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U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] WAC 96 131 53527

Office: CALIFORNIA SERVICE CENTER

Date: JAN 31 2007

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

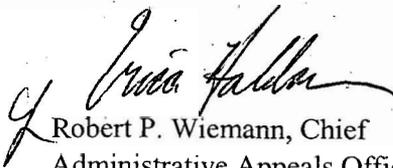
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

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

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, approved the employment-based petition on May 14, 1996. The director subsequently issued a Notice of Intent to Revoke the petition's approval, properly providing the petitioner with thirty days within which to rebut the proposed revocation. Following the petitioner's failure to respond, the director revoked approval in a decision dated November 8, 2004. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO). In an August 8, 2005 decision, the AAO remanded the matter to the California Service Center advising the director to reissue the Notice of Intent to Revoke.<sup>1</sup> Following a timely response from the petitioner, the director revoked approval of the petition and certified the matter to the AAO for review. The AAO will affirm the director's November 13, 2006 decision revoking approval of the petition.

The petitioner filed the instant petition seeking 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 import and export of watches. It seeks to employ the beneficiary as its managing director.

The director approved the petition on May 14, 1996. In a decision dated November 13, 2006, the director revoked approval of the petition concluding that the petitioner had not demonstrated that: (1) it had been doing business in the United States for at least one year prior to the date of filing or that it continued to do business; (2) the beneficiary had been employed abroad and would be employed in the United States in a primarily managerial or executive capacity; or (3) a qualifying relationship existed between the foreign and United States entities at the time the petition was filed. The director also observed that the petitioner had not established its ability to pay the beneficiary's proffered annual salary of \$24,000.

In response to the instant certification, the petitioner's current counsel submits a brief that is comprised of a **statement of facts and additional documentary evidence**. In his brief, counsel contends that the record contains "ample evidence" to establish the beneficiary's eligibility for the requested immigrant classification. Counsel challenges Citizenship and Immigration Services' (CIS) request for documentation relating to the beneficiary's employment in the foreign entity, claiming that the petitioner cannot recreate the company's organizational hierarchy from approximately ten years ago. Counsel further contends that CIS failed to timely adjudicate the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status.

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

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<sup>1</sup> The AAO determined that the Notice of Intent to Revoke had been mailed to an incorrect address, and as a result, it was unclear whether the petitioner was given an opportunity to respond. The record reflects that the director issued a second Notice of Intent to Revoke to the petitioner on January 23, 2006, and that the petitioner's current counsel responded in a February 15, 2006 brief.

of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

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

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

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 unrebutted, 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 (9<sup>th</sup> Cir. 1984).

The first issue in this proceeding is whether the petitioner was doing business in the United States for at least one year prior to filing the instant petition as required in the regulation at 8 C.F.R. § 204.5(j)(3)(i)(D).

The regulation at 8 C.F.R. § 204.5(j)(2) defines "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.

The petitioner filed the instant immigrant petition on April 2, 1996. In a March 4, 1996 letter accompanying the petition, the petitioner noted that the United States corporation had been formed under the laws of the State of California in March 1995 in order to "facilitate the purchase and delivery of American-made components [for the foreign company] and the import and delivery of Chinese made watches." The petitioner noted that during its first year of operations, it realized approximately \$200,000 in imports.

As evidence of its business in the United States, the petitioner submitted copies of the following documents: (1) its articles of incorporation; (2) its filed California Statement by Domestic Stock Corporation; (3) its 1995 income statement and Internal Revenue Service (IRS) Form 1120-A, U.S. Corporation Short-Form Income Tax Return; (4) a Fictitious Business Name Statement filed with the Los Angeles County registrar-recorder; (5) IRS Form SS-4, Application for Employer Identification Number; (6) pages one and fifteen of an industrial real estate lease entered into by the petitioner for a two-year term beginning on June 1, 1995; (7) invoices and customs documents dated June 1995 through the filing date; and (8) checks drafted by the beneficiary on behalf of the petitioner during April 1995 through January 1996.

