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U.S. Citizenship
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Services

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FILE: [REDACTED]
SRC 06 070 50711

Office: TEXAS SERVICE CENTER

Date: MAY 08 2007

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

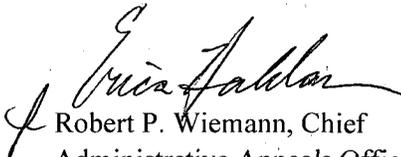
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based 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 Florida that is engaged in repairing electronics. The petitioner seeks to employ the beneficiary as its president.

The director denied the petition concluding that the petitioner had not demonstrated that: (1) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity; or (2) at the time of filing, a qualifying relationship existed between the United States and foreign entities.

The director also questioned the validity of the immigrant visa petition, noting in her decision that the Form I-140 had been signed by an individual who did not appear to be employed by the petitioner, but rather was employed by the foreign entity. The petitioner contends on appeal that the signator was appointed as the petitioner's treasurer prior to the instant filing, but that the Florida Division of Corporations did not receive its amended articles of incorporation because of destruction incurred by a hurricane. As the director addressed the merits of the immigrant visa petition, the AAO will consider the instant appeal. The director's comments with respect to the invalidity of the Form I-140 are withdrawn.

On appeal, the petitioner contends that the beneficiary qualifies for the requested immigrant visa classification, as he would be employed by a qualifying United States entity in a primarily managerial capacity. The petitioner submits a brief and documentary evidence in support of the appeal.

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

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

* * *

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

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 petitioning entity in a primarily managerial or executive capacity.

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

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

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

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

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

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

The petitioner filed the Form I-140 on December 30, 2005 noting that the beneficiary would be employed as the president of the three-person United States company. In an attached letter, dated December 17, 2005, the

petitioner indicated that the beneficiary would be employed as the corporation's general manager, and identified his job responsibilities as: exercising authority with respect to the company's human resources function, including hiring and firing employees, delegating assignments and conducting performance reviews; exercising "autonomous control" and "wide latitude and discretionary decision-making"; making decisions with respect to the company's management and "direction of our international activities"; ensuring consistency in the technical services offered by the company; and, improving communications between the petitioner and the foreign company. With respect to its business operations, the petitioner explained that "small" electronic repairs are done in the company's "repair service center," while larger repairs are completed by field technicians at the customer's location.

The petitioner submitted an organizational chart identifying the beneficiary's two subordinate employees as occupying the positions of supervisor and assistant manager. The petitioner's September 30, 2005 quarterly wage report confirms the employment of the petitioner's three-person staff.

The director issued a request for evidence on January 20, 2006 directing the petitioner to submit a detailed statement describing the job duties of its three employees, including the percentage of time each employee would spend on their specific tasks, and whether the beneficiary's subordinates are employed on a full-time basis. The director noted that the Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, issued by the petitioner in 2004 and 2005 suggest that its two lower-level employees were employed as part-time workers. The director requested clarification as to who would perform such daily tasks of the petitioner's business as answering customer calls and performing repairs, and asked that the petitioner submit evidence, such as work agreements or payments made to contractual workers, demonstrating its purported use of field technicians.

The petitioner responded in a letter dated March 31, 2006, stating:

All the employees are full[-]time, and they dedicated 100% percent [sic] of their time to their task. The repairs are made through the supervisor[']s department . . . , who has the responsibility to select the outsourcing personnel that the [sic] will consider to hire. He must evaluate the skills and knowledge. [The assistant manager] is responsible for the supervision of the center, assist[ing] [the] manager in all aspects of the daily operation center[.]

The phone lines in the company are connected to a computer and it direct[s] the phone calls to the specific person request[ed] by the customer. As a proof of payment, the [IRS Form W-2] contains the wages paid to our employees. We do not have any contract subscribed with our employee[s].

The petitioner acknowledged the director's request for specific evidence related to its employees, and referenced as evidence an exhibit marked "D." It is unclear, however, to what the petitioner is referring, as the attached documentation is not labeled, and the petitioner's response is devoid of evidence related to the petitioner's staffing levels.

The director issued a decision on August 15, 2006, concluding that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director noted uncertainty as to the petitioner's claim of employing a full-time assistant

manager, stating that it conflicts with the representation that this individual also works for another company. The director also pointed out that the petitioner had not submitted evidence of its purported use of outside workers. The director concluded that, as a whole, the record failed to demonstrate the beneficiary's employment in a primarily managerial or executive capacity. Consequently, the director denied the petition.

