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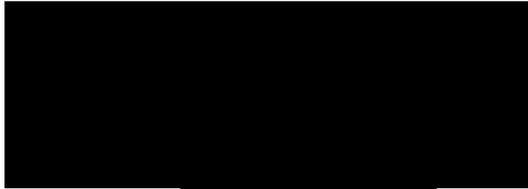
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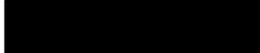
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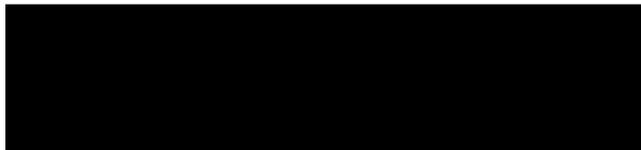
Petitioner:

Beneficiary:



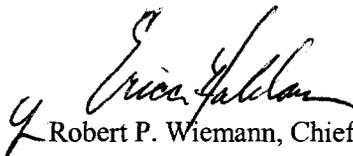
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



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, Nebraska Service Center, denied the employment-based visa petition.¹ The director granted the petitioner's subsequent motion to reconsider, but ultimately affirmed his previous decision and denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant 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 Illinois that is engaged in the technological development of air compressors, and claims to be the subsidiary of the beneficiary's foreign employer. The petitioner seeks to employ the beneficiary as its general manager.

The director denied the petition concluding that the petitioner had not demonstrated that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity, or that the beneficiary would be employed by the United States company in a qualifying managerial or executive capacity.

On appeal, counsel for the petitioner challenges the director's findings, claiming that they "are contrary to the factual record" and contain erroneous conclusions of law. Counsel claims that the petitioner has established that the beneficiary's former employment in the Chinese company and proposed employment in the United States entity satisfy the statutory requirements of a manager or executive. Counsel submits a lengthy brief 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 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.

¹ In a decision dated March 30, 2006, the director initially denied the petition due to abandonment. The petitioner subsequently filed a motion to reconsider, presenting evidence that the petitioner had submitted a timely response to the director's request for evidence. Citizenship and Immigration Services ultimately reopened the matter based on its own motion. See 8 C.F.R. § 103.5(a)(5).

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 first issue in this proceeding is whether the beneficiary was employed by the foreign 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 immigrant visa petition on September 2, 2005. In an appended August 29, 2005 letter, the petitioner identified the beneficiary as the general manager of the foreign entity, during which he was responsible for both the "implementation of the Company's product development and continuous profitability improvement programs in China" and "the development and profitability of product applications in China." The petitioner noted that the beneficiary also "conducted daily operations." The petitioner described the beneficiary's specific job duties as including:

- Responsibility for new market implementation of scroll technology product applications in China including researching conventional compressor replacement options. Analyzing compressor industry and end-user market places. Developing plans and coordinating presentations to compressor distributors and potential end-users and meet with potential customers;
- Responsibility for the development and profitability of the products including review and manage product design schedules. Oversee production of prototypes and production samples. Establish performance specifications and oversee testing. Oversee production schedules;
- Conduct daily operations including review weekly and monthly reports from design, production and marketing departments, review and approve financial reports and budgets.

The petitioner submitted copies of the beneficiary's payroll summaries, confirming his employment in the foreign entity from February 28, 2002 through November 2003. The petitioner claimed that the beneficiary was employed by the foreign entity until his transfer to the United States as a nonimmigrant in August 2004.

On December 7, 2005, the director issued a request for evidence noting that the information contained in the petitioner's initial filing was not sufficient to establish the beneficiary's prior overseas employment in a primarily managerial or executive capacity. The director explained that the descriptions provided for the beneficiary's employment as the foreign entity's general manager were broad and undefined, and "did not sufficiently detail the actual duties of the position[]." The director requested a "detailed, comprehensive description" of the job duties performed by the beneficiary in the foreign entity and the amount of time the beneficiary devoted to performing each task. The director also requested that the petitioner describe the foreign entity's "overall structure" at the time of the beneficiary's employment, identify the beneficiary's former position in the organizational structure, and describe the employees supervised by the beneficiary and their job duties.

Counsel for the petitioner responded in a letter dated February 28, 2006. In an attached letter, dated February 6, 2006, the foreign entity provided the following "essential functions" related to the beneficiary's employment as the foreign company's general manager:

- Developing new markets for implementation of scroll technology product applications in China, including researching the conventional compressor industry and end-user markets. Developing plans for and coordinating presentations to compressor distributors and potential end-users. Meet with potential customers regarding scroll technology applications. . . . 40%
- Developing products and ensuring profitability of the products by review and management of product design schedules; oversee production of prototypes and

- production samples; establish performance specifications and oversee testing of products; oversee production schedules. 40%
- Resolve operational, manufacturing, and maintenance problems to ensure minimum costs and to prevent operational delays[.] 12%
- Evaluate and determine responsibilities of assigned organizational and staff positions to better accomplish business objectives[.] 8%

The foreign entity noted that the beneficiary managed and directed the activities of employees holding the following positions: assistant to the general manager; financial manager; operations manager; human resources manager; two external consultants; and, a technical manager, which was identified as being unoccupied. An appended organizational chart briefly outlined the tasks related to each subordinate position.