The director issued a Notice of Intent to Revoke on January 23, 2006, in which he addressed the documentary evidence, dated in "the mid-1990's," that had been offered by the petitioner. The director concluded that the petitioner had not established that it is doing business in the United States. The director noted that relevant evidence of the petitioner's business operations would include "current invoices, receipts, business transactions and a history of business operations since its inception."

Counsel for the petitioner filed an appellate brief, dated February 15, 2006, in response to the director's Notice of Intent to Revoke. Counsel challenged the director's observation of insufficient evidence of the petitioner's current business operations, explaining that the record would not contain evidence of the petitioner's operations from 1996 through 2004 because the petition had already been approved. Counsel stated:

At no time was the petitioner required to submit evidence of its operations between 1996 and 2004. Logically, [CIS] is entitled to request evidence of petitioner's current operation of business as part of the process of the I-485 applications, but not when [CIS] goes back to review whether the I-140 should have been approved in 1996 in the first place. The law is clear, the employer must show that it has been doing business in the United States *when a petition is filed*. The law does not require the employer to show that it is doing business in the United States eight years after the filing of the petition, and [CIS] has no right to require evidence that the petitioner is doing business in the United States eight years after the filing and approval of the petition.

Nonetheless, counsel submitted copies of the petitioner's income tax returns and IRS Forms W-2, Wage and Tax Statement, for the years 1995 through 2003, and invoices and shipping documents dated during the years 1999 through 2004. Counsel also submitted a copy of a multi-tenant lease agreement. The AAO notes that the petitioner is not identified as a party to the lease agreement, and that the permitted use of the premises is as an entertainment lounge and bar, services that do not coincide with the petitioner's claimed business. The

lease agreement appears to involve an unrelated company and is not probative of the petitioner's business in the United States.

In a decision dated November 13, 2006, the director concluded that the petitioner had not established that it had been doing business for at least one year prior to the instant filing and that it was currently doing business in the United States. The director noted that the petitioner's lease for office space and its seller's permit were dated in May 1995, eleven months prior the date of filing, and that the beneficiary was approved for classification as an L-1A nonimmigrant transferee the following month. The director stated that the petitioner "had no employee's [sic] until the beneficiary changed her nonimmigrant status in [the] mid-1990's." The director further noted that the invoices and checks offered by the petitioner failed to demonstrate its business operations during the years 2005 and 2006. As a result, the director concluded that the petitioner was not doing business for the requisite time period in order to qualify for the requested visa classification. Accordingly, the director revoked approval of the petition.

Counsel submits a brief in response to the director's certification to the AAO. As evidence of the petitioner's operations in the United States, counsel submits copies of the following: (1) bank statements dated from years 2004 through 2006; (2) the petitioner's May 6, 1995 seller's permit; (3) years 2004 through 2006 statements of information filed with the State of California; (4) invoices, customs documentation, and quarterly payroll payments pertaining to the years 2005 and 2006; (5) years 2004 and 2005 memorandum receipts for deposited federal taxes; and (6) years 2004 and 2005 federal income tax returns.

Upon review, the petitioner has not demonstrated that it was doing business in the United States for at least one year prior to the instant filing.

The record suggests that the petitioner commenced its operations in the United States in June 1995, approximately ten months before the petition was filed. Relevant evidence corroborating the time at which the petitioner started doing business includes: (1) its initial lease agreement, which began on June 1, 1995; (2) invoices and customs documentation dated no earlier than June 1995; (3) the petitioner's fictitious business name statement, on which it noted that it had "commenced to transact business" on June 1, 1995; and (4) Forms I-9, Employment Eligibility Verification, dated June 1, 1995. The record does not contain relevant documentary evidence dated prior to June 1, 1995 that would demonstrate that the petitioner had been doing business for more than ten months prior to the date on which the petition was filed. 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)). As a result, the petitioner did not establish at the time of filing that it had been doing business in the United States for at least one year.

The AAO notes that the record contains sufficient documentary evidence demonstrating that the petitioner has been doing business in the United States from June 1, 1995 until the present. Nonetheless, as the petitioner did not satisfy the eligibility requirement outlined in the regulation at 8 C.F.R. § 204.5(j)(3)(i)(D), the director properly revoked approval of the immigrant petition. 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.

