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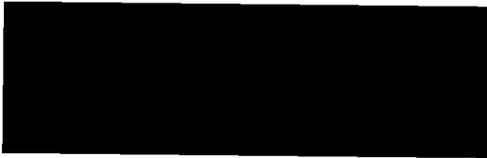
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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File: EAC 07 094 53032 Office: VERMONT SERVICE CENTER Date: **MAY 30 2008**

IN RE: Petitioner:
Beneficiary:



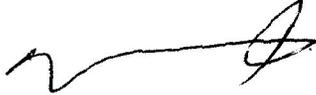
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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 petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its director 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, a Texas corporation, states that it is engaged in retail trade and investment. It operates a gas station and convenience store. The petitioner claims to be a subsidiary of M/S Shree Collections, located in Maharashtra, India. The beneficiary was initially granted a one-year period of stay to open a new office in the United States in 2002 and was subsequently granted two extensions of status. The petitioner now seeks to extend the beneficiary's L-1A status for three additional years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would 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, counsel for the petitioner asserts that the director erred by overlooking and misinterpreting certain evidence and by failing to recognize the beneficiary's executive and managerial role within the petitioning company. Counsel submits a brief and additional evidence in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The sole issue addressed by the director is whether the petitioner established that 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 nonimmigrant petition was filed on February 15, 2007. The petitioner indicated on Form I-129 that the beneficiary would serve as the director of the U.S. company, which was stated to have five employees. In support of the petition, the petitioner submitted a letter dated February 12, 2007, in which it described the beneficiary's duties as follows:

She functions in a managerial and executive capacity. [The beneficiary] continues to supervise and control the work of other supervisory, professional and managerial employees. She functions at the senior most level within the organizational hierarchy and exercises discretion over the day-to-day operations of this organization.

The petitioner submitted an organizational chart for the U.S. company which identifies the beneficiary as president, with responsibility for supervising a store manager and one proposed employee of "Wash-n-Shop," a San Antonio, Texas-based laundromat the petitioner claims to have acquired in January 2005. The organizational chart shows that the store manager supervises one "assistant," who in turn supervises two cashiers.

The petitioner submitted a copy of its Texas Form C-3, Employer's Quarterly Report, for the fourth quarter of 2006, which indicates that the company employed four employees during each month. When comparing the quarterly wage report to the organizational chart, it is noted that there is one employee, [REDACTED], listed on the quarterly report who does not appear on the organizational chart, and one employee on the organizational chart, Mohamadur Saheen, who does not appear on the quarterly report for the fourth quarter of 2006.

The director issued a request for additional evidence on March 16, 2007, in which he instructed the petitioner to submit the following to establish that the beneficiary would be employed in a primarily managerial or executive capacity: (1) a comprehensive description of the beneficiary's duties with an explanation as to which duties would be managerial or executive in nature; (2) a list of all U.S. employees which identifies each employee by name and job title; (3) a complete position description for all employees in the United States, to include a breakdown of the number of hours devoted to each employee's job duties on a weekly basis; (4) copies of all payroll records for the petitioner's employees for the months of December 2006 and January 2007; (5) copies of IRS Forms 941, Employer's Quarterly Federal Tax Return, for all four quarters of 2006; and (6) copies of IRS Forms W-2 and W-3 for 2005 and 2006.

In a response dated May 8, 2007, counsel for the petitioner stated that the petitioner employs a total of six employees as of the most recent quarter, "which allows [the beneficiary] to spend her workdays running the company rather than handling the ordinary tasks of the business." Counsel further described the beneficiary's duties as follows:

[The beneficiary] handles all of the directorial and executive aspects of the business as she has been appointed to this position by the foreign entity which owns 100% [the petitioning company]. Exhibit 5, which is a Business Resolution and experience letter from [the foreign entity] proves that she has been granted the authority to set up this business and operate it as an executive would. In other words, she has final authority to make all executive and managerial decisions with regard to the US subsidiary.

