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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]
SRC 06 241 51641

Office: TEXAS SERVICE CENTER

Date:

SEP 25 2007

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, Chief
Administrative Appeals Office

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

The petitioner filed the immigrant visa 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 Hawaii that is engaged in the wholesale and retail sale, and import and export of clothing, jewelry, and accessories. The petitioner represents itself as an affiliate of the beneficiary's foreign employer, and seeks to employ the beneficiary as its executive manager.

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

On appeal, counsel for the petitioner contends that the beneficiary qualifies for classification as a multinational manager or executive based on his proposed employment in an "executive management position." Counsel challenges the director's finding that the beneficiary would provide the petitioner's "supervisory and operational services" and perform "tasks associated with the daily operation of the company." Counsel submits a 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.

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

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) Directs the management of the organization or a major component or function of the organization;
- (ii) Establishes the goals and policies of the organization, component, or function;
- (iii) Exercises wide latitude in discretionary decision-making; and
- (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the Form I-140 on August 9, 2006 noting the beneficiary's proposed employment as the company's executive manager. The petitioner indicated on the petition that it employed three full-time and two part-time employees. In an appended letter, dated July 24, 2006, counsel provided the following description of the beneficiary's proposed employment:

As the business executive, [the beneficiary] seeks out and brings in new business/client[s] and promotes repeat customers, through his keen influence in customer relations and skills in business administration. [The beneficiary] knows and utilizes his knowledge of product trends to enhance the business and is knowledgeable of the products and experienced in foreign trade as well as the wholesale business. [The beneficiary] is the key person in the business marketing strategy and directs the sales team regarding potential customer relations, satisfaction and retention. [The beneficiary] continually communicates with Chinese and Hong Kong suppliers and has been sourcing more business and vendors throughout Europe, traveling abroad frequently in the course of his business activities. [The beneficiary] uses his excellent business acumen to monitor and control supplier activities, which ensures quality and value for their products. His excellent business and marketing skills have enabled the company to become stable and active in the market. Hence, his skills are critical to the operations. [The beneficiary] is responsible for the following business activities:

- In charge of U.S. sales and the Western Europe market.
- Performs as a buyer for the company from suppliers in China and Hong Kong.
- Communicates with customers in the U.S. and Europe.
- Communicates with various suppliers and offices in China and Hong Kong, frequently traveling to visit customers in the U.S. and Europe.
- Frequently travels to China and Hong Kong to book new orders, check production and develop new products with the suppliers.
- Visits trade shows in Asia, Europe and the U.S.
- Works closely with customers to organizations [sic] new collections for new seasons and new trends.
- Works with the personal bankers regarding company financial issues.
- Works with the [certified public accountant] on issues and to monitor the company's financial status.
- Works with customers and suppliers in the office.
- Uses business connections to source for new products and suppliers.
- Researches the markets for potential customers and to procure important accounts.
- Authorizes payments to suppliers.
- Uses his import and export experience to control shipping lines and forwarding agents.
- Locates sources to fill quotas for the U.S. and Europe shipments.
- Participates in various activities of the local Chamber of Commerce as a member.
- Seeks more suitable locations for products locally[.]
- Negotiates with agencies for potential markets[.]
- In charge of marketing/advertising[.]
- Monitors office management[.]

In the same letter, counsel provided an outline of the beneficiary's "business and travel activities in 2004 and 2005," which included attending trade exhibitions, working with sales and staff members, and traveling overseas to meet with customers. Counsel stated that the beneficiary is the petitioner's "ultimate decision-maker," who performs "executive management functions," supervises lower-level management, "exercises ultimate control" over finances, and enters into contracts for the benefit of the company.

As additional evidence, counsel submitted a list of employees in the United States company, which included: the beneficiary as president; a sales manager; a sales representative; a part-time office executive; and a part-time marketing coordinator. Included on the list was a brief description of the tasks performed by each worker. The AAO notes in particular that the sales manager was identified as servicing customers in the North American and Canadian markets only, while the sales representative was responsible for providing sales services to customers in Hawaii. Neither was represented as being responsible for the sales realized by the petitioner in such countries as the United Kingdom, Belgium, China, and Italy, which are identified on a large portion of the sample sales invoices, packing lists, and bills of lading submitted by the petitioner.

