

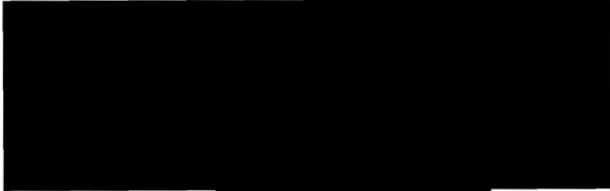
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2007**
WAC 98 127 51696

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, California Service Center, initially approved the employment-based visa petition. Following an investigation performed in connection with the beneficiary's I-485 Application to Register Permanent Residence or Adjust Status, the director issued a Notice of Intent to Revoke and subsequently revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will affirm the director's decision to revoke the approval of the petition and dismiss the appeal.¹

The petitioner filed the immigrant visa petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of California that is engaged in the design, creation, sale, and marketing of fashion apparel. The petitioner claims to be the subsidiary of the beneficiary's foreign employer, and seeks to employ the beneficiary as its president.

The director approved the immigrant visa petition on August 3, 1998. The director subsequently issued a Notice of Intent to Revoke, providing the petitioner thirty days within which to rebut the proposed revocation. Notwithstanding the petitioner's response, on October 27, 2006, the director revoked approval of the petition concluding that the petitioner had not established at the time of filing that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The present timely appeal followed.

On appeal, the petitioner's current counsel challenges the director's findings, claiming that the director's denial of the petition relied on an incorrect interpretation of the petitioner's staffing levels. Counsel submits a brief and documentary evidence 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.

¹ The record suggests that the original documents submitted by the petitioner in connection with the filing of the Form I-140 and in response to the director's Notice of Intent to Revoke were either misplaced or lost. The present record is comprised of copies of the original documentary evidence, which were submitted by the petitioner's counsel in an attempt to reconstruct the record. There is no issue as to whether the present record constitutes the complete record.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement, which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

Following approval of an immigrant or nonimmigrant petition, the director may revoke approval of the petition in accordance with the statute and regulations. Section 205 of the Act, 8 U.S.C. § 1155 (2005), 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 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition."

Regarding "good and sufficient cause" and the revocation of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals (BIA) 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 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 Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590. Notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

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

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

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

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;

- (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

- (i) Directs the management of the organization or a major component or function of the organization;
- (ii) Establishes the goals and policies of the organization, component, or function;
- (iii) Exercises wide latitude in discretionary decision-making; and
- (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the Form I-140 on April 2, 1998, noting the beneficiary's proposed employment as its president. In an appended letter, dated March 18, 1998, the petitioner explained:

The duties of this key managerial position entail responsibility for managing and directing all functions and operations which are essential to the continued growth of business development in the United States.

* * *

As [the petitioner's] president, [the beneficiary] will continue to perform his current responsibilities which include directing administration and management of the company, and implementing the goals, policies, and business strategies that are essential to the successful operation of the company. He oversees the analysis, review and preparation of financial and business operation reports based upon past and projected performance of company products in a variety of international and U.S. market scenarios.

[The beneficiary] also negotiates and approves contracts on behalf of the U.S. enterprise. He establishes sales quotas and directs the development and implementation of [the petitioner's] fashion product marketing, sales strategy programs and related sales activities for the U.S. market. He reports directly to senior management of [the foreign entity] on sales activities and business development in the United States. [The beneficiary] exercises discretionary authority over personnel decisions affecting company employees and independent contractors, including compensation and hiring/firing of such personnel.

The AAO notes that it is unclear what additional documentary evidence, if any, was submitted with the petitioner's original filing. The AAO acknowledges that the record contains copies of the petitioner's state quarterly wage reports for the years 1997 through 2004, which appear to have been provided by the beneficiary at an interview performed in connection with his Form I-485 application. Specifically, the June 30, 1998 quarterly wage report indicates that the petitioner employed three workers during the month the instant petition was filed. While an attachment to the quarterly report lists the names of four employees, it appears from the wages reflected on a separate payroll report that the company's financial and accounting department manager was hired in May, the month following the instant filing. The wages reflected on both the quarterly wage report and payroll report suggest that other than the beneficiary, the remaining two employees, who occupied the positions of import and export department manager and shipping and delivery manager, were employed in a status that was less than full-time.

