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U.S. Citizenship and Immigration Services

B4

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2006

WAC 04 217 53232

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, Chief
Administrative Appeals Office

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

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of California that is operating as a distributor of computer components. The petitioner seeks to employ the beneficiary as its general manager, director, and chief executive officer.

The director denied the petition concluding that the petitioner failed to demonstrate that: (1) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity; (2) a qualifying relationship existed between the foreign and United States entities at the time of filing; or (3) at the time of establishing the priority date, it had the ability to pay the beneficiary his proffered salary.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded it to the AAO for review. On appeal, counsel for the petitioner contends that the beneficiary would be employed by the United States entity in a primarily executive capacity. Counsel claims that an affiliate relationship exists between the foreign and United States entity, as two of the "major shareholders" of each organization entered into a voting trust, which allows the trustees to vote a combined share of 59.67 percent of each company's stock as one unit. Counsel further claims that because the beneficiary has already been receiving the proposed salary, the petitioner has demonstrated its ability to pay. Counsel submits a brief and additional evidence on 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 or 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, which 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.

The AAO will first consider the issue of whether the beneficiary would 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), 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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 filed the instant immigrant petition on August 3, 2004, noting the beneficiary's proposed employment in the positions of general manager, director and chief executive officer. In an appended letter,

dated July 27, 2004, the petitioner noted the beneficiary's proposed employment in a primarily executive capacity, and provided the following job description:

> Set up company goals, policies and procedures. Direct and supervise the operation of [the petitioning entity], including its finance, operations and sales/marketing departments. Coordinate with parent companies and its factories in Malaysia and China to develop business and support U.S. customers. Direct market research to identify the product lines [that] best serve the U.S. customers, and direct the customer support activities in launching company's new product lines. Direct and oversee market research divisions to study technology trends and decide new product planning. Decide budget and personnel policies and procedures of [the petitioning entity], and to hire and fire managerial and professional staff and supervise their work. Review the [sic] analyze activities, costs, operations, and forecast data to determine the company's progress toward stated goals and objectives. Confer with senior manager of [the foreign entity] to review achievements and discuss required changes in goals or objectives resulting from current status and conditions and oversee their implementation. Represent [c]ompany and exercise discretionary decision power over the day-to-day operation of [the petitioning entity]. In such capacity, [the beneficiary] will hire and directly supervise 3 managers (CFO, Operation/HR Manager and Director of Sales/Marketing) and indirectly supervise 6 additional staff, 4 of them are in professional capacities (Sales Engineer, Accountant, Technical Writer/Buyer, and Administrative Assistant) with bachelor or above degrees.

The petitioner submitted an organizational chart identifying the company's chief executive officer, human resources and operation manager, and director of sales/marketing as the three positions subordinate to the beneficiary, as well as the lower-level positions consisting of accountant, technical writer/buyer, warehouse department manager, administrative assistant/officer, sales engineer, and warehouse worker. The petitioner attached a list of the above-named personnel, on which it noted a brief job description for each position, and the date of hire and educational level of each employee.

In a December 9, 2005 decision, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director referenced the job description offered for the beneficiary's position, and determined that the petitioner had not established that it had a "reasonable need" for an executive. The director stated "[the petitioner's] business does not possess the organizational complexity to warrant having such an employee." The director noted that the beneficiary's job description is a restatement of the statutory definition of "executive capacity," and that the petitioner did not "specify the activities associated with these broad job responsibilities." Consequently, the director denied the immigrant petition.

On appeal, counsel addresses the beneficiary's purported role in an executive capacity, and states:

> The Beneficiary directs the management of the organization in that he decides the organization[al] structure and staffing need of Petitioner. **He makes hiring decisions,** determines wage rate, and makes promotion/demotion decisions. He also determines the product pricing and terms, and approves purchase orders, sale quotations, and expenditures of the operation.

* * *

> The Beneficiary has been exercised [sic] discretions over various operational matters. In addition to the management decisions [addressed above], the Beneficiary also exercised various administrative decisions such as employees' wage and bonus, sales commission, etc.

