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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 22 2006

SRC 04 212 51489

IN RE: Petitioner:
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:

[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, Texas Service Center, denied the employment-based petition. The matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of Tennessee in June 2002. It claims it markets honey products and is engaged in the import and export of agriculture products. It seeks to employ the beneficiary as its chief executive officer. 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) that the beneficiary would be employed in a managerial or executive capacity for the petitioner; or (2) that it had been and continued doing business as required by regulation.

On appeal, counsel for the petitioner asserts: (1) that the proffered position is managerial and executive; (2) that the beneficiary does not perform the tasks necessary to produce a product or provide a service; (3) that the petitioner's work is carried out by subcontractors; and, (4) that the petitioner represents not only its parent company but other companies in marketing products. Counsel submits documentation and copies of unpublished decisions in support of her assertions.

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 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;
>
> 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 indicated on its Form I-140, Immigrant Petition for Alien Worker, filed on August 2, 2004, that it had two employees. In a July 29, 2004 letter appended to the petition, counsel for the petitioner indicated that the beneficiary:

> [W]ill be responsible for the day[-]to[-]day management of the company, she will determine and formulate policies and provide the overall direction of the company; Determine and formulate policies and business strategies; Planning the use of materials and human resources; Assist the President in the development of the US market as well as the worldwide market of the US subsidiary, import and export; accomplish the most complex transactions.

On March 24, 2005, the director requested, among other things, a definitive statement describing the proposed job duties including: the position title; a list of all duties; the percentage of time spent on each duty; the names of subordinate managers/supervisors or other employees reporting directly to the beneficiary; a brief description of their job titles, and educational levels, or if the beneficiary would not supervise other employees, the essential function the beneficiary would manage; an organizational chart specifying the beneficiary's position within the organizational hierarchy; and, who provides the product sales/services or produces the petitioner's products. The director also requested copies of Internal Revenue Service (IRS) Forms 941, Employer's Quarterly Federal Tax Return, showing quarterly taxes paid for all salaried employees including their names for the last three years, and evidence of wages paid (IRS Forms W-2) of all employees from the date of filing the petition.

In a June 6, 2005 letter in response to the request for further evidence, the petitioner provided the same job description previously submitted and indicated that the petitioner was not importing Argentinean honey into the United States because of current U.S. "anti-dumping" legislation and would be engaged primarily in marketing for the foreign entity as well as lobbying for the repeal of the "anti-dumping" legislation. The petitioner did not provide copies of Forms 941 that included the names of the salaried employees and did not provide IRS Forms W-2.

On August 16, 2005, the director denied the petition determining that the beneficiary would be performing some of the day-to-day duties of the petitioner and that the petitioner's business did not need a full-time executive to manage zero employees and to make decisions regarding the company.

On appeal, counsel for the petitioner asserts that the proffered position is managerial and executive, the beneficiary does not perform the tasks necessary to produce a product or provide a service, and that subcontractors carry out the petitioner's work. Counsel indicates that as previously presented, the beneficiary's day-to-day duties include:

- Determine and formulate policies and provide the overall direction of the company

- Plan, direct, and coordinate operational activities at the highest level of management with the help of subordinate executives, managers and employees;
- Determine and formulate policies and business strategies; Participate in formulating and administering company policies and developing long range goals and objectives
- Managing daily operations of the company
- Planning the use of materials and human resources
- Management or administration, personnel, purchasing, and administrative services
- Direct and coordinate activities of the company to obtain optimum efficiency and economy of operations and maximize profits
- Direct and coordinate promotion of products and services to develop new markets, increase share of market, and obtain competitive position in industry
- Promote the company in industry, manufacturing and trade associations
- Reports to the President of the company

Counsel contends: that the beneficiary satisfies the definition of executive capacity as she directs the management of the entire organization, establishes the goals and policies of the entire organization, exercises the widest latitude in discretionary decision making as she is the highest decision-maker, the chief executive officer; and that the beneficiary satisfies the definition of managerial capacity as she manages the entire organization, supervises and controls the work of other supervisory and professional subcontractors, and functions at the highest level within the organizational hierarchy and exercises discretion over the day-to-day operations of the activities and functions of the company. Counsel also lists several companies and individuals that the petitioner claims are its subcontractors, including attorneys, accountants, web designers, and clerical, marketing, and translation personnel.

