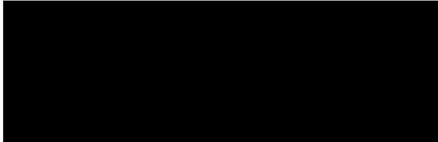




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FILE: EAC 07 008 51133 Office: VERMONT SERVICE CENTER Date: **NOV 06 2007**

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

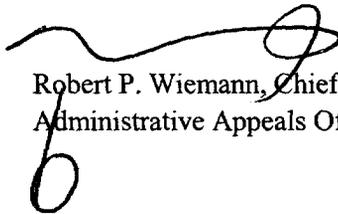
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president 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, an Arizona corporation, is engaged in the construction industry. It claims to have a qualifying relationship with Willma, S.A. de C.V., located in Mexico. The petitioner has employed the beneficiary in L-1A status since 2004 and the petitioner now seeks to extend his status.

The director denied the petition concluding that the petitioner had not established: (1) that the beneficiary would be employed in a managerial or executive capacity; (2) that the U.S. entity and the foreign entity maintain a qualifying relationship; or (3) that the foreign entity continues to do business as required by the regulations.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the petitioner submitted sufficient evidence to establish that the beneficiary is employed in a managerial capacity. Counsel attaches documentation related to the petitioner's construction projects and emphasizes that the beneficiary signs and reviews all documents and is the individual who made the investments.

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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate 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 first issue addressed by the director is whether the petitioner established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

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 October 11, 2006. The petitioner indicated on Form I-129 that the beneficiary would continue to serve as the president of the U.S. company. The petitioner stated that the U.S. company had four employees at the time the petition was filed. The petitioner did not submit an L Classification supplement, a statement from counsel from the petitioner, or supporting evidence, other than evidence of the beneficiary's current L-1A status.

The director issued a request for additional evidence on November 29, 2006, in which the petitioner was instructed to submit: (1) evidence that establishes the duties performed by the beneficiary in the past year and the duties he will perform if the petition is extended; (2) a list of the U.S. company's employees by name and position title; and (3) a complete position description for each employee, including the beneficiary, including a breakdown of the number of hours devoted to each of the employee's job duties on a weekly basis.

In a response received on January 22, 2007, the petitioner provided the following description of the beneficiary's duties:

Will plan, direct, coordinate, and control the daily operation of the corporation through the three division managers in construction operations, sales & marketing, and the chief financial officer. He will be responsible for preparation of a budget and monitor expenses against the budget. He will direct the development of and approve standards and procedures. He will be responsible for development of personnel policies and obtaining all licensing required. He will be responsible for timely, orderly, accurately and consistently maintaining financial and operation reports. He will assume all aspects of daily operation of the corporation, including hiring, firing of employees, determination of employee's salaries within salary structured guidelines, organizational structure, staffing within approved budgets, and approving all expenses reports. Moreover, he will promote the philosophy as outlined in the corporation's Mission Statement.

The petitioner also provided an organizational chart for the U.S. company, which represents the beneficiary as supervising an operations manager, a sales manager, and an administrative assistant. The chart also depicts one sales person who reports to the sales manager. The petitioner provided position descriptions for the operations manager and the administrative assistant, but the information was provided in Spanish and was not accompanied by an English translation. The petitioner also submitted a "yearly earnings report" for the year ended on December 31, 2005, which showed that the individuals identified as operations manager and sales person were each paid gross wages of \$1,080 for the months of January and February 2005, but received no payments for the remainder of the year. The administrative assistant received gross wages of \$480 for the first two months of 2005, but also received no wages thereafter. The employee identified as the sales manager did not receive wages in 2005, according to the earnings statement. The petitioner did not submit evidence of wages paid to employees in 2006.

The petitioner also provided what appears to be a list of independent contractors who had provided services in connection with the petitioner's construction projects in the areas of surveying, air conditioning, excavation, granite installation, painting, window installation, plumbing, engineering design, property appraisal, drilling and general construction. The petitioner submitted a copy of an agreement dated April 27, 2006, between the beneficiary and two construction/contracting firms who agreed to construct a single family home based on specifications approved by the beneficiary, as well as copies of several invoices from other contractors.

