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U.S. Citizenship
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Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 31 2006
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IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

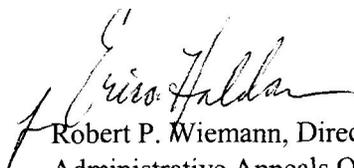
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

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


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner filed the instant immigrant 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 California that is doing business as a manufacturer of personal computers, servers, CPU coolers, LCD personal computers, and digital video discs. The petitioner seeks to employ the beneficiary as its program manager for its business program with Corporation Intel.

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

Counsel for the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded it to the AAO for review. On appeal, counsel contends that the organizational chart submitted to reflect the foreign entity's staffing levels identified the beneficiary's position of authority and outlined the project teams supervised by the beneficiary, as well as his job responsibilities. With regard to the beneficiary's position in the United States, counsel claims that the director failed to consider the "totality of the evidence submitted," particularly the beneficiary's success in securing "five to eight new Intel projects per year." Counsel submits a letter in support of the claims on 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 two related issues in this proceeding are whether the beneficiary was employed abroad and would be employed in the United States 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 instant immigrant petition on December 8, 2003 requesting that the beneficiary be employed in the position of "program manager – Intel." The petitioner noted on Form I-140 its staff of thirty-five workers.

In an appended letter, dated November 11, 2003, the petitioner stated that prior to the beneficiary's transfer to the United States in September 2003, the beneficiary held the same position as the one offered in the United States company. The petitioner explained that "the importance of the Intel program" necessitates that the beneficiary "be strategically relocated to the United State[s] . . . to oversee the global manufacturing process and marketing strategies for our Intel program." The petitioner further stated:

As Program Manager, his duty includes: project control and creation of new projects, communicate with Intel upper level executive and administrative personnel, help eliminate communication barrier between Intel and China factory, quotation and RMA management, translate customer needs into product concepts and communicate the ideas to engineering team for ongoing actions, update latest market and product information with customer.

The petitioner explained that the beneficiary's job duties as program manager in the United States company, wherein he would report to the general manager of the Taiwan company, remain the same as those performed while employed in this position in Taiwan.

In an attached organizational chart, which counsel clarified on appeal depicted the position of the beneficiary in the foreign entity, the beneficiary's responsibilities were outlined as:

- Support all Intel project[s]
- Internal communication
- 1st customer interface
- Quotation of new project
- Lead different project team
- BOM Audit & Price Maintain

The organizational chart identified the beneficiary as having occupied a position subordinate to the foreign company's president and vice-president.

The petitioner also submitted a chart of the position to be held by the beneficiary and the related job duties. The following additional job duties were provided for the beneficiary's position as program manager for the company's Intel project:

- Project control and getting more project[s]
- Face to face communications with upper level executive and administrative personnel
- Help eliminate the communication barrier between Intel and China factory
- Quotation and RMA management
- Translate customer needs into product concepts and communicate these ideas to Engineering team for ongoing actions
- Updated latest market & product information with customer.

The director issued a request for evidence, dated March 22, 2005, noting ambiguity in the organizational chart previously submitted, and questioning, in particular, whether the beneficiary held the responsibilities listed on the chart. The director asked that the petitioner provide a detailed description of the job duties performed by the beneficiary while employed overseas, as well as the job duties to be performed by the beneficiary in the United States. The director requested that the petitioner indicate the percentage of time the beneficiary spent

and would spend on each task. The director also asked that the petitioner provide: (1) an organizational chart of both the foreign and United States corporations, clearly illustrating the employees subordinate to the beneficiary, and their job titles and job duties; (2) the beneficiary's Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for the years 2003 and 2004; and (3) the petitioner's 2003 and, if available, 2004 corporate tax returns.

The petitioner's former counsel responded in a letter dated June 9, 2005. Counsel explained that the need for the beneficiary's employment in the United States stems from the unsatisfactory work of the prior program manager. Counsel stated that despite the beneficiary's change in location, his job duties and the nature of his position remain the same. Counsel submitted a chart of the beneficiary's job duties, which were outlined as follows:

- Sustaining Project Management, 5%
- Reply Intel's Engineering Change Request (ECR) and follow up the Engineering Change Order (ECO), 12%
- New Project Implement management (NPI), 20%
- Translate Customer's need into product concepts. 10%
- Creation of new projects and business, 10%
- Upper level communication, 8%
- Reply the Request For Quotation (RFQ) given by customer, 10%
- Reply Quality Complaint, 8%
- Day to day management, 12%
- Other mission, 5%

The AAO notes that the chart provided descriptions of the beneficiary's role in relation to each job duty prior to and following his transfer to the United States. As the accompanying descriptions are already part of the record, they will not be repeated herein.