The second 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 noted on the Form I-140 that the beneficiary would be the managing director of the two-person United States company. In its March 4, 1996 letter, the petitioner noted that the beneficiary's "management" of the petitioning entity has allowed for more products to be imported to the United States and exported to Hong Kong. The petitioner did not address the specific job responsibilities related to the position of managing director in its initial submission or identify the position held by its other employee. As evidence of the beneficiary's employment in a qualifying managerial or executive capacity, the petitioner points to its lease agreement and copies of canceled checks, all of which the beneficiary signed on behalf of the petitioning entity.

The record contains additional evidence that appears to have been subsequently submitted by the petitioner's former counsel in connection with the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status. Specifically, the petitioner submitted an August 26, 1997 letter outlining the following job duties related to the beneficiary's position as managing director:

- a) Exercising all discretionary decision[-]making to direct the management of the entire U.S. organization;
- b) Establishing both short-term and long-term goals and policies of the organization;
- c) Managing and directing all activities related to the distribution and wholesale of products; and
- d) Conferring with executive personnel in Hong Kong to assure effective organizational coordination and implementation of long-term plans.

The petitioner provided an organizational chart, on which the beneficiary was identified as supervising two salespersons, one of whom also acted as the company's secretary, as well as a contract accountant. An appended quarterly wage report dated June 30, 1996 also noted the employment of the beneficiary and two salespersons. The AAO notes that based on the compensation received by the two salespersons, it does not appear that the petitioner employed either on a full-time basis.

In the January 23, 2006 Notice of Intent to Revoke, the director noted that the record does not contain relevant evidence of the beneficiary's employment in a primarily managerial or executive capacity, such as an organizational chart of the petitioning entity, or a description of the job duties, employment status, educational level and salary of the other worker employed by the petitioner. The director also found that the beneficiary's job descriptions was not "detailed enough to classify her as a multinational executive or manager," as it failed to describe what the beneficiary would be doing on a daily basis. The director stated that the petitioner's claim that the beneficiary "directs and develops all import/export/sales operations of the U.S. subsidiary" is not sufficient to establish the beneficiary's eligibility for classification as a manager or executive.

In his February 15, 2006 brief, counsel contended:

[T]he fact is perfectly clear that the beneficiary was employed in [a] managerial or executive capacity. Since 1995, when the beneficiary was employed by the petitioner as the [m]anaging [d]irector, she decided the location of the business. She decided how many employees to hire and who to hire. She set the work hours and salary of the employees. She decided what products should be imported into the United States. She also decided the timing and the volume of the import. She decided who to sell to, and the sale price of each product. She decided the payment terms for each customer, and the amount of credit each customer is afforded. She also chose the accountant and the lawyer for the company. When the business was slow, she decided which employee to let go, and when. When it was necessary to move to a cheaper location, she picked the new location, and executed the lease agreement for the new location. She signed all company checks, purchase orders, pay checks, and everything else that requires the signature of an officer on behalf of the company. In sum, the beneficiary (a) has directed the management of the entire organization, (b) has established the goals and policies of the organization, (c) has exercised wide latitude in discretionary decision-making, and (d) has received only general

supervision or direction from the stockholders of the organization. She fits squarely in the definition of an executive provided in 8 C.F.R. [§] 204.5(j)(2).

Counsel challenged the director's request for an organizational chart, stating that the organizational chart serves only as a "visual aid" that would not be necessary in order to understand the petitioner's organizational structure. Counsel stated "at the peak of its business, [the petitioner] had only three employees, including the beneficiary."

The director concluded in his November 13, 2006 decision that the petitioner had failed to demonstrate that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director again noted the beneficiary's "general and vague" job description, and stated that counsel's response "borrowed liberally from portions of the statutory definitions of 'executive capacity.'" The director stated that counsel's paraphrase of the definition of "executive capacity" was not sufficient to establish the beneficiary's employment in a primarily managerial or executive capacity. The director noted that the petitioner had not provided the requested organizational chart, which would have provided CIS with "a clear picture of the petitioning entity . . . to see how the individual truly fits within the organizational hierarchy." The director also referenced the petitioner's staffing levels, stating that it did not appear to employ "any subordinate employees to perform all of the day-to-day, menial tasks that exist with an entity of this nature." The director found that the petitioner had not established that the beneficiary would devote his time to performing primarily managerial or executive job duties. Consequently, the director revoked approval of the petition based on the petitioner's failure to establish the beneficiary's employment as a manager or executive.