In a decision dated April 13, 2006, the director concluded that the petitioner had not demonstrated that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity. The director outlined the job duties related to the position of general manager, stating that they were "overly broad in nature and did not adequately define the beneficiary's specific duties." With respect to the beneficiary's subordinate staff, the director noted that while the employees possess managerial titles, "it does not appear that any subordinates are actually overseeing departments, but are rather the only employees in such departments." The director concluded that the beneficiary's supervision of the subordinate workers accounted for only a "small proportion of [his] time, and the majority of his time [was] spent performing functional duties." Specifically, the director noted that because the beneficiary had researched markets, performed presentations, and met with clients, he appeared to have been performing the company's sales and marketing functions. The director also noted that while the beneficiary was claimed to have been overseeing design schedules and prototype productions, "the record shows no employees performing design and production work." Consequently, the director denied the petition.

On May 16, 2006, counsel for the petitioner filed a motion to reopen and reconsider the director's decision, which the director granted. In addition to a brief in support of the motion, counsel submitted a May 12, 2006 letter from the foreign entity, in which the foreign company's finance manager explained the history of the foreign company as a trading company that "reinvented itself" as a holding and business investment development company, resulting in the purchase of the petitioning entity in 2001. The finance manager explained the foreign entity's decision to hire the beneficiary as its general manager, stating that it realized its need for someone to "lead this new business," and noting that the beneficiary had prior work experience with compressor manufacturers. The finance manager explained:

Between 2002 and 2004, [the beneficiary] directed this new investment and made many recommendations to [the foreign entity's] Board of Directors for the adoption and implementation of new business plans to increase the possibilities for the success of [the foreign entity's] investment in [the petitioning entity]. [The beneficiary] also directed [the foreign entity's] effort to develop manufacturing facilities in China for scroll compressor products based on [the petitioner's] patented variable thickness technology and to establish collaborative agreements with compressor manufacturers in China interested in the new technology. While serving as [the foreign entity's] General Manager, [the beneficiary] also directed [the foreign company's] other business and investment development options and recommended to [the foreign entity's] principals various investment options, a number of

which resulted in a substantial investments [sic] which are or were held in a variety of ways by the investors.

Counsel also submitted a May 11, 2006 affidavit from the president of the petitioning entity, in which he explained the foreign company's initial desire to hire the beneficiary based on "his extensive executive experience and familiarity with the scroll compression business" The petitioner's president provided the following description of the beneficiary's former overseas employment as general manager:

[The beneficiary] conducted a thorough evaluation of [the petitioner's] operations, recommended numerous changes to maximize the success of the investment, and implemented a number of these changes following approval by [the foreign entity's] Board of Directors. [The foreign entity] was particularly concerned with the difficulties [the petitioner] and its wholly owned subsidiary, Scrollex, were having developing marketable products based on [the petitioner's] patented variable thickness scroll compression technology and limited revenue streams. [The beneficiary] identified numerous concerns regarding [the petitioner's] operations and urged the Board of Directors to make many changes to ensure the long range success of the [United States] investment.

In her brief on motion, counsel contended that the previously submitted evidence along with the two affidavits, as well as information on the petitioner's website addressing its history and operations, substantiate the petitioner's claim that the beneficiary was employed by the foreign entity in a primarily executive capacity. Counsel claimed that the beneficiary qualified as an executive because:

[H]e directed [the foreign company's] operations, specifically its investment in [the petitioning entity] and its pursuit of other investments on behalf of its principals; (b) he established the goals and policies of [the foreign entity], specifically by evaluating [the foreign entity's] investment into [the petitioner], by recommending numerous changes in [the petitioner's] operations to [the foreign entity's] Board of Directors, by developing a business plan for [the petitioner] in accordance with the recommendations approved by [the foreign entity's] Board of Directors, and by directing the implementation of the business plan; (c) [he] exercised broad discretion in developing and directing the implementation of the business plan; and (d) [he] reported to no one other than [the foreign entity's] Board of Directors. A review of [the beneficiary's] responsibilities at [the foreign entity] demonstrate that he was has [sic] also employed in a managerial capacity as [the term] ["managerial capacity"] is defined at 8 C.F.R. § 204.5(j)(2)(C).

In an August 11, 2006 decision, the director concluded that the petitioner had not established the beneficiary's overseas employment with the foreign entity in a primarily managerial or executive capacity. The director stated that the evidence submitted on motion "appears to emphasize the beneficiary's involvement in the establishment of business operations with the United States entity while he was employed abroad," whereas the beneficiary's initial job description discussed the beneficiary's responsibility towards "new market implementation of scroll technology product applications in China," without addressing the beneficiary's work with the United States company. The director found this to be "a major change in the beneficiary's alleged [job] duties abroad," and concluded that the petitioner had not submitted evidence to resolve the inconsistencies in the two job descriptions. Consequently, the director affirmed his original decision, and denied the petition.

