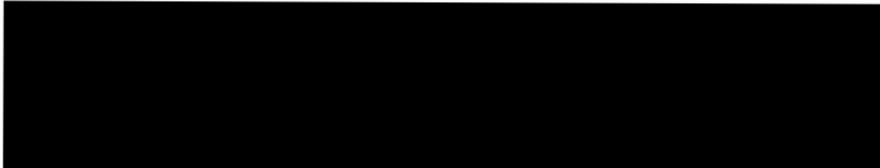




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File: WAC 05 003 50079 Office: CALIFORNIA SERVICE CENTER Date: **SEP 29 2006**

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, 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 visa petition seeking to extend the employment of its executive 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 corporation organized under the laws of the State of California and is allegedly engaged in the business of exporting used copying machines. The petitioner claims that it is the subsidiary of [REDACTED] located in Germany. 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 in denying the petition because the director had previously approved the initial L-1A "new office" petition, which was "based on the exact same employment position." The petitioner further argues that the director was obligated to "specifically elucidate" why the previous petition approval was erroneous in order to justify a denial of the current petition. 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 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, and implies in its appeal that the beneficiary is acting as both. 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.

In the initial I-129 petition, the petitioner described the beneficiary's job duties as follows: "Continue to establish a division in the United States by maintaining and adding branches."

The only other information regarding the beneficiary's job duties appears in a letter dated September 29, 2004 appended to the initial petition:

- (1) [The beneficiary] started [the petitioner] with zero sales, and now has annual sales of \$1.5 million.
- (2) Under [the beneficiary's] direction, the initial staff of three persons has doubled.
- (3) [The beneficiary] also established departments within the company to make the business more effective. [The beneficiary] created sales, service and shipping departments with [the petitioner]. [The beneficiary] oversees the managers of those departments, outside counsel, and the company's accountant.
- (4) [The beneficiary] has negotiated accounts and strategic alliances with five major copier companies, including Ikon and Cannon.
- (5) Under [the beneficiary's] direction, [the petitioner] is now exporting its machines to Singapore, Germany, and Dubai.

On November 8, 2004, the director requested additional evidence. Specifically, the director requested evidence establishing that the beneficiary will be performing managerial or executive duties and that the United States entity is doing business.

In response, the petitioner submitted an organizational chart showing the beneficiary at the top of the organization supervising directly and indirectly seven employees; Forms 941 for 2003 and 2004; Forms W-2 for eight employees (2004) and three employees (2003); Forms 940-EZ showing employee compensation of \$46,542.13 in 2004 and employee compensation of \$11,274.79 in 2003; and Forms 1120 from 2003 and 2004. Both Forms 1120 indicate that a foreign person did not own more than 25% of the petitioner, that the petitioner is not a subsidiary in a parent-subsidiary controlled group, and that no one person owned 50% or more of the corporation's voting stock. The 2004 Form 1120 lists the petitioner's business activity as "discount cigarettes."

The petitioner also supplied a letter dated January 27, 2005 from the foreign entity, which states:

This is to inform that [the beneficiary] is [the petitioner's] President. He has the authority of managing any and all employees in the company from engineers to sales representatives to secretaries and assistants.

[The beneficiary] has the power and authority of hiring, firing, and dealing with human resources. [The foreign entity] is ran [sic] by the Executive manager and the president who is [the beneficiary].

The petitioner did not provide any information regarding the job duties or educational levels of the subordinate employees listed in the organizational chart or identified in the Forms W-2. Further, the petitioner did not provide any more details regarding the beneficiary's job duties.

On April 21, 2005, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

On appeal, the petitioner asserts that the director erred in denying the petition because the director had previously approved the initial L-1A "new office" petition, which was "based on the exact same employment position." The petitioner further argues that the director was obligated to "specifically elucidate" why the previous petition approval was erroneous in order to justify a denial of the current petition. In support of this assertion, the petitioner submits a brief and additional evidence, primarily a copy of the previously approved Form I-129 and associated supporting documents.

Upon review, petitioner's assertions are not persuasive. 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, 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 as defined by law.

As a threshold matter, counsel improperly relied on *Omni Packaging, Inc. v. INS*, 733 F. Supp. 500 (D.P.R. 1990), and other federal court decisions in arguing that the director was obligated to approve the current petition unless he could "clearly elucidate" why the prior approval of the "new office" petition had been in error. As explained above, 8 C.F.R. § 214.2(l)(14)(ii) articulates very clearly the evidentiary obligations

placed on a petitioner seeking to extend a "new office" petition. Therefore, the director was permitted to deny the petition if the petitioner failed to establish eligibility under the regulations. Regardless, whenever 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. *See 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*, 534 U.S. 819 (2001). The initial approval of an L-1A new office petition does not preclude Citizenship and Immigration Services (CIS) from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5<sup>th</sup> 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.

Moreover, it must be emphasized that each petition filing is a separate proceeding with a separate record. *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).

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. 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.

The petitioner 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 negotiating accounts, forming strategic alliances, and continuing to establish a division in the United States. The petitioner did not, however, specifically define these duties. Moreover, because of the vagueness of the job descriptions provided for the beneficiary and the subordinate employees, it must be concluded that certain duties, such as negotiating accounts, includes both managerial and administrative or operational tasks, which are not qualifying duties. Because the petitioner fails to quantify the time the beneficiary spends on the administrative or operational tasks, the petitioner has not established that the beneficiary is acting primarily as a manager. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988). Importantly, the petitioner failed to explain what the beneficiary does on a day-to-day basis or to clarify who actually will do the work that is being managed. 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 failed to prove that the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees, or that he will manage an essential function within the organization. While the petitioner did supply an organizational chart, the petitioner failed to provide any information regarding the job duties or educational levels of the subordinate employees identified in the chart even though the director specifically requested this evidence. 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). Given the lack of evidence, the beneficiary would appear to be a first-line supervisor, the provider of actual services, or a combination of both. 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 International*, 19 I&N Dec. at 604. Since the record fails to reveal the educational or skill level of the subordinate employees, it cannot be determined if they rise to the level of professional employees.<sup>1</sup> Therefore, the record does not prove that the beneficiary will be acting in a managerial capacity.<sup>2</sup>

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<sup>1</sup> 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).