Counsel explains the goals and policies established by the beneficiary, noting that the beneficiary made "key changes to the company's organizational structure and operational goals," such as reorganizing the company's "order processing flow," and suggesting the termination and development of new lines of business. Counsel further addresses the beneficiary's success in transforming the company to a profitable position during his more than one year of employment with the petitioner. As evidence of the beneficiary's qualification as an executive, counsel submits copies of employment offers, a performance review, price quotations, purchase orders and expenditures authorized by him. Counsel also provides a copy of the petitioner's five-year business development plan proposed by the beneficiary, as well as documentation of suggestions regarding company procedures made by the beneficiary, including a website and magazine. As additional evidence, counsel submits a letter from a chairman of the foreign entity, who also outlined the "key changes" made by the beneficiary during his tenure with the United States entity, and addressed the importance of the beneficiary to the United States operation.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

Despite the petitioner's failure to demonstrate the beneficiary's eligibility for the requested classification, the AAO notes that the director partially based his decision on an improper standard. The director noted the petitioner's failure to demonstrate a "reasonable need" for the employment of an executive. The statutory definitions of "managerial capacity" and "executive capacity," as well as the accompanying regulations, do not require the petitioner to demonstrate a "need" for a manager or executive. *See* sections 101(a)(44)(A) and (B).

The AAO first notes inconsistencies in the position to be occupied by the beneficiary. On the Form I-140, the petitioner requested employment of the beneficiary as its general manager, director, and chief financial officer. In the July 27, 2004 letter submitted with the petition, however, the petitioner identified the beneficiary as the company's "president/chief executive officer," and noted the employment of another worker, [redacted], in the position of chief financial officer. An October 1, 2003 consent by the petitioner's shareholders and directors indicated that [redacted] resigned as president-chief executive officer and assumed the positions of secretary and chief financial officer, which are subordinate to the beneficiary. It is questionable, however, whether this change in the petitioner's staffing levels is legitimate, as the adjustment took place one month after a prior immigrant petition for the beneficiary's employment in the position of chief financial officer, director and general manager was denied.[1] Moreover, without further explanation from the petitioner, it is suspect that the petitioner's previous president-chief executive officer would accept a demotion. 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

[1] Counsel suggests on appeal that the appellate brief filed in connection with the instant proceeding also supports approval of the previously filed immigrant visa petition. The AAO emphasizes that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). The AAO may not determine the beneficiary's eligibility for an immigrant classification requested in a separate proceeding.

I&N Dec. 582, 591 (BIA 1988). Regardless, the petitioner has not resolved the discrepancies in the position to be held by the beneficiary. The beneficiary's true position is relevant to the determination of his employment capacity and whether he would be employed primarily as a manager or an executive. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 91-92.

When examining the executive or managerial capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The limited job description offered by the petitioner fails to define or clarify the beneficiary's involvement in various functions of the business, and whether he is performing primarily managerial or executive job duties with respect to each. For example, the petitioner stated in its July 27, 2004 letter that the beneficiary would "[c]oordinate" with the foreign company and overseas factories to develop business, direct the company's market research and customer support in order to identify its product lines, "oversee market research divisions to study technology trends and decide new product planning," and determine policies for the petitioner's budget and personnel. However, as the petitioner has not specifically explained these responsibilities, the beneficiary's role with regard to each is unclear. Specifically, the record fails to identify who would be performing the market research that the beneficiary is purportedly directing. While the petitioner employs a director of sales and marketing and a sales engineer, the petitioner represented each as performing the actual sales of the company and did not indicate that either would be responsible for performing marketing functions of the business.[2] Additionally, the petitioner's organizational chart does not reflect "market research divisions" specifically referenced by the petitioner as being directed by the beneficiary. Moreover, based on the brief job descriptions offered for the beneficiary's subordinates, it would appear that the beneficiary would also be responsible for deciding the company's product line, rather than directing employees who would perform this function. Absent a more comprehensive job description for both the beneficiary and his subordinates, the AAO cannot determine the specific managerial or executive job duties to be performed by the beneficiary. Case law dictates that a petitioner's blanket claim of employing the beneficiary as a manager or executive without a description of how, when, where and with whom the beneficiary's job duties occurred is insufficient for establishing employment in a primarily managerial or executive capacity. *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).

