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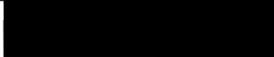
**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

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IN RE:

Petitioner:

Beneficiary:



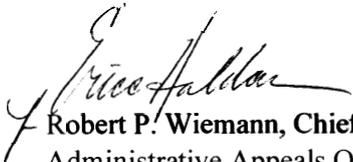
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 claims to be engaged in international trade and project consulting. The petitioner represents itself as a subsidiary of an organization in the People's Republic of China that was formed as a result of a reorganization of the assets and operations of the beneficiary's foreign employer. The petitioner seeks to employ the beneficiary as its president and chief financial officer (CFO).

The director denied the petition concluding that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity or that the beneficiary had been employed by the foreign entity as a manager or executive.

On appeal, counsel for the petitioner challenges the director's findings, claiming that Citizenship and Immigration Services (CIS) "utilized erroneous reasoning and failed to look at the totality of the evidence" when refusing to consider the beneficiary's proposed and former employment in a primarily managerial or executive capacity. Counsel submits a brief in support of the appeal.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. – An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

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

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

The first issue in this proceeding is whether the 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.

Counsel for the petitioner filed the Form I-140 on September 13, 2005, noting the employment of the beneficiary and seven additional employees. In an attachment to the immigrant visa petition, the petitioner provided the following description of the beneficiary's proposed employment:

Following the formulation of business development review and plan in accordance with company objectives and foreign company business plans, [the beneficiary] is charged with

implementing these policies and business plans. She establishes internal company policies and procedures as well as business policy for the overseas market. She also controls foreign capital investment and is responsible for advanced technology introduction project development. She provides business location evaluation and seeks strategic business partners in the region. In addition, [the beneficiary] formulates specific business tasks and implementation plans as needed. She decides product line focus and prepares business reports to parent company management. Applying her senior[-]level management experience and industrial background expertise, she directs [the] petitioner's overall business operations, including final decision making on business development and other organization issues. She also conducts the hiring and firing of key level managers and provides internal company restructuring to meet [the] petitioner's business focus and approach. Under her supervision, the company has grown in both sales and organizational size. Her strategic plan has led to business partnerships (by developing exclusive regional distributors) on the east coast of the U.S. and in Canada to more effectively serve [the] petitioner's wholesalers and clients in those regions.

As CFO, she will continue to be in charge of [the petitioner's] financial management. She will continue to establish financial policies and database financial management systems, manage foreign capital investment, as well as direct and control the overall financial planning at the company.

[The beneficiary] supervises both the Vice General Manager and Vice President, who in turn are responsible for critical business functions and overseeing the office, sales, and marketing/logistics managers. The Vice General Manager and Vice President will support [the beneficiary] in administration, financial management, and business development. As highest in command with supervisory authority over professional-level employees, [the beneficiary] is clearly a multinational manager/executive under Section 203(b)(1)(C) of the [Act], as amended.

The petitioner described its "management structure" as consisting of the president, vice-president, vice general manager, regional sales manager, office manager, and resource and logistic manager. In an appended organizational chart, the additional lower-level positions of sales associates and product design assistant were identified. The petitioner offered descriptions of the positions supporting the beneficiary in her employment as president and CFO, noting that the vice general manager would be responsible for managing the company's sales and administrative functions and increasing its market share, while the vice president would utilize the petitioner's United States location to develop its market in the United States, as well as that of the foreign Chinese entity. As the complete job descriptions are already part of the record, they will not be repeated herein.

The director issued a request for evidence on February 28, 2006, directing the petitioner to submit the following evidence in support of the beneficiary's employment as a manager or executive: (1) a detailed description of the specific job duties to be performed by the beneficiary on a day-to-day basis, and the percentage of time the beneficiary would devote to performing each task; (2) a list of the employees directed by the beneficiary and their job titles; (3) an organizational chart identifying the positions of the employees to be supervised by the beneficiary; (4) copies of quarterly wage reports completed by the petitioner for the last

four quarters; and (5) a copy of the petitioner's payroll summary, and Internal Revenue Service (IRS) Forms W-2 and W-3.