<sup>2</sup>While the petitioner has not specifically argued that the beneficiary manages an essential function of the organization, the record nevertheless does not support this position. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, *i.e.*, identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties would be managerial, nor can it deduce whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Similarly, the petitioner has failed to prove that the beneficiary 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 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, the petitioner has failed to prove that the beneficiary, who is allegedly managing a few employees who are apparently engaged in providing services to customers, will be acting primarily in an executive capacity.

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.* In this case, the record is particularly unclear as to what, exactly, is the petitioner's business. The petitioner maintains that it is in the business of exporting used copying machines. This assertion is in both the Form I-129 as well as in supporting documentation, including the September 29, 2004 support letter. However, the petitioner clearly identified its "business activity" in schedule K to its 2004 Form 1120 as "discount cigarettes." Moreover, according to the public fictitious name registry of Santa Clara County, California, the petitioner registered a fictitious name "Cigarette for Less" on June 16, 2004. Nowhere in its petition or supporting documentation does the petitioner explain that it is in the business of operating a cigarette business. Tellingly, the record is also devoid of any evidence regarding the petitioner's ongoing copier exporting business. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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 is whether the petitioner has established that it still has a qualifying relationship with the foreign entity.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) states that a petition to extend a "new office" petition filed on Form I-129 shall be accompanied by:

- (A) Evidence that the United States and the foreign entity are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section[.]

8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section." A "subsidiary" is defined, in part, as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity."

In the initial Form I-129 petition, the petitioner purports that the foreign entity, [REDACTED] owns 100% of the petitioner, thus establishing, if true, a parent/subsidiary relationship. In support of this contention, the petitioner provided a stock certificate (#1) issuing 55,000 shares of stock in [REDACTED] to [REDACTED] and a stock transfer ledger showing that the only stock transfer made was for certificate #1.<sup>3</sup> The petitioner did not provide any other organizational materials for the petitioner.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The articles of incorporation, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In this case, as the petitioner failed to supply this evidence, the petitioner has failed to establish the existence of a qualifying relationship.

Moreover, upon reviewing the corporate and tax documents submitted by the petitioner, there is evidence contradicting the petitioner's assertion that a qualifying relationship exists with the foreign entity. First, the

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<sup>3</sup> These documents were submitted as additional evidence with the petitioner's appeal as attachments to a partial copy of the previously approved Form I-129 petition. Therefore, these documents are being considered because they are before the AAO as part of the instant appeal and not because they were previously submitted as part of the original "new office" petition. It must be emphasized that that each petition filing is a separate proceeding with a separate record. *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)*. However, where documents have been made a part of the record by the petitioner, they may be fully addressed, regardless of whether they were originally from a separate record of proceeding.

stock certificate is ambiguous. Not only has the petitioner failed to establish that the petitioner and "[REDACTED] Inc." are the same entity, but the owner of the 55,000 shares in [REDACTED] is not clearly the foreign entity. The foreign entity is repeatedly identified as [REDACTED], while the owner of the stock in [REDACTED] is [REDACTED]. Given that the foreign entity and the petitioner have similar names using commonly used words, any ambiguity in these documents must be clearly explained. Second, the petitioner's 2003 and 2004 IRS Forms 1120 both indicate that a foreign person did not own more than 25% of the petitioner, that the petitioner is not a subsidiary in a parent-subsidiary controlled group, and that no one person owned 50% or more of the corporation's voting stock. These representations are completely inconsistent with the petitioner's averment that it is 100% owned by a foreign entity and would establish that, in fact, a qualifying relationship does not exist. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Therefore, since the record fails to establish that the petitioner and the foreign entity have a qualifying relationship, the petition may not be approved.

Accordingly, the petitioner has not established that the petitioner and the foreign entity are qualifying organizations as required by 8 C.F.R. §§ 214.2(l)(3) and 214.2(l)(14)(ii)(A), and the petition will also be denied for this reason.

Beyond the decision of the director, a related issue is whether the petitioner has established that it has been doing business for the previous year.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) states that a petition to extend a "new office" petition filed on Form I-129 shall be accompanied by:

(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[.]

8 C.F.R. § 214.2(i)(1)(ii)(H) defines "doing business" as "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 this case, the petitioner has failed to provide any evidence that it has been doing business in a regular, systematic, and continuous manner. Other than tax documents and letters from the foreign entity, the petitioner has supplied no evidence regarding its business activities. The record is devoid of invoices, bank statements, or other business documents establishing that the petitioner's copier exporting business is regular, systematic, and continuous. Moreover, the fact that there is a serious inconsistency within the record regarding the nature of the petitioner's business activities calls into question the reliability of those few documents submitted by the petitioner. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Accordingly, the petitioner has not established that the petitioner has been doing business for the previous year as required by 8 C.F.R. §§ 214.2(l)(3) and 214.2(l)(14)(ii)(B), and the petition will also be denied for this reason.

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 vague job description and unsupported and inconsistent assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church of 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 Engr. 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 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, *aff'd*, 248 F.3d 1139, *cert. denied*, 534 U.S. 819.

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. v. Upchurch*, 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 (2d 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.