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U.S. Citizenship  
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Services

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FILE:

[REDACTED]  
LIN 07 021 52238

OFFICE: NEBRASKA SERVICE CENTER

Date: DEC 19 2008

IN RE:

Petitioner:  
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.

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, 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 is a Florida corporation that owns and operates a restaurant. The petitioner seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director denied the petition based on two independent grounds of ineligibility. The director concluded that: 1) the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity; and 2) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity.

On appeal, counsel disputes the director's conclusions and submits a brief and additional documents in support of her arguments.

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.

The two primary issues in this proceeding call for an analysis of the beneficiary's job duties. The AAO will review the petitioner's submissions to determine whether the beneficiary was employed abroad and whether he would be employed in the United States in a qualifying 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.

In support of the Form I-140, the petitioner submitted a letter dated October 13, 2006, stating that the beneficiary's responsibilities with the U.S. entity include the following: hiring, firing, training managerial staff, determining company growth and marketing strategies, and making business decisions. The petitioner stated that the beneficiary assumed a similar role with the foreign entity. The petitioner also provided its organizational chart, depicting the beneficiary as the head of the company with a vice president as his direct subordinate. The kitchen manager and restaurant manager are identified as the vice president's direct subordinates. At the bottom of the organizational hierarchy are the kitchen staff, who are supervised by the kitchen manager, and a cashier and waiters, who are supervised by the restaurant manager. Lastly, the

petitioner provided the foreign entity's payroll statements from January through June 2006, naming all of the foreign entity's employees and their respective salaries and position titles.

On July 31, 2007, the director issued a request for additional evidence (RFE) instructing the petitioner to provide, *inter alia*, documentation to assist U.S. Citizenship and Immigration Services (USCIS) in determining the beneficiary's employment capacity in his foreign and proposed positions. Specifically, the petitioner was asked to provide detailed job descriptions of the beneficiary's foreign and proposed employment, including specific job duties and the amount of time allotted to each listed job duty. The petitioner was also asked to provide each entity's organizational chart depicting the beneficiary's positions within each entity, as well as the employees the beneficiary managed abroad and those he would manage in his prospective position in the United States. Lastly, the director restated two of the responsibilities included in the petitioner's initial description of the beneficiary's position and asked the petitioner to clarify by specifying the actual job duties associated with the broadly defined responsibilities.

In response, the petitioner provided a letter dated August 30, 2007, which included the following job descriptions for the beneficiary's foreign and U.S. positions accompanied by a percentage breakdown of the beneficiary's time allocation:

Foreign entity job description:

As [c]hief [e]xecutive and [g]eneral [m]anager at Keshmir Restaurant Malaysia, [the beneficiary] directed the operations of the company by formulating policies, procedures, and goals for implementation by subordinate first-line managers; for example, he decided what the employment structure would be, who would perform which duties and how; he directed the organization and components of the restaurant, kitchen, dining room, etc.; he set sales goals for the for the [sic] managers and oversaw and reviewed upper level implementation of such goals, deciding (after input and meetings with managerial staff), which products/menu items to push and when, depending on his expertise and judgment [25% of his time]. He directed the hiring of all new staff, including high level/managerial staff [5%]. [The beneficiary] was responsible for making executive decisions regarding menu selection and pricing; products and services to be offered (such as catering/private parties/banquets, etc.) [20%]; and, most importantly, business expansion and/or diversification [20%]. [The beneficiary] was responsible for the continued success and growth of the company and was charged with making decisions regarding whether and how to expand the business (adding seating space, increasing menu items offered, expanding restaurant hours, hiring additional staff, providing retail specialty food products and cookware, etc.) [15%] He also monitored financial reports prepared by accountants . . . [15%]. . . .

[The beneficiary] managed and supervised the [k]itchen [m]anager/[h]ead [c]ook and the [f]loor [m]anager/[h]ead [w]aiter. The [k]itchen [m]anager in turn supervised the assistant cooks and food preparation assistants, and other kitchen help, creating their work schedules and monitoring their performance. Any problems or issues not resolved by the managerial staff would be reported to [the beneficiary]. The [f]loor [m]anager supervised the waiters, hostess, and other floor workers, creating their work schedules and monitoring their performance, reporting any problems or issues to [the beneficiary]. [The beneficiary] had 100% authority over the operations of the company and made all executive decisions . . . .

