



U.S. Citizenship
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FILE: [Redacted]
LIN 06 016 51285

Office: NEBRASKA SERVICE CENTER

Date: MAY 15 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

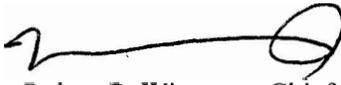
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, initially approved the employment-based visa petition. The director subsequently issued a notice of intent to revoke the petition's approval and provided the petitioner an opportunity within which to rebut the proposed revocation. Following the petitioner's response, the director revoked approval of the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.¹

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 Delaware that is engaged in providing telecommunications and information technology services. The petitioner seeks to employ the beneficiary as its server manager.

The petitioner has filed two immigrant visa petitions for this beneficiary: the first petition was denied in 2004 and the second petition was approved in 2005 and subsequently revoked in 2006. In its first filing, the petitioner and counsel represented that [REDACTED] employed the beneficiary immediately prior to his transfer to the United States as a nonimmigrant. As will be discussed, the petitioner and counsel now assert in the instant petition that a different company was the beneficiary's last foreign employer.

In a decision dated April 5, 2006, the director revoked approval of the second petition based on the petitioner's failure to demonstrate that the beneficiary's foreign employer, who the petitioner initially represented to be [REDACTED] enjoyed a qualifying relationship with [REDACTED] the petitioning entity, at the time of filing the petition.

On appeal, counsel contends that prior to transferring to the United States as a nonimmigrant, the beneficiary was employed by debis [REDACTED], as represented on the previously denied I-140 petition and a blanket L petition.² Counsel's claims that debis [REDACTED]

¹ The petitioner previously filed an employment-based immigrant petition requesting classification of the beneficiary as a multinational manager or executive (LIN 04 020 51050). In a decision dated December 6, 2004, the director denied the petition concluding that the petitioner had not established the existence of a qualifying relationship between the foreign and United States entities at the time of filing. The AAO subsequently affirmed the director's decision and dismissed the appeal. Based on the record initially presented for review by the director and the AAO, [REDACTED] and the petitioning entity did not enjoy a qualifying relationship on the filing date. The AAO detailed the deficiencies in the petitioner's claim of an affiliate relationship with the beneficiary's purported overseas employer. That decision is part of the current record of proceeding, as it has been incorporated into the beneficiary's permanent A-file (A99 328 899).

² The current petition is premised on an extremely complicated set of facts that were first developed in the previous proceeding. Based on the record, at the time of the beneficiary's transfer to the United States, debis [REDACTED] was owned by the German company debis [REDACTED] now [REDACTED] the product of an agreement between [REDACTED] and [REDACTED] which resulted in [REDACTED] ownership of 50.1 percent of the corporation. In March 2002, [REDACTED] exercised its option to sell its 49.9 percent share in debis [REDACTED] thereby resulting in [REDACTED] ownership and control of the German company as well as of debis [REDACTED]. The record demonstrates that at the

and the United States entity enjoyed a qualifying relationship on the date of filing. In an appellate brief, counsel addresses discrepancies raised by the director with respect to the beneficiary's foreign employer, and submits documentation of the beneficiary's purported employment with debis IT Services (UK) Ltd. prior to his transfer to the United States as a nonimmigrant.

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.

time of the beneficiary's transfer to the United States in January 2001, debis [REDACTED] was owned and controlled by [REDACTED]. As discussed by the AAO in its January 25, 2006 decision, the record does not demonstrate that [REDACTED] ever entered into a bona fide joint venture agreement. See 8 C.F.R. § 204.5(j)(2) (contemplating a qualifying subsidiary relationship wherein an entity owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity). Based on the information reported on page eleven of [REDACTED] Form 20-F filed with the Securities and Exchange Commission on February 20, 2003, [REDACTED] owned a 50.1 percent controlling interest in debis [REDACTED] thereby qualifying as the majority owner of the corporation. There is no evidence that [REDACTED] controlled debis [REDACTED] with its 49.9 percent minority interest. Moreover, as determined by the AAO, there is no evidence that [REDACTED] and the petitioning entity enjoyed a qualifying relationship at the time of the beneficiary's transfer under [REDACTED] L petition or on the date of filing the prior Form I-140 petition (LIN 04 020 51050).