Counsel also provided an organizational chart reflecting the beneficiary's proposed position in the United States organizational hierarchy. The beneficiary was identified as supervising seventeen employees, of which one was located in the United States, while the remaining employees were employed in the foreign company in Taiwan or in one of two factories in China.

In a decision dated August 17, 2005, the director concluded that the petitioner had not demonstrated that the beneficiary had been employed abroad and would be employed in the United States in a primarily managerial or executive capacity. With regard to the beneficiary's employment overseas, the director noted that the petitioner had not provided an organizational chart of the foreign entity or descriptions of the job duties performed by the beneficiary's subordinate employees. The director additionally noted that the job descriptions offered for the beneficiary's position were unclear as a result of the translation into English.

The director also concluded that the beneficiary would not be primarily employed in the United States as a manager or executive. The director noted an ambiguity in the information presented, stating that the beneficiary was identified both as the sole employee of the petitioner's "facility" and as directly supervising seventeen employees. The director noted that the employees identified as subordinates of the beneficiary are employed in Taiwan and China, but addressed the fact that the petitioner had not provided a detailed description of their job duties. The director stated "[i]t is not entirely clear if the petitioner is contending that

the beneficiary directly supervises Intel employees or [the petitioner's] employees that are employed in other offices on different continents." The director concluded that, regardless, the beneficiary's role as a liaison between the petitioning entity and Intel was more consistent with that of an account manager, rather than one managing or supervising employees. Consequently, the director denied the petition on both grounds outlined above.

The petitioner's present counsel subsequently filed an appeal contending that the beneficiary qualifies for the classification sought. Counsel claims that despite the director's finding to the contrary, the petitioner submitted the foreign entity's organizational chart reflecting the beneficiary's position overseas, during which he exercised "authority over all department heads as to Intel New Project Implementation (NPI) and sustaining project management." Counsel notes that in this position the beneficiary was directly supervising an individual identified as occupying the position of "Intel project manager Champion," who, in turn, was supervising the project managers for the "New Project Implementation," and coordinating manufacturing and "ECOs for the [company's] specific product lines." Counsel states that an additional responsibility held by the beneficiary in relation to his job duty of "New Project Implementation" was to select and train a project manager for each new Intel project. Counsel explains that because the project managers repeatedly change, they were not identified by name on the organizational chart, but rather by department. Counsel states:

The beneficiary review[ed] and supervis[ed] the work of the [project managers] through their preparation of various [research and development] and Operational Performance Status reports, and weekly [New Project Implementation] meetings. In addition, any problems are immediately communicated to him through his [project managers] or directly from Intel personnel, so that solutions can be worked out without significant production setbacks. Although all of the operational abbreviations can be, admittedly, quite confusing, there should be no questions that, in the overall scheme, the beneficiary holds a high rank in a very large organization. This conclusion is only logical considering the volume of work, its technical and logistical complexity, and the value of such a large account to the petitioning organization.

Counsel explained that the petitioning entity's offices are based in California, yet, the beneficiary spends the majority of his time at Intel's facility in Oregon, where he "work[s] closely with Intel's engineering management staff, in order to accommodate their complex and ever-changing product requests."

Counsel also contends that Citizenship and Immigration Services (CIS) failed to consider the "totality of the evidence submitted" when denying the immigrant petition based on the finding that the beneficiary would not employed as a manager or executive in the United States. Counsel states:

As stated in the detailed job description (previously submitted), since his relocation to the U.S., the beneficiary has been able to secure five to eight new Intel projects per year. These are large scale design and manufacturing projects that require the beneficiary's engineering management and marketing expertise from concept to design, from costing to competitive pricing, and from engineering to mass production. This is not a low-level sales engineering or production supervisory position. As stated in the job description, the position necessarily carries with it a large degree of responsibility and ultimate authority to make high-level decisions (such as price and timing commitments) regarding multi-million dollar contracts.