Counsel for the petitioner filed an appeal on September 13, 2006, claiming that the director had made erroneous findings of fact and conclusions of law in denying the immigrant visa petition. In a lengthy appellate brief, submitted on April 16, 2007, counsel challenges the director's finding of inconsistencies in the descriptions of the beneficiary's foreign employment, claiming that the job description submitted on motion "complemented the prior evidence of record and was corroborated by substantial objective evidence." As evidence of the beneficiary's former overseas employment as a manager or executive, counsel references portions of the affidavits from the petitioner's president and foreign entity's finance manager, most of which have already been cited above, as well as information contained on the petitioner's website, which counsel states documents "how the patented scroll technology [the foreign entity] acquired when it purchased a majority interest in [the petitioning entity] was being used in both China and the United States to research, develop, manufacture and market innovative scroll compressor products." Counsel suggests that this evidence is significant, in that it demonstrates the foreign entity's need to employ a general manager "with [the beneficiary's] management and executive experience in the scroll compressor business in China to direct and manage the development of the cutting edge variable thickness scroll compressor technology it acquired when it purchased [the petitioner]." Counsel also references information contained on the website of Scrolllex, a wholly owned United States subsidiary of the petitioning entity, in which the company documents its development of a manufacturing facility and research and development center in China and deployment of a national sales operation to China. Counsel states that this information is consistent with the statements of the foreign entity's finance manager, who, counsel states, explained the beneficiary's responsibilities of directing the development of manufacturing facilities in China for scroll compressor products, establishing agreements with Chinese manufacturers, and making investment recommendations to the foreign entity's board of directors.

Counsel challenges the director's finding that the initial description offered of the beneficiary's employment with the foreign entity is not consistent with the job description subsequently submitted with the petitioner's motion to reopen and reconsider. Counsel contends that contrary to the director's finding, the August 29, 2005 letters from the petitioner and its president discussed the beneficiary's "duties with [respect to] operations in both China and the United States." Counsel further highlights portions of the letters that address the existence of the petitioning entity and the beneficiary's role in the foreign company's international activities, which counsel notes would require "substantial involvement with the United States operations." Counsel states that the subsequent letters from the petitioner's president and the foreign entity's finance manager did not "suggest[] that the focus of [the beneficiary's] evaluations and recommendations did not include [the foreign entity's] operations in China as well as in the United States." Counsel states: "[T]here was no wall between the United States and Chinese operations since [the petitioner's] patented technology, product development, and international sales focus clearly required an international focus." Counsel further states:

[I]t should also be noted that the discussion in [the president's] affidavit and [the finance manager's] letter of [the beneficiary's] responsibilities while serving as [the foreign entity's] General Manager for evaluating [the petitioner's] operations and recommending and implementing changes was included in large part to demonstrate the [the foreign entity] was transferring him to the position of [the petitioner's] General Manager to perform executive and management functions which could best be performed by him while employed in the United States. The fact the [the beneficiary] was transferred to the United States to address 'the difficulties [the petitioner] and its wholly owned subsidiary, Scrolllex, were having developing marketable products based on [the petitioner's] patented variable

thickness scroll compressor technology and limited revenue streams' does not in any way contradict his responsibilities while serving as [the foreign entity's] General Director in China for managing product development and production or other components of the operations in China.

Counsel contends that as the "highest level employee" in the foreign organization, during which the beneficiary directed and established the goals of the company, exercised wide latitude in discretionary decision-making, supervised managerial, professional, and supervisory employees, and reported only to the company's board of directors, the beneficiary should be considered to have been employed by the foreign company in a primarily managerial or executive capacity.

Upon review, the petitioner has not established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

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). 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 job descriptions offered with the petitioner's original filing and in response to the director's request for evidence suggest that the beneficiary's employment as general manager of the foreign entity included the performance of sales, marketing, and business and product development functions for the company beyond those normally considered to be managerial or executive in nature. See §§ 101(a)(44)(A) and (B) of the Act. In both the August 29, 2005 and February 6, 2006 letters from the petitioner and the foreign entity, the beneficiary was represented as holding responsibility for introducing the petitioner's scroll technology product applications into new markets in China, researching and developing the appropriate consumer markets, meeting with and making sales presentations to distributors and end-users, developing products, and establishing product performance specifications. Based on the foreign entity's February 6, 2006 letter, the beneficiary devoted approximately 80 percent of his time to performing these tasks, which appear to be non-managerial and non-executive in nature. Moreover, while he was represented as having managed four managerial employees and two outside consultants, the job description indicates that the beneficiary spent only 8 percent of his time evaluating the responsibilities held by his subordinates. Based on these representations alone, which the AAO notes were made by the petitioner prior to the director's finding that the beneficiary had been primarily performing "functional duties," it appears that the beneficiary was personally engaged in the performance of non-managerial and non-executive duties related to the foreign entity's sales, marketing, and business and product development functions. 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).