Counsel for the petitioner responded in a letter dated May 18, 2006, providing a lengthy description of the beneficiary's job duties as president and CFO of the United States company. Based on the offered job description, the beneficiary would dedicate her time to the following job responsibilities: "consolidate the overseas company's overall business mission into an effective business goal for [the petitioner]," 15%; assume responsibility "for establishing and leading the company toward achieving business goals," 50%; supervising the vice general manager and his administrative management team, 15%; and supervising the business development team, 20%. As the beneficiary's job description is already part of the record, it will not be entirely repeated herein. Counsel again offered job descriptions for the beneficiary's subordinate employees, and a revised organizational chart identifying staffing changes incurred by the petitioner since the filing date. Because the beneficiary's eligibility for the requested immigrant visa classification is based on her job responsibilities and the petitioner's staffing levels on the date of filing, the company's subsequent changes in its staffing levels will not be considered in the instant analysis. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (finding that 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).

Counsel further provided the petitioner's quarterly tax reports for 2005 and the first quarter of 2006, all of which offer significant information as to the petitioner's staffing levels on the filing date. The AAO notes that based on the petitioner's second and third quarter reports, of the eight employees represented on the original organizational chart, four were employed during the months immediately prior to the instant filing, and do not appear to have been employed in September 2005, the month during which the petition was filed. Similarly, the petitioner's third quarter report identifies four employees who have not been represented on its organizational chart, and whose positions have not been identified. Further, in light of the minimal wages reflected on the third quarter report, of the company's eight employees, five appear to have been working on a less than part-time basis.

In a September 28, 2006 decision, the director concluded that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director referenced the job descriptions offered for the beneficiary, and noted discrepancies in both the petitioner's staffing levels on the date of filing and the full or part-time employment status of its workers. The director questioned whether the petitioner employed any full-time workers to assist the beneficiary. The director concluded that the beneficiary "[would be] performing the entire functions of the petitioner[,] such as import[ing], warehous[ing], shipping, receiving, sales, attending trade shows, and promot[ing] product[s] to customers and retailers[.]" and noted that the named tasks are not considered to be managerial or executive in nature. The director further noted that the petitioner had not demonstrated the need for a professional to perform in the positions of vice general manager, vice president, or resource and logistic manager, and concluded that the beneficiary would not be managing "a subordinate staff of professional, managerial or supervisory personnel who [would] relieve [her] from performing the services of the company in her absence." Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on October 31, 2006. In an appellate brief bearing the same date, counsel contends that the petitioner offered a comprehensive job description demonstrating that 65 percent of the beneficiary's time would be spent performing in an executive capacity, and challenges that because the beneficiary would be employed as an executive, the petitioner is not required to demonstrate her

"management of [an] organization, department, subdivision, function, or component," as noted by the director in his decision. Counsel states that in her role as president, the beneficiary's "main objective" is to consolidate the Chinese company's "business mission into an effective business goal for the petitioner," and further provides that the beneficiary is responsible for "controlling foreign capital investment, financial planning, and technology introduction project development, business location valuation, and internal company restructuring," and for developing strategic business policies. As an example of the beneficiary's executive decision-making, counsel references the petitioner's 12-page 2005-2006 Business Development Review and Plan, which was prepared by the beneficiary. Counsel states:

[The] Beneficiary reviewed the company's compliance with governmental business and tax registrations, efficiency of organizational/administrative systems, and product lines and marketing approaches, and formulated specific goals with respect to production capacity, the establishment of a distribution network through regional wholesalers, and developing additional production resources in China. The Business Development and Review Plan was prepared by the beneficiary for review and approval by the Board and high ranking officials of the overseas company. The Business Development and Review Plan reflects a concrete discussion of the plans and goals formulated by the beneficiary beyond the petitioner merely asserting that the beneficiary is 'President'.

Counsel further contends that CIS "utilized faulty reasoning to determine the number of [the petitioner's] employees." Counsel claims that the Act neither mentions nor requires the supervision of a certain number of full-time employees to be considered a manager or executive, and stresses that the petitioner's reasonable needs in light of its overall purpose and stage of development should be reviewed if considering the petitioner's staffing levels. Counsel states:

The petitioner was incorporated in 2001 and has been conducting the active imports, wholesale, and distribution of glass products and quartz related products from China for sale and distribution in the U.S. It provides a variety of company owned, designed, and manufactured container products for the market. In the floral market section, the company has developed sizeable wholesalers and established [a] base of regular clients. Therefore, its business heavily relies on business development and increasing business territory. The beneficiary's executive job duties (as described above) reflects [sic] this emphasis on generating business partnerships and developing exclusive regional distributors. [The] Petitioner's core business needs are beyond the beneficiary herself performing 'import, warehouse, shipping, receiving, sales, attending trade shows, and promoting product to customers and retailers.' Rather, such tasks are performed by [the] petitioner's staff, as depicted in the organizational chart and employee job duties (and discussed further below).

