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U.S. Citizenship
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Services

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FILE:

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LIN 06 199 52757

Office: NEBRASKA SERVICE CENTER

Date: DEC 01 2008

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a Florida corporation, claims to be an "entertainment production company" and to have a qualifying relationship with the beneficiary's foreign employer in Argentina. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be or has been employed in a primarily managerial or executive capacity.

On appeal, counsel to the petitioner disputes the director's findings, asserts that the beneficiary will perform, and has performed, primarily qualifying duties, and submits a brief and additional evidence.

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

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

* * *

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

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

Title 8 C.F.R. § 204.5(j)(3) explains that a petition filed for a multinational executive or manager under section 203(b)(1)(C) must be accompanied by a statement from an authorized official of the "petitioning United States employer" which demonstrates that:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

The first issue in this proceeding is whether the petitioner provided sufficient evidence to establish that it will employ the beneficiary 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) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

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

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

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

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

The petitioner claims in the Form I-140 to employ two workers and describes the beneficiary's proposed duties in the United States as follows:

Establishing network and entertainment clientele. Securing contract for shows and exhibitions. Contracting crews and dancers for shows as needed. Responsible for coordination for all sub-contractors and productions of all shows and/or events[.]

Counsel further described the beneficiary's proposed duties in her letter dated June 19, 2006 as follows:

[The beneficiary] will be responsible for continuing his duties, which involves the direction and coordination of the company's budgeting, marketing and sales activities. He would continue to negotiate and review all contracts with the television and publications industry. [The beneficiary] would also continue to control all financial activities and transactions as well as decide on all legal matters upon consulting with the company's legal counsel.

The position of Executive Director will also require him to maintain and continue to nurture his contacts and relationships in the entertainment industry. [The beneficiary] has that specific knowledge base which can only be gained by years of experience and is unavailable to other[s] without extensive training and experience.

On March 15, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties in the United States, including a breakdown of the amount of time the beneficiary will devote to each of his ascribed duties, an organizational chart, and descriptions of any subordinate workers.

In response, the foreign employer submitted a letter dated June 5, 2007 in which it further describes the beneficiary's proposed duties as follows:

[The beneficiary] has total discretion in negotiations and contracts with network companies such as A&E and the History Channel in the United States as well as regional companies such as Nikki Beach and Penrods that host the internationally recognized South Beach events. The nature of this business is one of entertainment productions which do not require a permanent staff, but rather it is a constantly evolving set of artists, actors, models, musicians, D.J.'s, lighting and sound technicians. [The beneficiary] recognizes the talent and matches it to the need of the productions. There are employees that are permanent such as [██████████] the administrative assistant] who [the beneficiary] supervises as she coordinates the bookings and until recently there was a [██████████] who worked in maintenance and costume design.

Counsel submitted a letter dated June 6, 2007 in which she claims the beneficiary supervises an administrative assistant and a costume designer. However, according to the petitioner's 2005 and 2006 Forms W-2, the petitioner only employed the beneficiary and the "costumer designer" in 2006. The administrative assistant was employed in 2005, and not in 2006 when the instant petition was filed.

Finally, counsel further describes the beneficiary's duties in the June 6, 2007 letter as follows:

40% of the time on a daily basis: As the Executive Director, [the beneficiary] meets with prospective clients, conducts contract negotiations and prepares budgeting and layouts tailored to the needs of each event.

40% of the time on a daily basis: [The beneficiary] is also responsible for hiring vendors as well as selecting prospective subcontractors such as independent artists, models and entertainers that would be necessary for each event. The contracting and terms of each agreement are solely at the discretion of [the beneficiary].

20% of the time on a daily basis: [The beneficiary] dedicates the remaining balance of his time directing the events, planning logistics as well as maintaining contacts with current clients and meetings with potential clients as he also oversees the marketing for the further expansion of the U.S. subsidiary. This time is also spent overseeing the administration of the business as well as overseeing the financial points of the business.

On December 12, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

On appeal, counsel to the petitioner asserts that the director erred and that the beneficiary will primarily perform qualifying duties. Counsel also submitted a letter from the foreign employer dated January 7, 2008 which describes the beneficiary as primarily developing clients, preparing proposals, complying with guidelines, hiring personnel, contracting with third party services, and supervising events.