Following approval of an immigrant or nonimmigrant petition, the director may revoke approval of the petition in accordance with the statute and regulations. Section 205 of the Act, 8 U.S.C. § 1155 (2005), states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition."

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding "good and sufficient cause" and the revocation of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals (BIA) has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590. Notwithstanding the Citizenship and Immigration Service (CIS) burden to show "good and sufficient cause" in proceedings to revoke approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

Notwithstanding the director's finding that the petitioner failed to establish the existence of a qualifying relationship between [REDACTED] and the petitioning entity, the critical issue in this proceeding is whether the instant record resolves the petitioner's earlier identification of [REDACTED] (UK) Ltd. as the beneficiary's last foreign employer so as to demonstrate the beneficiary's eligibility for the requested visa classification.

To establish a qualifying relationship under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e. a United States entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

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;

* * *

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 filed the instant Form I-140 petition on October 14, 2005. At this time, the beneficiary was employed by the petitioning entity, [REDACTED], as an L-1A nonimmigrant intracompany transferee. The beneficiary initially entered the United States on January 23, 2001 on a Blanket L petition of [REDACTED].³ Based on the Form I-129S, Nonimmigrant Petition based on a Blanket L Petition, the beneficiary had been employed overseas by [REDACTED] from April 1998 until his entrance into the United States in January 2001 to work for [REDACTED]'s Warrenville Support Center in Lisle, Illinois. Upon arrival in the United States, the beneficiary commenced employment with T-Systems North America, Inc., the petitioning entity, not [REDACTED] on, as represented in the Form I-129S. The AAO notes that [REDACTED] (UK) Ltd., is included on the list of qualifying organizations attached to the Form I-797 Approval Notice, however, debis [REDACTED] is not identified as an approved qualifying organization.

On October 29, 2003, the petitioner filed the previously referenced employment-based visa petition to classify the beneficiary as a multinational manager or executive, and seeking to employ the beneficiary as its operations program manager (LIN 04 020 51050). With this filing, the petitioner provided a copy of the Form I-129S submitted by the beneficiary to the U.S. Embassy in London, on which the petitioner had noted the beneficiary's foreign employment with DaimlerChrysler (UK) Ltd. from April 1998 until January 2001, and his proposed employment in the United States at DaimlerChrysler Corporation's Warrenville Support Center.

In connection with this earlier proceeding, the petitioner submitted a September 15, 2004 letter in response to the director's request for clarification of a qualifying relationship between the United States company and [REDACTED], in which it stated that in 1998, the time at which the blanket petition was filed, the beneficiary was employed by Mercedes-Benz (UK) Ltd., which was subsequently named [REDACTED] (UK) Ltd. The petitioner discussed the purported relationship between DaimlerChrysler (UK) Ltd. and the petitioning entity. There was no mention of the beneficiary's employment with debis IT Services (UK) Ltd.

³ The blanket L petition procedures allow for the expedited processing of L visas for petitioners with annual sales of \$25 million, a United States workforce of 1,000 employees, or if the employer can demonstrate that it received approval of at least 10 L petitions in the previous year. *See generally*, 8 C.F.R. § 214.2(1)(4). If approved as a blanket L employer, CIS creates a blanket approval notice with a list of the petitioner's pre-approved branch offices, affiliates, and subsidiaries that allows the employer to transfer employees among the companies on an expedited basis.

Counsel for the petitioner also submitted a copy of a January 12, 2001 letter submitted with the Blanket L petition, in which the immigration administrator for [REDACTED] discussed the beneficiary's employment in England, stating that he "has been a DaimlerChrysler employee at our affiliate company, [REDACTED] (UK) Ltd., in [REDACTED]s, England, from February 1, 1988 to the present – nearly 13 years." Counsel also provided a copy of the beneficiary's employee badge from [REDACTED] and a copy of a "consultant profile" of the beneficiary, which identified his employment with [REDACTED] from the year 2000 through the present. The AAO notes that the consultant profile does not reflect a date on which it was generated, yet, based on the provided employment history, it was prepared sometime during or after the year 2000.

