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U.S. Citizenship
and Immigration
Services

D7



File: SRC 04 043 50178 Office: TEXAS SERVICE CENTER Date: **SEP 06 2006**

IN RE: Petitioner:
Beneficiary:



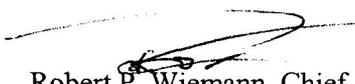
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief
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 visa 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 limited liability company organized under the laws of the State of Texas and is allegedly **engaged in the business of operating** retail convenience stores.¹ The petitioner claims that it is the subsidiary of [REDACTED] located in Karachi, Pakistan. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

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, the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of an executive or manager. In support of this assertion, the petitioner submits a brief and additional evidence.

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

¹ It should be noted that, according to Texas state corporate records, the petitioner's corporate status in Texas is not in good standing. Therefore, as the State of Texas has forfeited the petitioner's corporate privileges, the company can no longer be considered a legal entity in the United States. Therefore, as this clearly and unequivocally renders the petitioner ineligible for the classification sought, the issues raised on appeal are moot.

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.

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 petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. While the beneficiary is identified repeatedly as a manager, counsel to the petitioner states in its appeal that the beneficiary is acting as an executive. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary is acting either as a managerial *or* as an executive and will consider both positions.

In the initial petition, the petitioner included a support letter dated November 24, 2003, in which it describes its business as "establishing a chain of gas stations and convenien[ce] retail stores." However, the record reveals that the petitioner operates only one such store known by the trade name "[REDACTED]" which has an address of [REDACTED]. The letter also described the beneficiary's job duties as follows:

As the President and General Manager of [the petitioner], [the beneficiary] has responsibility for ensuring the profitable operation of the U.S. Company. In this capacity, [the beneficiary] establishes goals and policies for [the petitioner] and exercises discretionary decision-making authority based upon policies and procedures developed by [the foreign entity]. [The beneficiary] also hires and supervises personnel and assumes sole responsibility of all discretionary actions taken by [the petitioner]. In addition, [the beneficiary] has the overall executive responsibility for developing, organizing, and establishing the purchase, sale, and service in the U.S. domestic market.

His other duties includes [sic]: (i) identifying, recruiting, and building a management team and staff with background and experience in the U.S. market; (ii) hiring, discharging, and transferring employees according to work performance and production needs; (iii) leasing equipment and retail services facilities; (iii) [sic] negotiating and supervising the drafting of service agreements; (iv) overseeing the legal and financial due diligence process and resolving any related issues; (v) developing trade and consumer market strategies based on guidelines formulated by the shareholders and directors; (vi) preparing and analyzing reports on labor cost and production operations to determine whether operating cost standards are being met; and (vii) developing and implementing plans to ensure [the petitioner's] profitable operation.

Percentage of time spent on each duty:

Management Decisions/Team Building	40%
Business Negotiations	15%
Financial Decisions	10%
Supervision of management staff and company functions	15%
Organizational Development of Company	20%

The petitioner also supplied an organizational chart showing the beneficiary at the top of the organization managing three people: an accountant [independent contractor], legal counsel [independent contractor], and a store manager. The store manager in turn supervises a shift manager who, in turn, supervises cashiers and clerks. Appended to the organizational chart are job descriptions and hours of work for the beneficiary, the store manager, and the shift manager:

President and General Manager

Varies as needed

Identifying, recruiting, and building a management team and staff. Hiring, discharging, and transferring employees according to work performance and production needs. Leasing equipment and retail service facilities. Negotiating and supervising the drafting of service agreements. Overseeing the legal and financial due diligence process and resolving any related issues. Developing trade and consumer market strategies based on guidelines formulated by the shareholders and directors. Preparing and analyzing reports on labor cost and production operations developing and implementing plans to ensure company's profitable operation.

Store Manager

08:00 am to 05:00 pm

Oversee operation of food store and gas sales. Handle all customer complaints. Deal with vendors. Maintain inventory and equipment, reconcile accounts. Interview, hire and

train employees. Ensure compliance with applicable regulatory agency requirements. Listen to customer complaints, resolve problems to restore and promote good public relations.

Shift Manager

03:00 am to 11:00 pm

Coordinate and direct sales activities. Develop [s]ales [p]rocedures. Sell merchandise to retail customers. Schedule Cashiers and assign work. Maintain inventory and showroom. Inventory purchasing and bookkeeping.

The organizational chart and job descriptions also identify two cashiers/clerks who work from 10:00 a.m. until 4:00 p.m. and 4:00 p.m. to 11:00 p.m. respectively.