The director denied the petition on May 7, 2007, concluding that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director noted the evidence submitted suggested that the beneficiary is the sole full-time employee of the U.S. company. The director acknowledged the list of contractors submitted, but found no evidence that the petitioner employs laborers. The director also acknowledged the petitioner's organizational chart, but noted that the petitioner had not provided evidence of wages paid to employees, or English translations for their position descriptions. In addition, the director observed that the position description provided for the beneficiary was too vague to establish his employment in a qualifying capacity. The director concluded that, given the size and nature of the corporation, the beneficiary would act as a first-line supervisor, rather than performing primarily managerial or executive duties.

On appeal, counsel for the petitioner states the following on Form I-290B, Notice of Appeal to the AAO:

The service indicated that the petitioner have [sic] not submitted sufficient evidence to prove that the beneficiary is in a managerial capacity, attach [sic] is the evidence to the contrary, you will see that the documents for the projects here are sign and review [sic] by [the beneficiary] and the beneficiary is the one person investing in all the project of [the petitioner].

You will also find sufficient evidence of the investments in the Millenia Project and Cortez Project.

The attached documents include: the petitioner's balance sheet as of May 31, 2007; a general ledger statement for the period January 1, 2006 through May 31, 2007; and documentation related to the petitioner's residential construction projects, including permits, correspondence, proposals estimates and invoices from contractors; and engineering drawings of the projects.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(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 in either an executive or a managerial capacity. *Id.*

The petitioner has described the beneficiary's duties in only vague and non-specific terms and therefore failed to identify the specific managerial or executive tasks he will perform on a day-to-day basis. For example, the petitioner stated that the beneficiary will "plan, direct, coordinate the daily operation of the corporation," "direct the development of and approve standards and procedures," "promote the philosophy of the company," and assume "all aspects of the daily operation of the corporation." The petitioner did not, however, describe the specific duties the beneficiary performs to "direct" or "coordinate" the company's affairs and the AAO will not speculate as to the related managerial or executive duties. 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). In addition, the AAO notes that the beneficiary's responsibilities for "obtaining all licensing required," monitoring expenses, and "maintaining financial and operational reports," without further explanation, suggest that he is directly involved in the day-to-day administrative and financial operations of the company, rather than managing these activities.

Moreover, the AAO notes that several of the beneficiary's stated duties reference his responsibility for supervising "division managers," and performing various duties related to personnel management. However, as discussed further below, the petitioner has not established that it actually employed the individuals identified on the submitted organizational chart at the time of filing, and never claimed to employ a "chief financial officer," who is included among the beneficiary's subordinates in the position description. Therefore, the beneficiary's duties with respect to the supervision of subordinate company employees can be called into question. 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).

It must be emphasized that the director had specifically requested a complete position description for the beneficiary's position, including a breakdown of the number of hours devoted to his duties on a weekly basis. Although the petitioner provided the vague job description requested above, it did not provide the requested information regarding how the beneficiary's time is allocated among specific duties. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director,, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). This failure of documentation is important because several of the beneficiary's daily tasks' do not fall directly under traditional managerial duties as defined in the statute. Any 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).

Although the director specifically referenced the deficiencies of the submitted position description in the notice of decision, neither counsel nor the petitioner makes any attempt to clarify the beneficiary's job duties on appeal. Counsel merely submits additional documentation and suggests that the fact that the beneficiary invested in the petitioner's projects and signed and reviewed documents on behalf of the company establishes his employment in a managerial capacity. Counsel's assertions are not persuasive and cannot be accepted in lieu of a detailed description of the beneficiary's actual duties and an explanation as to how those duties meet the statutory criteria set forth at section 101(a)(44)(A) or (B) of the Act. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The definitions of executive and managerial capacity have two separate 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). The AAO does not doubt that the beneficiary exercises authority over the U.S. company as an owner and president. However, the fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). The petitioner has failed to establish the actual duties performed by the beneficiary, thus it cannot be concluded that his duties are primarily managerial or executive in nature.

Although the beneficiary is not required to supervise personnel, if it is claimed that his managerial 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. The petitioner indicated that the beneficiary will direct the U.S. company "through three division managers in construction operations, sales & marketing, and the chief financial officer." The petitioner also attached an organizational chart identifying an operations manager, a sales manager, a sales person and an administrative assistant, but no chief financial officer. The record contains the company's earnings report for all employees for 2005, as well as detailed general ledger statements for 2006 and the first five months of 2007. Upon review, the record contains no evidence of payments to the two sales employees. There is no evidence of any salary or wages paid to the administrative assistant after February 2005. The employee identified as the operations manager received payments during January and February 2005, as well as payments totaling approximately \$800 during the months of June, August and October 2006. The petitioner has not submitted evidence that it employed a chief financial officer, a sales and marketing staff, or an administrative employee, and the services provided by the individual identified as the operations manager appear to be part-time or intermittent at best.

