

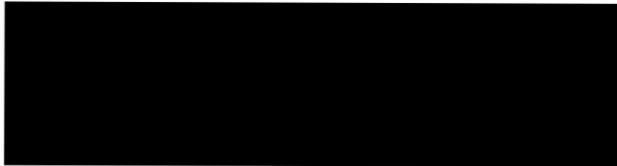


U.S. Citizenship
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File: WAC 04 050 52354 Office: CALIFORNIA SERVICE CENTER Date: JUL 06 2006

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)

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 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 marketing manager as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a California corporation that is engaged in the retail merchandising of women's apparel. The petitioner claims to be a subsidiary of [REDACTED] located in Rio de Janeiro, Brazil. The beneficiary was initially granted one-year in L-1B status in order to work in a new office and the petitioner now seeks to extend her stay for a three-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that she would be employed in a position that involves specialized knowledge.

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. Counsel asserts that the director's decision was based on a lack of understanding of the "unique" and proprietary nature of the petitioner's products and failed to consider the evidence submitted to establish the beneficiary's qualifications and her standing as a "key employee" of the foreign entity. Counsel submits a brief 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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

This matter presents two related, but distinct issues: (1) whether the beneficiary possesses specialized knowledge; and (2) whether the proposed employment is in a capacity that requires specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines “specialized knowledge” as:

[S]pecial knowledge possessed by an individual of the petitioning organization’s product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization’s processes and procedures.

The petition was filed on December 12, 2003. In an appended letter dated December 3, 2003, the petitioner indicated that the U.S. company is engaged in importing and selling women’s apparel and provided evidence

that it operates one retail store. The petitioner stated that the beneficiary is responsible for marketing and promotion of the U.S. company, including the following duties:

- Establishing the promotional and marketing goals for the Company expansion plans;
- Providing feedback to upper management here and in Brazil and recommending negotiation of contracts with major suppliers;
- Establishing sales goals, assisting salespeople in promoting sales;
- Reviewing market analyses and trends to determine customer needs, and volume potential;
- Overseeing and planning corporate strategies as well as to recommend and approve budget, and expenditures;
- Responsible for the distribution, marketing, and promotion of the Company product line;
- Developing marketing strategies and promotions for the fashion retail chain.

The success of the United States Company is directly attributed to the creative vision, talent and skillful management and marketing promotion of [the beneficiary]. She has been [sic] an integral part in the development, establishment and expansion of [the petitioner's] business operation and has demonstrated [sic] her expertise to promote and integrate the company's reach into new lines of business. . . . [The beneficiary's] continued role as Marketing Manager of the United States Company is crucial. [The beneficiary] is in the process of overseeing the expansion of [the petitioner] including marketing strategies for the expansion, and negotiating sensitive contracts with suppliers that are crucial to the continued success and expansion of the United States Company.

The petitioner further stated that the beneficiary held the position of marketing manager for the petitioner's foreign parent company immediately prior to her transfer to the United States. The petitioner described the beneficiary's foreign employment as follows:

[S]he was responsible for in all respect for the management and direction for the foreign parent company's sales programs, marketing decisions, as well as working close with the designers and patternmakers of the product lines. She coordinated clothing distribution and established sales goals. [The beneficiary] also analyzed sales statistics to formulate policy, purchasing of raw materials, and assisted salespeople in promoting sales. [The beneficiary] reviewed market analysis and trends to determine fashion trends and volume potential. Additionally, she was responsible for directing product simplification and standardization to eliminate unprofitable items from the sales line.

The petitioner failed to specifically address the beneficiary's qualifications as a nonimmigrant intracompany transferee with specialized knowledge.

The director issued a notice of intent to deny the petition on March 25, 2004, observing that the petitioner failed to provide a detailed clarification as to how the beneficiary's duties require specialized knowledge. Specifically, the director noted that the petitioner had not demonstrated that the beneficiary's duties involve

knowledge or expertise beyond mere familiarity with an organization's product or services, and that such knowledge does not constitute specialized knowledge under section 214(c)(2)(B) of the Act.