The foreign entity's staffing levels also suggest that the beneficiary was responsible for personally performing the non-qualifying, operational tasks associated with the development of the foreign entity's products and

markets in China. Although brief, the job descriptions for the beneficiary's subordinate employees included such tasks as: business strategy analysis; public relationship; investment analysis; business development; marketing; sales; office management; corporate relations; finances; and, human resources. While the foreign company's operation director was identified as being engaged in sales, marketing, and business development, the petitioner has not represented that he relieved the beneficiary from the performance of the specific above-named responsibilities. Furthermore, because the petitioner specifically represented the beneficiary as having "[d]evelop[ed] new markets," "research[ed] the conventional compressor industry and end-user markets," "coordinat[ed] presentations to compressor distributors and potential end-users," "[met] with potential customers," "develop[ed] products," and "establish[ed] performance specifications," and did not provide contradictory claims or evidence that someone other than the beneficiary was responsible for performing these non-managerial or non-executive tasks, the finding that the beneficiary's overseas employment was in a primarily non-managerial or non-executive capacity is reasonable.

Similarly, the claims made by the finance manager in his letter dated May 12, 2006 further support finding that the beneficiary was not employed by the foreign company as a manager or executive. Specifically, the finance manager identified the beneficiary's responsibility of *directing* the development of manufacturing facilities in China. Yet, the petitioner did not account for the development of manufacturing facilities by any of the beneficiary's subordinates. Despite assigning the responsibility of "manufacturing facility analysis" to the position of technical manager, the beneficiary could not have "directed" the development of Chinese manufacturing facilities, because this position in the foreign entity remains unoccupied. 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).

The director concluded in his August 11, 2006 decision that subsequent job descriptions offered by the petitioner of the beneficiary's former overseas employment seemed to change the beneficiary's foreign job duties, focusing instead on the beneficiary's role in establishing business operations in the United States. Counsel challenges the director's finding, referencing letters from the petitioner and the foreign entity as evidence that the claims made in the job descriptions are consistent. The AAO recognizes that the foreign and petitioning entities are interdependent, in that the foreign entity, a holding and business investment development company, purchased the petitioning entity as an investment in the United States economy and to expand operations in China. However, while they may not entirely alter the original depiction of the beneficiary's position in the overseas company, several of the job descriptions submitted on motion to reopen and reconsider the director's decision do not appear to coincide with the original representations of the beneficiary's foreign employment. Whereas the petitioner and foreign entity initially noted the beneficiary's role in personally developing the foreign entity's sales markets and meeting with potential users and buyers, latter job descriptions, particularly the president's May 11, 2006 affidavit, focus on the beneficiary's evaluation of the operations and product development of the petitioning entity and its subsidiary, Scrolllex. Similarly, in her brief on motion, counsel emphasized that by managing and evaluating the petitioning entity, the beneficiary was managing the foreign company. Emphasis by the petitioner and counsel on the beneficiary's role in deciding the most successful operations of the petitioning entity is insufficient to establish the true capacity in which the beneficiary was employed by the foreign entity, particularly since the latter claims fail to expound on the beneficiary's original job description, which, again, suggests the beneficiary's employment in a primarily non-managerial or non-executive capacity. 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 AAO further notes that with respect to the foreign entity's operations as a holding and business investment development company, the record is deficient in explaining the company's "other business and investment development options." The beneficiary is identified by the finance manager as having directed and recommended to the foreign entity business and investment options other than its investment in the petitioning entity. Counsel also addresses in her brief on motion to reopen or reconsider the beneficiary's role in recommending to the foreign entity other investments on behalf of its principals. The petitioner has not clarified the purported "other investments" of the foreign entity or the beneficiary's responsibility in directing the company's business and investment options. Rather, as discussed previously, the record focuses mainly on the beneficiary's responsibility of evaluating strategies to enhance the business operations of the petitioning entity and Scrollex. 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).

Based on the foregoing discussion, the petitioner has not demonstrated that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

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

On the Form I-140, the beneficiary was identified as assuming the position of general manager of the United States entity. In an appended letter, dated August 29, 2005, the petitioner discussed the beneficiary's employment in the following manner:

In this position, [the beneficiary] has provided strategic and tactical managerial leadership and direction to improve the profitability and cash flow of [the petitioning entity]. Additionally, he has further defined and developed [the petitioner's] product line and market share. In addition to overseeing [the petitioner's] day-to-day operations, [the beneficiary] is responsible for planning and developing organizational policies and goals, and implementing goals through subordinate administrative personnel. [The beneficiary] directs and coordinates the promotion of products manufactured to develop new markets, to increase market share, and to obtain a better competitive position in the industry. [The beneficiary] is also responsible for analyzing and managing the budget of the company. [The beneficiary] coordinates transactions among foreign entities and the U.S. entity including demand forecasting, order processing, inventory and quality control, project management, cost analysis, and customer service. [The beneficiary] also directs the preparation of directive to [m]anagers outlining policies, programs, and operational changes for implementation. . . .

* * *

In sum, [the beneficiary] has autonomous control over, and exercises wide latitude and discretionary decision-making in, establishing the most advantageous courses of action for the successful management and direction of our international development activities.

The petitioner also provided a list of job responsibilities to be held by the beneficiary. As the outline is repeated by the petitioner in subsequent correspondence, and includes an allocation of the amount of time the beneficiary would dedicate to each task, the job responsibilities will be documented below.