With respect to the employment status of the employees depicted on the petitioner's organizational chart, counsel contends that the petitioner retained a full-time staff, and that "a low salary in and of itself does not indicate that the employees were not working in a full-time capacity." Counsel also claims that even if part-time, the lower-level employees "can just as effectively relieve the beneficiary of performing the day-to-day business operations [of the petitioning entity]." Counsel again notes the petitioner's staffing levels, claiming that the record, as a whole, demonstrates the beneficiary's proposed employment in an executive capacity.

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 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).

Based solely on the lengthy description offered for the beneficiary's position, it appears that the beneficiary would be performing high-level executive job responsibilities in the petitioning entity. However, a comprehensive review of the beneficiary's claimed job duties in connection with the staffing levels represented by the petitioner and the personnel actually employed on the date of filing creates doubt as to whether the beneficiary would be supported in a primarily executive or managerial capacity.

Counsel correctly observes on appeal that, when staffing levels are used as a determining factor in denying a visa to a multinational manager or executive, the reasonable needs of the organization in relation to its overall purpose and stage of development must be considered and addressed. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, while counsel merely excuses the question of full or part-time employment on the part of the beneficiary's subordinates, this unexplained discrepancy is an essential factor in determining the capacity in which the beneficiary would be employed. The record as presently constituted does not corroborate the petitioner's claim that the beneficiary would be primarily establishing business goals of the petitioning organization and supervising subordinate management teams. 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).

As noted previously, the petitioner's third quarter wage report demonstrates the employment of eight workers on the date of filing. However, the positions of four have not been identified. Again, of the eight workers represented on the petitioner's original organizational chart, four were employed prior to the instant filing. Neither the petitioner nor counsel has explained whether the employees identified on the third quarter wage report assumed the positions of these former employees. The AAO also notes that despite referencing the use of regional distributors, the petitioner has not presented evidence of a relationship with any United States distributors. Without further evidence or clarification, the record demonstrates that at the time of filing, the petitioner employed the beneficiary as president, a vice president, a vice general manager, and a resource and logistic manager. Again, according to the September 30, 2005 quarterly wage report, the petitioner's vice general manager and resource and logistic manager were employed on a less than part-time basis, earning approximately \$913.00 and \$1,569.00, respectively, during the third quarter.

Consideration of the petitioner's staffing levels in light of its business purpose as a four-year old importer, wholesaler, and distributor demonstrates that the petitioner's reasonable needs would not be met while employing the beneficiary in a primarily managerial or executive capacity. Moreover, the nature of the petitioner's business, which involves importing, shipping, stocking, and selling products, undermines the petitioner's claims that the subordinate employees would relieve the beneficiary from performing non-qualifying duties. The petitioner has not sufficiently and accurately accounted for the performance of the

functions associated with the positions of vice general manager, resource and logistic manager, regional sales manager, or office manager, or the performance of the non-managerial or non-executive tasks related to the positions of sales associate and product design assistant. The AAO acknowledges that the position of vice general manager is represented in the offered job description as full-time with flexible hours. However, based on the wages earned during the period in question herein, the vice general manager cannot be deemed to have been performing in a full-time capacity or to sufficiently support the beneficiary by performing the associated sales and marketing administrative functions. Moreover, the petitioner leases a 4,800 square foot warehouse for purposes of receiving, storing, shipping and selling products, but has not documented the employment of lower-level workers to perform these operational non-qualifying tasks. Considering the numerous, unexplained discrepancies in the petitioner's staffing levels on the date of filing, the AAO cannot be expected to merely assume that the beneficiary's subordinates "effectively relieve the beneficiary of performing the day-to-day business operations," as suggested by counsel on appeal.