On November 30, 2006, the director issued a request for evidence directing the petitioner to submit the following information pertaining to the beneficiary's proposed employment in the United States: (1) a more specific job description, including a list of the beneficiary's day-to-day job duties and the percentage of time devoted to the performance of each task; (2) copies of the petitioner's 2006 state and quarterly wage reports; and (3) if appropriate, documentary evidence of the petitioner's use of contracted workers.

Counsel responded in a letter dated February 5, 2007, in which she restated the above offered list of job duties and the job description related to the beneficiary's proposed employment as executive manager. In appended documentation, counsel provided the following description of the beneficiary's "typical day":

Morning activities:

- 10 minutes briefing, about anything [that] happened yesterday and possible occurrences of today. 2%
- Talking with [the office executive] about the upcoming appointment today. 2%
- Assigning [the office executive's] bank visiting. 2%
- Talking with [the sales manager] and [sales representative]. 12%
- Looking into e[-]mails and giving replies. 12%
- Meeting with visiting customer in the office. 10%
- Noontime coffee break with customer at Starbucks Café. 10%

Afternoon activities: Returning to the office.

- Talking with [the marketing coordinator] about any messages during his absence. 2.5%
- Signing checks, signing [sic] orders to the factories in China. 2.5%
- Planning upcoming business trips. 15%
- Assigning needed travel booking to the office executive. 2.5%
- Looking into order details and authorizing for placing orders. 15%
- Listening to reminding of tomorrow's appointment from [the marketing coordinator]. 2.5%
- Conference call with colleagues from mother company in China. 10%
- Off duty.

In an additional list, the beneficiary's job responsibilities were outlined as follows:

- In charge of sales to U.S. and Western Europe market.
- Find new supplier in Hongkong [sic] and China.
- Develop new items for the customers with various suppliers.
- Sourcing for the new products and new suppliers.

- In charge of buying from China and Hongkong [sic].
- Communicate with customers in U.S. and Western Europe. 40% of time spent.
- Communicate with suppliers and the mother company in China. 25% of time spent.
- Discuss with [chief financial officer] for [sic] company accounting issues. 5% of time spent.
- Meet with customers in the office. 5% of time spent.
- Meet with suppliers from Hongkong [sic] and China. 1% of time spent.
- Discuss with [the sales manager] of his responsible market and provide help if needed. 15% of time spent.
- Discuss with [office manager] of daily office management. 4% of time spent.
- Involved in business with local Chamber of Commerce.
- Attend trade shows in U.S. Frequency depends on show type and company needs.
- Visit trade shows in U.S. and Europe and Asia. Frequency depends on show type and company needs.

Re: percentage of time spent, please see specific indication above. For other duties without specific time indication, total time spent is 5%.

Counsel also submitted a brief list of job duties performed by each of the four subordinate workers. An attached organizational chart depicted the five-person organizational hierarchy of the petitioning entity, and the petitioner's third quarter state wage report confirmed the full-time employment of the beneficiary, sales manager, and sales representative, as well as the part-time employment of the office executive and marketing coordinator.

In a decision dated February 21, 2007, the director concluded that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity. The director stated that the job description initially offered for the beneficiary's employment was "very general" and comprised of "a wide range of duties" that appeared to be non-managerial and non-executive in nature. The director noted that the petitioner offered the same job description in its response to the director's request for evidence. The director instructed that employment as a manager or executive required that the beneficiary "plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals," as well as that the majority of the beneficiary's duties relate to operational or policy management, not the performance of "operational activities of the company." The director concluded that many of the beneficiary's job duties appeared to be "typical of an employee providing supervisory and operational services to the petitioner as well as tasks associated with the daily operation of the company." Consequently, the director denied the petition.