Counsel asserts that the number of a petitioner's employees is irrelevant to determining managerial or executive capacity and that the director must consider the reasonable needs of the petitioner if using the petitioner's staffing levels as a factor in this issue. Counsel provides copies of unpublished decisions and a district court decision in support of her assertions. Counsel also attaches the petitioner's 2005 organizational chart depicting the beneficiary in the position of chief executive officer over eleven subcontractors. Counsel includes invoices issued by the petitioner to its claimed parent company for marketing services beginning in January 2005.

Counsel's assertions are not persuasive. First, if the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. 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.). In addition, counsel's assertion that the beneficiary qualifies as both a manager and an executive, without documentary evidence to support the claim, will not satisfy the petitioner's burden of proof. The unsupported 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).

Second, 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). Contrary to counsel's conclusion, the initial description of the beneficiary's duties was broad and did not convey an understanding of what the beneficiary would do on daily basis. The description paraphrased elements contained in the definitions of both managerial and executive capacity. *See* sections 101(a)(44)(A)(i), (iv) and 101(a)(44)(B)(i),(ii) of the Act. The petitioner does not explain how "Planning the use of materials and human resources; Assist the President in the development of the US market as well as the worldwide market of the US subsidiary, import and export; accomplish the most complex transactions" comprise managerial or executive tasks rather than the daily tasks necessary to carry out the operations of the company. 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). Further, despite the director's request for a more detailed description of the beneficiary's duties and information regarding her subordinates, the petitioner failed to provide such evidence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Counsel's indication that the description of the beneficiary's job duties provided on appeal was previously provided is not substantiated in the record. As the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated, consideration of the evidence submitted on appeal is unnecessary. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Of note, however, counsel's additional description of the beneficiary's duties on appeal provides only a general overview of the beneficiary's duties and is not supported by documentary evidence. For example, counsel indicates that the beneficiary will: "Plan, direct, and coordinate operational activities at the highest level of management with the help of subordinate executives, managers and employees." However, as further discussed below, the petitioner has not provided documentary evidence that it employs subordinate executives, managers, or employees. 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)).

Counsel's indication that the beneficiary would: "Direct and coordinate activities of the company to obtain optimum efficiency and economy of operations and maximize profits;" "Direct and coordinate promotion of products and services to develop new markets, increase share of market, and obtain competitive position in industry;" and "Promote the company in industry, manufacturing and trade associations" does little more than recite broadly-cast business objectives and general job responsibilities. The petitioner in this matter has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Counsel's claim that the beneficiary satisfies the criteria listed in the definition of executive capacity is not persuasive. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee.

The petitioner in this matter provided no evidence of subordinate employees or subcontractors initially or in response to the director's request for further evidence. On appeal, once again counsel's claim that the petitioner utilizes subcontractors is untimely as well as unsubstantiated. The petitioner provides no evidence, even on appeal, that it regularly used subcontractors to carry out the day-to-day operational tasks of the petitioner when the petition was filed. The petitioner's 2005 organizational chart, invoices, and banking statements do not demonstrate that the petitioner used subcontractors until quite some time after the petition was filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner has not provided evidence that it had or has a sufficient level of managerial employees for the beneficiary to direct in carrying out the petitioner's operational and administrative tasks.

Neither does the petitioner provide evidence that the beneficiary primarily performs managerial duties for the petitioner. Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, including claimed subcontractors the petitioner must establish that the subordinate employees are supervisory, professional, or managerial employees. *See* § 101(a)(44)(A)(ii) of the Act. Again, the record contains no evidence of subordinate employees or subcontractors or their duties when the petition was filed.

The petitioner has not provided evidence that the beneficiary satisfies the criteria for a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. However, if a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. 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. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. at

604. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function or has sufficient personnel through which she works to carry out the day-to-day operational tasks of the petitioner.

In addition, the AAO observes that on appeal, the petitioner submits information further casting doubt on the petitioner's claim that the beneficiary performs primarily managerial or executive duties. For example, the brochure describing the petitioner's business that the petitioner submits on appeal identifies the beneficiary as its import/export trade specialist. Further, electronic mail sent to the beneficiary at the petitioner's address also identifies the beneficiary as an import-export specialist. This title and the beneficiary's list of activities set out in the brochure support the conclusion that the beneficiary is primarily performing operational tasks. 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 correctly points out that as required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, Citizenship and Immigration Services (CIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. To establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not explained how the reasonable needs of the petitioning enterprise justify the beneficiary's performance of non-managerial or non-executive duties. 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. Furthermore, counsel should make note that the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44).

The petitioner has not provided evidence that the beneficiary will perform primarily managerial or executive duties for the petitioner. For this reason, the petition will not be approved.