As executive, [the beneficiary's] day-to-day duties include making decisions with regard to employee hiring and firing, promotions and advertising. That is to say, she spends her time promoting the image of the business. She handles customers' concerns and complaints when they arise, makes marketing decisions, selects various products to sell in order to maximize the profits. This is also done in conjunction with [the store manager's] efforts, who confers with her and makes recommendations regarding which items to sell and which items to stop selling, how much to sell, etc. [The beneficiary] spends almost no time working behind the cash register, and she does not generally deal with things such as maintenance, cleaning, or even purchasing/sales.

* * *

[H]er work is clearly that of an executive. She directs the store; she does not handle the day-to-day menial tasks that would make her an ordinary worker. She has complete control of executive decisions; she spends her time making the business stronger by networking, by increasing product profitability, by streamlining the financial issues, etc.

The petitioner provided the requested list of its employees by name and position title, but did not provide the requested detailed position descriptions for the beneficiary's subordinates. 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's employee list included the following individuals:

- [REDACTED], Store Manager
- [REDACTED], Assistant
- [REDACTED] Cashier
- [REDACTED]n, Cashier
- [REDACTED] Cashier

It is noted that M [REDACTED] and [REDACTED] were not included on the organizational chart submitted at the time the petition was filed, and the petitioner has not explained this apparent discrepancy. The petitioner provided a copy of its Texas Form C-3 for the first quarter of 2007 which lists all employees named on the employee list. Four of the six employees earned wages of \$1,500 for the quarter; the store manager earned \$2,880; and the beneficiary earned \$9,000.

The petitioner also submitted copies of its Texas Forms C-3, Employer's Quarterly Report, and IRS Forms W-2, Wage and Tax Statement, for 2006. The AAO notes that the employee [REDACTED] was issued a Form W-2 from the petitioner indicating that he earned wages of \$1,500 in 2006; however, this employee was not listed on any of the company's state quarterly wage reports during that year. Similarly, the petitioner issued a Form W-2 to [REDACTED] showing that he earned wages of \$1,500 in 2006. [REDACTED] is not listed on any of the petitioner's 2006 quarterly wage reports. The petitioner did list an "[REDACTED]" on its Texas Form C-3 for the fourth quarter of 2006, but this individual has a different U.S. Social Security Number and is clearly not the same person. The record shows that the petitioner did not issue a Form W-2 to

██████████.” Finally, based on a review of the petitioner’s wage records, it is noted that the employee ██████████, who was listed on the organizational chart submitted at the time of filing, was employed by the U.S. company only during the second quarter of 2006.

Overall, the discrepancies between the petitioner’s payroll records, tax documentation and organizational chart raise serious questions regarding the credibility of its claims regarding its staffing and organizational structure as of the date of filing. 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). 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. *Id.*

It appears that the company has consistently employed the beneficiary, a store manager, a part-time “assistant” whose duties have not been identified, and one or more part-time cashiers. However, the petitioner has not adequately supported its claim that it employed six workers as of February 2007 when the petition was filed. Although specifically requested by the director, the petitioner failed to provide copies of its payroll records for all employees for the month of January 2007. Again, 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 September 21, 2007, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director noted the discrepancies in the record with respect to the number of employees working for the petitioning company, and further observed that the petitioner had failed to submit the requested detailed position descriptions for the beneficiary’s subordinate staff. The director observed that it was not clear who was providing the goods and services of the U.S. company on a full-time basis, other than the beneficiary. The director concluded that the petitioner had failed to establish that the beneficiary would be primarily engaged in supervising a subordinate staff of managerial, supervisory or professional workers, or that she would be managing an essential function of the organization. Rather, the director found that the beneficiary would be engaged in the non-managerial, day-to-day operations of the business, such as providing a service or selling a product.