The director denied the original I-140 immigrant visa petition, noting that it was unclear why blanket petition would have been used as evidence of a qualifying relationship, as there was no indication that [REDACTED] was affiliated with the United States petitioner.

In a January 25, 2006 decision, the AAO dismissed the petitioner's appeal of the director's denial concluding that the petitioner had not demonstrated the existence of a qualifying relationship between the beneficiary's overseas employer, [REDACTED] and the petitioning entity. In the brief submitted in connection with the earlier appellate proceeding, counsel again represented [REDACTED] as the beneficiary's last foreign overseas employer before transferring to the United States.

On October 14, 2005, after the denial of the first petition but prior to the AAO's decision on the appeal, the petitioner filed the second I-140 petition. In connection with this proceeding, the petitioner submitted a September 12, 2005 letter, in which it changed its claim and identified the beneficiary's foreign employer as debis [REDACTED] (presently known as [REDACTED] not [REDACTED]). The petitioner claimed the existence of an affiliate relationship between debis IT Services (UK) Ltd. and T-Systems North America, Inc., stating that each are indirect subsidiaries of the German company [REDACTED]. The petitioner submitted an organizational chart labeled "schematic representation of ownership change in 2002" which depicted the petitioner and debis [REDACTED] as subsidiaries of the German company [REDACTED], whose name was later changed to T-Systems ITS GmbH and which subsequently merged with [REDACTED] in November 2002. A second organizational chart titled "relevant corporate relationship" also identified the petitioner and debis [REDACTED] (UK) Ltd. as wholly-owned subsidiaries of [REDACTED].

The AAO notes that in the present filing, the petitioner did not address the beneficiary's former employment with [REDACTED], or explain its earlier claims that the beneficiary had been continuously employed with [REDACTED]d. from 1998 through the time of his transfer to the United States under [REDACTED] petition. Additionally, none of the accompanying organizational charts or corporate documentation identifies [REDACTED].

The director approved the petition on November 30, 2005.

On March 8, 2006, the director issued a Notice of Intent to Revoke, noting that the petitioner's representation of the beneficiary's foreign employer is not consistent with the claim in its earlier Form I-140 petition that the

⁴ [REDACTED] International GmbH, a company located in Germany, is represented as a wholly-owned subsidiary of [REDACTED].

beneficiary was employed by [REDACTED] immediately prior to his transfer to the United States. The director addressed the beneficiary's entrance into the United States as an L-1A nonimmigrant under [REDACTED] blanket petition, and noted that neither the petitioning entity nor the beneficiary's claimed foreign employer were identified as a qualifying organization on the blanket petition. The director stated:

The previous Form I-140 was denied on December 6, 2004 as the evidence did not demonstrate a qualifying relationship. You appealed this decision on January 7, 2005, and the appeal was subsequently dismissed on January 25, 2006. The appellate decision, which has already been provided to you, contained specific information regarding the lack of relationship between the beneficiary's employer abroad and the petitioning entity. In the interim, you filed this petition claiming a different employer abroad, although the evidence previously submitted clearly demonstrates that the beneficiary was employed by [REDACTED], not by debis [REDACTED]. As all previous documentation indicates that the beneficiary was employed by [REDACTED] not by debis [REDACTED] Limited as now claimed, it appears that this petition is misrepresenting the beneficiary's foreign employment.

Counsel responded in a letter dated March 21, 2006. In her letter, counsel stated that the beneficiary had been employed by DaimlerChrysler (UK) Ltd. from February 1988 through March 31, 1998, at which point he began employment with debis [REDACTED] until his transfer to the United States on [REDACTED] petition. Counsel claims that "inaccuracy" in the job description provided by [REDACTED] in its blanket petition resulted in her "confusion" and belief that [REDACTED] and debis [REDACTED] were the same company. Counsel stated:

5) Because of the inaccuracy in [REDACTED] description of [the beneficiary's] foreign employment [the] Petitioner and Petitioner's counsel had believed in good faith that [REDACTED] and [REDACTED] (now [REDACTED] [sic] were the same company with two offices in the same location. You will note the address of each company is almost identical (see exhibit 7).