Finally, the petitioner provided Quarterly Wage Reports demonstrating that the petitioner paid total wages in the first quarter of 2003 of \$5,300.00 to four employees (employed in March only), in the second quarter of 2003 of \$8,500.00 to three employees, and in the third quarter of 2003 of \$4,100.00 to two employees (only one employee in August and September). These records also claim that the petitioner employed two people in the third quarter of 2003, but only in July. These reports also show that the petitioner did not have any employees until March 2003 and, as indicated above, only one employee in August and September 2003.

On November 2, 2004, the director requested additional evidence.² Specifically, the director requested that the petitioner clarify why it claims to have five employees on its Form I-129 while the Quarterly Wage Reports submitted list no more than three employees.

On April 29, 2004, the petitioner responded to the request for evidence. The petitioner provided the Texas Quarterly Wage Report for the fourth quarter of 2003 demonstrating that wages of \$17,100.00 were paid during that quarter to five employees.

On December 14, 2004, the director denied the petition. The director concluded that the petitioner failed to prove that the beneficiary spends the majority of his time performing managerial or executive duties given the size, staffing, and organizational structure of the petitioner.

On appeal, the petitioner asserts that the beneficiary's duties are primarily those of an executive or manager. In support of this appeal, the petitioner submits (1) a brief repeating the same job description and attaching the same organizational chart contained in the initial petition; and (2) additional evidence, including the petitioner's 2003 Form 1065 (U.S. Return of Partnership Income), showing gross receipts of \$567,301.00, \$26,400.00 in total wages paid, ordinary income of \$1,577.00, and a claim that the petitioner does not have any foreign partners. The Form 1065, however, was incomplete in that the schedules showing deductions were omitted.

² The director originally requested additional evidence on February 2, 2004, and the petitioner responded to this request on May 10, 2004. However, as the director was unable to locate the petitioner's response, the director reissued the request on November 2, 2004.

Upon review, petitioner's assertions are not persuasive.

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. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). Title 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

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(l)(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 must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. As explained above, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner's description of the beneficiary's job duties has failed to prove that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include establishing goals and policies, building a management team, developing marketing strategies, and developing and implementing plans. The petitioner did not, however, define the beneficiary's goals or policies, marketing strategies, or plans. The petitioner's elaboration on what percentage of time the beneficiary devotes to each duty is not helpful given the vague, non-descriptive duties listed, *i.e.*, "management decisions/team building" and "organizational development" taking up 60% of the beneficiary's time. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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).

The petitioner also supplied job descriptions and an organizational chart indicating that the beneficiary managed a constantly changing work force ranging from one employee (possibly the beneficiary himself) to five employees during the first year. These employees are described as a store manager who, in turn, supervises a shift manager who, in turn, supervises the cashiers and clerks. When taking into account the reasonable needs of a single retail convenience store and gas station, and in light of the overall purpose and

stage of development of the organization, this multilayered organizational structure is simply not credible.

As correctly noted by the director, the shift manager and the store manager work different shifts and only overlap for two hours each day. Also, for much of 2003, the petitioner employed less than four people and, for eight months of 2003, it employed three people or less. It is clear from the petitioner's employment history and the fact that there are rarely more than two persons working at the store at the same time, that the shift manager, the store manager, and the cashiers/clerks all perform the same basic functions in operating a retail convenience store and gas station. While the shift manager and the store manager have managerial titles, the vague job descriptions provided for these employees do not list any managerial duties other than setting cashier schedules. In addition, the job descriptions do not define what percentage of time these employees devote to each duty, assuming one could argue that any of the other duties are managerial in nature. As the petitioner has not proven that the store manager and the shift manager are managerial employees, the beneficiary's supervision of them cannot be considered to be managerial as defined by the Act and the regulations.

In view of the above, the beneficiary would appear to be a first line supervisor, the provider of actual services, or a combination of both. 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 Intl.*, 19 I&N Dec. 593, 604 (Comm. 1988). A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology Intl.*, 19 I&N Dec. 593, 604 (Comm. 1988). Since the record fails to reveal the educational or skill levels of the subordinate employees, it cannot be determined if they rise to the level of professional employees.³ Therefore, the record does not prove that the beneficiary is acting in a managerial capacity.

Similarly, the petitioner has failed to prove that the beneficiary has been or will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that **person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the**

³ In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* As indicated above, while the petitioner may have provided a vague job description which reiterates the regulations, the petitioner has failed to prove that the beneficiary, who is allegedly managing no more than four employees (and at times less) and who apparently provides services directly to customers, will be acting primarily in an executive capacity. Therefore, it must be concluded that the reasonable needs of this single retail convenience store and gas station, in light of the overall purpose and stage of development of the organization, do not require the services of an executive employee.

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).