The director further referred to a 1994 legacy Immigration and Naturalization Service policy memorandum from James A. Puleo, Acting Executive Associate Commissioner, which identifies "specialized knowledge" as knowledge that is different and advanced compared to that generally held in the industry. The director noted that, according to the memorandum, the knowledge need not be proprietary, but should be crucial to the petitioner's interests and must go beyond general knowledge or expertise that enables an employee to merely produce a product or provide a service. Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Special Knowledge*, CO 214L-P (March 9, 1994) ("Puleo memorandum").

The director instructed the petitioner as follows:

The petitioner must provide evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. The evidence must also establish that the beneficiary's knowledge of the processes and procedures of your company is apart from the elementary or basic knowledge possessed by others.

Additionally, provide evidence to substantiate the uniqueness to the petitioner's sales and marketing procedures and techniques used in marketing products that is different from other similar organization[s].

Finally, provide demonstrative evidence to show the petitioner['s] new products and evidence of the beneficiary['s] familiarity with the new products.

In a response dated April 20, 2004, the petitioner also referenced the Puleo memorandum and emphasized that the memorandum indicated that "specialized knowledge" may include knowledge of a product that is significantly different from that of others in the industry although it may have similarities, as well as knowledge that can't be transferred to a U.S. worker without a period of training that would cause a significant interruption of business.

With respect to the petitioner's products, the petitioner provided the following description:

[The petitioner] offers a unique product that is significantly different from other women apparel currently available in the United States. [The petitioner] offers a creative and unique selection of women's clothing that is tagged "The Brazilian Way (Jeitinho Brasileiro)." For example, our parent company has designed and manufactured a unique pair of jeans often referred to as the "amazing Brazilian pants." These pants, all imported from our parent company, is a new version of jeans, which combine a unique blend of indigofio (a specialized cotton fiber blend) with elastano (a form of lycra), which gives comfort and elasticity to the

pants. . . . Currently, no other clothing company in the United States has the fabrication technology to manufacture these pants unique to our company. . . .

Euphoria offers a large selection of women's clothing apparel that is significantly different [from] clothing lines currently offered in the United States, including specialty crochet tops, made by our own "crocheteiras," which are individuals who possesses a specialized talent in crocheting by creating a structuralized pattern that can only be done by hand and the human eye. . . . Because of the sizing differences between Brazilian and U.S. garments and the often revealing nature of the blouse for which the blouse is known, the specialty crafted blouses have to be designed for the United States market, which is deemed more conservative than the Brazilian market.

Our clothing line is substantially different, offering unique apparel under our proprietary Banzai line that is not found elsewhere in the United States. [O]ur clothing line symbolizes the Brazilian culture.

The petitioner also elaborated on the beneficiary's qualifications as an employee possessing specialized knowledge, noting that she is fluent in English, Portuguese and Spanish, and possesses "the unique knowledge of our company's proprietary product line, which is essential for the position of Marketing Manager." The petitioner emphasized that her position requires "an integral understanding not only of our proprietary product line, but of the Latin market, including its unique culture, which are product line encompasses and the language." The petitioner further explained:

[The beneficiary] clearly possesses knowledge that is invaluable to our competitiveness in the United States market. Our clothing line is made up of exclusive garments that are not otherwise found on the United States market and is what has made our United States company so successful in such a short time. [The beneficiary] has established that she is uniquely qualified to contribute to our United States company's knowledge of our Brazilian operating conditions. Specifically, [the beneficiary] has acquired unique knowledge of our Brazilian product through the prospective [sic] of being a sales associate, manager and Purchase department manager with our parent company. Being a Brazilian native herself, [the beneficiary] understands the culture and meaning behind our clothing line.

As Marketing Manager with our parent company in Brazil, [the beneficiary] was utilized as a key employee and was tasked with significant assignments that clearly enhanced our company's productivity, competitiveness, image and financial position. . . . [The beneficiary] was tasked with the critical duties of establishing the company's promotional and marketing goals for expansion to the United States. This significant assignment required an individual with in-depth knowledge of our company's unique product line and image, as well as out [sic] company's goals and limits. As a result of [the beneficiary's] intimate knowledge of our proprietary clothing line, her in-depth knowledge of our company's image and Brazilian culture and the language, our company's expansion to the United States was a resounding success.

