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U.S. Citizenship
and Immigration
Services

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By

FILE: [REDACTED]
SRC 05 141 50871

Office: TEXAS SERVICE CENTER Date: NOV 23 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

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, Texas 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 Texas in October 1971. It exports raw materials to Mexico. It seeks to employ the beneficiary as its import-export manager. 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 that the beneficiary had been employed in a managerial or executive capacity for the foreign entity or would be employed in a primarily managerial or executive capacity for the United States petitioner.

On appeal, the petitioner asserts that it has demonstrated the beneficiary's managerial capacity for the foreign entity and the petitioner. The petitioner submits a brief and additional documentation in support of the appeal.

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):

* * *

- (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 in this proceeding is whether the beneficiary had been employed in a managerial or executive capacity for the foreign entity prior to his entry into the United States as a nonimmigrant.

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 petitioner initially did not provide information regarding the beneficiary's foreign employment. On May 16, 2005, the director issued a notice of intent to deny and requested information regarding the beneficiary's foreign employment. The director specifically requested: the dates of the beneficiary's employment with the foreign entity; his title; whether he directly supervised other employees; if he supervised other employees their names, titles, and duties; the beneficiary's supervisory duties, if any; and the beneficiary's daily duties while at the foreign entity.

In a June 4, 2005 response, the petitioner indicated that the beneficiary had been employed by its two foreign subsidiaries from August 2000 through September 2003 as the Guadalajara office manager. The petitioner further indicated that the beneficiary supervised: (1) a customer service representative/purchasing agent who was the primary contact for some customers and who also purchased certain product lines from the United States; (2) a customer service representative/accounts receivable officer who was the primary contact for some customers and who also handled accounts receivable for the branch office; (3) an accounts receivable officer who handled accounts receivable transactions; (4) a traffic, logistics, and customs officer who oversaw the import, logistics, and traffic of products sold and/or distributed through the Guadalajara branch and who also coordinated the import process of products with customs brokers, carriers and warehouses; (5) a warehouse supervisor and machine operator who managed warehouse activities and operated a special machine; and, (6) a warehouse and deliveries clerk who provided general warehouse clerical activities.

The petitioner also indicated that the beneficiary supervised all the work units within the office, the work of subordinate area supervisors and staff, advised employees regarding work situations, developed operating procedures, forms, and systems, and performed personnel administrative tasks including hiring, promoting, supervising training and time and attendance records, and resolving employee problems. The petitioner added that the beneficiary made sure the inventory was accurate, planned and purchased products stocked for customers, coordinated with the customs supervisor on paperwork for importing from the United States warehouse to the Guadalajara branch, verified the sufficiency of the material for stock items and for one time orders, double checked import permits, prepared reports for the customers, prepared commercial invoices, oversaw the general functioning of the office, supervised the activities performed in all work units, assisted the corporate office in the development and implementation of policies within the office, met regularly with the staff, served as a point of contact for information concerning the office, and assisted in the preparation and maintenance of the office budget.

The petitioner also provide the foreign entity's organizational chart showing the beneficiary in the position of office manager and reporting to the branch managers in Juarez and Guadalajara/Monterey. The chart did not include the beneficiary's subordinates as outlined by the petitioner in its letter of response.

On June 16, 2005, the director denied the petition determining that the petitioner's evidence regarding the beneficiary's foreign duties was composed primarily of daily productive tasks and first-line supervision of non-managerial, non-supervisory, and non-professional employees. The director concluded that the beneficiary's job assignments were not primarily managerial or executive.

On appeal, the petitioner asserts that the beneficiary supervised two professional employees for the foreign entity, the customer service representative/purchasing agent and the traffic, customs, and logistics officer. The petitioner indicated that the individuals in these two positions were Licensed Foreign Trade Specialists and that their work for the Guadalajara branch office was consistent with their professional skills. The petitioner contends that the beneficiary's duties for both the foreign entity and the petitioner included developing strategies that would generate business for the company, running and directing a team to develop the business, supervising department members to ensure that the operations run properly, and organizing the conduct of the business by working on its design, determining custom strategies to be implemented, developing and supervising the implementation of proper collection standards, and getting feedback from customers to improve their experience. The petitioner claims that although the company is small, the beneficiary is only minimally involved in activities outside of his organizational, managerial, supervisory, and planning chores, and that other employees of the company conduct most of the front-line work. The petitioner asserts that it was quite clear that the beneficiary had been employed as a managerial employee. The petitioner requests that this matter be remanded, assigned to a different reviewing officer, and that it be allowed to present any further specific evidence to support its case.

