U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 08 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of California in October 1997. It cleans and repairs Persian and Indo Persian carpets. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that the petitioner had not established: (1) a qualifying relationship between the petitioner and the foreign entity; or (2) that the beneficiary would be employed in a primarily managerial or executive capacity for the United States petitioner.

On appeal, counsel for the petitioner asserts: (1) that the beneficiary owns and controls both the U.S. corporation and the foreign entity, thus the criteria for a qualifying relationship have been met; (2) that the beneficiary satisfies the criteria for a manager or an executive and that he is not a first-line supervisor; and, (3) the beneficiary was recently issued an extension of his L-1A intracompany transferee visa, thus denial of his Form I-140 petition under these circumstances is arbitrary and capricious.

Section 203(b) of the Act states in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
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> * * *
>
> (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a

statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

The first issue to be considered in this proceeding is whether the petitioner has established a qualifying relationship with the beneficiary's foreign employer. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity. *See* section 203(b)(1)(C) of the Act.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

> *Affiliate* means:
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> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
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> (B) 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.
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> *Multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.
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> *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.

The petitioner initially submitted: (1) a stock certificate dated January 15, 1998 issued by "The Carpet Mechanic" to [redacted] Company for 1,000 shares; (2) The Carpet Mechanic's Articles of Incorporation stating that it was authorized to issue 1,000 shares; (3) a fictitious business name statement filed December 24, 1997 by The Carpet Mechanic, Inc. stating its fictitious business name as "Interior Care Services;" (4) a copy of a form document titled "Minutes" that was partially completed, did not provide a first page, contained information that the corporation was electing subchapter S status, and showed that the beneficiary had been elected president, vice-president, secretary, and chief financial officer; and, (5) its 2001 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return. The record also contains evidence that the beneficiary is the incorporator of "Farsh Incorporated," a company incorporated in the State of California in July 2002. The record shows that Farsh Incorporated is authorized to issue 100,000 shares but the record does not contain evidence of the ownership of those shares.

In a March 26, 2003 request for further evidence, the director requested, among other things, evidence that the foreign entity had, in fact, paid for its interest in the petitioner.

In a June 17, 2003 response, the petitioner again provided: (1) The Carpet Mechanic's Articles of Incorporation stating that it was authorized to issue 1,000 shares; (2) a stock certificate dated January 15, 1998 issued by "The Carpet Mechanic" to Tehran Persian Rug Company for 1,000 shares; and, (3) a copy of a form document titled "Minutes" that was partially completed, did not provide a first page, contained information that the corporation was electing subchapter S status, and showed that the beneficiary had been elected president, vice-president, secretary, and chief financial officer. The petitioner also provided an unfiled copy of the foreign entity's Articles of Incorporation showing the beneficiary as the foreign entity's incorporator. Counsel for the petitioner noted that documentation proving the purchase of the petitioner's stock certificates no longer seemed to exist. Counsel stated that: "[I]n this case [the beneficiary] issued the share to the Canadian parent and used his capitalize [sic] from that company to fund the U.S. company."

The director observed that although the stock ledger showed that the foreign company had paid $1,000 for 1,000 of the petitioner's shares, the minutes of annual shareholders meeting reflected that the petitioner's stock was issued for $10 per share or $10,000 for 1,000 shares. The director also noted that the petitioner's 2001 IRS Form 1120, Schedule K did not show that a foreign company or person owned at least 25 percent of the petitioner and that Schedule L did not reflect the value of any stock issued. The director concluded that ownership and control could not be determined because of the inconsistencies and because the petitioner had failed to submit proof of stock purchase or other evidence to establish that the foreign entity and the petitioner had a qualifying relationship.

On appeal, counsel for the petitioner asserts that the U.S. company's share certificates prove that it is a wholly owned subsidiary of the parent Canadian company. Counsel submits an opinion letter from an attorney who observes that the foreign entity's articles of incorporation, "The Carpet Mechanic's" articles of incorporation, and the January 15, 1998 share certificate and the petitioner's representation that it has not issued other shares demonstrate that the "Canadian corporation and the California corporation are owned by common owner(s)."

Counsel's assertion and documentation are not persuasive. The regulations and applicable precedent decisions 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. 8 C.F.R. § 204.5(j)(2); *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm. 1988); *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact

number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In this matter, the petitioner has presented confusing evidence regarding its ownership and control. The AAO observes that the petitioner was incorporated under the name "The Carpet's Mechanic" but also refers to itself as "Carpet Mechanic, Inc." In addition, the petitioner has not provided a complete set of its organizational minutes and the minutes that have been provided contain confusing references to an election to be treated as a subchapter S corporation.[1] As the director observed, the articles of incorporation show that the petitioner was authorized to issue 1,000 shares, and the record does contain a copy of a stock certificate that was issued to a foreign entity owned by the beneficiary; yet the petitioner's IRS Form 1120, Schedule L does not show that the petitioner has any outstanding stock. The record also contains evidence of a separate entity incorporated by the beneficiary but the petitioner does not explain how this third entity[2] is relevant to the matter at hand. 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).