On a separate organizational chart of the company's 1998 staffing levels, the petitioner identified the beneficiary as overseeing the financial and accounting, import and export, and shipping and delivery departments, as well as the following contract employees: national sales manager; west coast sales manager, east coast sales manager; Florida sales manager; two designers; and two sales representatives. As in the case of the petitioner's employees, an attached list of the annual wages paid to the company's contracted workers suggests that all but the national sales manager were utilized by the petitioner on an abbreviated work schedule.

The director issued a Notice of Intent to Revoke the petition's approval on December 2, 2005, stating that the present record failed to demonstrate that the beneficiary would be employed by the United States company as a manager or executive. The director concluded that, contrary to the petitioner's claim of employing eleven workers on the date of filing, the petitioner maintained a staff of three workers, including the beneficiary.

The director noted that the record failed to support the petitioner's claim of employing the beneficiary in a primarily managerial or executive capacity, and stated: "If anything, [the beneficiary's] overall function in the company appears to be to overlook the daily business activities of the company, and, because of the questionable personnel, probably performs most of those daily business activities himself" The director further noted that the record was devoid of evidence establishing whether the petitioner's three employees were working on a part-time or full-time basis. The director also concluded that based on the annual salary of \$48,000 paid to the beneficiary approximately five years after the organization of the company, the petitioning entity "is not a very profitable and productive company." The director stated that regardless of this finding, the record does not demonstrate that the beneficiary would be performing primarily managerial or executive job duties. The director provided the petitioner thirty days within which to rebut his findings.

The petitioner's former counsel submitted a brief, dated December 29, 2005, in response to the director's Notice of Intent to Revoke. Counsel contended that the director incorrectly focused on the wages paid to the

beneficiary and the petitioner's employees, stating that neither the relevant regulations nor the Act impose a wage requirement on the analysis of "managerial capacity" or "executive capacity." Counsel stated that the beneficiary's salary is commensurate with the salary paid to the beneficiary when employed with the foreign company.

Counsel also challenged the director's statements as to the size of the petitioner's staffing levels, noting that the petitioner had indicated on the Form I-140 that, in addition to contract workers, its staff consisted of eleven workers. Counsel stated that the petitioner's employment of these workers was substantiated by the following documentation: Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement; IRS Forms 1099, Miscellaneous Income; IRS Form 1120, U.S. Corporation Income Tax Return; a list of sales representatives; and, cancelled checks issued to sales representatives. Counsel further challenged the director's finding that the petitioner misrepresented its staffing levels during the beneficiary's interview with CIS, stating that CIS did not inquire about the beneficiary's qualifications as a manager or executive.

Counsel restated the job descriptions provided by the petitioner in its March 18, 1998 letter, claiming that the associated job responsibilities establish the beneficiary's eligibility for classification as both a manager and an executive. Counsel stated that the organizational charts submitted for the years 1996 through 2005 illustrate the beneficiary's position as president of the United States company, during which he would supervise more than ten sales managers and sales representatives. Counsel contended that the director's finding that the beneficiary would "probably perform" the business' daily activities is not supported by the record.

In a decision, dated October 27, 2006, the director revoked approval of the immigrant visa petition. The director rejected the petitioner's claim that it employed a staff of eleven workers at the time the petition was filed, again concluding instead that the beneficiary supervised only two workers on the filing date. The director also stated that the employees' purported full-time employment was questionable. The director concluded that the petitioner's limited workforce would require the beneficiary to personally perform the business' non-qualifying day-to-day functions. The director further concluded that the petitioner's claim of employing eleven workers on the date of filing was a misrepresentation of material fact, as the record did not illustrate the claimed staffing levels.

The director found that the "declarative statements" made by the petitioner and submitted by counsel in response to the notice of intent to revoke were not sufficient to support the claim of employing the beneficiary in a qualifying managerial or executive capacity. The director also concluded that the additional evidence submitted by counsel, including a copy of the beneficiary's adjustment of status interview notice and counsel's letters to CIS inquiring on the status of the beneficiary's I-485 application, failed to overcome the director's earlier findings. Consequently, the director revoked approval of the immigrant visa petition.

The petitioner's current counsel filed an appeal on November 13, 2006 challenging the director's analysis and denial of the immigrant visa petition. In a February 5, 2007 appellate brief, counsel contends that the beneficiary is eligible for the requested visa classification as he is employed in both a managerial capacity and executive capacity. Counsel states:

As President, the beneficiary plans and directs the management of [the petitioning entity] through its own salaried employees, as well as outside contract employees who perform sales and design duties. As the highest ranking executive of the U.S. subsidiary the beneficiary is the individual responsible for establishing goals and policies and exercising

wide latitude in discretionary decision-making, duties which he executes with little supervision. In recent decisions, the Commissioner has held that management of an important function at a senior level within a hierarchy of an organization meets the definition of an executive position with the organization.