Counsel for the petitioner filed a timely appeal on March 19, 2007. In an attached appellate brief, dated March 14, 2007, counsel states that the beneficiary possesses "the highest level of authority for the U.S. business," which encompasses such responsibilities as "monitoring its management, developing marketing strategies and promoting the business domestically and abroad." As evidence of the beneficiary's "executive functions," counsel restates the original list of job duties outlined in her July 24, 2006 letter. Counsel challenges the director's finding that the beneficiary's duties resemble those performed by "an employee providing supervisory or operations services to the petitioner as well as tasks associated with the daily operation of the company," stating that as the sole owner of the petitioner and a majority owner of the foreign entity, the beneficiary's "executive capacity routinely requires him to travel abroad." Counsel states:

[The beneficiary] performs his executive functions in a variety of ways. When not abroad, he holds daily briefings with his management staff to remain abreast of the company's daily operations to convey vital information with respect to financial goals, products, customer/public relations, etc. He also holds individual discussions with staff according pertaining [sic] to their specific functions, providing and receiving updates from each. Later, [the beneficiary] addresses other executive issues using various methods, e.g., telephone/conference calls, email, and meetings with customers/suppliers, etc. at lunches and/or over coffee at Star Bucks. Other functions performed by [the beneficiary] within the U.S. investment business include approving expenses and distributing funds, planning travel strategies, entering into contracts, and communicating in an executive capacity with the Japan Corporation, to name a few. Given the executive nature of his functions, his activities vary from day-to-day, week-to-week, according to specific business needs, with the overall objective geared toward ensuring the efficacy of the business operations, which in turn protects his 'at risk' investment.

[The beneficiary] seeks out and brings in new suppliers, clients, retailers and wholesalers, using his excellent public relations (PR) skills as well as his expertise in product trends, to optimize profits. PR/networking are key marketing strategies for businesses, and [the beneficiary] is continually involved in PR functions with Chinese and Hong Kong suppliers and sources business and vendors internationally. It is through these executive functions that the company had become stable and active in the market.

Counsel contends that, reviewed in its entirety, the record of proceeding demonstrates that the beneficiary would be employed in an "executive management position," and that he would not perform the daily operations of the business.

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.

The petitioner does not clarify whether the beneficiary would be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. Counsel repeatedly refers to the beneficiary's employment in an "executive management" position. A petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. A petitioner may not claim to employ a beneficiary as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. 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.

When examining the executive or managerial capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5).

The job descriptions offered by counsel corroborate the director's finding that the beneficiary would perform primarily non-managerial and non-executive tasks related to the sale of the petitioner's products. Based on the initial job description submitted by counsel, the beneficiary would perform such day-to-day non-qualifying tasks as: communicating and traveling abroad to personally meet with overseas suppliers and

customers; acting as the petitioner's buyer in the purchase of its products; determining "new orders"; checking production status; "develop[ing] new products with the suppliers"; organizing new collections with customers; attending trade shows in Europe, Asia and the United States; meeting with suppliers and customers in the United States office; researching markets to locate new customers; "[controlling] shipping lines and forwarding agents"; and "locat[ing] sources to fill quotas for the U.S. and [European] shipments". In response to the director's request for evidence, counsel confirmed the beneficiary's performance of these primarily non-managerial and non-executive tasks, and further represented on a separate list that at least 71 percent of the beneficiary's time would be devoted to such operational tasks as communicating and meeting with customers and suppliers, which are not typically deemed to be managerial or executive in nature. See §§ 101(a)(44)(A) and (B) of the Act. In contrast, the beneficiary would spend only 19 percent of his time supervising or discussing issues with the subordinate staff. Based on these claims, the time spent by the beneficiary performing tasks related to the day-to-day sale of the petitioner's products is significantly more than the time devoted to supervising his lower-level staff, and demonstrates that the beneficiary's proposed employment would not be primarily managerial or executive in nature. 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 AAO notes that the supplemental outline of the beneficiary's "typical day" offered in counsel's January 26, 2007 letter is not consistent with the beneficiary's original job description and those job duties outlined in counsel's response to the director's request for evidence. Specifically, while the petitioner identified the beneficiary as meeting with customers in the United States office, it has not accounted for such responsibilities as meeting with customers overseas, as well as with suppliers both in the United States and abroad, monitoring production, developing new product collections, attending trade shows, and researching markets for new customers. Nonetheless, of the job responsibilities addressed in the beneficiary's typical day, thirty percent of his time is devoted to meeting with customers in the United States office and determining product orders, tasks which were also identified above as being non-managerial or non-executive in nature. In light of the fact that these two tasks occupy thirty percent of the beneficiary's time, it is reasonable to conclude that these job duties in addition to the other non-qualifying tasks not specifically noted in the beneficiary's typical day but addressed above would account for a primary portion of the beneficiary's day.

