

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

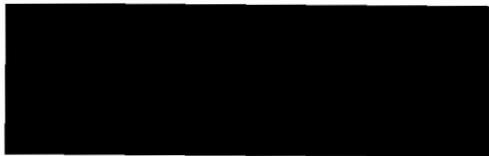
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D1

PUBLIC COPY



File: LIN 03 237 51365 Office: NEBRASKA SERVICE CENTER Date: JUL 03 2006

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN 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 petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner alleges that it is a corporation organized under the laws of the States of Georgia and Kansas and claims to be engaged in operating a gas station and convenience store. The petitioner claims that it is the subsidiary of H.H. & Company, located in Hyderabad, India. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not demonstrate that (1) the beneficiary was employed abroad in a primarily managerial, executive, or specialized knowledge capacity for the requisite one-year and (2) the company was well enough established to support an executive position.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that (1) the beneficiary was employed in a "managerial capacity" with the parent company for more than one year prior to his admission to the United States, (2) the beneficiary is employed in an "executive capacity" with the U.S. entity, and (3) the previous L-1A petition was not approved in error. In support of this assertion, the petitioner submits additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in the present matter is whether the beneficiary was employed in a primarily managerial or executive capacity abroad for at least one year in the three years preceding his admission to the United States.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as 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.

In the initial petition, the petitioner described the beneficiary's job duties with the foreign entity as follows:

As Partner and General Manager he managed all the commercial, financial and marketing aspects of the parent company. On behalf of our company, he negotiated purchasing and financial agreements with distributors and manufacturers. He was responsible for the supervision of the sales department. He determined sales goals and objectives, and the strategic means to meet the company sales and marketing goals. He was responsible for training, promotion, hiring and firing of sales personnel. He created an outstanding customer service policy in our parent company that led to a tremendous success for our parent company. He was determined and demanded nothing less from all the staff than excellence in the service and products provided to our parent company customers.

On September 3, 2003, the director requested additional evidence. Specifically, the director requested (1) explanations for several discrepancies in the record, including ownership of the U.S. entity, where the U.S. company is incorporated, and the beneficiary's offered salary as compared to actual compensation received to date, (2) a more detailed description of the beneficiary's job duties abroad, including a percentage breakdown of the time spent on each duty, (3) an organizational chart for the foreign entity for the period the beneficiary was employed, which includes the positions, employees, and a brief description of each employee's job duties, (4) a more detailed description of the beneficiary's job duties with the U.S. entity, including a percentage breakdown of the time spent on each duty, (5) an organizational chart for the U.S. entity, including each employee's name, title, duties, and salary, (6) the hours of operation for the U.S. entity, (7) a copy of the employee work schedule for the U.S. entity, (8) copies of each employee's 2002 W-2 Forms, and (9) an explanation of the relationship between the U.S. entity and the sub-sublessor of its place of business.

In response, the petitioner submitted (1) explanations for discrepancies in the record, (2) descriptions of the beneficiary's job duties with the parent company and with the U.S. entity, (3) organizational charts for both the U.S. and foreign entities, (4) information on the U.S. entity's business hours, (5) information on the hours worked by each employee at the U.S. entity, except for the beneficiary, (6) a copy of the 2002 W-2 Forms for the beneficiary and one employee, and (7) a brief explanation of the relationship between the U.S. entity and the sub-sublessor of its place of business. Specifically, with regard to the beneficiary's foreign job duties, the petitioner submitted a letter from its foreign parent, H.H. & Company, dated November 12, 2003, which states that the beneficiary was employed as a "Partner and General Manager" from 1992 until 2001 with the following responsibilities:

[The beneficiary] directed the staffing and training of our personnel, and conducted performance evaluations of employees. He made decisions on hiring, promotion and termination of employees. (15% of time).

[The beneficiary] analyzed sale[s] statistics to assist in formulating our company policy and business objectives. He reviewed marke[t] analyses to determine customer needs, volume potential, price schedules and discount rates. He prepared periodic sales reports showing sales volume and potential sales. (45% of time).

He developed sales campaigns and our company advertising strategy. (15%)

[The beneficiary] represented our company at trade shows. He performed market and manufacturer research to obtain the most advantageous contracts. He negotiated financial and purchasing agreements with product manufacturers and distributors. (25% of time).

