

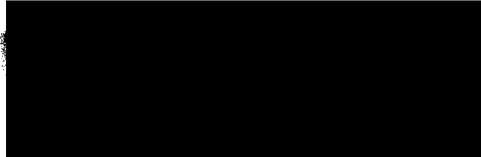
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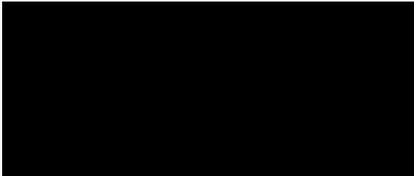


File: SRC 04 170 52144 Office: TEXAS SERVICE CENTER Date: NOV 28 2005

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

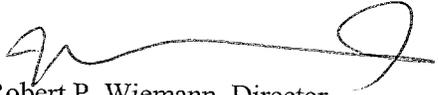
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN 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, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president and general manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a Texas corporation that claims to be engaged in the retail sale of general goods and household items. It operates a gas station and convenience store. The petitioner claims that it is the subsidiary of Xpert Circuit (India) Pvt. Limited, located in Mehsana, India. The beneficiary was initially granted a one-year period of stay in L-1A status to open a new office in the United States and was subsequently granted a one-year extension of stay. The petitioner now seeks to extend the beneficiary's stay for an additional three-year period.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the U.S. entity was doing business for the previous year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director erroneously determined that the beneficiary will not serve in a managerial or executive capacity. Specifically, counsel claims that the petitioner's response to the director's request for evidence was adequate, and asserts that the director denied the petition based on the petitioner's failure to provide evidence that was never requested. Counsel further contends that the director placed undue emphasis on the size of the petitioning company without considering its reasonable needs, and disregarded the job description provided for the beneficiary. With respect to the issue of whether the petitioner has been doing business for the previous year, counsel asserts that the director ignored the evidence submitted by the petitioner. Counsel submits a brief and copies of previously submitted documents in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The primary issue in the present matter is whether the beneficiary will 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), defines the term "managerial capacity" as 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) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or 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), defines the term "executive capacity" as 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 Form I-129 petition was filed on June 1, 2004. In a May 26, 2004 letter, the petitioner described the beneficiary's duties as follows:

[The beneficiary] is employed at an executive-level position within the US Company and will continue to supervise managers who will manage the day-to-day operations of [the petitioner's] retail locations. [The beneficiary] has been the key person in conducting the feasibility and due diligence tests for acquisition of additional locations. [The beneficiary] will continue to conduct additional tests for potential locations in furtherance of our goals. [The beneficiary] is the key US contact for the parent company and she oversees and directs all executive functions of the US Company. [The beneficiary] supervises managers who run day-to-day operations of the retail stores. [The beneficiary] establishes goals, policies and procedures for [the petitioner]. In sum, [the beneficiary] has the overall responsibility of planning and developing the U.S. investment, executing personnel actions based upon recommendations made by management, placing a management team to run the operations, determining where to establish retail centers, supervising all financial aspects of the company and developing policies and objectives for the company.

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[The beneficiary] will have overall executive responsibility for developing, organizing, and establishing the purchase, sale, and retail distribution of food, automotive, and household products in the U.S. domestic market. Her other duties will include: (i) identifying, recruiting, and building a management team and staff with background and experience in management and sales in the U.S. market; (ii) hiring appropriate personnel and leasing equipment and retail distribution facilities; (iii) negotiating and supervising the drafting of purchase agreements; (iv) overseeing the legal and financial due diligence process and resolving any related issues; (v) negotiating purchases and conducting sales promotions; (vi) developing trade and consumer market strategies based on guidelines formulated by [the foreign entity]; and (vii) developing and implementing plans to ensure [the petitioner's] profitable operation.

The petitioner submitted evidence that it had purchased one gas station/convenience store as of the date of filing, and listed its number of employees as "10 (projected)" on Form I-129. The petitioner submitted its Texas Form C-3, Employer's Quarterly Report, for the first quarter of 2004, showing that the company employed four employees as of March 31, 2004, including the beneficiary.

On June 7, 2004, the director requested additional evidence to establish that the beneficiary will be employed in a primarily managerial or executive capacity. In part, the director requested: (1) a definitive statement describing the beneficiary's U.S. position including all duties, the percentage of time spent on each duty, and the number of subordinate employees who report to the beneficiary, with a brief description of their job titles, duties and educational background; (2) an explanation as to who produces the products or provides the services of the business; and (3) an organizational chart for the United States entity.