In his December 7, 2005 request for evidence, the director noted that the present record, which utilized "broad, undefined language," did not detail the specific job duties to be performed by the beneficiary in his position as general manager. The director asked that the petitioner submit "a detailed, comprehensive description of the beneficiary's duties" in the United States company, and an allocation of the amount of time the beneficiary would spend performing each. The director asked that the petitioner also provide a description of the company's "overall structure," including its staffing levels and the employees to be supervised by the beneficiary.

Counsel responded in a letter dated February 28, 2006, referencing a chart from the petitioner, which highlighted the following "managerial duties" to be performed by the beneficiary:

- Developing, implementing and managing business plans, market trends and economic conditions to forecast potential purchases and sales for North and Latin America. Make final determinations on new markets and products. Developing relationships with governmental agencies and business organizations throughout North America and Latin America. [The beneficiary] will develop relationships by contacting businesses or governmental agencies via telephone or by traveling in person to describe scroll technology and explain its benefits, uses and implementation. 25%
- Developing and managing [the petitioner's] business plans to include all program requirements, labor hours, production costs and cycles, including establishing production and quality control standards, business budgets and cost control. 12%
- Managing the development of scroll compressors technology strategy and researching and developing new and emerging products; reviewing and managing design schedules for compressors; oversee production of prototypes and production samples. 15%
- Leading the development of a manufacturing process plan, including personnel requirements, material needs, subcontracting requirements, facility needs, and tooling and equipment needs. 15%
- Coordinating manufacturing activities with all other functions of the organization and suppliers to obtain optimum production and utilization of human resources, machines, and equipment. 10%
- Reviewing production and operating reports and directing the resolution of operational, manufacturing, and maintenance problems to ensure minimum costs and prevent operational delays. 15%
- Determining responsibilities of assigned organization and staff positions to accomplish business objectives. 8%

In its February 6, 2006 letter, the petitioner stated that the beneficiary's managerial authority over the petitioner's daily operations might also extend to those of the petitioner's subsidiary, Scrolllex. The petitioner indicated that the beneficiary would be "responsible for directing the implementation of marketing strategies for [the petitioner's] scroll technology throughout North and South America," and would provide "senior level guidance and direction regarding the successful implementation of [the petitioner's] international development plans and policies."

The petitioner noted the employment of four workers: an office president who would oversee the company's business development, marketing, sales, and management; a corporate manager in charge of project management, customer relations, new product development, corporate relations, and intellectual property management; a technical manager who performs the purchasing, quality control management, and prototype manufacturing functions; and a financial manager in charge of internal control, banking, taxes, and accounting. The four positions, as well as the unoccupied position of engineer technical manager, were identified on an appended organizational chart as being subordinate to the beneficiary. The petitioner provided the resumes of each of the four employees.

The AAO notes that an appended quarterly federal tax return ending September 30, 2005 indicated the employment of two workers during the month the instant petition was filed. Assuming the beneficiary was employed by the petitioner on the filing date, is not clear from the record which of the above-named positions was occupied by the second worker.

In his April 13, 2006 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 noted that despite his request for specification of the beneficiary's proposed job duties, the job description submitted in the petitioner's response to his request was essentially the same as that originally provided at the time of filing. The director stated that the petitioner had failed to explain what managerial or executive tasks were included in "managing" the company's strategic development or "leading" its process plan. The director further noted that while the beneficiary is represented as supervising managerial employees, "it is not clear that any of these subordinates are actually managerial level in nature." The director concluded that the record suggested that the beneficiary "would spend minimal time actually overseeing such employees," and that the beneficiary "would be actively performing sales and marketing duties, such as forecasting sales and interacting with client organizations." Consequently, the director denied the petition.

In the May 16, 2006 motion to reopen or reconsider, counsel for the petitioner references a May 11, 2006 affidavit, in which the petitioner's president addressed the petitioner's operations with respect to the foreign organization and the United States company, Scrollex, as well as the beneficiary's responsibilities in the petitioning entity. The petitioner stated:

Since [the beneficiary's] assumption of [the position of general manager in the petitioning entity], [the beneficiary] recommended to the Board of Directors of [the foreign entity] and [the petitioner] numerous changes in [the petitioner's] operations and has been responsible for developing a new business plan and directing its implementation. The changes addressed the need: (a) to increase the speed of development of quality, marketable products utilizing [the petitioner's] patented technology in order to maximize the profitability of the patented technology; (b) to develop alternative revenue sources primarily with the adoption of a product trading strategy; and (c) to keep costs of operations low through the development of collaborative partnership relationships sharing the costs of product development projects and through other effective cost control mechanisms.

In an attempt to explain the beneficiary's executive authority, the petitioner highlighted five "principal business operations" in which the United States company is engaged, and which the beneficiary is purportedly directing, including: (1) the utilization of variable scroll technology in refrigeration compressors, which required the beneficiary to present information regarding technology and feasibility studies to "top

multinational refrigeration compressor companies"; (2) the beneficiary's negotiation of a sales representation contract for Scrolllex to act as the sales representative of a Chinese company that is engaged in the automotive air conditioning business; (3) the establishment of the petitioning entity as the North American marketing and sales representative of a Chinese aluminum wheels manufacturer; (4) the establishment of a joint venture with a Chinese manufacturer of small air compressors, under which the petitioner would market the compressors in the United States; and (5) negotiations to license the petitioner's scroll technology to a European company, establishing the petitioner as the company's marketing and sales representative in the United States.