The petitioner'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). 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). In this matter the beneficiary's duties of supervising the work units within the office, which included checking the inventory, making sure the inventory was stocked for customers, checking the import permits, preparing commercial invoices, and advising on and resolving employee problems, all pertain to performing the petitioner's day-to-day functions and the tasks of a first-line supervisor. 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). A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner's description of the beneficiary's duties for the foreign entity appear to focus on supervising subordinates who have contact with customers, purchase products, handle accounts, and perform the operational tasks associated with importing and storing products. The descriptions of the duties for the beneficiary's purported subordinates do not demonstrate that the positions are professional positions. In evaluating whether the beneficiary manages professional employees, the AAO must evaluate the level of education required by the position, rather than the degree held by subordinate employee. On appeal, the petitioner claims that two of the beneficiary's foreign subordinates perform duties that are professional duties. The petitioner claims that the customer service representative/purchasing agent and the traffic, logistics, and customs officer perform duties that require a specialized knowledge or skill which requires intensive preparation to be adequately developed, and is a skill that is sanctioned by an independent body. However,

the petitioner has not provided sufficient evidence that these two positions require knowledge or learning, and merely skill, of an advanced type given in a prolonged course of specialized instruction.¹ In the instant matter, the petitioner has not established that a bachelor's degree is actually necessary to perform the duties of a buyer and customer service representative and the duties of an individual who coordinates the import process and interacts with customs brokers.

On appeal, the petitioner also indicates that one or more of the beneficiary's foreign subordinates supervise other workers. However, the foreign entity's organizational chart does not depict any of the beneficiary's purported subordinates, let alone the subordinates' subordinates. 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). In this matter, the lack of detail on the foreign entity's organizational chart undermines the petitioner's claim that the beneficiary actually supervises other workers, rather than carrying out many of the operational duties himself. 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)).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as, preparing reports for the customers, coordinating with the customs supervisor, making sure the inventory was stocked and accurate, checking import permits, and preparing invoices do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot conclude that the beneficiary is primarily performing the duties of a manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In this matter the AAO need not consider the foreign entity's staffing levels to determine whether the beneficiary acted in a managerial or executive capacity for the foreign entity. The description of the beneficiary's duties provides sufficient information to conclude that the beneficiary performed operational

¹ On appeal, the petitioner has submitted untranslated documents it claims are Licensed Foreign Trade Specialist degrees for the two employees holding the positions of customer service representative/purchasing agent and traffic, logistics, and customs officer. However, because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Moreover, the descriptions of the duties for the two positions held by these two individuals do not comport with the duties of individuals requiring advanced learning and not merely the skill of a trained staff member.

tasks and the tasks of a first-line supervisor. As observed above, the petitioner has not established that the beneficiary's subordinates perform duties that correspond to the duties of a professional employee; thus, the petitioner has not demonstrated that the beneficiary supervises professional employees. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner has provided information suggesting that the beneficiary's duties extend, at most, to the supervisory tasks of a first-line supervisor over non-professional, non-managerial, and non-supervisory employees or, at the least, to an individual responsible for carrying out the daily operational and administrative functions of one of the foreign entity's offices. The petitioner has not established that the beneficiary's duties for the foreign entity were primarily managerial or executive. For this reason, the petition will not be approved.

The second issue in this matter is whether the petitioner established that the beneficiary's employment with the United States entity would be in a primarily managerial or executive position.