In a reply dated August 9, 2004, the petitioner repeated a portion of the job description provided in its May 26, 2004 letter and indicated that the beneficiary would allocate her time as follows:

Developing [m]arket [s]trategies based on guidelines from [f]oreign [o]ffice	15%	
Overseeing [l]egal and [f]inancial issues and resolving related issues	30%	
Developing and [I]mplementing [p]lans to ensure [p]rofitable [o]perating	35%	
Hiring/[s]upervising [p]ersonnel	10%	
Negotiating and [s]upervising [c]apital [d]ecisions		10%

The petitioner indicated that it employed a store manager and two cashiers. The petitioner's Texas Forms C-3, Employer's Quarterly Report, confirmed the employment of the claimed employees. One cashier received a monthly wage of \$500, while the store manager and other cashier both received wages of \$1,000 per month. The petitioner provided the following job description for the store manager:

The Store Manager oversees the day-to-day operations of the retail store and gas sales. The Store Manager makes recommendations to President on daily management issues such as employee discipline, theft, purchasing and receives guidance from President on policy and procedure of the Company. Store Manager handles all customer complaints, negotiates with vendors, fills-in for Cashiers as needed, maintains the inventory and equipment, reconciles sales transactions and bank accounts. Store Manager is responsible for creating a team of lower-level employees, cashiers and stockers by interviewing and training employees. Store Manager ensures compliance with applicable regulatory agency requirements and informs the President of any renewals of licenses or health department issues. Store Manager listens to customer complaints, resolves problems to restore and promote good public relations. He schedules and assigns tasks to employees and report to President and makes recommendations on the daily operations of the retail outlet and the employees. This position requires a Bachelor's Degree.

The petitioner further indicated that its two cashier/clerks handle customer sales transactions, prepare transaction reports, stock merchandise, accept delivery of goods, perform other clerical functions and report to the store manager on the daily operations of the store.

On August 26, 2004, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director observed that the petitioner provided only a general statement that failed to demonstrate that the beneficiary will perform managerial or executive duties, noting that there was no documentary evidence submitted to establish that the beneficiary performs the claimed duties. Specifically, the director addressed the breakdown of job duties submitted in response to the request for evidence and noted that the petitioner did not clarify the legal and financial issues overseen by the beneficiary, the specific capital decisions she negotiated, or the specific plans she developed in order to ensure a profit. The director further found that given the current structure of the company, the beneficiary would continue to perform the day-to-day services of the organization.

On appeal, counsel for the petitioner asserts that the director erroneously concluded that the beneficiary would not be employed in a qualifying managerial or executive capacity. Counsel objects to the director's characterization of the beneficiary's job description as general and asserts: "It is difficult to provide documentary evidence on the duties performed by an Executive or Manager since [many] duties are intangible and require executory decision making." Counsel asserts that the director only requested a "list of duties" and contends that the regulations do not require the petitioner to document the long term goals developed by the beneficiary. Counsel objects to the denial of the petition based on lack of documentation when such documentation was never requested by the director.

Counsel further contends that the director erroneously concluded that the petitioner has not established that the beneficiary will not engage in the day to day operations of the business, noting that the petitioner must only establish that the beneficiary's duties are primarily managerial or executive, not that she will not engage in any non-qualifying duties. Counsel states that the beneficiary has performed duties that are executive in nature including involvement in acquisition of retail locations, negotiating purchase agreements, working with lawyers and accountants to ensure proper conveyance of title, conducting feasibility studies and market research on retail sites, and ensuring compliance with governmental rules and regulations. Counsel asserts that the director ignored the job descriptions submitted by the petitioner, and observes that the director "seems to have looked at the size of the company and its employees" in concluding that the beneficiary will not act in a managerial or executive capacity.

In addition, counsel emphasizes that the petitioner submitted evidence that it employs a manager who oversees the day-to-day operations of the company and questions why the petitioner would "employ a person at a Manager's salary who is not really doing 'Managerial' activities." Counsel further claims that the director is required to consider the reasonable needs of the petitioning company if considering its staffing levels, and contends that it is "normal industry standard for a retail grocery store to have full-time cashiers to perform the menial day-to-day operations and managers to oversee this activity." Counsel re-submits the petitioner's organizational chart and descriptions of the beneficiary's subordinates' duties and asserts that the number of employees supervised by the beneficiary is not determinative of her employment in a managerial or executive capacity.