As noted above, the current record suggests that the beneficiary would be responsible for performing operational functions of the petitioner's business, specifically with respect to the petitioner's marketing, customer service, and product development activities. As the petitioner has not addressed the amount of time of the beneficiary would spend on the named responsibilities, the AAO cannot determine whether the beneficiary would be performing primarily managerial or executive tasks of the organization or the non-qualifying operational functions. The AAO notes that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

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[2] Based on the job descriptions offered by the petitioner at the time the Form I-140 was submitted, the director of sales/marketing would "[m]anage [the] sales [department] and contracted sales representatives" and the sales engineer would "[be] [i]n charge of [the] western region sales."

While counsel offers on appeal an outline of the goals and policies established by the beneficiary, as well as documentation referencing organizational decisions made by the beneficiary, the additional documentary evidence does not clarify the beneficiary's purported role as an executive in the United States company. The AAO acknowledges the "key changes" made by the beneficiary and the sample documents evidencing employment offers, price quotations and purchase orders authorized by the beneficiary. However, the additional documentary evidence does not clarify the responsibilities identified by the petitioner in its July 27, 2004 letter or confirm the beneficiary's role as a manager or executive. 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)).

Moreover, the additional documentation submitted on appeal raises an inconsistency in the petitioner's personnel. The petitioner's product invoices, which incidentally are dated both before and after the date of filing, identify "[redacted]" as the company's sales engineer. On the organizational chart, [redacted] is identified as the human resource and operation manager. A separate document pertaining to the petitioner's bonus system for its employees, dated November 8, 2004, identifies [redacted] as the vice-president. In an accompanying performance review conducted by the beneficiary for the review period of May through December 2005, the employee "[redacted]" is identified as the organization's operation manager. On the organizational chart, he is noted as the company's administrative assistant/officer. Although the review took place nine months after the instant filing, the review form indicates that [redacted]'s job title has remained unchanged, thereby implying that he had not received a promotion after the date of filing. These inconsistencies call into question the petitioner's true organizational structure, as well as the presence of subordinate staff who would relieve the beneficiary from performing non-qualifying duties. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so[3], those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa

[3] The AAO recognizes that the director's June 3, 2005 request for evidence did not include a request for an **additional description of the beneficiary's employment capacity in the United States organization.** The regulation at 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. The director did not deny the petition based on insufficient evidence of eligibility. Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Based on the above discussion, the petitioner has not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The AAO will next consider the issue of whether a qualifying relationship existed between the foreign and United States entities at the time of filing the immigrant petition.

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

> *Affiliate* means:
>
> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
>
> (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;
>
> * * *
>
> *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 noted in its July 27, 2004 letter the existence of a parent-subsidiary relationship between the foreign and United States companies as a result of both having the "same majority shareholders and those majority shareholders hav[ing] entered into a voting trust agreement." The petitioner stated "[u]nder the voting trust agreement, the trustees of the trust will vote for those majority shareholders as a single group for both companies." In appended stock transfer ledgers for both the foreign and United States entities, the ownership interests of each were identified as follows:

Foreign Company:

Shareholders	Number of shares	Percentage of ownership
[redacted]	4,660,000	38.83%
	2,500,000	20.83%
	260,000	2.16%
	2,928,000	24.4%
	28,000	0.23%
	260,000	2.16%
	1,364,000	11.36%

United States Company:

Shareholders	Number of shares	Percentage of ownership
[redacted]	126,493.33	23.87%
	189,740	35.80%
	11,483.33	2.17%
	129,320	24.40%
	1,236.67	0.23%
	11,483.33	2.17%
	60,243.33	11.37%

The petitioner offered copies of stock certificates numbers ten and twelve noting the shares of stock held by [redacted] and [redacted]" in the United States company, as well as a "roster" of the number of shares held by four of the seven above-named stockholders of the foreign entity. The petitioner also provided a copy of the January 8, 2002 voting trust agreement between [redacted] and [redacted] which addressed the transfer of each shareholder's stock into the trust and noted the trustees right to vote the transferred shares.