In response, counsel claims the existence of "ample evidence" demonstrating that the beneficiary "has been conducting executive duties." As evidence of the beneficiary's employment in a primarily qualifying capacity, counsel submits the petitioner's 2004 and 2005 memorandum receipts for deposited federal taxes which reflect the beneficiary's signature, and the minutes from a December 15, 1999 board of director's meeting, in which the beneficiary was named as the petitioner's chief executive officer and signed as the company's president and director.

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5).

The petitioner has failed to provide a sufficient description of the position of managing director to support the proposition that the beneficiary would be employed in a primarily managerial or executive capacity. The petitioner's initial filing was devoid of any documentation that would assist CIS in understanding the responsibilities held by the beneficiary and the related managerial or executive tasks. The petitioner's reference in its March 4, 1996 letter to "trade documentation" as evidence of the beneficiary's "expert management and direction" of the petitioning entity is not sufficient to establish her proposed managerial or executive employment. Also, the petitioner did not identify the specific managerial or executive job duties associated with the beneficiary's responsibilities of "direct[ing] the management of the entire U.S. organization," particularly in light of the fact that the petitioner has not represented the employment of any managerial employees subordinate to the beneficiary. The regulations require that the petitioner "clearly

describe the duties to be performed by the [beneficiary]." The limited record offered by the petitioner fails to satisfy this statutory requirement. 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. at 165.

The job description offered by counsel in his February 15, 2006 brief is equally insufficient to establish the beneficiary as a manager or executive. Counsel highlighted the beneficiary's responsibility to make decisions with respect to the petitioner's products, pricing, staffing, location, and customers, and her authority to sign checks on behalf of the organization. While counsel's representations suggest a position of managerial or executive authority, the record remains devoid of a detailed description of the specific managerial or executive job duties to be primarily performed by the beneficiary. Counsel also failed to offer clarification of the petitioner's vague representations in its August 26, 1997 letter, in which the petitioner noted that the beneficiary would manage "all activities related to distribution and wholesale" and establish its goals and policies. 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).

Additionally, counsel's recitation in his February 15, 2006 brief of the statutory definition of "executive capacity" does not establish the beneficiary's purported employment as an executive. See § 101(a)(44)(B) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

A review of the petitioner's staffing levels with respect to its overall purpose and stage of development supports a finding that the beneficiary would not be employed by the United States entity in a primarily managerial or executive capacity. 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. It is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Here, at the time of filing, the petitioner employed the beneficiary as managing director and two part-time salespersons, one of whom also performed secretarial functions. The AAO notes that neither of the beneficiary's two subordinates is represented as a managerial, supervisory or professional employee. See § 101(a)(44)(A)(ii) of the Act (identifying one of the four statutory criteria of "managerial capacity" as supervising and controlling the work of other supervisory, professional, or managerial employees). As a result, the petitioner's claim that the beneficiary would "direct the management" of the United States organization is undermined by its deficient staffing levels.

Additionally, the absence of a greater subordinate staff substantiates a finding that the beneficiary would primarily perform non-managerial and non-executive job duties as the petitioner's managing director. Other

than accounting for the part-time employment of two sales representatives, one of whom would also be the company's secretary, the petitioner has not identified employees who would **perform** such administrative and operational functions as importing, exporting, shipping, finances, bookkeeping, personnel, distributions and marketing. There is no evidence that at the time of filing the immigrant petition, the petitioner employed a staff sufficient to support the beneficiary in a primarily managerial or executive capacity. It is therefore reasonable for the AAO to question whether the performance of the non-managerial and non-executive functions would remain with the beneficiary. The AAO notes that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The documents submitted by counsel with his December 4, 2006 brief do not establish the beneficiary's eligibility at the time of filing for classification as a manager or executive. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Here, counsel submits documentation relative to the years 1999, 2004 and 2005, more than three years after the petition was filed. Furthermore, the limited documentation, which merely bears a signature or reference to the beneficiary as "president" or "chief executive officer," does not establish the beneficiary's purported role in a primarily managerial or executive capacity since the filing date. By itself, a beneficiary's managerial or executive job title is not sufficient to establish employment in a primarily qualifying capacity.