Counsel's assertions are not persuasive. Upon review of the petition and supporting evidence, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity under the extended petition. 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. § 214.2(I)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner's descriptions of the beneficiary's job duties do not establish that the beneficiary would be employed in a primarily managerial or executive capacity, other than in job title. As noted by the director, the initial job description was vague, indicating that the beneficiary's responsibilities included "conducting feasibility and due diligence tests for acquisition of additional locations," "oversee[ing] and direct[ing] all executive functions," "establishing goals, policies and procedures," "planning and developing the U.S. investment," "supervising all financial aspects of the company," "overseeing the legal and financial due diligence process and resolving any related issues," and "supervising the management." 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 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). Furthermore, the initial job description also included job duties which could reasonably be construed as non-qualifying tasks, such as “negotiating purchases and conducting sales promotions” and “developing trade and consumer market strategies.” Without further explanation, these appear to be routine sales and marketing tasks that do not fall under the traditional definitions of managerial or executive capacity. *See* section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44).

Accordingly, the director requested a comprehensive description of the beneficiary's duties including a list of specific duties and the percentage of time spent on each duty. In response, the petitioner repeated the same job description submitted with the initial petition. Rather than assigning a percentage of time the beneficiary devotes to specific duties, the petitioner assigned percentages to broad responsibilities that were described in even broader terms than the initial description. For example, based on the petitioner's representations, the majority of the beneficiary's time will be divided between “overseeing [l]egal and [f]inancial issues and resolving related issues,” and “[d]eveloping and [i]mplementing [p]lans to ensure [p]rofitable [o]perating.” The petitioner has not, however, defined what legal, financial or “related” issues confront the petitioner's business such that they would reasonably require the daily attention of an executive, nor has it provided any description of the plans developed by the beneficiary or how she implements them. Counsel's claim that it would be difficult to document the beneficiary's “intangible” duties is not persuasive; the regulations require a detailed description of the beneficiary's duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). The director specifically requested a comprehensive description of the beneficiary's duties and was justified in finding the petitioner's response insufficient to establish the beneficiary's employment in a managerial or executive capacity. 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)).

On appeal, counsel claims that the beneficiary's “primary” responsibility is to identify additional investments and conduct feasibility studies on potential investments. However, counsel does not identify what specific duties are entailed by this responsibility, nor does she indicate how conducting feasibility studies qualifies as a managerial or executive duty. Further, the record does not substantiate that locating additional investment opportunities is the beneficiary's primary responsibility. The record contains a one page “feasibility” study which addresses the petitioner's intention to operate gas stations and convenience stores in the United States, evidence that the petitioner purchased the gas station and store that it currently operates, and a purchase offer contract for a second location. Based on this limited explanation and documentary evidence it cannot be concluded that the beneficiary devotes a substantial amount of time to investment and expansion activities, or that these activities are primarily managerial or executive in nature.

In sum, the petitioner's descriptions of the beneficiary's duties do not allow the AAO to determine the actual duties performed by the beneficiary, such that they can be classified as managerial or executive, nor does the described breakdown of the beneficiary's time seem plausible within the context of the petitioner's organization.

On appeal, counsel states that the director placed undue emphasis on the petitioner's small staff size in making her determination, noting that the statute and regulations do not impose such a requirement with respect to the size of the petitioning organization. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), 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. However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

A review of the record with respect to the petitioner's staffing levels undermines the petitioner's claim that the beneficiary primarily performs managerial or executive-level duties associated with the company's investment and expansion efforts and overall management. The petitioner has established that it employs the beneficiary as president, a store manager, and two cashiers. Counsel emphasizes the "manager's salary" paid to the claimed store manager as evidence that this employee performs supervisory or managerial duties, yet the AAO notes that the store manager and one of the petitioner's cashiers receive the same salary of \$1,000 per month. Doubt cast on any aspect of the petitioner's proof may undermine 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). The other cashier appears to be employed only part-time, as he or she receives a monthly salary of only \$500. When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position.

In this matter the petitioner operates a gas station and convenience store, a type of retail business that is typically open daily and requires long operating hours. The AAO will assume that the business is open at least 80 hours per week. The petitioner requires employees to take inventory, order merchandise and supplies, arrange and stock merchandise displays, clean the store, process customer purchases of groceries and gasoline, receive gasoline and grocery deliveries, reconcile daily cash register receipts, make bank deposits, and perform many other routine duties. The petitioner also submitted a copy of its license as a "food manufacturer" which suggests that its store also offers at least some prepared foods and requires employees to perform duties related to this service. Even assuming that the claimed "store manager" performs the stated supervisory duties associated with the day-to-day operations of the petitioner's store, it is not clear who would perform these duties when the store manager is not on duty, if not the beneficiary. Accordingly, based on the evidence presented, the beneficiary must spend a significant portion of her time performing non-qualifying operational duties in the petitioner's store, or serving as a first-line supervisor of lower-level employees. In the present matter, the totality of the record does not support a conclusion that any of the beneficiary's

subordinates are supervisors, managers, or professionals. Instead, the record indicates that the beneficiary's subordinates perform the actual day-to-day tasks of operating the gas station and convenience store. The petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial under the statutory definition.

