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**U.S. Citizenship
and Immigration
Services**

02



FILE: WAC 04 238 51117 Office: CALIFORNIA SERVICE CENTER Date: **MAY 25 2007**

IN RE: Petitioner:
Beneficiary

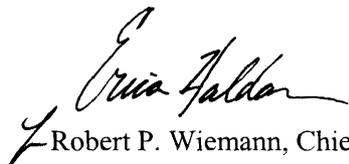


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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 appeal will be dismissed.

The petitioner is a California corporation and claims to be engaged in the trade of textiles, finished goods and electronics. The petitioner states that the foreign company and the U.S. company are both wholly-owned by the beneficiary and are affiliates. Accordingly, the United States entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The beneficiary was initially granted a one-year period of stay to open a new office in the United States and was subsequently granted an extension of stay. The petitioner now seeks to extend the beneficiary's stay in order to continue to fill the position of president.

The director denied the petition on November 30, 2004, concluding that the record contains insufficient evidence to demonstrate: (1) that the beneficiary will be employed in a managerial or executive capacity; and, (2) that the beneficiary's services are to be used for a temporary period in the United States. The director suggested that it did not appear that any of the beneficiary's subordinates were professionals, and thus the beneficiary will be primarily involved in performing the day-to-day services essential to maintaining the business. In addition, the director noted that the beneficiary is the sole owner of the U.S. entity and the petitioner failed to submit evidence to demonstrate that the beneficiary's services are temporary and she will be transferred abroad upon completion of the assignment.

Counsel for the petitioner filed a timely appeal on December 30, 2004. On appeal, counsel for the petitioner states that the beneficiary is employed in a managerial and executive capacity and asserts the director erred by denying the petition. Counsel asserts that the beneficiary is the "highest ranking executive" at the U.S. entity, "manages the entire organizational operations," and "supervises and controls the work of other supervisory and managerial employees." Counsel further asserts that the beneficiary supervises one general manager who supervises three managers, and thus, the U.S. entity employs four employees in addition to the beneficiary. Counsel submits a brief and documentation in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further 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 first issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

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

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) 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), provides:

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

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

The nonimmigrant petition was filed on August 27, 2004. In a letter of support dated August 25, 2004, the beneficiary's proposed duties in the U.S. are described as the following:

As President of [the U.S. entity], [the beneficiary] is responsible for planning, coordinating and monitoring investigation, study and negotiations of plans for long-term, balanced growth; organization and accountability of functions within the corporate framework; insuring effective utilization of talent and efficient management; designing and reviewing strategies and goals in all areas and implementation of plans to attain goals; monitoring of corporate performance in areas of profitability, cost-effective, growth, changes in sales and earnings; insuring the entity has adequate capital and finance resources; making key decisions regarding sourcing, pricing, and product selection; developing and maintaining relationships with key external influences on corporate performance such as suppliers, trading partners, governmental officials, etc.

The petitioner also submitted the U.S. company's IRS Form 1120, U.S. Corporation Income Tax Return, for 2003. The document indicates that the U.S. entity paid compensation of officers in the amount of \$48,670 and paid salaries and wages in the amount of \$33,967 in 2003. The petitioner stated on Form I-129 that the company had three employees at the time of filing.

On September 3, 2004, the director determined that the petitioner submitted insufficient evidence to process the petition and requested that the petitioner submit the following documentation: (1) a copy of the U.S. entity's organizational chart, including the job title, duties, educational level, annual salaries/wages and immigration status of each employee; (2) a detailed description of the duties presently performed by the beneficiary in the United States, including the percentage of time the beneficiary spends performing each duty, and whom the beneficiary directs; (3) copies of the California Employment Development Department, Form DE-6, Quarterly Wage and Withholding Report, for all employees for the last six quarters; (4) copies of the U.S. company's payroll summary and Forms W-2 and W-3; (5) further evidence to establish that the beneficiary qualifies under all four criteria for an executive, including a list of the specific goals and policies the beneficiary has established over the last six months; a list of the specific discretionary decisions that the beneficiary has exercised over the last six months; evidence that the higher level executive, the board of directors, or stockholders of the organization require only general supervision of the beneficiary; and, a specific day-to-day description of the duties the beneficiary has performed over the last six months.