Although the petitioner's organizational chart purports that the petitioner has contractual employees in various areas including legal and accounting who are supervised by the beneficiary, the petitioner has failed to explain how the services of the contracted employees obviate the need for the beneficiary, or any of his subordinate employees, to primarily conduct the petitioner's business. Most every business needs professional services. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity as required by 8 C.F.R. § 214.2(l)(3).

Beyond the decision of the director, a related issue in this proceeding is whether the petitioner has provided evidence sufficient to establish that the petitioner and the organization which employed the beneficiary in Pakistan [REDACTED] are qualifying organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G).

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (*i.e.*, one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). A subsidiary is a firm, corporation, or other legal entity (including a limited liability company) of which a parent owns more than half of the entity and controls the entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K).

In support of its petition, the petitioner provided articles of organization for the U.S entity, confirming that the petitioner is a Texas limited liability company, along with a certificate of organization dated November 13, 2002 confirming that the articles conform to Texas law. The articles of organization state that the name of the limited liability company is [REDACTED] and that the "initial member" is [REDACTED] of Karachi, Pakistan. The petitioner did not supply any other organizational documents for the U.S.

entity other than a copy of minutes dated November 15, 2002 claiming that a meeting of the members of the petitioner was held on November 15, 2002, that the only person present was the beneficiary, and that the beneficiary was appointed both president and secretary of the limited liability company.

While limited liability companies do not issue share certificates like corporations, the petitioner has failed to provide sufficient evidence demonstrating the ownership of the United States entity. Texas limited liability companies formed in 2002 are regulated by the Texas Limited Liability Company Act. Tex. Rev. Civ. Stat. Ann. Art. 1528n.⁴ This law provides guidance on how to interpret the articles of organization of a Texas limited liability company as these relate to ownership interests, and how a Texas limited liability company can evidence ownership interests by members.

Sections 3.02 and 4.01 permit a person to become a member of a limited liability company upon formation and to be identified as an “initial member” in the articles of organization. Tex. Rev. Civ. Stat. Ann. Art. 1528n, §§ 3.02 and 4.01. Section 4.01 also permits new members to be added after formation of the limited liability company. *Id.* Furthermore, section 2.22 requires Texas limited liability companies to maintain records including, but not limited to, a list identifying each member by name, address, and percentage of ownership; a written statement of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the date on which each member became a member; and copies of the regulations of the limited liability company, if any. Tex. Rev. Civ. Stat. Ann. Art. 1528n, § 2.22.

In the current case, the only evidence provided by the petitioner to prove that the foreign entity “owns” the petitioner was a copy of the articles of organization identifying [REDACTED] as the “initial member.” The petitioner did not provide a copy of the list, which it is compelled to maintain by Texas law, identifying the members of the limited liability company or any other company records which could have proven who, as of the date of the petition, are the members of the limited liability company.

Moreover, the one other document provided by the petitioner, the corporate minutes, contains information which calls into question its claim that the foreign entity is the sole member of the limited liability company. The minutes dated November 15, 2002, identify the beneficiary alone as being the member of the limited liability company. The minutes do not mention the purported sole member, the foreign entity, nor did the petitioner provide any documents evidencing the beneficiary’s authority to act on behalf of the foreign entity, which, according to the petitioner, has both shareholders and a board of directors.

Therefore, given the lack of evidence and contradictory information, the petitioner has not established that the petitioner and the organization which employed the beneficiary in Pakistan are qualifying organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The owners of the petitioner have not been adequately identified. For this additional reason, the petition may not be approved.

⁴ While the Texas Limited Liability Company Act was substantially amended in 2005, and was made effective in 2006, these revisions do not generally affect limited liability companies formed in 2002, such as the petitioner. The petitioner, therefore, is still regulated by the Act as it appeared in 2002. Tex. Bus. Org. Code Ann. Chapter 101.

While not directly addressed by the director, the minimal documentation of the petitioner's business operations raises the issue of whether the petitioner is a qualifying organization doing business in the United States. Specifically, under the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B), a petitioner must demonstrate that, for the previous year, it has been engaged in the regular, systematic, and continuous provision of goods or services. In this case, the petitioner has produced bank statements and tax documentation for the United States operation. However, many of the invoices provided by the petitioner are addressed only to the fictitious name of the business or to the previous owner. Such evidence is not sufficient to establish that the petitioner has been doing business in the United States. For this additional reason, the appeal must be dismissed and the petition denied.

The director's decision does not indicate whether he reviewed the approval of the initial new office petition. However, if the previous nonimmigrant petition was approved based on the same evidence of a qualifying relationship that is contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church of 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 Engr. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). In addition, a prior approval does not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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 approves a nonimmigrant petition on behalf of a beneficiary, the AAO is not 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*, 534 U.S. 819 (2001).

The initial approval of an L-1A new office petition does not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). 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, 8 U.S.C. § 1361.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2^d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.