In addition, on the organizational chart for the foreign entity, besides the beneficiary and his partner the only other positions listed were sales clerks and stockers. The job descriptions given for these subordinate positions were:

SALES CLERK:

- Total price on merchandise purchased by customers and accept payment.
- Answer customers' questions
- Record amount of cash in register at the end of shift.
- Stock shelves and counters with merchandise.
- Mark price on merchandise.
- Receive, open and unpac[k] cartons or crates of merchandise as necessary[.]

STOCKERS:

- Inventory, stock and price merchandise.
- Receive, open and unpac[k] cartons or crates of merchandise.

On January 20, 2004, the director denied the petition. The director concluded that (1) "the beneficiary was not employed by the petitioner in a managerial, executive, or specialized knowledge capacity for the requisite

one-year within the three years prior to the filing of the instant petition" and (2) "the petitioner lacks the organizational complexity for the beneficiary's position [of president] to be considered truly that of an executive."

On appeal, counsel for the petitioner asserts that (1) the "petitioner has established that . . . the beneficiary was continuously employed by the foreign entity, in a 'managerial capacity'" for the requisite period of time; (2) the "petitioner has also established that the beneficiary is currently employed in the United States in executive capacity;" and (3) "the petitioner has established that its initial petition for L-1A status was properly approved by the Service."

Upon review, counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) and (iv). The petitioner's description of the job duties must clearly describe the duties performed by the beneficiary abroad as well as those to be performed with the U.S. entity and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary was and will be primarily employed in a managerial or executive capacity. A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In this instant matter, in its letter dated July 29, 2003 the petitioner claims that the beneficiary served as an "executive" with the parent company. In the parent company's letter of November 12, 2003, however, the beneficiary is described as being the "General Manager" and, on appeal, counsel for the petitioner claims the beneficiary was employed abroad in a "managerial capacity." If a petitioner chooses to represent the beneficiary as being both an executive and a manager, it must then establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

With regard to the beneficiary's job duties with the foreign entity, on review, the petitioner has provided only a vague and nonspecific description, which fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner states that the beneficiary's duties included "determined sales goals and objectives," "[determined] strategic means to meet the company sales and marketing goals," and "created an outstanding customer service policy in our parent company." The petitioner did not, however, define (1) the sales goals and objectives developed and implemented by the beneficiary and (2) the customer service policy created by 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 Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In addition, the petitioner describes the beneficiary as "negotiat[ing] purchasing and financial agreements with distributors and manufacturers," "prepar[ing] periodic sales reports," "representing [the] company at trade shows," and "perform[ing] market and manufacturer research." Since the beneficiary actually negotiates the

contracts, prepares sales reports, attends trade shows, and performs market research, he is performing tasks necessary to provide a service or product and this duty will not be considered 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 employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Furthermore, even though the petitioner claims that the beneficiary "managed all the commercial, financial, and marketing aspects" as well as "supervis[ed] the sales department," it does not claim to have anyone on its staff to actually perform the commercial, financial, marketing, and sales functions. In fact, the petitioner describes the beneficiary's subordinates as responsible for operating the cash register, answering customer questions, and handling inventory control and purchases. Therefore, based on the record before the director, the beneficiary will only spend approximately 15% of his time performing managerial duties ("direct[ing] the staffing and training of our personnel [sic] 15%"). Moreover, as the petitioner claims that the beneficiary "managed" and "supervis[ed]" activities he does not have the staff to perform, the AAO is left to question the validity of the petitioner's claim and the remainder of the beneficiary's claimed duties. 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).

While the petitioner on appeal claims that one of its sales clerks was a supervisor, there is no indication in the record before the director that this was the case. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the evidence it now provides on appeal, and the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Thus, although the petitioner asserts that the beneficiary managed a subordinate staff, the record does not establish that the subordinate staff is composed of supervisory, professional, or managerial employees. See section 101(a)(44)(A)(ii) of the Act. A first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. Because the beneficiary supervised a staff of non-professional, non-supervisory, and non-managerial employees (sales clerks and stockers), the beneficiary cannot be deemed to have been primarily acting in a managerial capacity.

