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FILE: [Redacted]  
SRC 04 196 52014

Office: TEXAS SERVICE CENTER Date: DEC 14 2005

IN RE: Petitioner: [Redacted]  
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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a company organized in the State of Florida in April 2003. It claims to operate a restaurant in the State of Georgia. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity for the United States petitioner. The director alluded to but did not discuss the petitioner's failure to establish a qualifying relationship with the beneficiary's foreign employer and the petitioner's failure to establish that it had been doing business for one year prior to filing the petition.

On appeal, counsel for the petitioner asserts that the beneficiary fulfills the criteria of both a manager and an executive. Counsel submits a brief in support of the appeal. Preliminarily, the AAO accepts the petitioner's initial Form I-290B, Notice of Appeal, as timely filed on May 13, 2005.

Section 203(b) of the Act states in pertinent part:

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

- (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

The first issue in this proceeding is whether the beneficiary will be employed in a managerial or executive capacity for the United States entity.

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

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

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

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

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

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision making; and
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner's Form I-140, Immigrant Petition for Alien Worker, indicated that the petitioner employed five individuals. In a June 22, 2004 letter appended to the petition, the petitioner stated that:

Since 2002, [the beneficiary] has been President of [the petitioner], a position involving the overall control and supervision of the American company. In this position, he has been primarily responsible for establishing the company's corporate structure, developing the company's financing and marketing strategies, and for expanding the company's client base in the United States. He has been responsible for the management and administration of the company. As the President and Owner of [the petitioner] he has also been responsible for the over-all development and growth of the business. In addition, he has been supervising every activity and the day-to-day operations of the company by executing his decision making power on every project.

Moreover, [the beneficiary] has been directing and coordinating advertising, purchasing, and the credit and accounting departments of the company. He has been negotiating and approving contracts with suppliers and distributors as well as with maintenance and security providers. He has been the person responsible for developing our chain of restaurants in the United States. [The beneficiary] has held a key role in the ambitious expansion plan that has been undertaken by [the foreign entity ██████████] and his continuing presence in the United States is essential to bring the expansion effort to a successful conclusion and to ensure that our overseas company remains successful.

The petitioner also provided its organizational chart showing the beneficiary as president, a cuisine director, a general manager, a marketing executive, and a cuisine assistant. The petitioner provided several payroll registers including a payroll register dated April 9, 2004, the payroll register closest to the petition filing date, that showed wages paid to the beneficiary's four subordinate employees on the petitioner's organizational chart.

On February 10, 2005, the director requested the petitioner's organizational chart, evidence that the petitioner had paid wages to the employees, and a list of all employees by name, title, and brief job description. The director also requested additional details regarding the beneficiary's proposed position including his daily duties and the percentage of time spent on the daily duties, as well as evidence of the beneficiary's remuneration.

In an April 14, 2005 response, counsel for the petitioner indicated that the petitioner's number of employees had increased to ten employees. Counsel indicated that the beneficiary would be responsible for the daily operations of the restaurant, would devise strategies and formulate policies to ensure that the corporation's objectives are met, meet frequently with the staff to ensure that operations are conducted in accordance with the restaurant's policies, and supervise the general manager who directs the activities of the restaurant and implements the organization's policies on a day-to-day basis. Counsel noted that the beneficiary would also oversee the investment of funds, manage risks, supervise cash management activities, deal with possible mergers and acquisitions, and review financial statements and sales and activity reports to ensure that the corporation's objectives are achieved.

Counsel indicated that the beneficiary spent 60 percent of his time directing, coordinating, and developing the management of the company; 25 percent of his time taking over the assistance of operational control and supervision of the day-to-day activities; 5 percent of his time defining new markets and expanding the customer base; and, 10 percent of his time developing and implementing restaurant operation and system instructions, policies and procedures.

Counsel provided: the petitioner's revised organizational chart depicting ten employees, adding four waiters and an accountant to the positions submitted when the petition was filed; brief job descriptions of the beneficiary's subordinates' duties; and the petitioner's Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, issued to eight employees in 2004.

In a poorly articulated decision, the director denied the petition on April 20, 2005, determining that the beneficiary was not pursuing an assignment within the organization that was wholly executive or wholly managerial, but rather an executive/managerial hybrid. The director cited a non-precedent AAO decision in support of her conclusion. The director also noted that the petitioner must establish eligibility when the petition was filed.