Upon review, counsel's assertions are not persuasive in establishing that the beneficiary will be employed in a primarily managerial or executive capacity.

In examining the executive or managerial capacity of the beneficiary, U.S. Citizenship and Immigration Services (USCIS) will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The actual duties themselves 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).

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. To the contrary, it appears that the beneficiary will primarily perform non-qualifying administrative, operational, and first-line supervisory tasks which will not rise to the level of being managerial or executive in nature. For example, in administering the enterprise, the beneficiary will primarily meet with prospective clients, conduct contract negotiations, prepare budgeting and layouts "tailored to the needs of each event," hire vendors, and select independent artists, models and entertainers for each event. The beneficiary will also direct and coordinate the company's budgeting, marketing, and sales activities. Accordingly, it appears that the beneficiary will devote virtually all of his time to performing essential operational and administrative tasks pertaining to booking performers for customers' events. However, none of these ascribed tasks constitutes a qualifying duty. The fact that the petitioner has given the beneficiary a managerial or executive title does not establish that the beneficiary will actually perform managerial or executive duties. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). It appears that the beneficiary will be, at most, a first-line supervisor of a single non-professional worker. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. Section 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Likewise, the petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As noted above, the petitioner claims that the beneficiary will supervise an administrative assistant and a costume designer. However, as noted above, it does not appear as if the administrative assistant was employed at the time the petition was filed in June 2006. The petitioner's 2006 Forms W-3 and W-2 indicate that only the beneficiary and the costume designer were employed at the time the petition was filed. Regardless, both the administrative assistant and the costume designer are described as performing the tasks necessary to the provision of the petitioner's described services. As neither of these claimed subordinate workers is described as having supervisory or managerial responsibilities over other workers, it has not been

established that the beneficiary will supervise and control the work of supervisory or managerial workers. To the contrary, it is more likely than not that the beneficiary will be the first-line supervisor of his subordinate worker. Moreover, as the petitioner failed to establish the skills or educational backgrounds required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.¹ Accordingly, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.²

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole

¹In evaluating whether a beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

²The petitioner has also not established that the beneficiary will manage an essential function of the organization. The term "function manager" applies generally 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. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary will manage an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, 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. See 8 C.F.R. §§ 204.5(j)(2) and (5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform the tasks related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. As explained above, the record indicates that the beneficiary will more likely than not primarily perform non-qualifying tasks and serve as a first-line supervisor of a single non-professional employee. As the beneficiary will more likely than not primarily perform non-qualifying, first-line supervisory tasks in his administration of the enterprise, it cannot be concluded that he will manage an essential function. See generally *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. As explained above, it appears more likely than not that the beneficiary will primarily perform the tasks necessary to produce a product or to provide a service and will act as a first-line supervisor of non-professional workers. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991)); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).³

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.⁴

The second issue in the present matter is whether the petitioner has established that the beneficiary was employed abroad in a primarily managerial or executive position.

³It is also noted that counsel cites the unpublished opinion in *Matter of Irish Dairy Board*, ██████████ (AAO Nov. 16, 1989), in support of her contention that the beneficiary can be classified as an executive or managerial worker because of his supervision of "contractors." However, counsel's reliance on this decision is misplaced. First, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Second, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Third, as explained above, the petitioner has not established that the beneficiary will primarily be employed in an executive or managerial capacity. This is paramount to the analysis, and a beneficiary may not be classified as a manager or an executive if he or she will not primarily perform managerial or executive duties regardless of the number of people employed by the petitioner. Therefore, as the petitioner has not established this essential element, the decision in *Matter of Irish Dairy Board* would be irrelevant even if binding or analogous.

⁴Counsel cites the Foreign Affairs Manual (FAM) in her appellate brief as authority. It must be noted that the FAM is not binding upon USCIS. *See Avena v. INS*, 989 F. Supp. 1 (D.D.C. 1997); *Matter of Bosuego*, 17 I&N 125 (BIA 1979). The FAM provides guidance to employees of the Department of State in carrying out their official duties, such as the adjudication of visa applications abroad. The FAM is not relevant to this proceeding.