Accordingly, the petitioner has not established that the beneficiary was primarily employed in a managerial or executive capacity with the foreign entity for one continuous year, as required by 8 C.F.R. § 214.2(l)(3).

While the director did not explicitly base his denial on the failure of the petitioner to establish that the beneficiary will be employed in a primarily managerial or executive capacity, he did discuss this issue at length and, on appeal, counsel for the petitioner also raised the issue. Therefore, the AAO will address this additional issue in the present matter regarding whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

In the initial petition, the petitioner described the beneficiary's job duties as follows:

President and CEO of the [U.S.] subsidiary and in charge of marketing, finance, administration and management[, c]ontracts and bank negotiation. Expand and administer the operations. Hire and fire employees.

* * *

[The beneficiary will be responsible for] business promotion, sales objectives and the implementation of procedures for the efficient functioning of the U.S. company.

* * *

[The beneficiary will] fulfill the following duties: make key business decisions at his own discretion; update the business plan to reflect current market trends and needs; control overall financial aspects of the company; conduct general administration affairs of the company; act as liaison and representative for the parent company in the U.S.; market the services of the parent company; engage in long-term planning and identify business opportunities in the U.S.; direct the business activities and supervise another manager and employees; direct the potential expansion of the U.S. operations including devise plans, locating sites, preparing a report for the parent company to make a decision about expansion.

In its response, the petitioner submitted the following additional information on the job duties of the beneficiary with the U.S. entity:

General Administration[:] Responsible for planning, organization, and control of administrative aspects of Saheb International, Inc. Supervises the store manager who executes the administrative policies and functions. Plans and develops corporate, labor and public policies designed to improve the company's image and relations with customers. Responsible for the day-to-day operations of the company. (Average time spent: 50%)

Acquisitions and Financial Aspects[:] Responsible for all financial aspects of the company, including banking relations, loan negotiations, preparation of specific budgets and forecasts, and control of funds. Responsible for the execution of the business expansion plan. Responsible for development and execution of expansion strategy. The President is currently negotiating the lease of two additional establishments, and exploring the possibility of investing in convenience store and gas station business. The President has already successfully negotiated the lease of the store that currently makes up Saheb International, Inc. The President's duties are to research and analyze business data, locate desirable business locations, negotiate the terms of the sales agreement, secure the proper funding, provide and direct trained staff to run the stores. (Average time spent: 30%)

Human Resources[:] Responsible for hiring and termination of employees. (Average time spent: 5%)

Sales and Marketing[:] Design the sales and marketing plans that will support the sales efforts of the company stores. Establish marketing plan structure. Set budget for the marketing plan. Attend trade shows and establish presence in the wholesale/retail field. (Average time spent: 15%)

In addition, the petitioner claims the beneficiary manages three cashiers as well as a "Store Manager," who has the following duties:

Manages the convenience store and gas station. Plans and prepares work schedules and assigns employees duties. Coordinates sales promotion activities and prepares merchandise displays and advertising. Prepares requisitions to replenish merchandise on hand. Formulates pricing policies on merchandise according to requirements for profitability of store operations. Answers customers' complaints and inquiries. **Supervises the work of subordinates, or performs their work as needed.**

On appeal counsel for the petitioner claims that the "beneficiary is [and will be] employed in an 'executive capacity' in the United States entity."

Upon review, counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In this matter, although counsel for the petitioner asserts on appeal that the beneficiary's position is primarily executive, it appears from the job duties provided in the record that the petitioner is attempting to meet the standards for both "managerial capacity" and "executive capacity" as defined by the Act. If a petitioner chooses to represent the beneficiary as being both an executive and a manager, it must then establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

In its attempt to meet the standards for "managerial capacity" and "executive capacity," rather than providing a specific description of the beneficiary's duties, the petitioner generally paraphrased the statutory definitions of managerial capacity and executive capacity. See section 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A) and (B). For instance, the petitioner depicted the beneficiary as "responsible for [sic] control of administrative aspects," "supervis[ing] the store manager," "[r]esponsible for hiring and terminat[ing] employees," "mak[ing] key business decisions at his own discretion," and "[planning] and develop[ing] corporate, labor and public policies." However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