The petitioner submitted a response to the director's request for additional evidence on November 26, 2004. In a support letter dated November 22, 2004, the petitioner included the following information regarding the duties performed by the beneficiary in the United States:

The beneficiary is President of [the U.S. entity]. The duties include directing all aspects of the organization, including evaluation of capital needs, revenue and cash flow, expenses, expansion and business growth objectives, establishment of policies and goals, planning, directing and managing investments, development and monitoring of business plan, negotiation of contracts, supervision over management staff. [The U.S. entity] is a California corporation. As President, the beneficiary is the highest ranking executive in the United States and, by corporate charter, is subject to review only by the board of directors and shareholders of the corporation.

Among specific goals and policies over the past 6-months were effective use of capital, recruitment/retention of key personnel, identification of business opportunities and increase of revenues. The specific business decisions included purchase of real estate for income purposes (buying/selling/renting), pursuit of trading partners (identification of partners, negotiation of contract terms, locating, purchasing and arranging for delivery, letters of credit, collection) and growth within the textile industry (establishing printing and embroidery business, determining costs and potential revenues, deciding on location, hiring employees, sales and distribution, etc). Many of these have evolved such as 2 of 3 properties were recently sold for profit. We have established international trading of computer parts and accessories, accounting for \$87,260 in exports in the past 2 months. We have firm orders for \$392,640 over the next four months. To date, we have gross exports of almost \$700,000 with net income of almost \$140,000.

We have entered into two leases for 6200 square feet of space within premises located at 953 and 955 N. Elm, City of Orange. This space is our textile printing and embroidery business which is growing rapidly. On the printing side, we have capacity of 1500 pieces daily and are currently producing 600-800 pieces daily. We receive \$6 per piece and are presently receiving approximately \$115,000 per month in revenues. On the embroidery side, we receive \$1.50 per piece and have capacity of 3000 per day. We are currently producing 1250 per day with gross revenues running almost \$2 million. We have recently hired 10 workers for the printing and embroidery business which are not reflected in the older employment documents submitted due to the time lag in filings. We are currently negotiating with a major US retailer to provide clothing which, if consummated, will take us to full capacity.

The petitioner also submitted an organizational chart of the U.S. company indicating the job titles and the names of the employees in each position. The chart indicates the beneficiary as president who supervises the general manager who supervises three managers. The chart noted that the manager in charge of printing and embroidery supervises 10 textile/embroidery workers. The chart also indicates that the general manager "reports to president" and "supervises activities of managers." The chart shows that one manager is in "charge of printing and embroidery, facilities, machinery/equip, workers;" the second manager is in charge of

properties and he “evaluates real estate investments, financing strategies, tenancy,” and the third manager is in charge of administration including the office and accounting functions.

The petitioner submitted Forms W-2 for 2003 for four individuals. The individuals listed on the Forms W-2 are also listed on the organizational chart as the beneficiary, the manager of properties, the manager of administration and the general manager. The Forms W-2 indicated that the manager of administration received \$5,988 in wages for 2003 and the general manager received \$5,029 in wages for 2003. Thus, it appears that the general manager and the manager of properties are working on a part-time basis.

In addition, the petitioner submitted the company’s Form 941, Employer’s Quarterly Federal Tax Return, for the quarters ended December 2003, March 2004, June 2004, and September 2004. In each report, the U.S. entity employed four individuals. In the quarter ended September 2004, the quarter in which the instant petition was filed, the U.S. entity employed the beneficiary and the three managers listed on the organizational chart. The general manager listed on the organizational chart does not appear on the federal tax returns for any quarter in 2004. However, the petitioner submitted a paycheck stub indicating that the general manager had received 1099 (MISC) wages of \$29,535 as of October 8, 2004. The individual identified as the manager in charge of the printing and embroidery activities appears to be employed on a part-time basis, based on his quarterly wages of \$1,300 to \$1,500 throughout 2004.