Counsel's assertion that a stock certificate is sufficient to establish the qualifying relationship between the petitioner and the foreign entity is not persuasive. Due to the ease with which stock certificates can be manipulated, the director may require at his or her discretion additional evidence substantiating a qualifying relationship between the foreign entity and the petitioner. *See* 8 C.F.R. § 204.5(j)(3)(ii). In this matter, despite the director's request for substantiating evidence, the petitioner has not submitted evidence that the foreign entity actually paid for its interest in the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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[1] To qualify as a subchapter S corporation, a corporation's shareholders must be individuals, estates, certain trusts, or certain tax-exempt organizations, and the corporation may not have any foreign corporate shareholders. *See* Internal Revenue Code, § 1361(b)(1999). A corporation is not eligible to elect S corporation status if a foreign corporation owns it in any part.

[2] The beneficiary notes in a December 2, 2002 letter that he has set up a second wholly owned subsidiary to import Persian carpets and has arranged for a $100,000 purchase through this company.

A 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). Here, considered by itself, the petitioner's failure to submit the requested evidence is sufficient grounds for the denial of the petition.

The AAO also notes that a corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). The record in this matter contains banks statements issued to the beneficiary doing business as Interior Care Services, to Farsh Incorporated, Rug Wash Incorporated, and to the beneficiary, individually, all operating at the petitioner's address. The documentation contained in this record makes it appear that the beneficiary has created "shell" corporation(s) to enable the transfer of the beneficiary to the United States pursuant to this visa classification. *See, e.g. Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Regarding the issue of the petitioner's claimed qualifying relationship, the petitioner has not overcome the director's denial. For this reason, the petition may not be approved and the director's decision must be affirmed

The second issue in this proceeding is whether the beneficiary will be employed in a managerial or executive capacity for the United States entity.

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

In a December 2, 2002 letter appended to the petition, the beneficiary on behalf of the petitioner stated that:

> I need to continue ambitious expansion plans that are currently being undertaken by The Carpet Mechanics, specifically to move from individual clients to large corporate clients. Second we are expanding into the import of Persian rugs . . . On July 17, 2002, I set up a second wholly owned subsidiary to handle this aspect of the business and have arranged for $100,000 purchase through this company.
>
> In my role, I will continue to direct and manage the operations of the United States entity. I will continue to select, hire, train and supervise staff that will then be assigned management and administrative tasks. I will assign specific job duties, establish work schedules and maintain priorities of work to be performed. I will establish and implement corporate goals and policies and will prepare short and long term goals and management policies.
>
> I am the only person able to fill the management of the expansion plans, and my continuing presence is essential to bring the expansion effort to a successful conclusion.

Counsel in a December 24, 2002 letter in support of the petition asserted that:

> [The beneficiary] does not work in customer service, repair or cleaning. Nor does he work on taking orders for service or providing the service. He has developed the infrastructure for growth and has been working on developing new business. [The beneficiary] single handedly expanded Carpet Mechanics' operations to a prosperous position in the market. He has been instrumental in securing contracts with large U.S. chain stores, such as, The Home Depot, Bond Products, Inc. and Ameri-Can Forwarding Systems.

The petitioner also included its organizational chart showing the beneficiary as president and individuals in the positions of vice-president, accountant, operation manager, assistant operation manager, and plant manager.

On March 26, 2003, the director requested further evidence on the issue of the beneficiary's managerial or executive capacity. The director requested: a more detailed description of the beneficiary's duties, including the percentage of time spent on the listed duties; an organizational chart describing its managerial hierarchy and staffing levels and listing all employees under the beneficiary's supervision by name and job title, and including a brief description of their job duties; and, Internal Revenue Service (IRS) Forms 941, Employer's Quarterly Federal Return, for the last four quarters and California Forms DE-6, Employer's Quarterly Wage Report, for the last four quarters that were accepted by the State of California.

In a June 17, 2003 response, counsel for the petitioner stated:

> [The beneficiary] does not provide the services and does not direct first level supervision of the Company's daily operations. He has been involved in securing contracts from large U.S. change [sic] stores, such as The Home Depot, Bond Products, Inc, and Americ-Can Forwarding Systems. His daily functions entails [sic] meetings, correspondence and telephonic communications required to insure delivery of services to their reasonable expectations and to insure payment and continuing referrals. This is not automatic. It requires constant cultivation. [The beneficiary] is also in charge of hiring staff for positions brought on by growth and turnover.