On appeal, counsel for the petitioner references the AAO decision cited by the director and correctly observes that a petitioner must establish that the beneficiary satisfies each of the four requirements set forth in the statutory definition of executive and the statutory definition of managerial capacity if the petitioner represents the beneficiary is both a manager and an executive. Counsel asserts that the previous descriptions of the beneficiary's duties establish that the beneficiary is both a manager and an executive.

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. § 204.5(j)(5). Contrary to counsel's assertion, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include "overall control and supervision of the American company," "[responsibility] for establishing the company's corporate structure," "[responsibility] for the management and administration of the company," "[responsibility] for the over-all development and growth of the business," and "[responsibility] for developing our chain of restaurants in the United States." However, 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Moreover, portions of the beneficiary's job description suggest that the beneficiary will provide the routine operational services, administrative tasks, and first-line supervisory duties of the company. For example, the petitioner indicates that the beneficiary will direct and coordinate "advertising, purchasing and the credit and accounting departments, negotiate and approve contracts with suppliers and distributors as well as with maintenance and security providers." Although the petitioner indicates it employs a marketing director, the petitioner does not adequately establish whom the beneficiary will direct and coordinate to carry out the purchases, accounting, and negotiating tasks, if not the beneficiary. 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).

In addition, in the response to the director's request for evidence, counsel for the petitioner indicated that the beneficiary would be responsible for the daily operations of the restaurant, meet frequently with the staff, and supervise the general manager. However, when the petition was filed, the record confirms the employment of four individuals and the beneficiary. 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 record suggests that when the petition was filed, the beneficiary would have necessarily been responsible for the daily operations of the restaurant including first-line supervisory duties over a general manager, a "marketing executive," and two cooks. 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. See section 101(a)(44)(A)(iv) of the Act. The record does not demonstrate that any of the beneficiary's subordinates perform primarily managerial, supervisory, or professional duties. See section 101(a)(44)(A)(ii) of the Act.

Counsel's indication that the beneficiary spends 60 percent of his time directing, coordinating, and developing the management of the company and 25 percent of his time taking over the assistance of operational control and supervision of the day-to-day activities does not assist in determining that the beneficiary performs primarily managerial or primarily executive duties. This time allocation of non-specific tasks does not provide an understanding of the beneficiary's daily duties or otherwise establish a clear distinction between the beneficiary's proposed qualifying and non-qualifying duties. The record is simply insufficient to establish that the beneficiary will spend the majority of his time on duties that are either managerial or executive. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel contends that mentioning elements of the statutory definition of managerial capacity and executive capacity is sufficient to establish that the beneficiary's position is a managerial or an executive position. However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

Based on the current record, the AAO is unable to determine that the beneficiary's duties comprise primarily managerial or executive duties. For this reason, the petition will not be approved.

The next issue in this decision is whether the petitioner has established a qualifying relationship between the petitioner and the foreign entity. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity.

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

*Affiliate* means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

*Multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The petitioner in this matter claims that two individuals each own 50 percent of a foreign entity, [REDACTED] a restaurant and entertainment operation. The petitioner further avers that the foreign entity owns 51 percent of the petitioner. The petitioner presents three undated stock certificates, each identified as stock certificate number 1, to establish the foreign entity's purported controlling ownership of the petitioner. One of the stock certificates is issued to [REDACTED] for a 51 percent interest in the petitioner; one is issued to the beneficiary for a 25 percent interest in the petitioner; and, one is issued to the beneficiary's wife for a 24 percent interest in the petitioner. The petitioner also provides numerous untranslated documents apparently relating to the foreign entity.

The director did not request additional evidence on this issue but recited 8 C.F.R. § 204.5(j)(3)(i)(C) which requires the prospective employer in the United States to be the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas. On appeal, counsel notes that the director alluded to this issue and complains that as the director did not request evidence on this issue, the petitioner was not given the opportunity to present documentation to establish the qualifying relationship. Counsel re-submits the petitioner's stock certificates and articles of incorporation on appeal.

The AAO acknowledges that the director did not make a determination on this issue. Counsel's observation that the director appeared concerned with the issue and the re-submission of documents on the issue, suggest that counsel had notice that the record did not establish that the petitioner and the beneficiary's foreign employer enjoyed a qualifying relationship as defined in the regulations. Moreover, the AAO determines beyond the decision of the director that the petitioner failed to establish this essential element of eligibility.

First, the stock certificates presented do not establish that the foreign entity owned a majority interest in the petitioner. Stock certificates that do not bear a date and are all identified as stock certificate number one are inherently suspicious. Second, because the petitioner failed to submit certified translations of the documents apparently relating to the foreign entity, the AAO cannot determine whether the evidence supports the

petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the untranslated evidence is not probative and will not be accorded any weight in this proceeding. 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).

