annual company parties, etc.
- Organize plans to participate in future (2006) trade shows both locally and internationally.
- Attend local electronic trade exhibition[s] with China [s]ales [representatives].
- Attend C.E.S. (Computer and Electronic Show) in late November 2004.
- Plan and organize to [sic] participate in C.E.S. of [sic] October 2005.

While portions of the above job description suggest that the beneficiary would oversee the work of a subordinate managerial staff, the evidence of record shows that the petitioner had only one employee at the managerial level at the time the Form I-140 was filed. Therefore, it is unlikely and highly improbable that the beneficiary would have devoted a significant portion of her time to conducting meetings with managerial employees and department heads and evaluating a managerial staff. 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)).

Further, as the record lacks evidence that the petitioner employed an accountant at the time it filed the Form I-140, the AAO is unclear as to who was providing the financial reports and activity data the beneficiary was purportedly examining. While the above description indicates that the beneficiary has discretionary authority commensurate with that of an upper-level managerial employee, the petitioner did not identify the actual duties involved in setting the policies with regard to budgets and safety standards or organizing local and international trade shows. 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. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Finally, even though the petitioner states that the beneficiary would attend local trade exhibitions, this duty is easily attributed to someone in a sales-related position. The petitioner did not provide sufficient information to distinguish the beneficiary's role and that of a sales representative with respect to the task of attending trade shows. It is noted that an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Thus, not only is the petitioner obligated to specify the beneficiary's proposed daily tasks in order to meet its burden of proof, the petitioner must also establish that the beneficiary's proposed position is *primarily* comprised of tasks within a managerial or executive capacity.

In the instant matter, the petitioner has effectively provided only two descriptions of the beneficiary's proposed position—the first was provided in response to the NOIR and the second was provided on appeal. However, neither of the job descriptions satisfies the petitioner's burden. While the initial job description was

accompanied by a percentage breakdown, it was heavily focused on an organizational structure that included a research and development department as well as other employees who were clearly employed by the foreign entity, not the U.S. petitioner. As such, the petitioner failed to provide a job description based on the organizational hierarchy it had in place at the time it filed the Form I-140. While the latter position descriptions provided some additional detail with regard to the beneficiary's actual duties, they too were based on a more complex organizational hierarchy than the one depicted by the evidence of record and failed to adequately illustrate what the beneficiary would have been doing on a day-to-day basis at the time the petition was filed. Thus, based on the evidence furnished, it cannot be found that the petitioner would have been able to employ the beneficiary in a primarily qualifying managerial or executive capacity when the I-140 petition was filed.

The second issue in this proceeding is whether the petitioner had a qualifying relationship with the beneficiary's foreign employer at the time the petition was filed.

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

Affiliate means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

* * *

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The director concluded that the petitioner did not have the requisite qualifying relationship. This conclusion was based on the conclusion that the petitioner failed to provide contemporaneous evidence showing that the foreign entity paid for its claimed ownership of the petitioner's stock. The director also pointed out that Schedules E of the petitioner's corporate tax returns from 1998 through 2004 contradict the petitioner's claim regarding its ownership, as each of the tax returns shows that the beneficiary owns 100% of the petitioner's stock.

On appeal, counsel explains that even though the foreign entity intended to pay for the petitioner's stock in 1996, the final payment transaction did not occur until February of 1997. In support of this claim, the petitioner provides the foreign entity's board resolution and its English translation indicating that a board of directors meeting was held on February 10, 1997 and that the foreign entity acknowledged its inability to transfer the necessary funds to complete its purchase of the petitioner's stock. The resolution also indicated that the foreign entity had commenced the fund transfer procedures with its local bank and that the petitioner

was shortly due to receive the promised funds. The petitioner provided a copy of its February 1997 bank statement, which showed that the foreign entity was the originator of a fund transfer that took place on February 21, 1997 and totaled \$99,995. Thus, while the director properly pointed out the discrepancy between the petitioner's claim and its tax returns, the petitioner provided sufficient contemporaneous documentation to resolve the discrepancy, thereby overcoming the second ground of the director's revocation.

Nevertheless, the petitioner failed to establish that it was prepared to employ the beneficiary in a primarily managerial or executive capacity at the time the petition was filed. Therefore, the AAO finds that the initial decision to approve the petition was not warranted and will uphold the director's decision revoking the improperly granted approval of the I-140.

As a final note, the AAO notes that the petitioner was previously approved for L-1 employment of the beneficiary. With regard to the beneficiary's L-1 nonimmigrant classification, 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 Form I-129 nonimmigrant 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 immigrant 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).

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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.