The petitioner further summarized the beneficiary's "executive" responsibilities as follows:

a. Strategic planning:

[The beneficiary] sets the strategic focus for business structure, product portfolio, including existing and new technologies and services, targeted markets, key function responsibility assignment (development, manufacturing and marketing), and overall human resource policy. An example of [the beneficiary's] role in strategic planning is [the petitioner's] adoption of a trading strategy in addition to its patented technology focus. It is this strategy, which was adopted by the Boards of [the petitioning entity] and [the foreign entity], which led [the petitioner] to diversify its revenue sources through the new business activities discussed above.

b. Relationship Building:

[The beneficiary] creates, incubates, nurtures and maintains relationships with existing and potential customers and partners, suppliers, government officials, and industry leaders. [The beneficiary's] skills in this area were directly responsible for his success in establishing the [redacted] joint venture and in negotiating sales and marketing agreements with high[-]level business executives.

c. Organizing operations:

[The beneficiary] designs and leads the structural approach to each revenue stream. He determines where each critical function will be done and what type of organization will perform it. An example is the small air compressor product line which [the beneficiary] organized: the technology coming from [the petitioner], the design coming from [redacted] the manufacturing being done by the [redacted] joint venture, and sales being the responsibility of [the petitioner].

d. Marketing/Sales:

[The beneficiary] sets and approves overall marketing and sales strategies and targets. He meets with the executive of key customers. Examples include the sales initiatives he is making with executives of the aftermarket air conditioning companies, the project he is directing for use by the multinational refrigeration company of [the petitioner's] patented technology in refrigerators, and the sales agreements [the petitioner] has obtained to sell [redacted] automobile air conditioner compressors.

e. Budgeting:

[The beneficiary] approves [the petitioner's] budgets, business plans, major expenditures, and banking relationships.

f. Delegation:

[The beneficiary] determines functional responsibilities and delegates tasks and activities to [the petitioner's] staff, outside contractors, and other organizations. [The beneficiary's] leadership in establishing collaborative arrangements with project partners and sales and marketing arrangements with distributors and sales agents and representatives has enabled [the petitioner] to diversify and expand its business operations and increase revenue flows without incurring greatly increased costs of operations which would have depleted the funding available for its operations.

g. Performance evaluation:

[The beneficiary] delegates or conducts reviews of staff and the quality of their contributions to organization targets. Examples of this are his conduct of annual and quarterly review meetings, review of employee performance evaluations, most of which [the office president] perform[s], compensation adjustments, and the termination of the technical manager.

h. Results evaluation:

[The beneficiary] approves the annual budgets, monitors actual achievements against targets, and implements corrective actions.

In her brief on motion, counsel referenced additional documentation, such as copies of the petitioner's and Scrollex's websites, patent agreements assigning rights to the petitioning entity, and sales representation agreements, as evidence that the petitioner requires the employment of an executive to oversee its operations. Counsel also challenged the director's reference to the petitioner's staffing levels, stating that as a technology company, the petitioner does not perform all functions related to its sales, marketing, research and development, design, and manufacturing, but rather "establish[es] collaborative arrangements with other corporations by which they divide the responsibilities among a group of corporations in order to maximize expertise and profitability and to take advantage of differentials in the costs of production, including wages and material." Counsel states that in addition to licensing its technology to other organizations, the petitioner contracts with outside companies for design, manufacturing, and sales services.

In the August 11, 2006 decision, the director concluded that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director recognized that while the beneficiary may perform managerial or executive job duties in the petitioning entity, "it is not clear that a majority of his time would be spent performing that level of duties." The director specifically noted the beneficiary's responsibility of negotiating contracts, stating that he would be performing routine, functional tasks of the petitioner's business. Consequently, the director affirmed his previous decision, and denied the immigrant visa petition.

In the brief on appeal, counsel for the petitioner challenges the director's finding that the beneficiary would not be employed as a manager or executive of the United States company. Counsel references the job duties outlined in the petitioner's February 6, 2006 letter, the petitioner's organizational chart identifying the beneficiary in the highest position of the managerial hierarchy, and the May 11, 2006 affidavit subsequently

submitted by the petitioner's president on motion. Counsel also highlights the five previously-mentioned business projects with which the beneficiary has been involved since his transfer to the petitioning entity. Counsel contends that the record as a whole demonstrates the beneficiary's role as the petitioner's chief executive, in which he would be performing in a primarily managerial or executive capacity. Counsel states:

The sole example which [Citizenship and Immigration Services (CIS)] offers to support its contention is a reference to [the beneficiary's] responsibilities for 'negotiating sales contracts.' [CIS] seems to be suggesting that [the beneficiary] is some sort of glorified salesman whose responsibility is to enter into simple contracts for the sale of goods and services. However, the only reference in the record to [the beneficiary's] negotiation of agreements demonstrates that the contracts [the beneficiary] was negotiating were technology licensing agreements, joint venture agreements, minority ownership agreements, and nondisclosure agreements, all of which are the types of agreement which typically require the attention and direction of high level executives and managers. In fact, a review of the discussion in [the petitioner's president's] affidavit reveals that [the beneficiary] negotiated licensing, sales representations and joint venture agreements with high level executives of the companies with which [the petitioner] was seeking to establish complex licensing, sales representation, and joint venture agreements. [CIS'] suggestion that [the beneficiary] would be acting as some type of simple salesperson to justify its contention that [the beneficiary] would not be acting primarily as a manager or executive has no basis in the record, and therefore, must be rejected.

