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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **MAY 10 2006**
SRC 04 016 51235

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

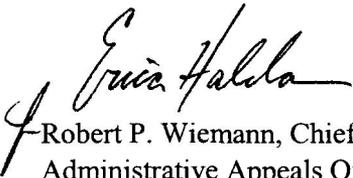
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed the instant 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 limited liability corporation organized in the State of Texas that is operating as a wholesaler of household goods. The petitioner seeks to employ the beneficiary as its chief executive officer.¹

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 contends that the evidence offered by the petitioner established the beneficiary's eligibility for the requested classification. In an appellate brief, counsel outlines the statutory definition of "executive capacity," claiming that the beneficiary's proposed employment satisfies each of the statutory criteria. 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

¹ The AAO notes that on July 17, 2000 an I-140 immigrant petition was filed by the petitioner requesting employment of the beneficiary herein as a skilled worker under Section 203(b)(3)(A)(i) of the Act. Despite certification under the penalty of perjury, the information provided by the petitioner in Part Four of the Form I-140 of the instant filing indicates that the beneficiary had not previously had an immigrant visa petition filed on his behalf.

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 the instant matter 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 petition on November 10, 2003, noting that the beneficiary would be employed as the chief executive officer of its three-person staff. In an appended letter, dated October 13, 2003, the petitioner provided the following job description for the beneficiary's proposed position:

[The beneficiary] establishes the goals and policies of the organization, supervises and controls managerial employees, financial files, forms and accounting record and tax records of the company including but not limited to reporting assets, liabilities and net income of the company.

As additional documentation, the petitioner provided an outline of its organizational structure, noting that the beneficiary would occupy the positions of president-chief executive officer and general manager-comptroller, while the remaining three workers would be employed in the positions of "secretary-commercial manager," "international sales," and "office clerical."

The director issued a request for evidence, dated February 8, 2005, asking that the petitioner provide a "definitive statement" of the beneficiary's proposed position in the United States, including: (1) his position title; (2) the related job duties; (3) the percentage of time to be spent on each task; (4) the managers or employees who would report directly to the beneficiary; (5) the qualifications necessary for the beneficiary's position; and (6) the level of authority held by the beneficiary. The director asked that the petitioner specify the beneficiary's position in the organizational hierarchy of the United States company, and provide job descriptions for the beneficiary's subordinates, as well as an explanation of whether the subordinate employees would provide the services or produce the products offered by the petitioner. The director also requested that the petitioner submit proof of its staffing levels, including Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for the years 2003 and 2004.

Counsel for the petitioner responded in a letter dated April 8, 2005. In an attached letter, the petitioner stated that as the company's president, the beneficiary "has the administrative assignment as Financial and Executive Director," during which:

[He] supervises and controls one manager and three employees, who report directly to him, he cares [for] the financial files, forms, accounting and tax records of the Company locally including the reports to the government authorities, and he is acquainted with the top trading shows worldwide, suppliers negotiations, budgeting and payments to them.

* * *

The percentage of time spent on each duty depends [on] the year[ly] business season; for instance: the annual tax report, means the three first months of the year, demands from [the beneficiary] almost 60% of the time spent on this duty and 40% divided among the others. During the trading shows seasons, spring (April – June) and fall (August – October), he spends more than 70% attending them. This time is shared with the foreign Company. The rest of the year he spends 50% of the time with the development & investment division, 20% in administrative meetings and 30% in general supervising the well doing activities in the whole Company. This time is shared with the foreign Company.

The petitioner also explained its organizational hierarchy, noting the job responsibilities held by its secretary, international sales person, and office clerk. The petitioner noted the employment of a fifth worker who "assists the managerial levels, [and] he cares about all the Company investments and the company network,"

however the specific position held by the employee was not identified. The petitioner submitted the requested Forms W-2 issued in 2003 and 2004.

In a decision dated April 18, 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. The director recognized the petitioner's reference to five employees, but noted that based on the salaries paid to the employees in 2003, only three were employed on a full-time basis. The director stated that, while the beneficiary would exercise discretion over the petitioner's day-to-day operations, based on the low number of full-time employees "[i]t must be assumed that the beneficiary was performing a significant amount of the day-to-day duties during this time." The director further stated "the petitioner has not demonstrated that the beneficiary's primary assignment has been or will be directing the management of the organization nor that the beneficiary has been or will be primarily directing or supervising a subordinate staff of professional, managerial, or supervisory personnel, who relieve him from performing non[-]qualifying duties." Consequently, the director denied the petition.