Counsel should note that the regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. at 593; see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

Also as general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, properly translated, CIS is unable to determine the elements of ownership and control. Further, as stock certificates are easily manipulated it is often necessary for the petitioner to provide independent evidence substantiating that the stock was actually purchased by the purported owner of the stock.

In this matter, the AAO does not believe the petitioner's evidence of a qualifying relationship between the beneficiary's foreign employer and the petitioner. 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 petitioner has not established this essential element of eligibility for this visa classification. For this additional reason, the petition will not be approved.

The next issue in this proceeding is whether the petitioner has established that it was doing business for one year prior to filing the petition on July 9, 2004. Again, the director did not request additional evidence on this issue but recited 8 C.F.R. § 204.5(j)(3)(i)(D) which requires the prospective United States employer to have been doing business for one year prior filing the petition. On appeal, counsel again notes that the director alluded to this issue and complains that as the director did not request evidence on this issue, the petitioner was not given the opportunity to present documentation to establish that the petitioner had been doing business for one year. Counsel submits the petitioner's IRS Forms W-2, issued in 2004, the petitioner's 2004 IRS Form 1120, U.S. Corporation Income Tax Return, the petitioner's business checking account statements beginning in July 2004, and bills, purchase, and sales receipts for 2004 and 2005.

Title 8, Code of Federal Regulations, section 204.5(j)(3) states:

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

\* \* \*

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

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

Again, the AAO acknowledges that the director did not make a determination on this issue. Again, counsel's observation that the director appeared concerned with the issue and submission of documents to attempt to establish that the petitioner had been doing business suggest that counsel had notice that the record did not establish that the petitioner had been doing business for one year as required by the regulations. Moreover, the AAO determines beyond the decision of the director that the petitioner failed to establish this essential element of eligibility.

Preliminarily, it appears that counsel misunderstands the regulatory requirement regarding the petitioner's conduct of business. The petitioner must submit evidence substantiating that it has been conducting business in a regular, systematic, and continuous manner for one year *prior* to filing the petition, not that the petitioner has been doing business for one year. In this matter, the petitioner was incorporated in April 2003 but the only evidence that the petitioner had actually begun to conduct business is the lease entered into in March 2004. The remaining evidence submitted, both initially and on appeal, concerns activity occurring in late 2003, 2004, and 2005. The record contains no evidence that the petitioner had begun to conduct business in July 2003 or for several months thereafter. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner has not established that it conducted business in a regular, systematic, and continuous manner for one year prior to filing the petition in July 2004. For this additional reason, the petition will not be approved.

Further beyond the decision of the director, the petitioner has not established that the beneficiary had been employed for one year by a qualifying foreign entity in one of the three years prior to entering the United States as a nonimmigrant. The petitioner references the beneficiary's employment with [REDACTED] beginning in 2001. The petitioner provides only a general statement outlining the beneficiary's claimed duties for the foreign entity. For example, the petitioner indicates that the beneficiary was responsible for "the management, administration, and commercialization activities" of the foreign entity, and "was responsible for the administration of the personnel, credit, and financial transactions on behalf of the company, setting standards, and guidelines for the company," as well as coordinating various departments and directly supervising employees. This description does not convey an understanding of the beneficiary's daily

duties for the claimed foreign entity. 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. at 1103. For this additional reason, the petition will not be approved.

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

The AAO acknowledges that CIS approved other petitions that had been previously filed on behalf of the beneficiary. With regard to the similarity of the eligibility criteria, the AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

In general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. Accordingly, many Form I-140 immigrant petitions are denied after CIS approves prior nonimmigrant Form I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing Form I-129 nonimmigrant petitions than Form I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

Moreover each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The approval of a nonimmigrant petition does not guarantee that CIS will approve an immigrant petition filed on behalf of the same beneficiary. As the evidence submitted with this petition does not establish eligibility for the benefit sought, the director was justified in departing from previous nonimmigrant approvals by denying the immigrant petition.

In addition, if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church*

*Scientology International*, 19 I&N Dec. 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).

Further, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The petitioner has not provided evidence or argument on appeal sufficient to overcome the director's decision.

Finally, the AAO observes that the director was justified in departing from the previous nonimmigrant approvals in this matter; the director should review the previous nonimmigrant approvals for revocation pursuant to 8 C.F.R. § 214.2(l)(9)(iii).

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.