6) [REDACTED] claims the use of their Blanket to transfer [the beneficiary] as [REDACTED] (formerly Mercedes-Benz (United Kingdom Ltd.) is on the blanket approval notice.

7) debis [REDACTED] the parent company of [REDACTED] (now [REDACTED]) is also on the DaimlerChrysler Blanket.

Evidence at the Point of First Transfer: DaimlerChrysler transferred [the beneficiary] based on his employment with DaimlerChrysler UK Ltd. which is permissible as he worked there within three (3) years prior to his transfer. In February 2001 when [the beneficiary] was transferred by DaimlerChrysler to its joint venture subsidiary debis IT Services North America, Inc., that subsidiary (now the Petitioner) would have no reason to believe that the transfer was improper because:

- i) There is no requirement to amend the blanket if the company name changes;

- ii) There is no requirement to amend an individual's visa if they move between companies on the blanket;
- iii) Personnel at debis [REDACTED] North America, Inc. believed in good faith that [the beneficiary's] transfer to this joint venture between [REDACTED] and [REDACTED] was properly completed and that all the entities were on the blanket.
- iv) The Blanket L states in pertinent part that [the beneficiary] will be 'a technical specialist (manager) . . . direct, manage and control [REDACTED] Support Center in Lisle Illinois.'

8) The offer letter is from debis [REDACTED], a company in the [REDACTED]. Petitioner is entitled to believe that [REDACTED] correctly transferred [the beneficiary] as [the] Petitioner was at that time a joint venture subsidiary of [REDACTED] and [REDACTED]. [REDACTED] in the United States maintains the [REDACTED] Blanket and completed [the beneficiary's] transfer to the Petitioner. The Petitioner would have no reason to believe this was not correct. The Service (CIS) makes a statement that debisIT Services North America, Inc. is not on the [REDACTED] L petition. The Petitioner does not have a copy of the U.S. [c]ompanies DaimlerChrysler had on its blanket and the Petitioner relied on [REDACTED] to handle this transfer properly.

* * *

11) The acquisition of [the beneficiary's] corporate employers abroad was not entirely clear until the relationships were investigated further for the appeal file for the original I-140. It was not until this point that the Petitioner discovered that it was not one of the many name changes of the employer abroad, but in fact two (2) separate qualifying employers abroad. In the appeal this was clarified. This in no way alters the fact that [the beneficiary's] last employer abroad was debis [REDACTED] d. (now [REDACTED]) and Petitioner was included in that acquisition, thereby preserving the L[-]1A relationship. The misstatements made by [REDACTED] in the blanket caused the Petitioner to initially believe that [the beneficiary] had one [REDACTED] related employer abroad and not two. The visa is still correct because his last employer was fully acquired thereby preserving the qualifying relationship.

* * *

Conclusion: The approved I-140 petition should not be revoked as a qualifying corporate relationship existed at the time of [the beneficiary's] initial transfer and has been maintained throughout [the beneficiary's] transfer. His last employer in the UK was debis I [REDACTED] [REDACTED]. (now [REDACTED]) [REDACTED]. The employer in the UK and in the United States were [sic] originally owned 50.1% by Deutsche Telekom and 49.9% by [REDACTED] and now is owned 100% by [REDACTED] always preserving a necessary corporate relationship to maintain the I-140 petition.

(Emphasis in original.)

As evidence of the beneficiary's prior overseas employment, counsel for the petitioner submitted two letters: (1) an October 19, 2005 letter, in which the human resources administrator of [REDACTED] formerly debis [REDACTED] stated that the beneficiary had been employed with the foreign company from April 1, 1998 through February 9, 2001; and (2) a March 20, 2006 facsimile from a human resources senior assistant of [REDACTED], identifying the beneficiary's dates of employment with the company as February 1, 1988 through March 31, 1998. Counsel also provided copies of the previously referenced Form I-129S and [REDACTED] January 12, 2001 letter offered in connection with its Blanket L petition filed on behalf of the beneficiary.