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[The beneficiary's] specific and detailed knowledge of our product line and image unique to our parent company in Brazil is required for our United States company to succeed in marketing our proprietary clothing line in the United States. [The beneficiary] also possesses an uncommon knowledge of the Brazilian culture, which is imbedded in our product line. [The beneficiary] possesses specialized knowledge that is crucial to the success of our United States company. . . . It is virtually impossible to transfer or teach this knowledge to another individual, as this information is unique and not found elsewhere in the United States.

In support of its rebuttal to the notice of intent to deny, the petitioner provided a partial copy of a Notice of Decision denying the petitioner's previous request to classify the beneficiary as an L-1A intracompany transferee, a photograph of one of the foreign entity's retail stores, and copies of advertisements for the foreign entity's stores. Referring to the previous denial, the petitioner stated that the decision had stated that "an L-1B was the appropriate visa for [the beneficiary]," and the petitioner had therefore filed for, and received approval for, L-1B classification previously.

The director denied the petition on October 18, 2004, concluding that the petitioner had not established that the beneficiary possesses specialized knowledge or that the U.S. employment is in a capacity requiring specialized knowledge. Referring to the petitioner's response to the notice of intent to deny, the director observed that the petitioner "merely described the beneficiary's duties and repeatedly states that the duties require 'in-depth knowledge of our company's unique product line and image' and 'Brazilian culture and the language'." The director noted that the petitioner provided no evidence to demonstrate the "exclusiveness" of its marketing procedures and/or techniques, and emphasized that mere familiarity or knowledge of the petitioner's products in itself is insufficient to demonstrate specialized knowledge.

The director further noted that the record contained no comprehensive description of the beneficiary's duties to establish that the duties are so out of the ordinary that they would require the services of an employee who possesses specialized knowledge. The director also found that the petitioner had failed to demonstrate that the beneficiary's skills and knowledge of the petitioner's marketing practice is different or advanced, or that the petitioner's business practice, marketing procedures and/or sales procedures are different from those of other organizations operating similar businesses.

Finally, the director responded to the petitioner's assertion that CIS had recommended the filing of an L-1B petition, noting that a careful reading of the notice of decision denying the L-1A nonimmigrant petition shows that no such suggestion or recommendation was made. With respect to the approval of the initial L-1B classification petition, the director noted "USCIS is not required to compound the error by approving the second petition."

On appeal, the petitioner reiterates portions of its response to the director's request for evidence and claims that "[c]ontrary to the Decision, our clothing line is substantially different, offering unique apparel under our proprietary Banzai line that is not found elsewhere in the United States. Our clothing line symbolizes Brazil."

The petitioner again emphasizes that the U.S. assignment requires “an individual with in-depth knowledge of our company’s unique product line and image” and states that the petitioner’s success depends upon the beneficiary’s “knowledge of our proprietary clothing line, her in-depth knowledge of our company’s image and Brazilian culture and the language.” Finally, the petitioner stresses that it is “virtually impossible to transfer or teach this knowledge to another individual, as this information is unique and not found elsewhere in the United States.”

The petitioner’s assertions are not persuasive. The petitioner has not submitted evidence demonstrating that the beneficiary possesses specialized knowledge or that she would be employed by the U.S. entity in a position requiring specialized knowledge.

When examining the specialized knowledge 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(l)(3)(ii). The petitioner must submit a detailed **description of the services to be performed sufficient to establish specialized knowledge**. *Id.* It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary’s knowledge of the business’s product or service, management operations, or decision-making process. *See Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, “the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought.” Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business’ operation.

Id. at 53.

¹ Although the cited precedents pre-date the current statutory definition of “specialized knowledge,” the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be “proprietary,” the 1990 Act did not significantly alter the definition of “specialized knowledge” from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of “[v]arying [*i.e.*, not specifically incorrect] interpretations by INS,” H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the “specialized knowledge” L-1B classification.

Here, the beneficiary's proposed job duties do not identify services to be performed by the beneficiary in a specialized knowledge capacity. For example, the beneficiary's responsibilities of establishing promotional and marketing goals for company expansion, establishing sales goals, reviewing market analysis and trends, contributing to corporate strategy, overseeing marketing and promotion of the product line, and developing marketing strategies and promotions are all tasks typically performed by any individual responsible for overseeing expansion into a new market. As discussed further below, the petitioner has not established that the particular position offered to the beneficiary requires an individual with knowledge beyond that which would normally be possessed by a marketing professional in the petitioner's industry.