The petitioner filed an appeal on September 14, 2006. In an attached appellate brief, dated September 9, 2006, the petitioner states that as the general manager, the beneficiary holds "entire responsibility" for the United States business. The petitioner identifies the beneficiary's associated job duties as: negotiating contracts with professionals; attending meetings held with the foreign and United States entities; and, supervising "all operations." The petitioner restates the statutory definition of "managerial capacity" and contends: "The beneficiary functions at a senior level within the organizational hierarchy or with respect to the functional [sic] managed, and continue [sic] to communicate with the foreign entity." The petitioner further instructs that the number of employees managed by the beneficiary should not be a factor in the analysis of whether he is employed as a manager or executive, and states: "It is clear that the management of [t]he United States branch office of the foreign entity requires the classification of a '[s]enior [l]evel with the organizational hierarchy."

With respect to the company's staffing levels, the petitioner identifies its supervisor and assistant manager as full-time employees, acknowledging that while its assistant manager works with the petitioner and another company, "she works with our papers during her free time" and is employed with the petitioner "100% in a managerial or executive manner."

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.

The petitioner has not clarified the position to be occupied by the beneficiary in the United States company. The Form I-140 indicates that the beneficiary would be employed as the company's president, while the remaining evidence submitted by the petitioner, including its December 17, 2005 letter in support of the visa petition, organizational chart, and appellate brief, identifies the beneficiary's proposed employment as general manager. The petitioner is obligated to "clearly describe" the beneficiary's managerial or executive job duties as they relate to his proposed employment in the United States. *See* 8 C.F.R. § 204.5(g)(5). The petitioner's inconsistent references to the beneficiary's proposed position are contrary to the regulatory requirements for the instant immigrant visa petition.

When examining the executive or managerial capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See id.*

The description offered by the petitioner of the beneficiary's proposed position falls significantly short of demonstrating the beneficiary's employment in the United States in a primarily managerial or executive capacity. The petitioner's brief and generalized statements of the beneficiary's employment are essentially restatements of the statutory definitions of "managerial capacity" and "executive capacity," in which he is claimed to supervise two managerial employees, exercise authority over personnel decisions, including hiring and firing, "exercise wide latitude and discretionary decision-making," and formulate strategies. *See* §§ 101(a)(44)(A) and (B) of the Act. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a

matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Similarly, the evidence provided on appeal in support of the beneficiary's qualifying employment is extremely limited, indicating only that the beneficiary would attend meetings between the petitioner and the foreign corporation, supervise "all operations," and negotiate contracts, which, incidentally, is not typically deemed to be managerial or executive in nature. See §§ 101(a)(44)(A) and (B) of the Act. The petitioner's recitations of the beneficiary's vague job responsibilities are 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 would the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Id.* at 1108.

The AAO notes that the petitioner did not offer an additional job description for the beneficiary despite the director's request for a detailed statement of the employees' specific job duties and the amount of time spent on each task. The petitioner likewise provided only a brief statement of the responsibilities held by the beneficiary's two subordinate employees. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The petitioner's 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).

The record demonstrates that the director correctly concluded that the petitioner did not employ a subordinate staff sufficient to support the beneficiary 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, Citizenship and Immigration Services (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 further 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.*

At the time of filing, the petitioner was a four-year-old electronics repair company that claimed to employ the beneficiary as president, plus a supervisor and an assistant manager. The petitioner also claimed to utilize field technicians or outsourced workers to provide its electronic service repairs. The petitioner, however, did not submit evidence, such as work contracts, invoices for services rendered, or proof of compensation paid by the petitioner, corroborating its claim of utilizing outside workers to perform the actual day-to-day, non-managerial operations of the company. The petitioner's 2005 federal income tax return, in particular, fails to identify any payments made during the year for work performed by contract workers. 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)).

The record as presently constituted suggests that at the time of filing, the petitioner's workforce consisted of the beneficiary and two subordinate employees. The wages reflected on the petitioner's September 30, 2005 quarterly report indicate that the subordinate workers were either working less than full-time or compensated

at an amount less than the minimum wage¹. The AAO recognizes the petitioner's claims that its staff is comprised of only full-time workers. However, the petitioner has not reconciled this claim with the observation that its two purported full-time employees are being compensated at a rate lower than minimum wage, thereby raising doubt as to the workers' true employment status. Moreover, the petitioner stated on appeal that its assistant manager is concurrently employed by another company, and that she "works with our papers during her free time." If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Based on these representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the petitioner's three-person staff, or that the beneficiary's two subordinates would support the beneficiary in a primarily managerial or executive capacity. 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).

