



U.S. Citizenship
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FILE:

EAC 04 267 52398

Office: VERMONT SERVICE CENTER

Date: AUG 31 2007

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based petition. The petitioner filed a timely appeal of the director's denial, which the Administrative Appeals Office (AAO) remanded to the director for further action and consideration. The director again denied the immigrant visa petition, and the AAO dismissed the petitioner's subsequent appeal. The matter is again before the AAO on motion to reconsider. The AAO will grant the motion. The prior decisions of the director and the AAO will be affirmed.

The petitioner filed the immigrant visa petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of New York that is engaged in repairing, remodeling, mending, and cleaning carpets. It seeks to employ the beneficiary as its general manager.

In a January 7, 2005 decision, the director denied the petition concluding that the petitioner had not established that the beneficiary had been or would be employed by the foreign or United States entities in a primarily managerial or executive capacity. Upon review of the petitioner's appeal, the AAO remanded the matter to the director, noting that the director had not issued a request for evidence, thereby failing to provide the petitioner an opportunity within which to address the deficiencies in the record.

Following the petitioner's response to his request for evidence, the director again denied the petition concluding that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

The AAO dismissed the petitioner's subsequent appeal, affirming the director's finding that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity as a manager or executive. Specifically, the AAO addressed the vague representations offered by the petitioner of the beneficiary's employment in a primarily managerial or executive capacity. The AAO emphasized the relevance of detailing the specific job duties performed by the beneficiary on a daily basis, noting that several of the beneficiary's job responsibilities suggested his performance of non-managerial and non-executive tasks. The AAO further noted that the petitioner's staff did not appear to be sufficient to satisfy the company's reasonable needs, particularly those related to its marketing, advertising, administrative, and financial functions.

Counsel for the petitioner filed this timely motion to reconsider challenging the AAO's review of the record of proceeding, and its analysis and interpretation of the beneficiary's job duties. Counsel submits a brief and documentary evidence in support of the motion.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect

application of law or [Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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

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

* * *

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

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

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

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

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

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

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

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

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

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

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

In support of the instant motion, filed on January 11, 2007, counsel for the petitioner submits a brief in which she challenges the AAO's findings on several grounds. Counsel first contends that the AAO "quote[d] only a portion of a whole section wherein the petitioner articulated how certain duties performed by the beneficiary meet each and every component of both definitions of 'managerial capacity' and/or 'executive capacity'." In support of the argument that the petitioner had demonstrated the beneficiary's eligibility under either classification as a manager or as an executive, counsel restates several of the job responsibilities named in the previously submitted job descriptions.

Contrary to counsel's claim, in its December 13, 2006 decision, the AAO cited the offered job descriptions in their entirety. The AAO's reference to only portions of the job descriptions in its actual discussion of the beneficiary's employment capacity does not demonstrate that the AAO did not consider the entire job descriptions in its analysis, as suggested by counsel.

With respect to the beneficiary's job duties, counsel emphasizes "four essential management functions" performed by the beneficiary – planning, organizing, leading, and controlling – and provides a lengthy description of the beneficiary's role in executing each "process." The AAO notes that in the record of proceeding available to the AAO at the time of its review, the petitioner mentioned three of the four job responsibilities – planning, organizing, and controlling – in the context of "*planning, organizing, budgeting, directing, controlling, and coordinating the overall activities of operations of our organization*" (emphasis added). The petitioner further noted that the beneficiary would be in charge of "planning" the operational activities of the company, controlling the hiring and firing of employees, and "developing long

range goals and objectives." The petitioner, however, did not previously expound on the tasks associated with these responsibilities, or identify each of these responsibilities as an "essential managerial function," or address how the beneficiary's purported "planning," "organizing," or "controlling" would qualify him as a manager or executive.

The instant motion to reconsider is not the proper forum in which to provide new details of the beneficiary's proposed employment. A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006) (citing *Matter of Cerna*, 20 I&N Dec. 399, 402 n.2 (BIA 1991)). Moreover, a motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. Rather, the Board in *Matter of O-S-G-* stated, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a de novo legal determination reached by the Board in its decision that may not have been addressed by the parties. *Id.* at 58. Further, the Board pointed out, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision. Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the Board's initial decision or must show how a change in law materially affects the Board's prior decision.