On appeal, counsel for the petitioner references the statutory definition of "executive capacity," and claims that the petitioner has met its burden of proof in demonstrating the beneficiary's qualification as an executive. Counsel cites the petitioner's "continued" success in "the linen business speciality [sic] market" in the United States as evidence that beneficiary establishes the petitioner's goals and policies, and notes the beneficiary's decisions "to diversify" the petitioner's business and invest in real estate.

Counsel contends that Citizenship and Immigration Services (CIS) failed to consider the reasonable needs of the petitioner in its finding that the beneficiary would be performing day-to-day activities of the company. Counsel stresses the need to apply a "case by case analysis," stating that "if a company has three employees [] it is [not] automatically assumed that the individual is performing non-qualifying executive duties." Counsel further claims the unfair prejudice in "apply[ing] an across the board criteria without consideration of the individual needs of each company." Counsel claims that the reasonable needs and "overall purpose" of the petitioner support a finding that the beneficiary would be primarily employed in an executive capacity.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed in a primarily managerial or executive capacity.

The AAO notes the numerous job titles assigned to the beneficiary for his role in the United States company. In addition to the position of chief executive officer, which was identified by the petitioner on the Form I-140, the petitioner referred to the beneficiary in various documents as its president, "[f]inancial & [e]xecutive [d]irector," general manager, and comptroller. The inconsistent references to the beneficiary's position complicate the record, particularly with regard to the true position held by the beneficiary. The AAO further notes that the greater part of the job description offered by the petitioner is related to the beneficiary's roles as "president" and "Financial and Executive Director," rather than the requested position of chief executive officer. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

When examining the executive or managerial capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Despite having two opportunities during which to submit the requested "detailed" description of the beneficiary's proposed position, the petitioner neglected to describe the specific job duties to be performed by the beneficiary. The petitioner's vague and

non-specific job description fails to clarify the managerial or executive tasks related to "the annual tax report" or to the petitioner's trade shows, the two responsibilities identified as occupying the majority of the beneficiary's time. Additionally, the petitioner has not defined the qualifying tasks associated with the beneficiary's responsibilities of "car[ing] [for] the financial files, forms, accounting and tax records," "suppliers negotiations," "budgeting," or "payments." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The AAO again notes that the petitioner has not clarified the job duties associated with the multiple positions assigned to the beneficiary, particularly the requested position of chief executive officer. 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)).

Additionally, based on the limited job description, it appears that the beneficiary would be performing non-managerial and non-executive tasks of the organization. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. While the petitioner contends that the beneficiary would devote the majority of his time to primarily performing managerial or executive tasks, the record demonstrates that the beneficiary would also be responsible for such non-qualifying tasks as attending trade shows on behalf of the petitioner, negotiating and issuing payments to suppliers, calculating the company's budgeting, and maintaining "the financial files, forms, accounting and tax records." While the definitions of "managerial capacity" and "executive capacity" do not exclude the activity of customer relations, it would appear that as the representative of the petitioning entity at trade shows and in negotiations, the beneficiary is functioning more as a salesperson of the company, in which he is responsible for marketing and selling the petitioner's products. See 9 FAM 41.54 N8.2-1(a). The AAO notes that based on the job description for the petitioner's international salesperson, the sales employee is engaged in promoting the petitioner's real estate developments, not its houseware products, which is identified by the petitioner as its "primary business." Thus, it is reasonable to conclude, and has not been shown otherwise, that the beneficiary is solely responsible for all sales and marketing duties associated with the petitioner's houseware products business, including a number of routine, non-qualifying tasks. 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).

Although the director based his decision partially on the size of the enterprise and the number of staff, the director did not take into consideration the reasonable needs of the enterprise. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

At the time of filing, the petitioner was a five-year-old company doing business as a wholesaler. The petitioner employed the beneficiary as chief executive officer, president, and general manager-comptroller, plus a secretary-commercial manager, international salesperson, and office clerk. The brief job descriptions offered by the petitioner for the beneficiary and lower-level employees fail to demonstrate that the company's reasonable needs as a wholesaler are met by the services of the beneficiary and three employees. Based on the low amount of wages reported on Forms W-2 in 2003, the three lower-level employees are likely employed on a part-time basis², thereby raising the question of whether the beneficiary, as the only remaining employee, is responsible for personally performing the non-qualifying tasks related to the petitioner's administrative and operational functions.