Moreover, a review of the beneficiary's job responsibilities in connection with the petitioner's overall purpose and stage of development suggests that the company's reasonable needs would not be met through the employment of the beneficiary and four other workers, two of which are part-time employees. The AAO emphasizes the job duties of the petitioner's sales manager and sales representative. As noted previously, the sales manager is identified as servicing the North American and Canadian markets, while the sales representative is solely responsible for the Hawaiian market. These representations are consistent with the finding that the beneficiary would be personally responsible for the day-to-day sales, negotiations, and communications with the company's European and Asian customers, and undermine counsel's claim on appeal that the beneficiary is not performing tasks associated with the daily operation of the United States company. As the petitioner clearly relies on the beneficiary to perform essential sales, negotiations, and market research functions related to its operations in the United States, Europe and Asia, the AAO cannot conclude that the company's reasonable needs might plausibly be met while employing the beneficiary in a primarily managerial or executive capacity. Moreover, the petitioner has not accounted for the performance of the job duties assigned to the part-time office executive and marketing coordinator during their absence.

Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Counsel's claims on appeal are not sufficient to overcome the original representations that the beneficiary would be performing primarily non-managerial and non-executive job duties. In her appellate brief, counsel emphasizes the beneficiary's responsibilities of "holding daily briefings with his management staff" and lower-level employees, addressing "executive issues" with the company's suppliers and customers, approving expenses, binding the company in contracts, and "communicating in an executive capacity with the Japan Corporation." Counsel's account of the beneficiary's job responsibilities largely excludes the beneficiary's role in performing the day-to-day tasks associated with the sales, marketing, product development, and inventory functions of the petitioning entity, which the petitioner represented as occupying approximately 71 percent of the beneficiary's time. 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). 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. 582, 591 (BIA 1988).

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

Beyond the decision of the director, an additional issue is whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity for at least one year during the three years prior to his entrance into the United States as a nonimmigrant.

On a statement of qualifications submitted at the time of filing the Form I-140, the beneficiary was identified as having occupied the position of managing director in the foreign entity, which is operating as a manufacturing and export company. The beneficiary's job responsibilities were identified as:

Responsible for communicating with foreign customers and getting orders, controls exports for the products, explore potential market outside of China, establish sales office in U.S.A.

The AAO notes that the beneficiary's resume, which was also submitted with the original filing, does not expound on the beneficiary's role as managing director of the foreign entity.

The limited description offered of the beneficiary's former employment as managing director is not sufficient to establish that he occupied a primarily managerial or executive position in the foreign entity. Based on the brief outline of tasks, it appears that at least a portion of the beneficiary's time was spent performing daily non-managerial and non-executive tasks related to the foreign organization's sales and export functions. The AAO recognizes the representations made by counsel in her July 24, 2006 letter that the foreign entity employed 39 workers in its factory and 7 sales employees, and acknowledges the foreign entity's factory employee list submitted with the Form I-140. These claims, however, do not establish that the beneficiary

was employed in a primarily managerial or executive capacity or was relieved from performing non-qualifying day-to-day functions of the foreign entity. 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, notwithstanding the above determination of the nature of the beneficiary's foreign employment, the record does not establish that the beneficiary was employed by the foreign entity for at least one year during the three years prior to his entrance into the United States as a nonimmigrant.

The petitioner stated in its July 24, 2006 letter that the foreign entity was incorporated in the People's Republic of China on September 19, 2000. According to Citizenship and Immigration Services' (CIS) records, the beneficiary was admitted into the United States on January 30, 2001 on a B-2 visa, and was subsequently granted a change of status to an L-1A nonimmigrant intracompany transferee on June 5, 2001. Accordingly, the record of proceeding demonstrates that the beneficiary worked for the foreign entity for approximately four months prior to entering the United States. The record of proceeding indicates that the beneficiary was not employed by the foreign entity for the requisite period of time prior to entering the United States as a nonimmigrant.

Absent evidence establishing otherwise, the AAO cannot conclude that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity for at least one year during the three years preceding the beneficiary's entrance into the United States as a nonimmigrant. For this additional reason, the petition will be denied.

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 recognizes that USCIS previously approved four L-1A nonimmigrant visa petitions 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 approval does 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 petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals 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 approvals 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.