The petitioner's claim that the beneficiary is eligible for this visa classification appears to be based on her purported "special" knowledge related to the proprietary interests of the petitioner and its foreign parent company, specifically the foreign entity's "unique" clothing line. However, the record is devoid of any documentary evidence that the beneficiary's position involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests as required in the regulations. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner has submitted no supporting documentation to substantiate its claims regarding the "unique" nature of the foreign entity's product lines. Based on the petitioner's representations, the foreign entity has a line of contemporary women's apparel that includes a "new version of jeans" and "specialty crochet tops," which "symbolize the Brazilian culture." The fact that the foreign entity may utilize a different fabric blend in the clothing it manufacturers does not support a finding that the beneficiary possesses specialized knowledge based on her experience marketing these products. Every company in the petitioning organization's industry realistically has variations in product design and manufacture. As noted by the director in issuing the request for evidence, mere familiarity with an organization's product or services does not constitute specialized knowledge under section 214(c)(2)(B) of the Act.

The petitioner has not supported its claim that the beneficiary possesses knowledge that can be gained only with the foreign entity, or that the position requires such knowledge. Specifically, the petitioner has neither explained nor documented why the knowledge required to market its products would be different from that required to market similar apparel in the United States. Simply stating that the products "represent the Brazilian culture" is not sufficient. The beneficiary's knowledge of the Brazilian culture and her ability to speak multiple languages does not constitute specialized knowledge related to the petitioner's organization. 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)).

Moreover, even if the petitioner had established that knowledge of the foreign entity's products alone constitutes specialized knowledge, the evidence submitted does not demonstrate that the beneficiary would be required to utilize this knowledge in the proposed position. Although the petitioner emphasizes that the beneficiary's familiarity with its "unique" Brazilian apparel is essential to the position, the petitioner's invoices and purchase orders show that the U.S. company in fact purchases much of its inventory from domestic wholesalers and manufacturers based in Southern California. **It appears that the petitioner imports some of its merchandise from a Brazilian manufacturer, [REDACTED],** but there is no evidence to establish that the petitioner even imports and sells the foreign entity's products. Again, the record does not

support a finding that prior experience with the foreign entity or knowledge of its products is required for the position, nor does it substantiate the petitioner's claim that it would be "virtually impossible to transfer or teach" the beneficiary's knowledge to another individual.

In *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner*, supra at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)). Reviewing the Congressional record, the Commissioner concluded that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted.

The AAO acknowledges the petitioner's claim that the marketing manager position is a key position that is crucial to the petitioner's success in expanding its presence in the U.S. market. However, merely establishing that the beneficiary will undertake a "key" position will not satisfy the petitioner's burden of proof. The petitioner must still submit evidence to establish that the beneficiary has been employed abroad in a position involving specialized knowledge and that she will be employed by the United States entity in a specialized knowledge capacity. See 8 C.F.R. § 214.2(l)(3). The AAO notes that the only supporting documentary evidence submitted in support of the petitioner's claims regarding the beneficiary's specialized knowledge of its "unique" products was a photograph of one of the foreign entity's stores and a few advertisements. Upon review, in every instance where the petitioner attempted to distinguish the beneficiary as having specialized knowledge, the petitioner failed to submit any evidence that would allow the AAO to evaluate the claim. The petitioner's response to the director's request for evidence consisted solely of a letter from the petitioner that provided little new information, and the above-referenced photograph and advertisements. On appeal, the petitioner essentially re-states the unsupported assertions made in response to the director's request for evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. See *1756, Inc. v. Attorney General*, 745 F. Supp. at 16. Based on the evidence presented, the petitioner has not established that the beneficiary possesses specialized knowledge, or that she would be employed by the petitioner in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

The AAO acknowledges that CIS previously approved an L-1B petition filed on behalf of the beneficiary for the same position. The prior approval does not preclude CIS from denying an extension of the original visa based on reassessment of beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). It must be emphasized that that each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. See section 291 of the Act.

If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approval by denying the present request to extend the beneficiary's status.

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).

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 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The director is instructed to review the beneficiary's previous nonimmigrant approval for possible revocation, pursuant to 8 C.F.R. § 214.2(l)(9)(iii).

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.