In an April 5, 2006 decision, the director concluded that the petitioner had not demonstrated that the beneficiary's foreign employer and the petitioning entity enjoyed a qualifying relationship on the filing date. The director again noted discrepancies in the beneficiary's foreign employment, and concluded that the record did not clearly establish which company served as the beneficiary's overseas employer. The director acknowledged counsel's March 21, 2006 response, yet stated that the petitioner submitted only "newly prepared statements" as evidence of the beneficiary's employment with debis [REDACTED] Ltd. The director noted the limited documentary evidence establishing the beneficiary as an employee of debis [REDACTED], as compared to the "multitude of documents previously provided" that identify the beneficiary as being employed with [REDACTED] until 2001. The director found that the record did not establish debis IT Services (UK) Ltd. as the beneficiary's foreign employer. The director concluded that the petitioner had not established a qualifying relationship between the petitioning entity and [REDACTED] Ltd., the company deemed by the director to have employed the beneficiary immediately prior to his entrance into the United States as a nonimmigrant. Consequently, the director revoked the petition's approval.

Counsel for the petitioner filed the instant appeal on April 24, 2006. In an appended appellate brief, counsel challenges the director's finding, stating that the beneficiary was employed by debis I [REDACTED] from April 1, 1998 through February 9, 2001, at which time he entered the United States as an L-1A nonimmigrant under [REDACTED] blanket petition. Counsel states that at the time of petitioning for the beneficiary's employment in the United States, the petitioner was not aware of a distinction between debis [REDACTED] and [REDACTED]. Counsel states:

5) In February 2001 [REDACTED] used its blanket L to transfer [the beneficiary] from [REDACTED] to 'The [REDACTED] Center.' [REDACTED] claims the use of their Blanket to transfer [the beneficiary] as [REDACTED] Ltd. (formerly Mercedes-Benz (United Kingdom Ltd.) is on the blanket approval notice.

6) debis [REDACTED] c. [now [REDACTED]] is generally referred to as the 'Warrenville Support Center.' (see exhibit 7 offer letter). debis IT Services [REDACTED] personnel relied on [REDACTED] to complete [the beneficiary's] transfer in 2001. Since the offer was from debis [REDACTED] c. (a [REDACTED] Telekom Joint Venture) and [REDACTED] was tasked to process a visa for [the beneficiary] for that company, [the] Petitioner did not make an independent determination if the company was on the [REDACTED] blanket, nor did it make an independent determination if the 50.1/49.9 joint venture allowed for equal control of the joint venture by [REDACTED] and [REDACTED]. However, debis stationary

suggests a qualifying relationship, since it refers to the company as the 'DaimlerChrysler Services Group.'

7) [The beneficiary's] last employer in the UK was [REDACTED] (now [REDACTED]) from April 1, 1998 to February 9, 2001 (see exhibit 1). The blanket petition states in pertinent part that his employer from '4/98-present, Senior Technical Consultant (manager), DaimlerChrysler UK Ltd. . .' (see exhibit 6). Since [the beneficiary's] last employer in the UK was indeed [REDACTED] (now [REDACTED] and DaimlerChrysler used its blanket to transfer [the beneficiary] it did not appear to [the] Petitioner that there was a distinction between these two companies, until it was investigated for the purpose of responding to the Service Center's request for additional information.

8) The Service's most recent decision implies that the distinction is obvious, but since [the beneficiary's] last foreign employer was [REDACTED] d. (now [REDACTED] from April 1, 1998 to February 9, 2001 it was not obvious to [the] Petitioner.

9) DaimlerChrysler maintains the blanket L petition. debis [REDACTED] personnel would have no way of knowing if DaimlerChrysler properly transferred [the beneficiary] to the joint venture, or properly captioned the company names. Again the offer letter was from debis, and the stationary of debis refers to the company as the 'DaimlerChrysler Services Group.' (see exhibit 7)

* * *

15) [The beneficiary's] qualifying employment existed in the UK. The record indicates that he had two employers within three (3) years of his transfer to the United States. DaimlerChrysler UK Ltd. until April 1998 and debis IT Services UK Ltd. from April 1998 to February 9, 2001.