On appeal, counsel for the petitioner asserts that the director erred when he failed to recognize the beneficiary’s managerial and executive position within the company, and also “misinterpreted and overlooked certain exhibits.” Counsel concedes the small size of the petitioning company, but argues that “the fact remains that [the beneficiary] was acting in an executive capacity while exercising her job duties.” With respect to the “confusion over the number of workers,” counsel asserts that it is clear that there have been four to six employees working for the company at any given time, and that the beneficiary “exercised complete authority over all aspects of the employees listed.” Counsel notes that the beneficiary “paid their salaries, she ensured that they performed their duties professionally and adequately, and she made executive decisions regarding the direction of the firm on a weekly basis.” Counsel further emphasizes that the beneficiary “made all final decisions with regard to the hiring and firing of employees, the types of products to be sold, and the types of contractors with whom to deal.”

Counsel acknowledges that the beneficiary is sometimes required to perform some non-qualifying duties, but states that “it is equally true that she worked on a daily basis as an executive of a successful US business.” Counsel outlines the following “executive” duties, and emphasizes that such duties are consistent with the statutory definition provided at section 101(a)(44)(B) of the Act:

- [The beneficiary] negotiated all contracts with landlords, product providers, employees, franchisors, etc., and made all final decisions as to what kind of product [the petitioner] provided and how it provided these products. Further, [the beneficiary] was at all times in possession of the legal right to conduct the business.
- She set all goals and made all determinations as to the shape of the business.
- [The beneficiary] had full authority and discretion over all aspects of the business.
- [The beneficiary] received no supervision from the foreign parent. Further, as 50% owner of the foreign parent, she had every right to operate as an executive in an executive capacity.

Counsel asserts that the beneficiary clearly exercises executive authority over the petitioner, and notes that “although she did perform an occasional non-qualifying duty, she was always busy researching new products, dealing with new clients, making advertising decisions, and otherwise guiding the business to success.”

Finally, counsel indicates that the petitioner is submitting documentation related to “a second enterprise” that is controlled by the beneficiary, noting that the new enterprise is “intimately linked” with the petitioner. The attached documentation includes a Texas Certificate of Filing for Maasb Enterprises, Inc. with an effective date of February 1, 2007, a lease for a convenience store entered into by this company on January 1, 2007, and business permits issued to the company in July 2007.

Counsel's assertions are not persuasive. Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary would 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(1)(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.*

In the instant matter, counsel and the petitioner have repeatedly described the beneficiary's proposed position in very broad terms. The petitioner initially stated in its letter dated February 12, 2007 that the beneficiary “continues to supervise and control the work of other supervisory, professional and managerial employees,” and that she “functions at the senior most level within the organizational hierarchy and exercises discretion over the day-to-day operations of this organization.” These duties merely paraphrase the statutory definition of managerial capacity. *See* section 101(a)(44)(A) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Accordingly, the director specifically requested that the petitioner submit a comprehensive description of the beneficiary's duties and an explanation as to how her duties qualify as managerial or executive in nature. In response, counsel emphasized that the beneficiary spends her days "running the company," that she has authority to operate the company "as an executive would," and that she "has final authority to make all executive and managerial decisions" with respect to the company. The AAO cannot accept an ambiguous position description and speculate as to the related managerial or executive duties to be performed. 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. at 1108.

Counsel also indicated that the beneficiary is responsible for hiring and firing, advertising and promotions, "promoting the image of the business," handling customer concerns and complaints, making marketing decisions, "directing the store," "streamlining the financial issues," and selecting products to sell. The petitioner's description does not clearly identify the managerial or executive duties to be performed by the beneficiary with respect to the purchasing, marketing, customer service, finance and advertising functions of the petitioner's gas station and convenience store. 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 her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

At the same time, counsel acknowledged that the beneficiary does spend some time operating a cash register or involved in purchasing and sales activities, but offered no detailed breakdown of her duties or how much time she spends on managerial and non-managerial tasks. Accordingly, the record before the director contained no concrete description of what the beneficiary does on a day-to-day basis as the director of the petitioning company. The definitions of executive and managerial capacity have two parts. 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 AAO does not doubt that the beneficiary exercises decision-making authority and overall oversight over the petitioning company as its director, the petitioner has not met its burden to show that the beneficiary primarily performs managerial or executive duties. The AAO cannot accept a managerial or executive job title and broad, conclusory assertions regarding the beneficiary's responsibilities in lieu of the required detailed description of the beneficiary's duties. The petitioner has not adequately described the beneficiary's actual duties, such that they could be classified as managerial or executive in nature. Nor has the petitioner submitted a more detailed description of the beneficiary's duties for consideration on appeal.