The response submitted by the petitioner failed to indicate the percentage of time spent by the beneficiary on each duty, a complete description of the job duties performed by each employee, and their educational levels. Furthermore, the petitioner failed to submit evidence to establish that the beneficiary qualifies for all four criteria for an executive. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The director denied the petition on November 30, 2004, on the ground that the petitioner did not establish that the beneficiary will be employed in a primarily managerial or executive capacity. The director found that the beneficiary’s duties, as described, were too broad and non-specific to convey any understanding of her actual day-to-day duties. The director further observed that since the United States company consists of employees that do not appear to be professionals, it is likely that the beneficiary will perform the duties required for the functions and day-to-day operations of the business, rather than oversee the functions and/or the personnel that perform those duties.

On appeal, counsel for the petitioner states that the beneficiary is employed in a managerial and executive capacity and asserts the director erred by denying the petition. Counsel asserts that the beneficiary is the “highest ranking executive” at the U.S. entity, “manages the entire organizational operations,” and “supervises and controls the work of other supervisory and managerial employees.” Counsel states that “the performance of the above-mentioned detailed executive and managerial duties occupy, at least, 80-90% of [the beneficiary’s] time” and “she spends the remainder of her time at the Company negotiating contracts, overseeing accounting and finance functions and performing day-to-day functions.” Counsel further asserts that the beneficiary supervises one general manager who supervises three managers and thus, the U.S. entity employs four employees in addition to the beneficiary. Counsel also states that the U.S. entity plans to hire 4 to 5 additional employees.

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity. 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 definitions of executive and managerial capacity have two specific requirements. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Here, while the beneficiary evidently exercises discretion over the day-to-day operations of the business, the petitioner's description of his current and proposed duties suggests that the beneficiary's actual duties as of the date of filing were and would continue to be providing the services of the business.

The beneficiary's proposed job description includes vague duties such as the beneficiary is responsible for "insuring effective utilization of talent and efficient management"; "monitoring of corporate performance in areas of profitability, cost-effective, growth, changes in sales and earnings"; and "developing and maintaining relationships with key external influences on corporate performance such as suppliers, trading partners, governmental officials, etc." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The job description also includes several non-qualifying duties such as the beneficiary is "responsible for planning, coordinating and monitoring investigation, study and negotiations of plans for long-term, balanced growth"; "designing and reviewing strategies and goals in all areas and implementation of plans to attain goals;" "insuring the entity has adequate capital and finance resources;" and "making key decisions regarding sourcing, pricing, and product selection." Since the petitioner has not provided a complete description of the duties performed by the general manager and the three managers employed by the U.S. entity, it appears that the beneficiary will be providing the financial procurement, marketing, and sales activities rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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).

Furthermore, the director specifically requested that the petitioner provide a detailed job description, including the beneficiary's specific duties in the United States. The petitioner did not submit the requested job description as requested by the director. Instead, the petitioner reiterated the job duties described in the original job description. Failure to submit requested evidence that precludes a material

line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. For this reason alone, the appeal will be dismissed.

As the United States company had only four employees at the time of filing, one of which appears to have been employed on a part-time basis, it is reasonable to assume, and has not been proven otherwise, that the beneficiary is directly performing sales, promotion, purchasing, marketing and financial development, and all or many of the various operational tasks inherent in operating a business on a daily basis, such as acquiring products, maintaining inventory, paying bills, and customer service. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. Accordingly, the director reasonably concluded that the beneficiary will be performing the day-to-day operations and directly be providing the services of the business rather than directing such activities through subordinate employees.

In addition, the petitioner stated that the U.S. entity is in the printing business and is "currently producing 600-800 pieces daily," and in the embroidery business it is "currently producing 1250 per day with gross revenues running almost \$2 million." The petitioner also stated that the U.S. entity employs 10 workers for the printing and embroidery business, however, has not submitted any documentation evidencing that these individuals are actually employed by the company. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Thus, the petitioner has not explained which employees are manufacturing the product they are selling. 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)).