In his December 9, 2005 decision, the director concluded that the petitioner had not demonstrated that a qualifying relationship existed between the foreign and United States companies at the time of filing. The director noted inconsistencies in the amount of shares identified as being held by [redacted] on the petitioner's 1999, 2000, 2001 and 2002 tax returns. The director stated that the petitioner had not established "that the two entities are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity." The director also stated that the petitioner had not offered voting proxies or agreements "showing that any degree of control of both entities has been formally relinquished by other shareholders in favor of one of the individuals holding shares in both entities." Consequently, the director denied the petition.

On appeal, counsel claims that the petitioner demonstrated the existence of an affiliate relationship between the two organizations. Counsel references the voting trust agreement as evidence that both organizations are owned and controlled by the same group of individuals, each owning and controlling the same share or proportion of each entity. Counsel clarifies [redacted] shareholder interest in the petitioning entity, noting that it was incorrectly identified, and that the correct amount is 35.8%. Counsel submits a copy of the amended tax return. Counsel also provides a "schedule" outlining the shareholders and ownership interests in the United States and foreign entities and a copy of the voting trust agreement.

Upon review, the petitioner has not established the existence of a qualifying relationship between the foreign and United States entities. The petitioner suggests the existence of an affiliate relationship as a result of the voting trust, which transfers to the trustees the right to vote the shares of [redacted] and [redacted] resulting in a cumulative vote of 59.66% of the petitioner's stock. Despite the voting trust, the petitioner has not corroborated the ownerships interests of the stockholders of both the foreign and United States entities. The petitioner submitted only two of the purportedly seven stock certificates issued by the petitioning entity, and did not provide any stock certificates issued by the foreign corporation. The foreign entity's "roster" of directors and supervisors identified the ownership interests of four of its seven stockholders. Verification of each company's stockholders, as well as the number of shares held by each, is

an essential element of establishing an affiliate relationship. *See* 8 C.F.R. § 204.5(j)(2). The petitioner has not provided the documentary evidence necessary to demonstrate the existence of the purported affiliate relationship. 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. Accordingly, the appeal will be dismissed.

The AAO will address the final issue of whether at the time the priority date was established the petitioner demonstrated its ability to pay the beneficiary's proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states:

> Any petition filed by or for any employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

On the Form I-140, the petitioner noted the beneficiary's proposed salary of $45,000 plus a bonus.

In his decision, the director concluded that the petitioner had not demonstrated its ability to pay the proffered wage. The director referenced the petitioner's tax returns for the years 1999 through 2002, stating that the petitioner failed to realize a net taxable income in the years 2000, 2001, and 2002. The director concluded that the petitioner's tax return for 2004, as well as the quarterly wage reports for the same year, failed to establish the petitioner's ability to pay the beneficiary. The director noted that the salaries reported on either form were different, and stated that the petitioner had not clarified this inconsistency. Consequently, the director denied the petition.

On appeal, counsel claims that the petitioner has been paying the beneficiary the proposed salary, and therefore, has demonstrated its ability to pay. Counsel submits Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, issued to the beneficiary for the years 2001 through 2004, which reflect that in the years 2002, 2003 and 2004, the beneficiary received a salary of $45,000. Schedule E of the petitioner's 2004 income tax return also reflects compensation paid to the beneficiary in the amount of $45,000.

Upon review, the petitioner has demonstrated its ability to pay the beneficiary's proffered wage. In determining the petitioner's ability to pay, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner demonstrated that it had previously paid the beneficiary the proposed annual salary of $45,000. Schedule E of the petitioner's 2003 and 2004 tax returns, as well as the beneficiary's Forms W-2 for the same years, reflect compensation paid to the beneficiary in the amount of $45,000. Accordingly, the director's decision with regard to this issue will be withdrawn.

The AAO recognizes the beneficiary's previously approved L-1A nonimmigrant petition. It must be noted that many 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). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 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. Because CIS spends less time reviewing I-129 nonimmigrant petitions than 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). Furthermore, 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 in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. Based on the lack of evidence of eligibility in the current record, the director was justified in departing from the prior nonimmigrant petition approvals and denying the immigrant petition.

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.