The petitioner also provided the foreign entity's organizational chart illustrating a multi-tiered structure consisting of a general manager at the top of the hierarchy; a kitchen manager/cook and floor manager/head waiter as the general manager's direct subordinates; assistant cooks and food preparation assistants as the kitchen manager's subordinates; and waiters and a hostess as the floor manager's direct subordinates.

U.S. entity job description:

At the U.S. company, [the beneficiary] is employed as [p]resident. In that capacity, he has been a key player in ensuring our company's continued success. As [p]resident, he directs, manage[s], and trains the first-line managers/supervisors (the [v]ice-[p]resident, the [g]eneral [m]anager, and the [k]itchen [m]anager [25% of his time], all of whom manage and supervise other employees). He is responsible for making executive decisions, and developing and implementing company policies and goals, such as deciding what the employment structure of the company should be, who shall perform which duties and how; directing the organization and components of the restaurant, kitchen, dining room, etc.; and setting sales goals for the waitstaff [sic], deciding which products/menu items to push and when, depending on his expertise and judgment [30%].

He has the authority to hire, fire and/or promote staff members based on his professional and executive judgment [10%]. [The beneficiary] makes executive decisions regarding corporate expansion and diversification, after reviewing market and financial research performed by staff [20%]. He decides whether to re-invest profits to further develop and expand the restaurant's operations, whether to open additional locations, whether to expand [the] current location, and whether to provide additional services, such as catering, based on research performed by subordinates [15%]. . . . He also exercises discretion over the day-to-day operations of the business; although he does not perform the actual services provided by [the] business. [The] staff members are charged with the cooking and serving of food, while [the beneficiary] is charged with making major financial, operational, marketing, and expansion decisions, based on data gathered by staff.

The petitioner also provided its restaurant's weekly five-day schedule showing how the restaurant was staffed from Monday through Friday during a three-week period in August 2007. It is noted that the Form I-140 in the present matter was filed on October 25, 2006, or nearly 10 months prior to the dates on the schedule provided by the petitioner. The petitioner did not provide a schedule reflecting its staffing and scheduling practices at the time the petition was filed. Furthermore, the schedule that the petitioner did provide does not include Saturday, even though the brochure advertising the restaurant's services and hours of operation clearly shows that the restaurant is open for business on Saturdays from 4 p.m. until 10 p.m.

In a decision dated December 26, 2007, the director denied the petition. With regard to the beneficiary's foreign employment, the director noted a discrepancy between the number of employees claimed and the number of positions listed in the payroll documents provided in support of the petition. The director also noted that the petitioner failed to explain who performed the foreign entity's purchasing, marketing, and accounting duties, indicating that without further information the beneficiary was the person most likely to have performed the duties associated with those functions.

With regard to the beneficiary's proposed position with the U.S. entity, the director found that while the petitioner clearly defined the degree of the beneficiary's discretionary authority, it failed to specify the actual job duties the beneficiary would perform. Rather, the director found the proposed job description to be vague, failing to establish which specific duties could be deemed managerial and which could be deemed executive. Here as well the director found that the petitioner did not identify who would be responsible for purchasing, marketing, and handling the restaurant's daily financial transactions. The director also noted the two different fliers advertising the petitioner's restaurant, pointing out that the fliers were inconsistent with regard to the restaurant's days and hours of operation. Lastly, the director made note that ten employees were listed in the restaurant's August 2007 schedule, while only four W-2 statements were issued in 2005 (aside from the one issued to the beneficiary during that year), thus indicating that the number of employees the petitioner had at the time of filing is unclear as the petitioner did not explain or address any changes in its staffing. In discussing the 2005 W-2 statements, the director noted that all four employees were paid the exact same salaries. The AAO finds this detail particularly troublesome when taking into account that the restaurant employees are paid hourly wages rather than flat salaries and are not likely to work the exact same number of hours with identical wages earned for all employees.