Counsel explains the need for the beneficiary in the United States, stating that the manager who previously occupied the beneficiary's position lacked the authority to make critical decisions, and therefore caused a delay in projects. Counsel states that the beneficiary is more qualified for the position as a result of his knowledge of the foreign entity's capabilities in engineering, testing and production, and because of the authority granted to him to authorize contracts for the company. In response to the director's finding that the beneficiary would function more as an account manager, counsel states that the beneficiary should instead be considered the manager of a \$45 million account comprised of five to eight engineering projects a year, with more than twenty-five ongoing projects involving research and development, engineering, testing and re-configuration of the manufacturing process.

In support of the beneficiary's managerial role in the United States, counsel submits a letter from Intel, dated September 14, 2005, in which the company's acting system development manager identifies the beneficiary as the "primary contact" for all of Intel's "New and Sustaining projects." Intel's manager further states that the beneficiary meets with the company's "System, Packaging, and Commodity managers" regularly, reviews the "specification of requirement" for any "request for quotation," and provides the related quotes. He further explains that following acceptance of the quote, "[the beneficiary] has ultimate responsibility for execution of the project, working hand in hand with the Intel team and providing much of the interface to the rest of the team at [the petitioning entity]."

Upon review, the petitioner has not established that the beneficiary had been employed by the foreign entity or would be employed by the United States entity in a primarily managerial or executive capacity. As the nature of the beneficiary's position and his related job duties are the same for his employment both abroad and in the United States, the AAO will consider the beneficiary's employment in each company together herein.

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 AAO acknowledges that the chart referenced by counsel on appeal, as compared to the remaining evidence in the record, acts as the greatest resource in interpreting the beneficiary's role as a project manager both abroad and in the United States. The AAO challenges, however, classification of the chart as a "detailed job description," and notes that, while lengthy, it does not describe the specific job duties related to each of the beneficiary's outlined responsibilities. Specifically, a majority of the job descriptions include an overview of the particular responsibility and identify goals either achieved or proposed through the beneficiary's employment. For example, with regard to the beneficiary's position overseas, the petitioner identified the challenges of "track[ing] the [engineering change orders] with mails and updated documents as requested by customers," "follow[ing] Intel's design and feedback our comments on production's [sic] capability and efficiency to Intel," and replying promptly to customer requests. The petitioner also noted the beneficiary's success in leading a "team" in creating new Intel projects. These descriptions provide more of an overview as to the particular functions related to the foreign entity's project with Intel. The remaining description provides a limited explanation of the beneficiary's related foreign job duties, including "work[ing] with PM manager frequently to confirm shipping," "working with the R&D and manufacturing department to confirm all the [engineering change orders] can be cut in as schedule[d]," "work[ing] with the factory and RD team to develop the products timely, successfully, and most competitively," communicating between the petitioner and Intel, "work[ing] with PM Champion to provide factory's Operation Performance Status report to Intel's upper level manager weekly," and working with the engineers to provide competitive price quotations and responses related to the quality of products. These vague statements offer only a general description of with whom the beneficiary worked and failed to sufficiently explain what the beneficiary did on a daily basis. The

petitioner has not identified the specific managerial or executive job duties performed by the beneficiary as program manager of Intel. 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).

The job description of the beneficiary's position in the United States company is equally insufficient. Again, the petitioner noted accomplishments achieved by the beneficiary during his employment in the United States, including stabilizing shipping between the foreign company and Intel and increasing communications between "with higher-level manager." Additionally, the petitioner addressed responsibilities of the beneficiary and persons with whom the beneficiary would work, but did not identify specific managerial or executive job duties to be performed by the beneficiary. In particular, the petitioner stated that the beneficiary would hold weekly conferences with Intel and the foreign company, "instruct [the] [engineering change order] controller to collect all the related information," chose project managers for each "new project implement" project, educate the project managers and internal research and development team on communicating with Intel's customers, review "specification of request" details with the project managers and research and development personnel, "provide efficient management and well face-to-face communication with Intel," attend bi-weekly system integration meetings at Intel "to synchronize the methodology," and assign employees to provide price quotes to customers and address customer service issues. The offered job description is essentially an overview of the beneficiary's proposed responsibilities, and is especially vague in explaining the beneficiary's managerial or executive role in relation to the named project managers and "teams." This is particularly true with regard to the "new project implement management" function, a task on which the petitioner represented the beneficiary would spend the most time. The petitioner stated:

[The beneficiary] work with OEM manager defining a dedicate Project Manager to each NPI project, and educate these PM studying the spec and help them communicating with Intel customer and internal R&D team without getting any misunderstanding. Not only [the beneficiary] supervise the entire NPI meeting weekly, but also he face to face communicate Intel's design team to catch all the change in the developing stage promptly. Because of his on-site support at [Intel's facility], most of Intel's questions can be answered promptly without time zone limited.