In addition, even though the petitioner claims that the beneficiary is "in charge of marketing, finance, administration and management," it does not claim to have anyone on its staff to actually perform the majority of these duties. Specifically, in describing the job duties of the store manager, the petitioner indicates that he is only responsible for work schedules, basic sales activities (setting up displays and advertisements), inventory, pricing, customer complaints, and supervising the cashier on duty. The cashiers only handle sales of goods, restocking shelves, and putting prices on items. Therefore, based on the record before the director, it appears that the beneficiary will actually implement marketing plans, such as attending trade shows, handle financial aspects of the company, such as loans, the budget, financial forecasts, lease negotiations, and control of funds, and other administrative aspects not handled by the store manager, such as maintenance and repairs, payroll, payment of services owed, and other accounting functions and, thereby, will perform tasks necessary to provide a service or product. As indicated above, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

It should be noted for the record that in its letter dated November 22, 2003, counsel for the petitioner asserts that the beneficiary will receive in 2003 slightly more than the proffered annual salary of \$30,000.00 and, in fact, "has already been compensated "\$27,800.00." While only the evidence of record before the director will be considered for purposes of determining the beneficiary's eligibility for the benefit sought, the additional wage data submitted on appeal taken together with the evidence of record clearly show that the beneficiary's total compensation for 2003 was only \$24,000.00. Either counsel made a serious miscalculation or it attempted to mislead the director with regard to this issue. In either case, the AAO is left to question again the validity of any of the petitioner's claims and evidence submitted. 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).

It should also be noted that, although the director appears to have based his decision partially on the size of the enterprise and the number of staff, the director did not take into consideration the reasonable needs of the enterprise. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

At the time of filing, the petitioner was a one-year-old company that operated a gas station and convenience store and that claimed to have a gross annual income of \$143,000.00. The firm employed the beneficiary as president, plus a "store manager" and three cashiers. The AAO notes that two of the five employees have managerial or executive titles. As discussed above, the petitioner did not submit evidence that it employed a sufficient number of subordinate staff members who would perform many of the actual day-to-day, non-managerial operations of the company that are left for the beneficiary to perform. Based on the petitioner's representations with regard to the job duties of each employee, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president, one "store manager," and three cashiers. 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) of the Act. Based on the reasons discussed herein, the petitioner has not established this essential element of eligibility.

Overall, the record is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner indicates that it plans to expand its operations in the United States, suggesting that it will need to hire additional managers and employees in the future. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in U.S. Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not established that it has reached the point that it can employ the beneficiary in a predominantly managerial or executive capacity or that it can even pay the proffered salary for such a position.

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3).

The third issue in this proceeding is the approval of the previous L-1A petition (SRC-02-239-50928) and its effect on the current matter.

In its decision, the director stated that the "Service is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous." *Matter of M--*, 4 I&N Dec. 532 (A.G. 1952; BIA 1952); *Matter of Khan*, 14 I&N Dec. 397 (BIA 1973), by extension.

On appeal, counsel for the petitioner states that "the prior petition was not approved in error" and that "it appears inappropriate that the Service is now questioning or challenging its own work and decision in order to validate the denial of the L-1A extension request." Counsel also states that "the Service should not be allowed to rely on its assertions of error in granting the initial petition to support the denial of the petitioner's request for extension of L-1 status."

Upon review, counsel's assertions are not persuasive. The director's decision does not indicate whether he reviewed the prior approval of the beneficiary's initial L-1A nonimmigrant status. If the previous nonimmigrant petition was approved on the same unsupported and contradictory assertions 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 a prior approval 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).

Furthermore, 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 a nonimmigrant petition 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). Therefore, the approval of the beneficiary's initial L-1A status (SRC-02-239-50928) will have no bearing on this matter; the appeal will be adjudicated based on the record of proceeding before the director.

Finally, it should also be noted for the record that the petition in this case was filed on August 4, 2003, one day after the expiration of the L-1A status of the beneficiary. According to 8 C.F.R. § 214.2(l)(14)(i), "[a] petition extension may be filed only if the validity of the original petition has not expired." For this reason, the director may not grant the requested extension of stay.

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.