Counsel also challenges the requirement imposed on the petitioner by the AAO to describe the managerial or executive job duties performed by the beneficiary *on a daily basis*. Counsel contends that the regulation at 8 C.F.R. § 204.5(j)(5) requires only that the petitioner submit a letter clearly describing the duties to be performed by the beneficiary, but that the petitioner need not identify *daily* job duties. Counsel correctly observes that the cited regulation does not specifically stipulate a description of *daily* job duties to be performed by the beneficiary. However, a review of the regulation at 8 C.F.R. § 204.5(j)(5) in conjunction with relevant case law substantiates the AAO's request for an outline of proposed daily managerial or executive job duties. The court in *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) found that the absence of a description "of how, when, where and with whom [the alleged managerial or executive] duties occurred" or the failure to mention "specific situations, circumstances or occurrences" would fall short of establishing the beneficiary's employment in a primarily managerial or executive capacity. The court further stated: "The actual duties themselves reveal the true nature of employment." *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Similarly, in determining that a beneficiary would not occupy a primarily managerial or executive position, the court in *Niagara Handpiece, Ltd. v. USCIS*, 2006 WL 2792292 (W.D.N.Y.), considered "the day-to-day nonqualifying activities" performed by the beneficiary. *See also, Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991) (considering, in part, the "day-to-day functions" performed by the beneficiary when determining whether the beneficiary would be employed in a primarily managerial or executive capacity). Accordingly, the AAO did not err in its request for a description of *daily* managerial or executive job duties to be performed by the beneficiary in his employment as general manager.

Counsel further claims that the AAO erred in its determination that the beneficiary would perform non-qualifying tasks of the petitioner's business, rather than acknowledging the beneficiary's role as a function manager in the company. Specifically, counsel references the AAO's finding that the beneficiary's responsibilities of promoting the company, developing new markets, determining operating budgets, or handling customer complaints more closely resemble non-qualifying operational tasks related to the

company's marketing, sales, and advertising functions, rather than managerial or executive tasks, as suggested by the petitioner. In dispute of the AAO's finding, counsel states on motion:

In the first place, the petitioner never claimed that the beneficiary actually performs the task(s) of promotion, marketing, sales, or advertising of the company. The petitioner merely stated that the beneficiary is responsible for '*planning, developing, and establishing* advertising, marketing and promotion of our services, to develop new markets, increase share of market, and obtain competitive position in the industry,' which is '*an essential function*' in order for the company to expand its business and remain profitable, and which fact is further supported by the [Occupational Outlook Handbook (OOH)] acknowledging marketing as an *essential function*, stating that 'the fundamental objective of any firm is to market its services profitably' (copy on file). The AAO has long acknowledged the role of a 'functional' manager in small organizations. *Matter of Vaillancourt*, 13 I&N Dec. 654 (R.C. 1970), and *Matter of Borris*, 13 I&N Dec. 601 (Reg. Comm'r 1970).

* * *

The AAO abused its discretion when it stated that '[b]ased on the petitioner's claims, the beneficiary would *manage* the previously noted tasks; yet the petitioner has not identified a subordinate staff that would develop and implement the company's marketing, advertising, and promotional programs' – once again, there is absolutely no claim on the part of the petitioner stating that the beneficiary would '*manage*' the company's marketing, advertising, and promotional programs; the petitioner stated that the beneficiary is responsible for '*planning, developing, and establishing* advertising, marketing and promotion of our services,' which is an *essential function* – in order for the company to market its services profitably, develop new markets, increase share of market, and obtain competitive position in the industry.

(Emphasis in original).

The record demonstrates that the AAO properly considered the beneficiary's eligibility for classification as a function manager. At the time of the appeal, counsel merely alleged that the beneficiary should be considered a function manager because he is "managing the overall activities of operations relating to the [petitioner's repairs, remodeling, mending, and cleaning of carpets], ensuring optimum efficiency and economy of operations and maximizing profits . . . [and] planning, developing, and establishing advertising, marketing and promotion of our services, to develop new markets, increase share of market, and obtain competitive position in the industry. . . ." Based on counsel's vague claim, the AAO's finding that petitioner failed to identify a specific function to be managed by the beneficiary is reasonable. The concept of function manager requires the petitioner to furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). The record as constituted at the time of the AAO's review does not satisfy this requirement of specificity.

Counsel's claims on motion are not sufficient to overcome the AAO's analysis of whether the petitioner established the beneficiary's eligibility as a function manager. As clarification, the AAO first addresses

counsel's argument that petitioner did not represent the beneficiary as *managing* the company's marketing, advertising, and promotional programs, but instead stated that he would *plan, develop* and *establish* these services, which counsel alleges is an essential function. Counsel appears to be claiming that prior to the instant motion the petitioner did not explicitly represent the beneficiary as a function manager. Yet, counsel's earlier representations on appeal that the "marketing [i]s an essential function" and that the management of the company's overall operations is an essential function implies the role of a function manager. The statutory definition of "managerial capacity" addresses the relevance of the term "essential function" when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). Under the claim of function *manager*, the beneficiary would purportedly *manage* an essential function of the company.