When examining the managerial or executive capacity of a beneficiary, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those

of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2).

In the present matter, the totality of the record does not support a conclusion that the beneficiary's subordinates are supervisors, managers, or professionals. At the time the petition was filed in February 2007, the petitioner employed the beneficiary as director, a store manager, a part-time assistant, and one or more part-time cashiers. Although requested by the director, the petitioner has failed to clearly identify the job duties, and educational backgrounds of its employees. 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). The organizational chart submitted with the petition identified three tiers of management or supervision to oversee two cashiers. The petitioner has not established that any of the beneficiary's employees were employed in managerial, supervisory, or professional positions. USCIS will not conclude that the beneficiary manages supervisory or professional employees based on an uncorroborated organizational chart that is unaccompanied by requested job descriptions for subordinate personnel. 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.

While the petitioning company purportedly has a "store manager," the evidence of record suggests that all of the employees would be required to perform the actual day-to-day tasks of operating the gas station/convenience store in order for the store to remain open for business. The petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial under the statutory definition.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS 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 absence of a subordinate staff sufficient to perform the non-qualifying duties of the petitioner's business is a proper consideration in the analysis of the beneficiary's employment capacity. See *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 25, 29 (D.D.C. 2003).

At the time of filing, the petitioner was operating a gas station and convenience store that is open for business for 115 hours per week, from 6:30 a.m. until 11:00 p.m. on weekdays, from 7:00 a.m. until 12:00 a.m. on Saturdays, and from 7:30 a.m. until 11:00 p.m. on Sundays.¹ The beneficiary and the store manager earned wages consistent with full-time employment. The petitioner employs a part-time “assistant” who receives a monthly salary of \$500 and typically employs one or two part-time cashiers who receive the same salary. A monthly salary of \$500 is equivalent to approximately 20 hours of employment at minimum wage. Therefore, the lower-level workers charged with performing the most routine functions of the business; i.e., handling customer transactions during operating hours, work a combined total of approximately 60 hours on a weekly basis. Given the minimal number of hours worked by the subordinates, and the petitioner’s extensive operating hours, the record does not support the petitioner’s claim that it employs sufficient lower-level personnel, to relieve the beneficiary from primarily working in the petitioner’s store. The record does not establish who among the petitioner’s staff would be responsible for purchasing and monitoring inventory, receiving deliveries, stocking and maintaining store displays, cleaning and maintenance, day-to-day administrative, financial and banking functions, and other routine tasks associated with operating a retail store. Based on the totality of the record, it is reasonable to conclude, and has not been shown otherwise, that the beneficiary is primarily engaged in the day-to-day tasks associated with operating a retail store, rather than primarily performing the claimed managerial or executive duties. Furthermore, 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.

Collectively, the lack of specifics in the beneficiary’s job description and the absence of subordinates to perform many of the duties that are reasonably required in the daily operation of this type of business raise questions as to how much of the beneficiary’s time can actually be devoted to managerial or executive duties. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. See sections 101(a)(44)(A) and (B) of the Act.

The petitioner claims for the first time on appeal that the beneficiary will also be involved in the management of a second U.S. company. The petitioner has provided no explanation for the late introduction of this information, nor has it submitted sufficient documentation to establish that the beneficiary’s unidentified duties with the new company should be considered in determining whether the petitioner would continue to employ the beneficiary in a primarily managerial or executive capacity. 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 foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

¹ The petitioner’s business hours are indicated on photographs of the petitioner’s storefront, which were submitted in response to the director’s request for evidence.

The AAO acknowledges that USCIS approved other L-1 nonimmigrant petitions that had been previously filed on behalf of the beneficiary. 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). The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

If the previous nonimmigrant petitions were 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).

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.