The record reflects that the petitioner failed to meet its burden of establishing the beneficiary's employment in a primarily managerial or executive capacity, thus the AAO will affirm the director's decision to revoke approval of the petition.

The third issue in this proceeding is whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

In its March 4, 1996 letter, the petitioner stated that the beneficiary "served in [the] management position" of account manager of the foreign entity from 1992 until her entrance into the United States as a nonimmigrant in February 1995. The petitioner noted the beneficiary's "excellent executive management skills, [ ] contract negotiations expertise, [and] [ ] detailed knowledge of the parent company's goals and practices," and referenced "the supporting documentation," as evidence of her employment in a primarily managerial or executive capacity. The AAO notes that other than the foreign entity's business registration certificates and certificates confirming the beneficiary's completion of two accounting courses, the attached documentation pertained solely to the petitioner's incorporation and business activities.

In addition, the record contains a September 10, 1997 letter from the foreign entity outlining the following job duties related to the beneficiary's position as accounting department manager:

1. Recording disbursements, expenses, and tax payments;
2. Preparing consolidated balance sheets to reflect [the] company's assets, liabilities, and capital;
3. Preparing profit and loss statement for specific accounting period; and

4. Representing [the] company before government agencies upon certification by agency involved.

An attached organizational chart noted only that the foreign company employed five workers.

In his January 23, 2006 Notice of Intent to Revoke, the director expressed ambiguity as to whether the beneficiary was employed in a managerial position in the foreign entity, noting that the petitioner had not identified employees purportedly managed by the beneficiary or clarified whether the beneficiary "served as a functional manager." The director also noted the deficient record, stating that the petitioner failed to identify "the specific goals and policies" or "discretionary decisions" made by the beneficiary while employed by the foreign company. The director referenced a January 13, 1999 overseas investigation performed by Immigration and Naturalization Services (now CIS), stating that it revealed the beneficiary's former position in the overseas company to be account clerk rather than account manager. The director concluded that the present record did not demonstrate that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity.

In response, counsel for the petitioner stated that it was unreasonable for the director to request evidence related to the beneficiary's position in the foreign entity more than ten years ago. Counsel stated that it was impossible for the petitioner to "re-construct its overseas parent company's organization[al] chart, and detail the names, job titles, duties, required education[al] [levels], and employment status of each employee of the parent company." Counsel contended that it is "unreasonable and unlawful" for CIS to claim a "mistake" ten years after approving the beneficiary's immigrant visa petition, and stated that the foreign company had not maintained its business records.

Counsel challenged CIS' finding that the beneficiary was employed as an accounting clerk in the foreign entity. Counsel stated that the tax document purportedly relied on by CIS in its 1999 overseas investigation reflected the beneficiary's position in "accounting," not as an "accounting clerk." Counsel claimed that regardless, the beneficiary's title on a tax return cannot be relied on as evidence of the beneficiary's employment capacity abroad. With respect to the beneficiary's overseas employment, counsel explained:

The overseas parent company has been a completely family-owned business since May 1991, owned equally by two partners: [the] beneficiary's father and [the] beneficiary's husband. The parent company was run by [the] beneficiary and her husband: [the] beneficiary's father did not participate in the day[-]to[-]day operation. While [the] beneficiary's husband took care of manufacturing and sales, [the] beneficiary was in charge of accounting, personnel, payables and receivables, tax, fiscal and financial decisions, and all monetary matters. Also, the parent company ran two assembling factories in China: one in Canton Province and the other in Shanghai City. . . . The beneficiary not only supervise[d] the accounting clerk at the parent company, but she also [oversaw] the accounting department in the Canton and Shanghai branches. Furthermore, [the] beneficiary's husband, traveled to these two assembling manufactories and stay[ed] there more often than he stayed in the parent company in Hong Kong. During [her husband's] absence, the beneficiary managed the entire company. In addition, the beneficiary was authorized to sign the company checks, and she also signed other documents on behalf of the company in her husband's absence. It is abundantly clear that the beneficiary worked in an executive or managerial capacity while she was employed at the parent company.