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

Based on the foregoing discussion, the petitioner has not demonstrated 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 petitioner demonstrated that the United States and foreign entities enjoyed a qualifying relationship at the time of filing.

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

Affiliate means:

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

¹ Assuming a 40-hour work week, the supervisor and assistant manager were being compensated at an hourly rate of \$5.00. At the time the immigrant visa petition was filed, the federal minimum wage rate was \$5.15, whereas the minimum hourly wage in Florida during 2005 was \$6.15. The AAO notes that where minimum wage rates differ between federal and state law, the higher standard applies. *See U.S. Department of Labor, "Minimum Wage Laws in the States,"* last revised on December 2006, available at www.dol.gov/esa/minwage/america.htm (accessed on May 2, 2007).

(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.

While the petitioner provided with its initial filing a translated copy of the foreign entity's mercantile register, in which the beneficiary and [REDACTED] were identified as equal shareholders of the organization, it neglected to specifically identify the existence a qualifying relationship between the foreign and United States entities. Consequently, in her January 20, 2006 request for evidence, the director requested that the petitioner submit documentary evidence reflecting the existence of a qualifying relationship between the petitioner and the beneficiary's overseas employer.

As evidence of a qualifying relationship, the petitioner submitted and referenced a copy of its issued stock certificate, on which the foreign organization is named as the shareholder of the company's 1,000 shares of authorized stock. The petitioner did not provide any additional documentary evidence of a purported qualifying relationship between the foreign and United States entities.

In her August 12, 2006 decision, the director concluded that the petitioner had not demonstrated that the United States and foreign entities enjoyed a qualifying relationship at the time the immigrant visa petition was filed. The director noted that while the foreign entity was named as a stockholder on the petitioner's issued stock certificate, the petitioner's 2004 and 2005 federal tax returns did not acknowledge the foreign entity's ownership as its sole shareholder. The director further noted that the beneficiary signed as the petitioner's owner on its lease agreement for office premises in the United States. The director stated that the inconsistencies precluded a finding of a qualifying relationship. Consequently, the director denied the petition.

On appeal, the petitioner claims the existence of a qualifying relationship between the foreign and United States entities, stating: "The owner of 100% of the stocks of the foreign company [] owns 100% of the shares of [the petitioning entity]." The petitioner provided a chart of "shareholder distribution" noting ownership as 50 percent of the United States entity and 50 percent of the foreign organization. The AAO notes that it is not clear who the petitioner is referencing as the "owner." The petitioner further noted that the foreign entity was owned equally between the beneficiary and Ramon Antonio Valero.

With respect to the information depicted on the company's income tax returns, the petitioner stated that its accountant had erroneously reported its ownership, and that the accountant, who "is just now out of the state of Florida," would rectify the mistake. The petitioner offered to provide copies of the corrected documents following the accountant's return to Florida. The AAO notes that the petitioner has not submitted any additional evidence following the filing of this appeal.

Upon review, the petitioner has not demonstrated that the United States and foreign entities enjoyed a qualifying relationship at the time 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 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.

Here, the limited evidence offered by the petitioner is insufficient to establish a qualifying relationship between the foreign and United States entities. While the petitioner submitted a stock certificate naming the foreign entity as the sole owner of the United States organization, the petitioner's response on appeal confuses the purported parent-subsidiary relationship. The petitioner's brief statement in its appellate brief seems to suggest that the beneficiary owns 50 percent of both the foreign and United States organizations, thus proposing an affiliate relationship between the two entities; however, this assumption cannot be verified by the limited and inconsistent record. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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.

As already noted by the director, the petitioner's 2004 and 2005 federal income tax returns fail to clarify the inconsistent claims of ownership, as neither the beneficiary nor the foreign entity is recognized as a stockholder of the corporation. Additionally, stock certificates alone are not sufficient to demonstrate ownership and control, particularly in the case where an apparent discrepancy with regard to ownership exists. 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.

at 591-92. Absent independent and objective evidence of the petitioner's ownership, the AAO cannot determine whether a qualifying relationship exists between the foreign and United States entities. Accordingly, the appeal will be dismissed for this additional reason.

The AAO recognizes that CIS previously approved two L-1A nonimmigrant visa petitions filed by the petitioner on behalf of the beneficiary. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 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. Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also 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).

Furthermore, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. *See* 8 C.F.R. § 103.8(d). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. Based on the lack of evidence of eligibility in the current record, the director was justified in departing from the prior nonimmigrant petition approvals and denying the immigrant petition.

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.