Counsel again notes the petitioner's staffing levels as common in the "increasing globalized economy, particularly in the areas of new technology." Counsel references various business articles as describing "collaborative arrangements" between organizations, and contends that the petitioner's organizational hierarchy does not detract from the executive or managerial nature of the beneficiary's employment capacity.

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

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 AAO recognizes the extensive documentary evidence submitted by the petitioner of the beneficiary's employment in the United States entity. While the offered job descriptions, particularly those included in the president's affidavit, suggest that the beneficiary would be performing primarily managerial or executive job duties, a review of the record as a whole does not corroborate the petitioner's claim of employing the beneficiary as a manager or executive. For example, as explained in further detail below, the record contains unsupported claims and inconsistencies in the beneficiary's employment in the petitioning entity, focusing instead at times on the tasks the beneficiary performs for Scrollex. Additionally, there are discrepancies in the petitioner's represented staffing levels and the employees' related job duties. These inconsistencies are critical to the analysis of the instant issue, as they create doubt as to the beneficiary's true employment capacity. 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, those inconsistencies will

raise serious concerns about the veracity of the petitioner's assertions. *Id.* 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 petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The AAO first addresses the parent-subsidary relationship and operations between the petitioning entity and Scrollex. The petitioning entity was identified in the petitioner's February 6, 2006 letter as the "technology development branch," while Scrollex was noted as performing the "operations" of the affiliated companies. Based on the representations made by the petitioner's president in the same letter, the beneficiary would possess managerial authority over the petitioner's daily operations, and, because of the parent-subsidary relationship, the beneficiary's "managerial functions *may* extend to Scrollex." The job responsibilities subsequently outlined in the same letter were identified as relating to the management of the petitioning entity, with the largest amount of time, or 25 percent, to be spent by the beneficiary developing and implementing marketing trends, determining new markets and products, and developing relationships via the telephone or in person with governmental agencies and organizations in North and Latin America. The AAO stresses that the named job responsibilities do not specifically address or identify Scrollex. Also, the petitioner's initial representations in its August 29, 2005 letter solely pertain to the beneficiary's oversight of *the petitioner's* day-to-day operations and developing its product line and market share.

In contrast, subsequent correspondence, including counsel's brief on motion and the president's affidavit, focused on the beneficiary's dual role as "an executive or manager for [the petitioning entity] and its subsidiary, Scrollex," and emphasized business negotiations completed by the beneficiary on behalf of Scrollex. Despite naming the beneficiary as a general manager of Scrollex, his purported role within the company, particularly with respect to his claimed full-time employment as the general manager of the petitioning entity, has not been reconciled. The petitioner's initial claim that the beneficiary would have some interaction with Scrollex appears to have been modified into a dual management role between the petitioning entity and Scrollex. The AAO notes that 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 AAO recognizes that in the case of related companies, employees may be required to work among the affiliated companies. It would be reasonable, however, to assume that an employee would hold a position specific to a particular company. In the present case, the beneficiary is represented as holding the position of general manager in both the petitioning entity and Scrollex, during which he would be performing primarily managerial or executive tasks for both companies. The relevant statute and regulations require that the beneficiary assume employment in a primarily managerial or executive capacity with the United States employer filing the immigrant visa petition, or, in other words, the petitioning entity. *See* 8 C.F.R. § 204.5(j)(1); *see generally* § 203(b)(1)(C) of the Act. It is not clear from the record whether the named job responsibilities are illustrative of the tasks the beneficiary would primarily perform in the petitioning entity, as the latter job descriptions emphasized the beneficiary's role as Scrollex's general manager. 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). Moreover, the petitioner merely mentioned the beneficiary's role as general manager of Scrollex without clarifying how the beneficiary's employment in the petitioning entity, excluding those job responsibilities associated with Scrollex, would be primarily managerial or executive in nature. 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 591-92.

Additionally, the petitioner has not clarified discrepancies in both its purported staffing levels and the employees' related job responsibilities. The beneficiary is represented as supervising the company's office president, corporate manager, technical manager, and financial manager. The AAO notes that while the petitioner claimed to employ a five-person staff at the time of filing, the company's September 30, 2005 quarterly federal tax return identifies a staff comprised of two employees during the month the Form I-140 was filed. The limited record does not identify which two workers were employed on the filing date, or whether the claimed subordinate staff is considered, or compensated as, officers rather than employees of the corporation². The AAO notes that combined February through March 2006 financial worksheets for the petitioner and Scrollex identify the purported corporate, technical, and financial managers as receiving officer's salaries. Yet, as the financial statements related to both the petitioner and Scrollex, and because at least two of the beneficiary's subordinate employees, the office president and corporate manager, are identified on corporate documentation as officers of Scrollex, it is not clear from which specific company the "officers" are being compensated, or whether they may be considered employees of the petitioning entity.