16) Petitioner was not involved in [the beneficiary's] original transfer, hence it assumed was correct; however, in petitioning for the permanent residency benefit the Petitioner is not obligated to establish a relationship between DaimlerChrysler UK Ltd. and [the] Petitioner. [The] Petitioner is only obligated to establish the relationship between itself and debis [REDACTED], [the beneficiary's] last foreign employer.

17) Assuming for argument sake that DaimlerChrysler was not permitted to transfer [the beneficiary] on its blanket to the Petitioner because it did not control the joint venture, Deutsche Telekom could have transferred [the beneficiary] as the joint venture existed at the time of the transfer. Following the buy-out of DaimlerChrysler the qualifying corporate relationship still existed as the foreign employer and the U.S. employer were subject to the buy-out. The Petitioner's only error is in misunderstanding the names of the companies abroad. The error is not material as [the] Petitioner did not affect [the beneficiary's] original transfer and made no misstatements about his foreign employment.

18) Prior to [the beneficiary's] transfer a qualifying relationship existed between [the petitioning entity] and [REDACTED] It was the 50.1% [REDACTED] and

49.9% DaimlerChrysler joint venture, in which at minimum D [redacted] (the surviving joint venture partner) could have transferred [the beneficiary]. After March 2002[,] [the beneficiary's] U.S. employer and last foreign employer were both owned 100% by Deutsche Telekom and [the beneficiary's] visa [was] amended accordingly, because it is at this juncture that [the] Petitioner is aware that [the beneficiary] cannot remain on the DaimlerChrysler blanket, as DaimlerChrysler divested itself of the company. (see exhibit 10)

[The] Petitioner was not involved in [the beneficiary's] initial transfer to the United States and assumes it was done correctly. [The] [petitioner] is not obligated to prove a relationship between DaimlerChrysler UK Ltd. and itself because that relationship is not relevant to [the beneficiary's] transfer as his last foreign employer was a debis company. A qualifying corporate relationship must exist throughout the transfer but need not remain the same (see exhibit 12). The Petitioner and beneficiary should not be prejudiced by an error in the initial transfer that it was not involved in when the qualifying corporate relationship did exist at all times.

As evidence of the beneficiary's foreign employment, counsel submits a copy of an employment offer from debis [redacted] to the beneficiary dated February 23, 1998, as well as letters from debis [redacted] dated December 17, 1998, December 6, 1999 and December 19, 2000. Counsel also submits a January 30, 2001 letter from debis [redacted] d. acknowledging the beneficiary's resignation from the foreign company. Counsel further provides copies of the beneficiary's "confidential pay advice" reflecting the wages paid by debis [redacted] to the beneficiary in the months of January and October through December 2000, May and December 1999, and April, June and September 1998, as well as copies of the beneficiary's years 1999 and 2000 Certificate of Pay, Income Tax and National Insurance contributions. The record also contains a copy of the beneficiary's March 1998 statement of wages paid by [redacted] l. and his 1998 tax certificate identifying Mercedes-Benz as his employer.

Upon review, counsel's assertions are not persuasive. The record does not contain sufficient independent and objective evidence to clarify which of the petitioner's conflicting assertions represent the true facts of this case. Specifically, the AAO cannot determine whether the beneficiary was employed with DaimlerChrysler (UK) Ltd. immediately prior to his transfer to the United States, or whether debis [redacted] d. was the beneficiary's last foreign employer. The unresolved inconsistencies prevent the AAO from determining the existence of the requisite qualifying relationship for the instant immigrant visa petition.

In establishing a beneficiary's eligibility for the requested immigrant visa classification, the petitioner is obligated to clarify the inconsistent and conflicting testimony by "independent and objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes multiple material discrepancies, and the petitioner fails to resolve the discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. *Id.*

Here, the record contains conflicting documentation and discrepant claims as to which foreign company served as the beneficiary's employer immediately prior to his transfer to the United States as a nonimmigrant. In the instant proceeding, counsel has failed to address the repeated claims made by DaimlerChrysler in its January 12, 2001 letter and on the Form I-129S of the beneficiary's continuous thirteen-year employment with