While the beneficiary's job duties are presented as being primarily executive in nature, a critical review of the employees purportedly supporting the beneficiary in her position as president and chief financial officer undermines the representations made by the petitioner, and suggests that the beneficiary would be responsible for personally assisting in the performance of the company's administrative, sales, marketing, warehousing, and shipping functions. 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). Although counsel challenges this finding on appeal by reiterating the executive responsibilities assigned to the beneficiary and referencing the positions represented on the petitioner's organizational chart, he has not clarified the relevant and apparent inconsistencies in the petitioner's staffing levels, which preclude a finding that the beneficiary would be sufficiently supported in a primarily managerial or executive capacity. 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).

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

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

The petitioner did not specifically address the beneficiary's former employment with the foreign entity in its initial filing. As a result, in his February 28, 2006 request for evidence, the director requested that the petitioner submit the following evidence in support of the beneficiary's employment as a manager or executive of the foreign entity: (1) a detailed description of the specific job duties performed by the beneficiary on a day-to-day basis, and the percentage of time the beneficiary devoted to performing each task; (2) a list of the employees directed by the beneficiary and their job titles; and (3) an organizational chart identifying the positions of the employees supervised by the beneficiary.

In his May 18, 2006 response, counsel referenced a detailed description of the beneficiary's employment in the foreign entity. The AAO notes, however, that the specific exhibit referenced by counsel was not provided for the record. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

With respect to the beneficiary's former employment, counsel submitted an employment verification letter, in which the foreign entity confirmed the beneficiary's employment as deputy manager of its import-export department from March 1999 through June 2000, and as manager of the North American department from June 2000 through July 2001, following which, the beneficiary was transferred to the United States as a nonimmigrant. The foreign entity explained that while employed as the manager of the North American department, the beneficiary was also the company's financial planning supervisor, during which she "manage[d] the financial budget planning based on [the] company's funds for each department." On an attached organizational chart, the beneficiary was identified as supervising a deputy manager and a quality assurance specialist. Counsel provided descriptions for the positions held by the beneficiary's two subordinates.

In his September 28, 2006 decision, the director concluded that the beneficiary was not employed by the foreign entity in a primarily managerial or executive capacity. The director noted the employment verification letter submitted by the foreign company, and, focusing on the previous position of deputy manager of the import-export department, concluded that the beneficiary had been performing non-qualifying tasks related to the foreign entity's shipping and administrative functions. The director further noted that the evidence provided of the beneficiary's former employment was "vague and nonspecific," and failed to document what tasks the beneficiary performed on a daily basis. Consequently, the director denied the petition.

On appeal, counsel for the petitioner contends that CIS "place[d] undue emphasis on the overseas company's letter" in concluding that the beneficiary did not occupy a primarily managerial or executive capacity. Counsel claims that the foreign company's letter, in conjunction with the job descriptions provided for the beneficiary's subordinates establishes the beneficiary's prior management of the North American Department and employment with the foreign entity as a manager or executive.

Upon review, the petitioner has not established that the beneficiary had been 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 extremely limited descriptions of the beneficiary's former employment as the deputy manager of the foreign entity's import-export department and manager of the North American department fail to demonstrate that either position was primarily managerial or executive in nature. As correctly noted by the director, the representations made by the foreign entity in its employment verification suggest that as the import-export manager the beneficiary was performing non-qualifying tasks related to the company's shipping function, such as "handl[ing] all the documents," settling bank accounts, and representing the foreign company in business negotiations. 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 petitioner has not submitted a sufficient job description to determine what managerial or executive job duties were performed by the beneficiary during her employment as the manager of the foreign North American department. Despite counsel's suggestion on appeal, the capacity in which the beneficiary's was employed cannot be inferred from the job descriptions of subordinate employees. While the subordinates' job descriptions may assist in determining whether the beneficiary was relieved from performing non-managerial or non-executive tasks of the department, the actual job duties of the beneficiary reveal the true nature of her employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990). The petitioner has failed to answer a critical question in this case: What did the beneficiary primarily do on a daily basis?

Although the director noted that the record was inadequate with respect to the beneficiary's foreign employment, counsel did not submit on appeal additional evidence of the specific job duties performed by the beneficiary in the overseas company. 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. at 534. Absent an additional description of the positions held by the beneficiary in the foreign entity, the AAO cannot conclude that the beneficiary was employed in a primarily managerial or executive capacity. For this additional reason, the appeal will be dismissed.

Counsel notes on appeal CIS' prior approval of three 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 prior nonimmigrant approvals do not preclude CIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant

petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.