Moreover, the petitioner has not clarified its ancillary "development [and] investment division," or specifically, how its reasonable needs are met through the employment of the beneficiary and its three lower-level employees. The petitioner represents that as the manager of two shopping plazas owned by the petitioning entity, the beneficiary would spend fifty percent of his time working in this division. The petitioner, however, has not clarified the beneficiary's job duties or those of his subordinate employees in relation to this division. The fact that the petitioner is operating an additional sector of its business raises further concerns as to whether the reasonable needs of both its wholesale and development and investment operations are met. The petitioner has not demonstrated that the workers employed at the time of filing could meet the reasonable needs of the company without the beneficiary actively participating in non-qualifying job duties of the organization.

Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Based on the foregoing discussion, the petitioner has failed to demonstrate that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, an additional issue is whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. The petitioner noted in its October 13, 2003 letter the beneficiary's former position as "Executive Manager and Chief Financial Officer." However, the vague job description offered both in its October 2003 letter and response to the director's request for evidence fail to identify the specific managerial or executive job duties performed by the beneficiary in this position. In fact, the majority of the job description mirrors that provided for the beneficiary's role in the United States company, particularly his responsibilities of maintaining "the annual tax report," "car[ing] [for] the financial files, forms, accounting and tax records," attending trade shows and administrative meetings, and "supervis[ing] the administrative and sales areas and its personnel performance." Moreover, as in the petitioning entity, the beneficiary was assigned the additional role of "Financial and Executive Director." Again, 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

² The petitioner does not clarify in its response to the director's request for evidence whether two of the lower-level employees are employed on a part-time basis or whether they are attending school part-time.

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. For this additional reason, the petition will be denied.

An additional issue not addressed by the director is whether a qualifying relationship existed between the foreign and United States entities at the time of filing.

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;

* * *

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 petitioner noted the existence of a parent-subsidiary relationship in its October 13, 2003 letter. Stock certificates submitted by the petitioner, however, indicate that the beneficiary and his wife own equal shares in the petitioning entity. Translated stock certificates issued by the foreign corporation indicate that the beneficiary and his wife each own 45 shares of the company's stock, while the remaining ten shares are owned equally between two other individuals. Based on the petitioner's representations, the foreign and United States entities do not possess a qualifying relationship. The petitioner has not demonstrated that both companies are "owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity." 8 C.F.R. § 204.5(j)(2). The petition will be denied for this additional reason.

A final issue not addressed by the director is whether at the time the priority date was established, the petitioner demonstrated its ability to pay the beneficiary his proffered annual salary of \$84,000.

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner did not establish that it had previously employed the beneficiary at an annual salary of \$84,000.

As an alternate means of determining the petitioner's ability to pay, the AAO will next examine the petitioner's net income figure as reflected on the federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). In *K.C.P. Food Co., Inc. v. Sava*, the court held the Immigration and Naturalization Service (now CIS) had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than on the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. at 537; *see also Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054.

As the petition's priority date falls on November 10, 2003, the AAO must examine the petitioner's tax return for 2003. The petitioner's IRS Form 1120 for calendar year 2003 presents a net taxable income of approximately \$10,000. The beneficiary's IRS Form W-2 for the year 2003, the period during which the instant petition was filed, indicates that the beneficiary received an annual salary of \$25,000. The petitioner could not pay the additional wages of \$59,000 due to the beneficiary out of this income.

Finally, if the petitioner does not have sufficient net income to pay the proffered salary, the AAO will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as the AAO is satisfied that the petitioner's current assets are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage. Here, the petitioner's net current liabilities exceed the net current assets by approximately \$78,000. Accordingly, the petitioner has not established its ability to pay the beneficiary's proffered salary. The petition will be denied for this additional reason.

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 references on appeal the two L-1A nonimmigrant visa petitions approved by CIS on behalf 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 approval 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.