In this case, while the AAO does not doubt that the beneficiary has authority to make executive decisions with respect to the management of the United States entity, the record does not support a conclusion that his duties are primarily managerial or executive in nature. Further, regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will function at a senior level within an organizational hierarchy. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude her from functioning in a primarily managerial or executive role. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

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 show 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). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower level employees, performance of the duties of another type of position, or other involvement in the operational activities of the company.

While counsel correctly states that performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. As discussed above, the lack of specificity in the beneficiary's job description, considered in light of the nature of the petitioner's business and current staffing levels, makes it impossible for the AAO to conclude that the beneficiary devotes the majority of her time to operational and policy management.

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity pursuant to 8 C.F.R. § 214.2(l)(3). For this reason, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner established that it has been doing business for the year preceding the filing of the instant petition.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) states: "*Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad."

In support of the initial petition, the petitioner submitted: (1) a copy of the bill of sale for its gas station and convenience store, executed in January 2003; (2) copies of federal and state quarterly wage reports for the last three quarters of 2003 and the first quarter of 2004; (3) various state and local government licenses for the sale of gasoline, alcohol, food, tobacco and lottery tickets, including a Texas sales and use tax permit identifying the company's first business date as "02/15/2003"; (4) receipts for goods purchased during the first quarter of 2004; and, (5) copies of telephone bills for the months of March through November 2003 and April 2004.

On June 7, 2004, the director instructed the petitioner to submit additional evidence to establish that the petitioner was doing business for the previous year. Specifically, the director requested copies of bank statements, payroll records, invoices, sales records, bills of sale, shipping receipts and orders for goods and services. The director also requested a copy of the petitioner's 2003 Internal Revenue Services (IRS) Form 1120, U.S. Corporation Income Tax Return, and evidence that the petitioner had registered a fictitious business name in order to do business as "[REDACTED]".

In response, the petitioner submitted the requested assumed name certification and an unsigned copy of its 2003 IRS Form 1120 showing gross receipts of \$259,848. The petitioner also re-submitted the above-referenced licenses, receipts, and copies of telephone bills, but did not provide any documentation not previously submitted.

The director denied the petition, in part concluding that the petitioner had not established that it has been doing business for the previous year.

On appeal, counsel references the documents submitted with the initial petition and in response to the request for evidence and asserts that the evidence was "obviously ignored" by the director.

Upon review, the AAO finds insufficient evidence to establish that the petitioner has been engaged in the regular and continuous provision of goods and/or services for the year preceding the filing of the petition. The director specifically requested that the petitioner provide additional documentary evidence in the form of invoices, orders, receipts and other documents to establish that the petitioner had been doing business for the previous year. The petitioner chose to re-submit the same documentation submitted with the initial petition, consisting only of business licenses, recent invoices and receipts for goods purchased, and telephone bills that do not identify the petitioning entity. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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). If the petitioner had been doing business for one year, it was reasonable to expect it to provide the requested evidence dating back to June 2003, such as invoices or receipts for gasoline and grocery items purchased, copies of monthly sales and use tax returns, or other evidence that would substantiate the amount of sales reported on the petitioner's unsigned Form 1120, U.S. Corporation Income Tax Return. The petitioner has not submitted evidence on appeal to overcome the director's decision on this issue. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the record reflects that the petitioner did not file the petition for an extension within the required time frame. The regulation at 8 C.F.R. § 214.2(l)(14)(i) provides, in pertinent part, that a petition extension may be filed only if the validity of the original petition has not expired. In the present case, the beneficiary's authorized period of stay expired on May 30, 2004. However, the petition for an extension of the beneficiary's L-1A status was filed on June 1, 2004, after the expiration of the beneficiary's status. Pursuant to 8 C.F.R. § 214.1(c)(4), an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed. As the extension petition was not timely filed, it is noted for the record that the beneficiary is ineligible for an extension of stay in the United States.

Finally, the AAO notes that the instant petition is the petitioner's second request for an extension of the beneficiary's L-1A status. While CIS approved another petition that had previously been filed on behalf of the beneficiary, the prior approval does not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's and beneficiary's qualifications. Moreover, if the previous nonimmigrant petition were approved based on the same unsupported assertions that are contained in the current record, the AAO finds that the director was justified in departing from the previous approvals by denying the present extension petition. 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. at 597. 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 (6<sup>th</sup> Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, 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 (5<sup>th</sup> 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.