Despite the somewhat fragmented description, which as the director noted in his decision causes difficulty in clearly understanding the beneficiary's role in the foreign and United States entities, the petitioner's description only generally addresses the actual responsibilities and level of authority held by beneficiary. It is unclear what specific managerial or executive tasks the beneficiary would perform. The petitioner has not identified the "OEM manager" with whom the beneficiary would work, or the specific job duties each would perform with regard to the "new project implementation." Case law dictates that a petitioner's blanket claim of employing the beneficiary as a manager or executive without a description of how, when, where and with whom the beneficiary's job duties occurred is insufficient for establishing employment in a primarily managerial or executive capacity. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The AAO notes that the petitioner's use of acronyms in the beneficiary's job description without further clarification of each process makes it particularly difficult to examine and understand the true managerial or executive job duties of the beneficiary. Following the director's reference to the ambiguities resulting from a

translation into English, counsel merely acknowledges on appeal the "confusing" operational abbreviations, yet contends that the beneficiary's "high rank" in the organization should be evident from the "overall scheme." Absent an explanation of the operational abbreviations, whose interpretation influences the analysis of the beneficiary's job duties, counsel's blanket claim that the beneficiary has been and would be employed in a primarily qualifying capacity is not sufficient. This is particularly appropriate in light of the director's note of uncertainty and confusion with regard to the beneficiary's job descriptions. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The lack of description creates further confusion in determining whom the beneficiary supervised or would supervise. The petitioner noted on Form I-140 a staff of thirty-five employees. Its organizational chart, however, identifies one employee in the position of internal sales. Clarification of the petitioner's staff is essential to determining whether a sufficient subordinate staff would support the beneficiary in his purported managerial or executive role. Also, the petitioner represents that the beneficiary would interact with Intel's customer and research and development teams. Intel's research and development group, however, was not identified on either organizational chart as a department subordinate to the beneficiary. In fact, as noted above, on the petitioner's organizational chart, the sole United States employee purportedly supervised by the beneficiary is in internal sales. If the beneficiary was supervising the sales and research and development teams while employed in Taiwan, the petitioner has not explained how the beneficiary could effectively supervise departments in the United States. Counsel states on appeal that since the beneficiary's transfer to the United States, he has devised a computer program to track the work of project managers and teams, however, this does not reconcile the beneficiary's purported supervision of these teams prior to his transfer. 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)).

Furthermore, although requested by the director, the petitioner has not provided a description of the job duties performed by the subordinates supervised by the beneficiary while employed overseas and in the United States. This information is essential to clarifying the beneficiary's role in each organization, as well as confirming that the beneficiary is supported in a primarily managerial or executive position. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Based on the foregoing discussion, the petitioner has not established that the beneficiary had been employed overseas or would be employed in the United States 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 petitioner demonstrated its ability to pay the beneficiary's proposed salary of \$40,000. *See* 8 C.F.R. § 204.5(g)(2). In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner did not establish that it had previously employed the beneficiary at the proffered salary. The

AAO notes that the beneficiary's IRS Form W-2 for the year 2003 indicates that the beneficiary received a salary of approximately \$21,000.

As an alternate means of determining the petitioner's ability to pay, the AAO will next examine the petitioner's net income figure as reflected on the federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). In *K.C.P. Food Co., Inc. v. Sava*, the court held the Immigration and Naturalization Service (now CIS) had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than on the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. at 537; see also *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054.

As the petition's priority date falls on December 8, 2003, the AAO must examine the petitioner's tax return for 2003. The petitioner's IRS Form 1120 for calendar year 2003 presents a net taxable income of approximately -\$1,053,000. The petitioner could not pay the beneficiary's proffered salary.

Finally, if the petitioner does not have sufficient net income to pay the proffered salary, the AAO will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as the AAO is satisfied that the petitioner's current assets are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage. The petitioner's net current assets are not sufficient to pay the beneficiary his \$40,000 salary. 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 notes the beneficiary's prior L-1A nonimmigrant petition approval. 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.

Because CIS spends less time reviewing L-1 petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003).

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

Furthermore, if the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approval by denying the present immigrant petition.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.