Nonetheless, even if an activity or component is deemed to be an essential function of the business, the petitioner must still demonstrate that the beneficiary would primarily manage the particular function rather than primarily perform the duties related to the function. The AAO was correct in concluding that the record suggested that the beneficiary would primarily perform non-qualifying tasks of the "essential functions" identified by counsel, most notably the marketing, advertising, and promotional programs, as well as sales, advertising, administrative, and customer service functions. In making this determination, the AAO noted the petitioner's failure to identify a subordinate staff that would perform any of the non-managerial and non-executive tasks associated with the above-listed functions, and thus a lack of evidence in the record to establish that the beneficiary would be relieved from personally performing these tasks. See *Q Data Consulting, Inc. v. INS*, 293 F.Supp.2d. 25, 29 (D.D.C. 2003) (holding that the INS' finding that the beneficiary did not work in a primarily managerial or executive capacity was "bolstered by the absence of evidence that a sufficient 'subordinate staff' will 'relieve her from performing managerial nonqualifying duties' "). The AAO recognized that the beneficiary's marketing and advertising responsibilities would occupy 35 percent of the beneficiary's time, but noted that the petitioner had not accounted for the additional time the beneficiary would presumably spend performing such the administrative tasks related to personnel matters, and bookkeeping, banking, and accounting functions.

In opposition to the AAO's finding, counsel states on motion that the beneficiary "does not perform the marketing, advertising, and promotions of the company," and explains that the beneficiary instead "decided to outsource marketing, advertising, promotions, and accounting, in order to cut expenses." Counsel references the beneficiary's role as a liaison between the petitioning entity and the claimed advertising and promotion agencies. The AAO notes that in its September 16, 2005 decision, in which the matter was remanded to the director for the issuance of a request for evidence, the petitioner was notified of a deficiency in the record that undermined its claim of employing the beneficiary as a function manager. Specifically, the AAO rejected counsel's claim that the beneficiary's responsibilities of "planning, developing, formulating and managing advertising, marketing, and promotion of [the petitioner's] services to develop new markets, increase share of market, and obtain competitive position in industry" constituted the management of an essential function. The AAO concluded that the job description was more indicative of one who would perform "routine operational tasks associated with advertising, marketing, and promoting the petitioner's services." Nonetheless, despite the comments made by the AAO in its earlier decision, no suggestion was made by the petitioner, either in response to the director's request for evidence or on appeal, of utilizing outside agencies for its marketing, advertising and promotions.

In the present motion, counsel contends for the first time the petitioner's use of outside agencies to perform tasks originally determined by the AAO to have been the responsibility of the beneficiary. Counsel, however, neglects to submit any documentary evidence, such as copies of payments made by the petitioner or invoices for services rendered to the petitioning entity supporting this claim. Moreover, the petitioner's federal income tax return for 2004, the year during which the Form I-140 was filed, undermines counsel's claim that the petitioner contracted for outside services, as there is no evidence of payments made for accounting, marketing, or promotional services. In fact, the only deductions listed by the petitioner on its 2004 income tax return are for expenses related to its automobiles, insurance, bank fees, office, and utilities. Absent relevant documentary evidence, such as the documents noted above, counsel's claim that the beneficiary would not personally perform the above-named non-managerial and non-executive tasks remains unsubstantiated. Accordingly, based on the record available at the time of the AAO's review, the AAO properly rejected the beneficiary's purported role as a function manager. Furthermore, the record does not support counsel's claim that the AAO's finding was an abuse of its discretion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel further alleges that the AAO incorrectly categorized the beneficiary's responsibilities of handling customer complaints and "overseeing the organization, scheduling, and implementation of projects" as non-managerial or non-executive. Counsel contends that it is common in small corporations for the general manager to handle customer complaints, as "the success of the company depends on customers' satisfaction," which incorporates "[a]ssessing customer needs, [and] meeting quality standards for services offered by the company." Counsel also states:

Since the beneficiary retains the ultimate responsibility for the financial success of the company, then judgment and decision making related to the services provided by the company; overseeing budgets and ensuring that resources are used properly and that programs are carried out as planned, directing and coordinating the activities of the company; managing daily operations and overseeing the use of materials and human resource; overseeing activities directly related to services provided by the company are being carried out efficiently and effectively, and stay within budget in order to maximize the company's profits; considering the relative costs and benefits of potential actions to choose the most appropriate one; management of personnel resources, determining staffing requirements, identifying the best people for the job; staff and time management, developing constructive and cooperative working relationships and maintaining them over time; monitoring and assessing performance of subordinates to make improvements or take corrective action, are all managerial responsibilities.