This omission is particularly important considering both the January 12, 2001 letter and the Form I-129S were submitted by counsel as evidence in the instant proceeding, and were twice incorporated into the record during the earlier I-140 proceeding. The AAO again emphasizes that in its January 12, 2001 letter, [redacted] made no mention of the beneficiary's purported overseas employment with debis IT Services (UK) Ltd., stating instead that "from April, 1998 to the present, [the beneficiary] has been employed in the managerial position of Senior Technical Consultant (Manager), [redacted]"

The question remains whether the beneficiary was in fact employed by [redacted] until his transfer to the United States in January 2001 or if [redacted] represented the beneficiary as being an employee of DaimlerChrysler (UK) Ltd. for thirteen years in order to exploit the relaxed requirements of the blanket L petition process. 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. at 591.

Counsel did not specifically explain the purported inaccuracies represented in the January 12, 2001 letter and the Form I-129S, or reconcile these representations with the claims made by [redacted], formerly debis [redacted]. In an October 19, 2005 letter, [redacted] stated that the beneficiary was employed with that company until February 2001. Counsel seems to view these inconsistencies as merely a mistake, asserting in her appellate brief that the record "indicates" that the beneficiary had two different employers during the three years prior to his transfer to the United States. In fact, the record does not contain independent and objective evidence demonstrating that the beneficiary was employed by debis [redacted]. While counsel offered on appeal copies of the beneficiary's pay receipts from debis I [redacted] they are not sufficient to establish his employment with the company during the claimed period as the dates of employment are not in agreement with those listed on the beneficiary's consultant profile. Counsel did not attempt to clarify the conflicting letters and claimed dates of employment, or offer an explanation as to why, prior to the instant filing, DaimlerChrysler (UK) Ltd. was repeatedly represented as the beneficiary's last overseas employer.

In light of the unresolved inconsistencies in the documentary evidence that is relevant and essential to determining the beneficiary's eligibility for the requested visa classification, the AAO cannot accept counsel's attempt to simply overlook these discrepancies or dismiss them as "misunderstandings" or the result of counsel's "confusion." Again, the petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92.

Moreover, while not specifically discussed by the director or counsel, the numerous inconsistencies presented by the beneficiary's DaimlerChrysler (UK) Ltd. consultant profile remain unexplained. The AAO notes that the beneficiary's consultant profile for DaimlerChrysler (UK) Ltd. indicates that the beneficiary assumed the position of senior technical consultant with the company in the year 2000, approximately two years after the beneficiary was claimed to have commenced employment with [redacted], formerly debis [redacted]. Also, according to the consultant profile, during the same time the beneficiary was purportedly employed by debis [redacted], he occupied the position of technical consultant at DaimlerChrysler (UK) Ltd. And while the petitioner has submitted pay records on appeal, the representations made on the consultant profile also contradict the beneficiary's purported period of employment with debis [redacted] (UK) Ltd., as represented on the pay receipts, damaging the probative value of the receipts in determining the beneficiary's last foreign employer. These additional inconsistencies raise serious concerns about whether the

beneficiary's overseas employment was intentionally misrepresented in order to benefit from the use of DaimlerChrysler's blanket petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.*

Counsel further alleges that regardless of the inconsistent statements made by DaimlerChrysler on its blanket petition, the beneficiary's transfer to the United States as a nonimmigrant was permissible as the beneficiary worked for DaimlerChrysler (UK) Ltd. within three years of his entrance into the United States. Counsel's claim is misplaced.

The pre-approved list of the petitioner's qualifying branch offices, subsidiaries, and affiliates is critical to the processing of a blanket L petition. The regulation at 8 C.F.R. § 214.2(l)(5)(ii)(D) states in pertinent part that when seeking admission to the United States under a blanket petition, the adjudicating immigration or consular officer "shall determine further whether the alien's immediate prior year of continuous employment abroad was with an organization named in the petition" In addition, the consular officer "shall determine whether the position in which the [beneficiary] will be employed in the United States is with an organization named in the approved petition."