The next issue in this proceeding is whether the petitioner has established that it had been doing business for one year prior to filing the petition and continues to do business. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984). Title 8, Code of Federal Regulations, section 204.5(j)(3) states:

> (i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

(D) The prospective United States employer has been doing business for at least one year.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part: "*Doing Business* means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

The petitioner initially provided a copy of an unsigned 2002 IRS Form 1120, U.S. Corporation Income Tax Return, showing $141,924 in gross receipts or sales for the year ended on October 31, 2003.

On March 24, 2005, the director requested evidence that the petitioner had been doing business for at least one year, such as invoices, bills of sale, evaluations, and/or contracts.

In a June 6, 2005 response, as observed above, the foreign entity indicated that: the petitioner currently was not importing honey into the United States because of "anti-dumping" legislation restricting the importation of honey; the petitioner was providing marketing services for its parent company, as well as lobbying Congress to allow the import of honey into the United States; and the petitioner would resume its import of honey when the "anti-dumping" legislation was cancelled.

The petitioner provided copies of invoices issued to the parent company for marketing services rendered beginning in December 2003, eight months prior to filing the petition. The petitioner also provided a copy of an unsigned IRS Form 1120 for the 2003-year showing $206,200 in gross receipts or sales. The petitioner also submitted copies of untranslated documents apparently related to the foreign entity.

On August 16, 2005, the director denied the petition, determining that the petitioner must be "conducting business now," and not waiting for a possible outcome in the future to conduct sales.

On appeal, counsel for the petitioner explains that the petitioner changed its business from importing honey to that of marketing products for its parent company and other Argentinean and international companies. Counsel asserts that the petitioner is conducting business. Counsel submits copies of invoices and wire transfers to the petitioner's bank account as evidence that the petitioner is conducting business. Counsel notes that the invoices and wire transfers were not previously available. The AAO observes that the invoices and bank statements are for transactions occurring in the year 2005.

Counsel's assertion is not persuasive. First, the petitioner has not provided evidence in the form of invoices or other documentation to establish that it conducted business for one year prior to filing the petition on August 2, 2004. The first invoice provided is for December 2003, eight months prior to filing the petition. The petitioner's 2002 and 2003 IRS Forms 1120 are unsigned and there is no evidence these documents were filed with the IRS. The petitioner has not provided evidence that it conducted business in a continuous, regular, and systematic manner for one year prior to filing the petition. Second, the petitioner has not established that it continued to conduct business on a regular basis after the petition was filed. The petitioner apparently did not begin to provide its marketing services until 2005, and based on the invoices in the record the petitioner provided its services only to the parent company for some time. 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 record does not establish that the petitioner has been or will be involved in a high volume of transactions, either in terms of volume or dollars. The petitioner has not submitted sufficient evidence to establish that its marketing services are more than the "mere presence of an agent or office" for the foreign entity. For this additional reason, the petition will not be approved.

Beyond the decision of the director, the petitioner has presented conflicting and incomplete evidence regarding its 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* 8 C.F.R. § 204.5(j)(2)

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In this matter, the petitioner claims that the beneficiary's foreign employer owns 100 percent of the petitioner. The record contains a copy of the petitioner's 2002 unsigned and unfiled IRS Form 1120 which shows on Schedule E that an individual owns 100 percent of the petitioner. The petitioner's IRS Form 1120 for 2003 does not include this information. 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). The record also contains a copy of an undated, unsigned stock certificate allegedly issuing 10,000 of the petitioner's shares to the beneficiary's foreign employer. However, 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, even more so when the stock certificate is unsigned and undated. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. For this additional reason the petition will not be approved.

Also beyond the decision of the director, the petitioner has not adequately described the beneficiary's role in the foreign entity's organization. The record contains only a general description of the beneficiary's duties for the foreign entity and does not contain substantive evidence of the beneficiary's foreign subordinates, if any. For similar reasons as observed in the above discussion of the beneficiary's managerial or executive capacity for the petitioner, the petitioner has not established that the beneficiary was employed in a managerial or executive capacity for the foreign entity. For this additional reason, the petition will not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The AAO acknowledges that CIS approved three L-1A nonimmigrant transferee petitions that had been previously filed on behalf of the beneficiary.[1] 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. *See* 8 C.F.R. § 103.8(d). 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.

In addition, 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. at 597. 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).

Further, 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

[1] The AAO notes that CIS revoked the approval of the beneficiary's most recent L-1A petition (SRC 06 010 51136) on February 10, 2006.

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.

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.