Counsel states that the documentary evidence submitted for CIS' review demonstrates that the beneficiary is the company's "primary agent," during which he is "responsible for the day to day operations of [the petitioning entity], which include the sales and marketing of apparel products," and further states that the beneficiary functions at a senior level by supervising the sales and operations of the United States organization. Counsel claims that contrary to the director's finding, because of the beneficiary's senior level position, the petitioner was not required to demonstrate his supervision of supervisory, managerial, or professional employees. Counsel restates the job description offered in the petitioner's March 18, 1998 letter, claiming that it demonstrates the beneficiary's employment in both a managerial and executive capacity.

Citing section 101(a)(44)(C) of the Act, counsel states that the director mistakenly considered the size of the petitioner's staffing levels without taking into account the nature of the company's business and its reasonable needs as an import company. Counsel states:

[The petitioner] does not have first line production workers because it does not produce anything. As an import distributor of apparel products, [the petitioner] is without production workers, thus it does not need to have supervisory managers. Rather, as an import trading company, [the petitioner] relies on an extensive network of contract sales agents and designers to support its sales and marketing operations. Therefore, the nature of [the petitioner's] business does not require the company to employ supervisory or professional workers.

Counsel contends that CIS' review of the beneficiary's proposed employment consisted only of the business' three salaried employees without also considering its contracted workers. Counsel claims that a review of the petitioner's salaried and contracted workers demonstrates that the beneficiary's job duties would not be primarily operational in nature, as suggested by the director, but would consist of primarily managerial job duties.

Counsel challenges the director's finding of misrepresentation with respect to the number of workers employed at the time of filing, claiming that the original record contained documentary evidence of the company's salaried and commissioned workers in 1998. Counsel cites an unpublished AAO decision in which the AAO found the beneficiary to be a manager or executive based on the petitioner's use of outside independent contractors.

Upon review, the petitioner did not establish at the time of filing that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

When analyzing the instant issue, the AAO emphasizes that a petitioner must establish eligibility at the time of filing the immigrant visa petition, or, in this matter, that the beneficiary would be employed in a primarily managerial or executive capacity when the petition was filed in April 1998. Both the petitioner's former and present counsel address the beneficiary's supervision of varying staffing levels during the approximately eight years since the petition was approved. It is a well-established finding, however, that 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).

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 regulation at 8 C.F.R. § 204.5(j)(5) requires that the petitioner submit a statement clearly describing the managerial or executive duties to be performed by the beneficiary.

While not specifically addressed by the director in his Notice of Intent to Revoke and decision revoking approval of the petition, the AAO finds that the description submitted for the beneficiary's employment as president is too vague to establish his role as a manager or executive. For example, the beneficiary was identified as "managing and directing all functions and operations," "directing administration and management," "implementing the [company's] goals, policies, and business strategies," "[overseeing] the analysis, review and preparation of financial and business operation reports," "negotiating and approving contracts, and directing the development of marketing and sales strategies. The petitioner describes the functions, operations, goals, policies, and strategies managed by the beneficiary as being essential to the business. It is reasonable that these factors would be relevant to the growth and success of any business, regardless of its specific activities, and therefore they do not provide clarification of the specific managerial or executive tasks the beneficiary would be performing as president of a fashion apparel company that engages in the design, sale and marketing of clothing. 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).

Specificity in this matter is also particularly important if the petitioner is claiming to employ the beneficiary as a function manager who is "managing and directing all functions." Counsel claims on appeal that the beneficiary is the "top functional manager having managerial control and authority over [the petitioner's] important functions." Counsel further contends that the beneficiary's senior level position within the organization excuses the petitioner from demonstrating his supervision over supervisory, professional, or managerial employees. However, counsel did not describe in detail the beneficiary's purported role as a function manager or identify the specific function the beneficiary would manage. 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). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Similarly, many of the job responsibilities assigned to the beneficiary paraphrase the statutory definitions of "managerial capacity" and "executive capacity," and, as a result, cannot be viewed as being descriptive of the beneficiary's employment in a primarily qualifying capacity. Specifically, the petitioner describes the beneficiary as "directing . . . [the] management of the company," establishing the company's goals, policies, and strategies, "exercis[ing] discretionary authority over personnel decisions . . . including the compensation

and hiring/firing of such personnel," and reporting directly to the foreign entity's management. 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 1108.