Counsel's assertions as to the managerial nature of the above-named job duties are not persuasive. The AAO recognizes that the success of a business is based on customer satisfaction. However, regardless of the "small" or large size of a corporation, the beneficiary's role in personally performing the petitioner's customer services function, which, according to the petitioner includes handling customer complaints, obtaining and evaluating information from customers, employees, and third parties, "resolving conflicts and negotiating with others," and "sett[ing] disputes" are not typically deemed to be managerial or executive in nature. See §§ 101(a)(44)(A) and (B) of the Act. Similarly, contrary to counsel's claim, the beneficiary cannot be deemed

to be "overseeing" such functions as the scheduling and implementation of projects. As the petitioner has not identified any subordinate workers who would be responsible for scheduling the company's appointments and projects, there is insufficient evidence documenting the beneficiary's purported responsibility of "overseeing the organization, scheduling, and implementation of projects." As noted previously, the absence of a subordinate staff sufficient to perform the non-qualifying duties of the petitioner's business is a proper consideration in the analysis of the beneficiary's employment capacity. *See Q Data Consulting, Inc. v. INS*, 293 F.Supp.2d. 25, 29 (D.D.C. 2003)

Counsel also contends that because the beneficiary supervises and controls the work of supervisory, professional, and managerial employees, he qualifies as a manager under section 101(a)(44)(A) of the Act. Counsel challenges that under the cited statute, the petitioner is required to demonstrate only that the beneficiary supervises a manager, or a supervisor, or a professional, and states that the beneficiary's classification as a manager is established by the sole fact that he is supervising a subordinate carpet/rug supervisor, who is employed in a supervisory position. In its December 13, 2006 decision, the AAO did not contest the supervisory role of the rug/carpet cleaning supervisor, but found insufficient evidence demonstrating that the beneficiary's other two subordinates – a warehouse manager and a color expert – were in fact employed as a manager or professional, respectively, as alleged by the petitioner. Nonetheless, the beneficiary's purported supervision and control of supervisory, professional or managerial employees does not, by itself, establish his employment in a primarily managerial capacity. This requirement is but one of four criteria outlined in the statutory definition of "managerial capacity," which requires a showing that the beneficiary would satisfy each of the four high-level responsibilities. Similarly, if the petitioner had demonstrated that the beneficiary would manage an essential function of the organization, this factor alone would not have satisfied the statutory definition of "managerial capacity."

Lastly, counsel maintains that CIS' previous approvals of two L-1A nonimmigrant petitions filed by the petitioner on behalf of the beneficiary "should be a relevant consideration in adjudicating the immigrant petition to classify the beneficiary as a manager or executive," particularly since the original L-1A nonimmigrant petition involved the opening of a new United States office, the extension of which, counsel notes, requires the petitioner to submit "specific, additional supporting evidence" of the beneficiary's proposed employment as a manager or executive. Counsel references the AAO's comment in its December 13, 2006 decision that "unless a petition seeks extension of a 'new office' petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and CIS normally accords the petitions a less substantial review." Counsel contends that because the prior approvals required additional documentary evidence of the beneficiary's proposed employment, it is logical that USCIS would apply "a more substantial review" to the beneficiary's two nonimmigrant petitions.

As noted in its earlier decision, the AAO again instructs that each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof. *See* 8 C.F.R. § 103.8(d). Despite the approval of two L-1A nonimmigrant visa petitions authorizing the beneficiary's employment as the general manager of the petitioning entity, each petition must stand on its own individual merits. In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The AAO notes that the earlier nonimmigrant petitions are not part of the instant record of proceeding. Nonetheless, 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.

While the statutory definitions for managerial and executive capacity are the same for the immigrant and nonimmigrant classifications, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act. 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.

Counsel's suggestion that USCIS likely applied a more strict analysis to its review of the "new office" visa petition and the petition involving the extension of the new office does not take into account the fact that 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). 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).

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the previous decisions of the director and AAO are affirmed.

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 previous decisions of the director and the AAO will be affirmed and the petition will be denied.

ORDER: The AAO's December 13, 2006 decision is affirmed.