The petitioner initially provided a job offer to the beneficiary addressed to the beneficiary dated February 2005 for the position of import/export manager. The February 2005 letter indicates that the beneficiary would "continue in sales," and that the beneficiary's "tasks will be to maintain and grow our business in Mexico, but there will be many other projects associated with our overall marketing efforts that will need your attention."

The record contains a second job offer dated March 30, 2005 for the position of import/export manager. In the March 30, 2005 letter, the petitioner described the duties of the proffered position as:

The Import/Export Manager supervises and manages the International activities. Works with our Mexican customer base to insure that the required products and services related to the client's need is being accomplished.

Manages the department and insures that employees and branch are meeting their goals and objectives.

Is in charge of searching and developing new opportunities for the mutual benefit (customer and Hisco), resulting in either a process or a product improvement.

The position as Import/Expooort [sic] manager reports directly to the Company Branch Manager.

It is not clear which permanent job offer has been extended to the beneficiary.²

² The record also contains an undated letter from an individual advising the beneficiary on the content of the proposed letter in support of the petitioner's Form I-140, Immigrant Petition for Alien Worker. The letter notes that the writer is attaching a sample job title and job description and suggests using the sample as a guide along with any technical data or information. The letter writer advises that the beneficiary should not

On May 16, 2005, the director issued a notice of intent to deny and requested further evidence on the issue of the beneficiary's managerial or executive capacity for the United States petitioner. The director specifically requested: whether the beneficiary directly supervised other employees; if he supervised other employees their names, titles and duties; the beneficiary's supervisory duties, if any; and the beneficiary's daily duties with the United States company and the percentage of time spent on the various duties.

In a June 4, 2005 response, the petitioner indicated that the beneficiary supervised an accounts receivable supervisor who handled the branch office's receivable transactions, an in-house customs broker who oversaw the import, logistics, and traffic of products sold and/or distributed in Mexico, and a customs clerk who supported the customs, logistics, and traffic department in Mexico. The petitioner also indicated that the beneficiary spent: 30 percent of his time running reports and preparing paperwork for weekly exports to Mexico; 10 percent of his time making sure that new products are authorized under the "maquila" program, if not gathering specific information so that the products could be included in the "maquila" program; 10 percent of his time making sure orders are invoiced; 20 percent of his time coordinating and following up on the merchandise being sent to Mexico, posting the items as received, entering the importation authorization number, and capitalizing all the expenses incurred on the importation; 30 percent of his time responding and answering requests from Mexican customers and strategizing and structuring sound import tactics for the clients. The petitioner also provided its organizational chart showing the beneficiary as an importations and exportations manager reporting to a branch manager. The chart did not depict any positions subordinate to the beneficiary's position.

The director determined that the beneficiary's duties appeared to be devoted to business marketing, staff recruitment, and first-line supervision of non-managerial, non-supervisory, and non-professional personnel, and other duties comprising the daily productive tasks of the company. The director concluded that the beneficiary's assignment would be outside the scope of the definitions of managerial and executive capacity.

On appeal, the petitioner asserts that the beneficiary supervises an in-house customs broker and in-house customs clerk, two positions that require professional skills. The petitioner contends that the beneficiary's duties for the petitioner include developing strategies that will generate business for the company, running and directing a team to develop the business, supervising department members to ensure that the operations run properly, and organizing the conduct of the business by working on its design, determining custom strategies to be implemented, developing and supervising the implementation of proper collection standards, and getting feedback from customers to improve their experience. The petitioner references the beneficiary's time spent on handling reports and information ensuring legal compliance so that business decisions can be made (30 percent), and claims that the decisions are made by the beneficiary or by the beneficiary in conjunction with other departments within the organization. The petitioner also references the beneficiary's time spent on verifying the suitability of new products, coordinating with customs brokers, verifying that orders are invoiced daily, and coordinating and following up on the merchandise sent to Mexico (40 percent) and contends that the beneficiary is supervising these activities and not performing them. Finally, the petitioner asserts that although the company is small, the beneficiary is only minimally involved in activities

mention sales so that Citizenship and Immigration Services (the successor to the Immigration and Naturalization Service) would not think that the beneficiary is simply a salesman.

outside of his organizational, managerial, supervisory, and planning chores, and that other employees of the company conduct most of the front-line work. The petitioner further asserts that it is quite clear that the beneficiary's position would be as a managerial employee. The petitioner again requests that this matter be remanded, assigned to a different reviewing officer, and that the petitioner be allowed to present any further specific evidence to support its case.