Although the director specially referenced the lack of evidence of wages paid to the claimed employees, counsel has not specifically addressed the director's concerns on appeal or otherwise attempted to correct the apparent discrepancies between the organizational chart and the petitioner's financial records. 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). 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)). Based on the above discussion, the AAO concurs with the director that the evidence does not establish that the petitioner regularly employed anyone other than the beneficiary and therefore he does not qualify as a "personnel manager," as contemplated by section 101(a)(44)(A)(ii) of the Act.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, United States Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

At the time of filing, the petitioner was a three-year-old construction and property development company that claimed to have a gross annual income of \$437,331. The firm employed the beneficiary as president but has not corroborated its claims that the claimed staff in the areas of sales and marketing, construction operations, administration, and financial operations actually exist. While the AAO is satisfied that that the petitioner

utilizes the services of contractors to perform the day-to-day duties associated with designing and constructing homes, it must be emphasized that job duties performed in connection with a business' sales, marketing, finances and general administration may be deemed non-qualifying if they involve the actual performance of the function. The petitioner has not explained how the services of the claimed contracted employees would obviate the need for the beneficiary to primarily conduct the majority of the day-to-day administrative tasks associated with the petitioner's business. Based on the petitioner's failure to establish that the beneficiary has a subordinate staff, it is reasonable to assume, and has not been shown otherwise, that the beneficiary is personally performing these non-qualifying tasks rather than managing or supervising the performance of these routine duties by other subordinate employees. While administrative and financial duties may be crucial to the proper functioning of the petitioner's business, they are also the daily operational tasks that cannot be deemed managerial or executive in nature.

Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president and independent contractors whose duties are limited to construction services. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

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

The next issue in this matter is whether the petitioner established that it maintains a qualifying relationship with the beneficiary's foreign employer. 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). The AAO will simultaneously address the directors' separate finding that the petitioner failed to establish that the foreign entity is a qualifying organization doing business abroad.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
  - (1) 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;
  - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the

duration of the alien's stay in the United States as an intracompany transferee[.]

- (H) *Doing business* means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad
- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) *Affiliate* means
  - (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
  - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

At the time of filing, the petitioner did not identify the foreign entity with which it claims to have a qualifying relationship, and did not submit evidence to demonstrate that such a relationship continues to exist. Accordingly, the director requested documentary evidence of the ownership and control of "each parent, subsidiary, and affiliate organization of the foreign organization." The director advised that such evidence should include copies of stock certificates, stock ledgers, articles of incorporation or similar documents. The director also requested evidence that the foreign organization continues to be engaged in the regular, systematic and continuous provision of goods and services.

In response, the petitioner submitted a self-prepared chart that appears to indicate a qualifying relationship between the petitioner and a Mexican corporation, Willma, S.A. de C.V. The petitioner submitted a copy of the U.S. company's stock certificate number 1 issuing 500 of the company's 1,000 shares to the beneficiary on July 17, 2003, and a copy of its articles of incorporation.

With respect to the foreign entity, the only document submitted was an un-translated document that appears to be a receipt for an annual tax filing for 2005 submitted to the Mexican government on March 31, 2006. The document identifies the name of the filer as "Willma." No other evidence was submitted to establish that ownership of the foreign entity or the ongoing business activities of the foreign corporation.

The director denied the petition on the separate and related grounds that the petitioner had not established: (1) that the petitioner maintains a qualifying relationship with the foreign entity; or (2) that the foreign entity is a qualifying organization doing business as defined in the regulations.

On appeal, counsel does not address either of these findings.

Upon review, the AAO concurs with the director's determination on both grounds. 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 (BIA 1988); *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.

The petitioner has not provided sufficient evidence of the ownership and control of the U.S. company or any evidence of the ownership and control of the foreign entity. The only fact established by the evidence submitted is that the beneficiary owned half of the U.S. company's authorized shares at the time of incorporation. 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).

Further, the fact that the foreign entity filed a tax return for the 2005 year does not establish that the foreign entity has been and will continue to be engaged in the regular, systematic and continuous provision of goods and/or services. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

As the petitioner has not addressed these deficiencies on appeal, the appeal will be dismissed for these additional reasons.

The petitioner noted that USCIS approved a previous petition to extend the beneficiary's L-1A status. 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). If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. 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). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous petition approvals by denying the instant petition.

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.

**ORDER:** The appeal is dismissed.