In his November 13, 2006 decision, the director concluded that the beneficiary was not employed by the foreign entity in a primarily managerial or executive capacity. The director acknowledged counsel's clarification of the beneficiary's former position on her income tax return, but stated that the beneficiary failed to qualify as a manager or executive because she was not represented as having supervised professional employees. The director noted that the organizational chart of the foreign entity indicated only that it employed a staff of five, and did not specifically identify workers employed subordinate to the beneficiary. The director rejected the petitioner's claim that the beneficiary oversaw employees in the assembly departments of the foreign entity's manufacturing plants. Consequently, the director revoked approval of the petition.

In his December 4, 2006 brief, counsel challenges the director's finding, stating that it is unreasonable for CIS to apply a stricter standard to its review of the beneficiary's eligibility than that instituted by CIS prior to September 11, 2001. Counsel again states that because the foreign entity has not maintained its records, it is impossible for the petitioner to reconstruct the organizational hierarchy of the foreign company at the time of the beneficiary's employment.

Upon review, the petitioner has not established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5).

The limited job descriptions offered by the petitioner and counsel do not corroborate the claims that the beneficiary occupied a primarily managerial or executive capacity in the foreign entity. The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

But for the foreign entity's outline of four job duties related to the beneficiary's former position as accounting department manager, the record is devoid of documentation as to how the beneficiary was employed in a purportedly managerial or executive capacity. Counsel's blanket claim that the beneficiary was "in charge of accounting, personnel, payables and receivables, tax, fiscal and financial decisions, and all monetary matters" fails to identify the specific managerial or executive job duties purportedly associated with these operational and administrative functions. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The record is equally vague as to the beneficiary's purported management of the foreign entity's accounting department, which counsel represented as having been comprised of an accounting clerk, and the accounting departments of two factories claimed by counsel to be branches of the foreign entity. Other than these broad statements, there is no description of what job duties the beneficiary performed during her purported supervision of these three departments. 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 did the beneficiary primarily do on a daily basis? *See id.*

Moreover, the petitioner has not offered a description of the foreign entity's staffing levels, particularly in its accounting department, or of the personnel in the foreign entity's two branch companies. As noted by the director, the two organizational charts in the record indicate only that the foreign entity maintained a staff of five employees. The petitioner made no reference to the positions held by the five workers. Nor did it document whether this is an accurate representation of the petitioner's staffing levels during the beneficiary's employment. Despite counsel's claim otherwise, CIS' request for documentation of the staffing levels maintained by the foreign entity at the time of the beneficiary's employment is reasonable considering the petitioner's claims that the beneficiary personally managed and supervised the organization for more than three years. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Based on the record as presently constituted, the beneficiary appears to have been personally responsible for performing the foreign company's financial functions, rather than supervising the performance of these functions by subordinate employees. The AAO specifically notes that counsel has not reconciled his claim of the beneficiary's qualifying employment with the petitioner's initial representations that the beneficiary was personally responsible for recording the company's financials and preparing its relevant financial statements, responsibilities that are not deemed to be primarily managerial or executive in nature. See §§ 101(a)(44)(A) and (B) of the Act. As noted by the director, there is insufficient evidence that the foreign entity employed a staff subordinate to the beneficiary who would perform the financial functions of the company, as suggested by counsel. The AAO notes that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm. 1988). Absent a more detailed organizational chart clearly identifying the foreign entity's staff at the time of the beneficiary's employment and describing the job duties performed by its staff, the AAO cannot determine that the beneficiary was employed in a primarily managerial or executive capacity.