Counsel stresses on appeal that in denying the petition, CIS misinterpreted the petitioner's staffing levels at the time of filing, and similarly, improperly relied on the size of the company's staffing levels without considering the nature of its business or reasonable needs. Notwithstanding the following discussion, the AAO notes that with respect to the director's finding of the petitioner's misrepresentation of its staffing levels at the time of filing, the AAO withdraws in part the director's decision. As addressed by the petitioner's current and former counsels, the petitioner noted its use of outside contact workers on the Form I-140. Similarly, the documentary evidence, including the IRS Forms 1099 and cancelled checks, corroborates the petitioner's representations on its organizational chart of the ten² individuals either employed or contracted by the petitioner.

While the AAO recognizes that on the filing date the petitioner maintained a staff of ten workers, including the beneficiary and independent sales representatives, the part-time or full-time working status of the workers is questionable. In response to the director's inquiry on this issue, the petitioner's former counsel claimed irrelevancy, stating that neither the regulations nor the Act require a certain amount in wages to be paid by the petitioner to its workers. Nonetheless, counsel did not clarify for the record whether the workers maintained a full or part-time work schedule. The petitioner's current counsel merely claimed on appeal that the petitioner's original filing demonstrated that the company had employed both independent contractors and full-time workers without submitting evidence of the purported full-time work schedules.

While neither the Act nor regulations require the petitioner to furnish a certain amount in compensation to its workers, the amount received by employees is significant to determining whether they are employed on a full-time or part-time basis. The working status of an employee is particularly relevant to understanding whether the petitioner maintains a support staff sufficient to employ the beneficiary in a primarily managerial or executive capacity. Accordingly, despite counsel's suggestion otherwise, an employee's wages are indirectly essential to the analysis of the beneficiary's proposed employment capacity.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

² As noted previously, a review of the petitioner's June 30, 1998 state quarterly wage report and 1998 payroll reports suggest that the financial and accounting department manager was hired at least one month after the petition was filed. Again, a determination of the beneficiary's employment capacity is dependent on the facts at the time of filing. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971)

Here, as discussed previously, the total amount in wages paid in 1998 to two of the beneficiary's direct subordinates, the import and export department manager and shipping and delivery manager, which amounted to \$2,500 and \$3,000, respectively, suggest that each was employed on a less than full-time basis. The AAO maintains this finding despite acknowledging that the petitioner's payroll report indicates that the import and export department manager ceased receiving compensation at the end of May 1998, and that the shipping and delivery manager may not have been employed during the months of May through September 1998. Similarly, based on the list derived by the petitioner of compensation paid to contracted workers during 1998, the AAO questions the employment status of the petitioner's east coast sales manager, designers, and New England and New York sales representatives. It appears that the contracted workers performed limited sales services for the petitioning entity.

On appeal, counsel emphasizes the petitioner's activities as an import trading company that "relies on an extensive network of contract sales agents and designers to support its sales and marketing operations." However, considering what appears to be a predominantly part-time work force, it is doubtful that the company's reasonable needs would be met through the services of the beneficiary and its ten-person staff. Of particular relevance is the question of how an import trading company can sufficiently operate while employing what appears to be a part-time import and export department manager and, furthermore, does not employ any lower-level workers in the import and export department. Additionally, the AAO again notes that the record does not establish the employment of a financial and accounting department manager or employees in the finance department who would handle these respective functions on the date of filing. The AAO further notes the identification of the petitioning entity as a wholesaler on its 1998 business license. Again, based on the low amount in commissions paid to its sales managers and representatives, it is not clear whether the company's reasonable needs as a wholesaler, importer, and designer would be met through the services of the staff maintained by the company on the filing date. While not conclusive of the beneficiary's employment capacity, these inadequacies call into question the beneficiary's role in the United States company, and undermine the petitioner's claims that the beneficiary would be performing primarily managerial or executive job duties. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Based on the foregoing discussion, the petitioner failed to demonstrate at the time of filing that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the director properly revoked approval of the petition based on "good and sufficient" cause.

The AAO recognizes that CIS previously approved two L-1A nonimmigrant visa petitions filed by the petitioner 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 25 (D.D.C. 2003).

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 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 assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approvals by denying the present immigrant petition.

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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. Accordingly, the director's decision will be affirmed and the petition approval will be revoked.

ORDER: The director's decision of October 27, 2006 is affirmed. The approval of the petition is revoked.