The current record does not corroborate the petitioner's claim of employing four workers subordinate to the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Based on the limited evidence relating to the purported subordinate staff, it is questionable whether a subordinate staff exists to perform the claimed job responsibilities. 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.

Even if the AAO were to consider the petitioner's five-person staff, the record does not reconcile discrepancies in the job responsibilities claimed to be held by the beneficiary with those held by his purported subordinate staff. Among other tasks, the beneficiary is represented as developing business contacts via the telephone or by traveling in person "to describe scroll technology and explain its benefits, uses and implementation," coordinating such business transactions as "demand forecasting, order processing, inventory and quality control, project management, cost analysis, and customer service," and coordinating manufacturing activities among the organization and its suppliers. However, based on the limited job descriptions offered for the subordinate positions, it would seem that either the office president or corporate manager, if employed, would instead be responsible for performing these tasks, as they are claimed to be in charge of the company's business development, marketing, sales, customer and corporate relations, and product development, including tracking. The ambiguity in the petitioner's true staffing levels together with the apparent overlap in the employees' job duties, again raises uncertainty as to whether a subordinate staff in fact existed to perform the named responsibilities, or rather, whether the beneficiary would be required to assume these responsibilities because of the absence of a subordinate staff.

The record also creates uncertainty as to the beneficiary's true employment capacity, because whereas the company's president identified him as the directing both the petitioning entity and Scrollex in "business

² The AAO notes that in 2002 and 2004, the petitioner's purported corporate manager, signed as "manager" on documentation relating to the petitioner's business.

projects" with outside companies, only one agreement in the appended documentary evidence bears the beneficiary's signature. Moreover, on this particular sales representation contract, the beneficiary signed on behalf of Scrollex. As discussed above, this is not representative of the beneficiary's purported managerial or executive employment with the petitioning entity. The remaining representative agreement, component supply and distribution agreement, and mutual nondisclosure agreements, the majority of which identify Scrollex as the relevant party, bear the signatures of either the petitioner's purported office president or corporate manager in their capacity as officers of Scrollex. As a result, the record does not corroborate the petitioner's claim that the beneficiary would be employed *by the petitioning entity* in a primarily managerial or executive capacity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Counsel also challenges the director's finding that the beneficiary would be performing tasks related to the company's marketing and sales functions, stating that the beneficiary would be negotiating "technology licensing agreements, technology development agreements, sales representation agreements, joint venture agreements, minority ownership agreements, and nondisclosure agreements, all of which are the types of agreements which typically require the attention and direction of high level executives and managers." Again, as noted above, the referenced agreements, only one of which bears the beneficiary's signature on behalf of Scrollex, are not illustrative of the beneficiary's employment as a manager or executive in the petitioning entity. Further, as noted by the director, the initial job responsibilities that related solely to the beneficiary's employment with the petitioning entity, suggest that at least 25 percent of his time would be spent personally speaking or meeting with potential customers "to describe scroll technology and explain its benefits, uses and implementation." Based on this representation, it appears that the beneficiary would be personally responsible for selling the petitioner's product, in this case, its technology, despite counsel's suggestion otherwise. Without documentary evidence to support the claim, the assertions of counsel 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).

The AAO will also consider the eight "executive functions" outlined by the petitioner's president in his affidavit for evidence of the beneficiary's employment in a primarily managerial or executive capacity. The beneficiary is identified as planning strategies, building relationships, organizing operations, approving budgets, delegating responsibilities, evaluating employees' performances and the company's annual performance, and approving sales and marketing strategies, while meeting with "key customers," tasks that appear to be managerial or executive in nature. However, in light of the discrepancies discussed above, the list of job duties, by itself, is not sufficient to demonstrate the beneficiary's role in a primarily managerial or executive capacity, particularly with respect to delegating tasks to the petitioner's staff and outside contractors, who, the AAO notes, have not been identified. Considered in conjunction with the remaining record, it is questionable whether some of the beneficiary's responsibilities, such as "relationship building," and his role in the company's marketing and sales, can be considered managerial or executive in nature. Despite the claims that the beneficiary would meet with the executives of key customers and maintain relationships with partners, suppliers, and government officials, the beneficiary's role in personally negotiating sales and marketing agreements with outside organizations calls into question whether these responsibilities rise to the level of "executive" or "managerial." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to 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.

Based on the foregoing discussion, the record as a whole does not corroborate the petitioner's claim of employing the beneficiary as a manager or executive. The noted discrepancies have not been resolved so as to deem the beneficiary to be employed in a primarily managerial or executive capacity. Accordingly, for this additional reason, the appeal will be dismissed.

The AAO recognizes that CIS previously approved an L-1A nonimmigrant visa petition filed by the petitioner on behalf of the beneficiary. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. 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.

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 prior nonimmigrant approvals do not preclude CIS from denying an extension petition. See e.g. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petition was approved based on the same unsupported and contradictory 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). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approval by denying the present immigrant petition.

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 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.