Counsel also indicated that the beneficiary manages an organization and does not provide the services for which the company was formed; manages nine employees in the United States and seven in Canada; and, all employees are screened by the beneficiary and work at his pleasure. The petitioner provided brief job descriptions for five of the positions held by the beneficiary's subordinates. The petitioner indicated that: the vice-president handled advertising and marketing and was in charge of the budget for these functions; the accountant was in charge of the company's entire bookkeeping; the operations manager was in charge of the operation of all machinery, repairs, restoration, and for scheduling pick up and delivery of rugs and dispatch of drivers; the assistant operations manager was in charge of customer service and handling commercial accounts; and the plant manager handled all scheduling of repairs, inventory, and ordering.

The director determined that the petitioner's job description and organizational chart did not establish that the beneficiary performed primarily in a managerial or executive capacity. The director also observed that the record did not convey an understanding of the beneficiary's daily duties. The director noted that it appeared that the beneficiary would be performing first-line supervisory duties of non-professional employees and would contribute to the performance of the major functions.

On appeal, counsel for the petitioner asserts that the beneficiary qualifies as an executive. Counsel supplements the previous descriptions of the beneficiary's duties by noting that the beneficiary "negotiates contracts with clients, oversees marketing and recruitment efforts for both [U.S. and Canadian] companies, and supervises employees at both companies." Counsel also contends that the beneficiary qualifies as a

manager as he is the sole stockholder and owner. Counsel notes that the position of accountant is a professional position and that a plant manager is a professional occupation and that the "beneficiary's" employees include an accountant and a plant manager.

Counsel's assertions are not persuasive. 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. § 204.5(j)(5). Counsel for the petitioner asserts that the beneficiary qualifies as both a manager under section 101(a)(44)(A) of the Act, and an executive under section 101(a)(44)(B) of the Act. However, a petitioner may not claim a beneficiary is to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing the beneficiary is both an executive and a manager.

The beneficiary on behalf of the petitioner states that he "will continue to select, hire, train and supervise staff," and "will establish and implement corporate goals and policies and will prepare short and long term goals and management policies." These general statements paraphrase elements of the definition of executive and managerial capacity. *See* sections 101(a)(44)(A)(ii) and (iii) and section 101(a)(44)(B)(ii) 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.).

The beneficiary indicates that he "will assign specific job duties, establish work schedules and maintain priorities of work to be performed" and the petitioner's counsel states that the beneficiary is "instrumental in securing contracts with large U.S. chain stores, such as, The Home Depot, Bond Products, Inc. and Ameri-Can Forwarding Systems." However, these statements evidence the beneficiary's direct supervisory services and sales services for the petitioner. 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. *See* section 101(a)(44)(A)(iii) of the Act. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Counsel's contention that the beneficiary's supervision of an accountant and a plant manager is supervision of professional employees is not persuasive. The petitioner indicates that the petitioner's plant manager handles scheduling of repairs, inventory, and ordering and that the petitioner's accountant is in charge of the company's bookkeeping. When 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). Thus, the AAO must focus on the level of education required by the position, rather than the degree held by the 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 matter, the petitioner has not, in fact, established that an advanced degree is actually necessary to perform the petitioner's bookkeeping or the general activities of scheduling, inventory and ordering.

Moreover, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions or executive functions and what proportion would be non-managerial and non-executive. Despite the director's specific request, the petitioner fails to quantify the time the beneficiary spends on his various duties. This failure of documentation is important because providing first-line supervisory duties and negotiating contracts do not fall directly under traditional managerial or executive duties as defined in the statute. For this reason, the AAO cannot conclude that the beneficiary is primarily performing the duties of an executive or a manager. *See e.g. IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Again, a 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).

Counsel's assertions on appeal concerning the role the beneficiary plays with the Canadian company are not persuasive. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

On review, the petitioner has not presented sufficient evidence to establish that the beneficiary's duties for the petitioner will include primarily executive or managerial duties.

On appeal counsel asserts that the criteria for L-1A, intracompany transferee classification and the criteria for the employment-based Form I-140 immigrant petition are essentially identical. Counsel also cites the Memorandum of [redacted] Assistant Commissioner for Adjudications, INS, CO214L-P, (January 13, 1989) ("Puleo Memo") in support of his assertion that denial of this visa petition is arbitrary and capricious.

Counsel's assertion in this regard is not persuasive. With regard to the similarity of the eligibility criteria, the AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

It must be noted that many Form I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing Form I-129 nonimmigrant petitions than Form I-140 immigrant petitions, some nonimmigrant L1-A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

Moreover, the AAO is not bound or estopped by the previous decisions of the service center director. 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).

Finally, each petition is a separate record of proceeding and receives an independent review. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Because the approved nonimmigrant petitions are not part of the current immigrant visa record of proceeding, the AAO cannot determine whether the previous L-1A petitions were approved in error, or whether the beneficiary was originally eligible but the facts changed before the Form I-140 immigrant petition was filed.

Regardless, 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). Counsel should further note that 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. at 597.

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.