In addition, the petitioner claimed on the Form I-129 that the U.S. entity is engaged in the trading of textiles, finished goods and electronics. In a support letter dated August 25, 2004, the petitioner stated that the U.S. company is primarily engaged in the trade of "ready made clothes." However, in the response to the director's request for evidence, the petitioner asserts that in the past six months the U.S. entity was involved in the "purchase of real estate," "establishing printing and embroidery business," and the "international trading of computer parts and accessories." The organizational chart of the U.S. entity indicates that the U.S. entity has one manager in charge of the printing and embroidery and one manager for the properties but it does not indicate any employees involved in the trade of computer parts and accessories. In addition, the petitioner has not provided any documentation evidencing that the U.S. entity is doing business in these areas such as the sales contracts of the purchased real estate, copies of the rental or purchase of the warehouse or equipment necessary to establish the printing and embroidery business, and/or copies of the invoices and receipts for computer parts. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

In addition, the petitioner submitted documentation with the original petition indicating that the U.S. entity employs three managers below the general manager. However, on appeal, counsel for the

petitioner asserts that the beneficiary supervises one general manager and three "managers-in-training." The job duties performed by a manager in training could be very different from duties and responsibilities of a manager. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. The record does not demonstrate that the beneficiary has a sufficient number of employees in the United States employed full-time who could perform the non-managerial tasks associated with operating a business involved in textile printing and embroidery, real estate investment, and trading in clothing and computer equipment. The petitioner's general and vague description of the beneficiary's duties and the lack of sufficient personnel to perform these tasks make it impossible to conclude that the beneficiary would plausibly perform primarily managerial or executive duties.

The record shows that as of the date of filing, the petitioner asserts that the beneficiary will control and direct subordinate managerial staff. The U.S. entity employed one general manager and two managers. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

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).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not described the duties performed by the general manager and the two additional managers in detail and has not established that a bachelor's degree is actually necessary, for example, to perform the administrative, operational and supervisory work of the employees of the U.S. entity, who will be among the beneficiary's subordinates. In addition, on appeal, counsel for the petitioner asserts that the three lower-level managers are "managers in training." Moreover, the petitioner has not shown that any of its "managers" actually supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Thus, the petitioner has not shown that the beneficiary's

subordinate employees are supervisors, professionals, or managers, as required by section 101(a)(44)(A)(ii) of the Act.

Furthermore, on appeal, counsel asserts that the position offered to the beneficiary is executive in 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, 8 U.S.C. § 1101(a)(44)(B). 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 managerial 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.* 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. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). As the beneficiary supervises one general manager who supervises three managers or managers in training, the U.S. company has not established a complex organizational structure that would elevate the beneficiary beyond a first-line supervisor, nor does the record demonstrate that the beneficiary primarily focuses on the broad policies and goals of the organization. In the instant matter, the petitioner has not established evidence that the beneficiary is employed in an executive capacity with the U.S. entity.

The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium size businesses. However, the AAO has also consistently required the petitioner to establish that the beneficiary's position consists of primarily managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks. It is the petitioner's obligation to establish through independent documentary evidence that the day-to-day non-managerial and non-executive tasks of the petitioning entity are performed by someone other than the beneficiary, although, these employees need not be professionals. Here, the petitioner has not met this burden.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. For this reason, the appeal will be dismissed.

The second issue in the proceeding is whether the beneficiary's services in the United States are for a temporary period. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of his services in the United States.

In the instant matter, the petitioner submitted documentation evidencing that the beneficiary is the sole owner of both the foreign company and the U.S. company. In reviewing the documentation submitted, the petitioner did not provide persuasive evidence demonstrating that the beneficiary's services are to be used temporarily and that she will be transferred to an assignment abroad upon completion of her services in the United States and thus for this additional reason, the appeal will be dismissed.

The beneficiary was previously granted L-1A classification. 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). The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

If the previous nonimmigrant petition was approved based on the same unsupported and contradictory 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 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.