As the initial petition was devoid of evidence addressing the beneficiary's job duties abroad, the director requested additional evidence on March 15, 2007. The director requested, *inter alia*, a more detailed job description for the foreign position, an organizational chart, and descriptions of any subordinate workers.

In response, the foreign employer described the beneficiary's duties abroad in a letter dated June 5, 2007 as follows:

From the beginning of [the foreign employer] in Argentina, [the beneficiary's] activities have been focused on developing original and creative entertainment ideas for different areas such as publicity, communication and event planning. As the general director for the company since 1993 [the beneficiary] developed and directed the events for which [the] company has obtained widespread recognition. [The beneficiary] has always held an executive position within the company.

Also, counsel claims in her June 6, 2007 letter that the beneficiary supervised a "vice president" and a "shareholder" abroad. However, the record is devoid of evidence pertaining to the duties of these subordinate positions.

On December 12, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity.

On appeal, counsel to the petitioner asserts that the director erred and that the beneficiary was primarily performing qualifying duties. Counsel also submitted a letter from the foreign employer dated January 7, 2008 which describes the beneficiary as primarily developing clients, preparing proposals, complying with guidelines, hiring personnel, contracting with third party services, and supervising events.

Upon review, counsel's assertions are not persuasive in establishing that the beneficiary was employed in a primarily managerial or executive capacity.

As explained above, in examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. At 1108, *aff'd*, 905 F.2d 41.

In this matter, and similar to the proffered position in the United States, the petitioner's description of the beneficiary's job duties abroad fails to establish that the beneficiary acted in a "managerial" or "executive" capacity. To the contrary, it appears that the beneficiary primarily performed non-qualifying administrative, operational, and first-line supervisory tasks which do not rise to the level of being managerial or executive in nature. For example, the beneficiary is described as "developing original and creative entertainment ideas for different areas such as publicity, communication and event planning" and developing and directing "the events for which [the] company has obtained widespread recognition." Furthermore, the beneficiary is described as supervising a "vice president" and a "shareholder," although the petitioner fails to explain the duties of these positions. Accordingly, it appears that the beneficiary devoted virtually all of his time to

performing essential tasks pertaining to event planning and event administration. However, none of these ascribed tasks constitutes a qualifying duty. The fact that the petitioner has given the beneficiary a managerial or executive title does not establish that the beneficiary actually performed managerial or executive duties. Once again, an employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. It appears that the beneficiary was, at most, a first-line supervisor of non-professional workers. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. Section 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Likewise, the petitioner has also failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As noted above, the petitioner claims that the beneficiary supervised a "vice president" and a "shareholder." However, the petitioner failed to describe the duties of these positions. In addition, the record is devoid of evidence establishing that either of these workers was truly an employee of the foreign entity and, if so, that either worker is a bona fide managerial, supervisory, or professional employee. 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)). 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). Accordingly, the petitioner has not established that the beneficiary was employed primarily in a managerial capacity.⁵

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. As explained above, it appears more likely than not that the beneficiary was primarily performing the tasks necessary to provide a service and acted as a first-line supervisor of non-professional workers. Therefore, the petitioner has not established that the beneficiary was employed primarily in an executive capacity.

Accordingly, the petitioner has failed to establish that the beneficiary primarily performed managerial or executive duties abroad, and the petition may not be approved for that reason.

As a final note, USCIS records indicate that the beneficiary has previously been approved for L-1 employment with the instant petitioner. However, with regard to the beneficiary's L-1 nonimmigrant classification, it should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by USCIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and

⁵The petitioner has also not established that the beneficiary managed an essential function of the organization. As explained above, the record indicates that the beneficiary was more likely than not primarily performing non-qualifying tasks and serving as a first-line supervisor. As the beneficiary more likely than not primarily performed non-qualifying, first-line supervisory tasks in his administration of the enterprise abroad, it cannot be concluded that he was managing an essential function. See generally *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d at 24.

executive capacity. See §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. Cf. §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427.

In 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 USCIS 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 USCIS spends less time reviewing Form I-129 nonimmigrant 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 at 29-30 (recognizing that USCIS approves some petitions in error).

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 USCIS 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 USCIS will approve an immigrant petition filed on behalf of the same beneficiary. USCIS denies many I-140 immigrant 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 USCIS 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).

In addition, 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).

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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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.