Furthermore, with respect to his response to the instant certification, counsel did not attempt to overcome the director's finding through independent objective evidence of the contrary. Again, counsel merely expresses on appeal the impracticality of CIS' request to reconstruct the organizational hierarchy maintained by the foreign entity at the time of the beneficiary's employment. Counsel did not offer an additional explanation or clarification of the beneficiary's overseas employment. Again, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Counsel also claims that it is "unreasonable" for CIS to revoke approval of the petition as a result of a "mistake" or the application of a more stringent standard to the instant analysis than that utilized by CIS prior to September 11, 2001. Counsel, however, has not identified any errors on the part of the director in conducting his review of the petition. Counsel's general objections to the revocation of the petition approval are simply insufficient to overcome the well-founded and logical conclusions the director reached based on a review of the record. **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). The AAO emphasizes that the petitioner's burden of establishing eligibility for the benefit sought is not discharged until the immigrant visa is issued. See *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

Based on the foregoing discussion, the petitioner has not demonstrated that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. Accordingly, the director properly revoked approval of the employment-based petition.

The fourth issue in the instant proceeding is whether the foreign and United States entities enjoyed a qualifying relationship on the date of filing.

To establish a qualifying relationship under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e. a United States entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

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.

In the March 4, 1996 letter submitted at the time of filing, the petitioner claimed the existence of a parent-subsidiary relationship between the foreign and United States entities, noting that the foreign company established the purported subsidiary office in the United States in March 1995. As evidence of the claimed qualifying relationship, the petitioner's former counsel submitted copies of the following documents: (1) the petitioner's articles of incorporation; (2) statement by a domestic stock corporation; and (3) stock certificate number one, issued on March 14, 1995, naming the foreign company as the owner of 10,200 shares of the petitioner's stock, and stock certificate numbers two and three, which named [REDACTED] as the owners of 5,000 and 4,800 shares of stock, respectively. The record also contained the petitioner's 1996 income tax return, identifying \$16,000 in capital stock, as well as the petitioner's state income tax return from the same year, on which the petitioner noted that a majority of the United States company's stock was not owned by another corporation or "single interest." The petitioner also submitted four money transfer notifications from the beneficiary's bank, dated in May, July, September, and October 1996, notifying the beneficiary of funds deposited into the beneficiary's bank account by the president of the foreign entity. The foreign entity's articles of association and certificate of incorporation were also included in the record.

In his January 23, 2006 Notice of Intent to Revoke, the director recognized the petitioner's claimed ownership, but noted that the record was devoid of evidence demonstrating that the foreign company furnished money to the petitioning entity in exchange for its purported majority interest. The director noted that relevant evidence of the foreign entity's payment would include copies of wire transfer receipts and relevant statements from bank accounts held by each company. The director explained that, by themselves, the petitioner's stock certificates, were not sufficient to establish the foreign entity's ownership and control of the United States company, and instructed that the petitioner's stock certificate registry, corporate by-laws and minutes of relevant corporate meetings are instrumental in determining the petitioner's ownership.

The director also referenced the January 13, 1999 investigation performed by CIS at the overseas organization. The director noted that during the investigation, the foreign entity was unable to present "verifiable evidence" that it owned and controlled a majority interest in the petitioning entity.

In his February 15, 2006 brief, the petitioner's present counsel challenged the basis of the director's finding that a qualifying relationship did not exist between the foreign and United States entities. Counsel stated:

The parent company was not able to produce ownership documents of the petitioner because the ownership documents were kept in the home of the beneficiary in the United States. As we have previously stated, the parent company is a family-owned business owned equally by [the] beneficiary's husband and father. It makes perfect sense that the documents are safety [sic] kept in [the] beneficiary's home in the United States. The investigator concluded that the foreign company 'does not own and control more than fifty (50) percent of the U.S. company' simply because the ownership documents were not kept in Hong Kong. Such conclusion is unjustified and reveals that the qualification of the investigator needs to be looked into. Further, while bank documents can not be located now, eight years after the approval of the I-140 petition. Money was deposited into [the] petitioner's account by the parent company for the operation of the petitioner, and the beneficiary has been running the petitioner since 1995. [CIS] did not request any other documentation eight years ago and has no evidence to show otherwise; it is not entitled to request further documents. No law in this country requires any business to keep record[s] for more than eight years.