Preliminarily, the AAO questions the legitimacy of the beneficiary's job position. The inconsistent descriptions in the record regarding the beneficiary's proposed job offers and other information in the record suggest that the petitioner is attempting to manipulate the beneficiary's position to fall within the definition of managerial or executive capacity. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Further, if CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Even when considering the petitioner's most expanded version of the beneficiary's duties, the petitioner fails to persuade that the beneficiary's duties for the petitioner will be primarily managerial or executive. When examining the petitioner's description of the beneficiary's job duties, the AAO finds that the petitioner's initial descriptions of the beneficiary's duties stated generally: (1) that the beneficiary would "continue in sales," and that the beneficiary's "tasks will be to maintain and grow our business in Mexico; and/or (2) that the beneficiary would supervise and manage international activities, a department, and would search for new opportunities or would continue in sales and marketing. Neither description is comprehensive or sufficient to suggest that the beneficiary's duties would be primarily managerial or executive rather than the performance of the petitioner's daily operational tasks. Again, 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. at 604.

The petitioner's response to the director's notice of intent to deny and request for further evidence notes that the beneficiary will supervise three employees, an accounts receivable clerk, an in-house customs broker, and a customs clerk. Contrary to the petitioner's assertions on appeal, again the actual description of these three individuals' duties does not lend to a determination that the positions require the knowledge or learning of professional employees. Neither does the evidence in the record substantiate that the beneficiary's purported subordinates supervise or manage others. 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.

The petitioner's allocation of the beneficiary's time to various duties serves only to confirm that the beneficiary will be performing operational and administrative tasks. The petitioner's indication that the beneficiary would be running reports and preparing paperwork, checking the authorized status of new products, checking merchandise has been received and posting the items received, responding to requests from customers, and making sure orders are invoiced suggest that the beneficiary will be performing

administrative duties. Again, the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The petitioner's attempt on appeal to elevate the beneficiary's position to a supervisory position is not persuasive. First, the petitioner's organizational chart does not list any employees under the beneficiary's position. Second, the petitioner's initial descriptions of the beneficiary's duties focused on the beneficiary's performance of duties for the petitioner, not on his purported supervision of other employees. Third, even on appeal, the petitioner describes the beneficiary as working with a team of employees that suggests that the beneficiary may be a senior member of a team, but does not extend to an individual who primarily supervises others. Moreover, even if considering the beneficiary's primary responsibility for the petitioner included supervisory duties over others, the record does not demonstrate that the beneficiary's three subordinates perform professional, managerial, or supervisory duties. See § 101(a)(44)(A)(ii) of the Act. The petitioner's assertion that the beneficiary supervises activities and that other employees conduct most of the front-line work is not substantiated in the record. Again, 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.

On review, the petitioner has not presented sufficient evidence to establish that the beneficiary's duties for the petitioner will comprise primarily executive or managerial duties. For this reason, the petition will not be approved.

The AAO acknowledges that CIS approved other petitions that had been previously filed on behalf of the beneficiary. 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.

In general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. Accordingly, many Form I-140 immigrant petitions are denied after CIS approves prior nonimmigrant Form 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 L-1A 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 each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The approval of a nonimmigrant petition does not guarantee that CIS will approve an immigrant petition filed on behalf of the same beneficiary. As the evidence submitted with this petition does not establish eligibility for the benefit sought, the director was justified in departing from previous nonimmigrant approvals by denying the immigrant petition.

Furthermore, 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).

Finally, 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 petitioner has not provided evidence or argument on appeal sufficient to overcome the director's decision.

Finally, the AAO finds that the petitioner had opportunity to present new evidence on appeal, and that it would serve no useful purpose to remand the case simply to afford the petitioner another opportunity to supplement the record with evidence.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.