In the instant matter, DaimlerChrysler (UK) Ltd., formerly Mercedes-Benz (UK) Ltd., is named on DaimlerChrysler's blanket petition; neither debis IT Services (UK) Ltd. nor the petitioner is identified on the blanket petition as an approved qualifying organization. According to counsel, the beneficiary was employed by debis IT Services (UK) Ltd. the year immediately prior to seeking L classification under the blanket petition. Based on counsel's claim, under 8 C.F.R. § 214.2(l)(5)(ii)(D), the beneficiary would not be eligible for the L classification under DaimlerChrysler's blanket petition. The conflicting claims as to the beneficiary's last overseas employer restricts the analysis of whether the beneficiary's L-1 visa was properly granted.

Moreover, the petitioner, then known as debis [REDACTED], was not listed on the blanket L petition. Based on the I-129S blanket petition (LIN 99 051 51729) and the visa issued by the U.S. Embassy in London, the petitioner identified DaimlerChrysler Corporation as the beneficiary's intended employer at the time of the transfer. Both the Form I-129S and January 12, 2001 letter submitted to the U.S. Embassy in London indicated that the beneficiary would work for the Blanket L petitioner, "DaimlerChrysler [REDACTED] Center" in Lisle, Illinois. Counsel noted in her March 21, 2006 letter that the petitioner did not possess a copy of organizations approved on DaimlerChrysler's blanket petition, and claimed that the petitioner believed that the beneficiary was properly transferred to work at its company in the United States. Counsel also states on appeal that the Form I-129S "states the corporate name generically 'The Warrenville Support Center' and 'DaimlerChrysler [REDACTED] Support Center,' which is how [the petitioning entity] is captioned in the publicly available information." This assertion is not supported by the record. Instead, the record contains a copy of a January 12, 2001 job offer letter on debis [REDACTED] North America, Inc. letterhead, signed by the beneficiary in February 2001, after his visa was issued. Based on the date of this letter, it appears that it was not submitted to the U.S. Embassy in London with the beneficiary's Blanket L-1A application, and thus the consular officer would have reasonably assumed that the beneficiary would be working for DaimlerChrysler Corporation in the United States. Accordingly, the beneficiary's blanket L-1 visa appears to have been granted in error.

Counsel further alleges that because a qualifying relationship existed at the time of the beneficiary's transfer to the United States and has been maintained between the petitioner and debis [REDACTED], the I-140 petition should not be revoked. Counsel's claim is based on the unproven assertion that the beneficiary was last employed by debis I [REDACTED]. As discussed above, the inconsistencies in the record preclude a finding that debis [REDACTED] employed the beneficiary immediately prior to his transfer to the United States.

In order to establish eligibility for classification as a multinational manager or executive for immigrant visa purposes, the petitioner must establish that it maintains a qualifying relationship with the beneficiary's foreign employer; the foreign corporation or other legal entity that employed the beneficiary must continue to exist and have a qualifying relationship with the petitioner at the time the immigrant petition is filed. 8 C.F.R. § 204.5(j)(3)(i)(C). A multinational executive or manager is one 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." Section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). Here, because the record does not clarify the company that last employed the beneficiary overseas, counsel's opposition of the petition's revocation is unsupported.

Based on the foregoing discussion, the petitioner has not resolved the critical issue of which company employed the beneficiary immediately before his transfer to the United States under DaimlerChrysler's Blanket L petition. Again, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above preclude a finding that the beneficiary is eligible for the requested visa classification. Accordingly, the revocation of the immigrant visa petition is affirmed.

The AAO notes that CIS previously approved an amended L-1A visa petition filed by the petitioner on behalf of the beneficiary. The AAO emphasizes and reiterates its previous dismissal of an appeal filed by the petitioner in connection with an earlier I-140 petition. In its January 25, 2006 decision, the AAO noted that the petitioner submitted misleading information in support of the beneficiary's I-129 petition, in that it misrepresented the name of the beneficiary's foreign employer and its relationship to Deutsche Telekom AG. 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).

It is noted that many I-140 petitions are denied after CIS approves 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. In addition, 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. *See* 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). 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 approval does not preclude CIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary.

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 a prior approval that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). 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).

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 petition approval will be revoked for the above-stated reason.

ORDER: The appeal is dismissed.