Counsel did not submit additional documentary evidence of the purported parent-subsidary relationship.

In the November 13, 2006 decision, the director concluded that the foreign and United States entities did not enjoy a qualifying relationship at the time of filing. The director again noted the petitioner's failure to submit evidence that it had received money from the foreign entity as consideration for the purported stock issuance, and referenced CIS' findings from the overseas investigation of the foreign company. The director stated that the petitioner should have submitted all documentation of the company's ownership purportedly possessed by the beneficiary. The director instructed that counsel's assertions alone are not sufficient to corroborate his claim of a parent-subsidary relationship. The director further noted an inconsistency in the company's claimed ownership in that the petitioner's years 2000 through 2003 federal income tax returns identified the beneficiary as the sole owner of the United States corporation. Consequently, the director revoked the petition's approval.

In response, counsel claims in his December 4, 2006 brief the existence of "ample evidence" of an "on-going parent-subsidiary relationship with the foreign entity." Counsel submits the minutes from a December 15, 1999 meeting held by the petitioner's board of directors, in which individuals expressed their desire to sell to the corporation their cumulative 49 percent interest in the petitioning entity.

Upon review, the petitioner has not established that the foreign and United States entities enjoyed a qualifying relationship at the time of filing or that the companies shared a qualifying relationship until the present review.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 364-365. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. See 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

Here, the petitioner has not corroborated its claim of ownership and control by the foreign entity with independent evidence reflecting monies transferred by the foreign entity as consideration. Although requested, there is no evidence in the form of wire transfer receipts or bank statements demonstrating that the petitioner received monies from the foreign entity in March 1995, the time at which the foreign company purportedly received its 51 percent ownership interest in the United States entity. While the record contains four money transfer notifications, each reflects personal funds transferred by the foreign company's president into the beneficiary's individual savings account. Moreover, the transfers took place in the months of May through October 1996, more than one year after the stock is represented as being transferred to the petitioning

entity. 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. at 165.

Additional evidence in the record further undermines the claim of a parent-subsidary relationship. For example, the petitioner failed to note on its 1996 state income tax return the foreign entity's purported ownership of more than 50 percent of its stock. Also, as pointed out by the director in his November 13, 2006 decision, the petitioner's years 2000 through 2003 federal income tax returns identify the beneficiary as the owner of the United States company. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the corporate minutes submitted by counsel in response to this certification do not clarify or establish the ownership of the petitioning entity. Rather, the document merely addresses the relinquishment of two minority stock interests. The minutes from the petitioner's December 15, 1999 board meeting do not address the foreign entity's purported ownership of the United States organization. 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).

Counsel's claim of unavailability with respect to documentation relevant to the petitioner's ownership is not persuasive. As noted by the director, based on counsel's representations, the beneficiary should be able to produce documents establishing the owner of the petitioning entity. Again, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Regardless, notwithstanding 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 (9<sup>th</sup> Cir. 1984). Here, as the record does not demonstrate the existence of a qualifying relationship between the foreign and United States entities, the beneficiary is not eligible for the requested visa classification. Accordingly, the director properly revoked approval of the immigrant petition.

The final issue in this proceeding is whether the petitioning entity established its ability to pay the beneficiary her proffered annual salary of \$24,000 on the date of filing.

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

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

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 a salary equal to or greater than \$24,000. However, the beneficiary's 1996 IRS Form 1040A, U.S. Individual Income Tax Return, and 1996 IRS Form W-2, as well as the petitioner's 1996 federal income tax return all reflect that the beneficiary received the proposed annual salary. Subsequent IRS Forms W-2 indicate that the beneficiary has continued to receive an annual salary equal to or greater than \$24,000. As a result, the petitioner has demonstrated its ability to pay to beneficiary her proffered wages. The director's decision with respect to this issue only will be withdrawn.

The AAO recognizes that CIS previously approved two L-1A nonimmigrant 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. 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).

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 approval will be revoked for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 director's decision dated November 13, 2006 is affirmed. The approval of the petition is revoked.