On appeal, counsel asserts that the director erred by assuming that any job duties that were not specifically assigned to the beneficiary's subordinates were and are probably performed by the beneficiary himself. Counsel claims that, contrary to the director's assumption, the petitioner's kitchen manager purchases the restaurant supplies, the vice president handles the marketing and advertising, while an outside accountant handles daily financial transactions. However, 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)). 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). In the present matter, the petitioner has not provided documentary evidence to support its claim that it employed an outside accountant to relieve the beneficiary from having to perform the non-qualifying operational tasks associated with this function at the time of filing. Neither the 2005 tax return nor the 2005 W-2 statements suggest that an accountant was employed prior to the petition's filing. Although these documents do not address the petitioner's staffing at the time of filing, the relevant year's tax documentation has not been submitted for the AAO's review. As such, the AAO can only consider the documents that have, in fact, been submitted.

Counsel also compares the instant petitioner to petitioners in prior unpublished AAO decisions, which counsel cites in support of her argument. However, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision(s). Furthermore, even if the facts of the case cited by counsel were analogous to those in the present matter, 8 C.F.R. § 103.3(c) provides that only AAO precedent decisions are binding on all USCIS employees in the administration of the Act. Unpublished decisions are not similarly binding and thus will be given no consideration in the current proceeding.

Next, counsel provides further explanation of how the beneficiary's proposed employment fits the definitions of both managerial and executive capacity. Counsel refers to the beneficiary's managerial subordinates, asserting that they are the first-line supervisors that oversee the day-to-day operation of the restaurant while the beneficiary oversees the managerial employees and uses his authority to make discretionary decisions. However, even if that were currently the case, the record does not have sufficient evidence to document the

petitioner's staffing at the time of filing. Despite the claims the petitioner has made as to the positions that are currently filled within its organizational hierarchy, there is no documentation to establish which of these positions were filled at the time the petition was filed. To be more specific, the petitioner's August 2007 work schedule lists a total of ten workers, not including the beneficiary. However, the Form I-140 indicates that only eight employees had been hired by the time the petition was filed, thereby indicating that the petitioner had at least three fewer employees in October 2006 than it purportedly has at the present time. The record does not clarify who the eight employees were and which positions they filled, and no corroborating evidence was submitted to establish that eight employees were actually employed at that time. Counsel argues that the director ought not make adverse findings absent affirmative evidence. However, the opposite is true. Absent affirmative evidence to establish the claims being made, the AAO cannot assume that either counsel's or the petitioner's claims are credible. Thus, in light of the uncertainty with regard to the petitioner's staffing at the time of filing, the AAO cannot assume that the petitioner was able to relieve the beneficiary from having to primarily engage in the performance of the restaurant's daily operational tasks as of October 25, 2006.

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 AAO will then consider this information in light of the petitioner's organizational hierarchy, the beneficiary's position therein, and the petitioner's overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks. In the present matter, the record lacks a comprehensive description of the beneficiary's day-to-day tasks and does not adequately establish the availability of support personnel who would perform the petitioner's daily operational tasks such that the beneficiary would be able to primarily focus on the performance of managerial or executive duties. In the present matter, the only component that the petitioner has established to a sufficient degree of certainty is the beneficiary's position with the organizational hierarchies of the foreign and U.S. entities, while the remaining components, particularly the beneficiary's past and proposed job duties and each entity's ability to relieve the beneficiary from having to primarily perform non-qualifying tasks, remain in question. Although the petitioner has submitted a supplemental letter dated February 26, 2008, attempting to provide further insight into the beneficiary's past and proposed job duties, the statements focus primarily on the beneficiary's discretionary authority and decision-making rather than specific tasks the beneficiary performed abroad and would perform within the U.S. entity.

In fact, all of the job descriptions provided thus far attempt to establish the beneficiary's qualifying capacity within both entities by implication. To explain further, the petitioner discusses the non-qualifying job duties that others perform, indicating that by virtue of not performing those duties, the beneficiary's qualifying capacity is implied. Such is not the case, however. Both case law and the relevant regulatory provisions emphasize the need for a detailed description of the beneficiary's daily job duties, as it is the actual duties themselves that 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). While a job description alone is not enough to establish eligibility, as it must credibly fit an entity's business and staffing capabilities, a job description is a fundamental element without which eligibility cannot be established. Here, this crucial element is missing. Instead of expressly delineating the beneficiary's daily tasks, the petitioner deflects this issue by referring to the beneficiary's subordinates, asking the AAO to assume their existence and to believe that they take on all restaurant-related operational tasks. Meanwhile, the petitioner asserts that the beneficiary's time abroad and in the United States has been and would be allocated to hiring personnel, making menu and pricing decisions, setting goals and policies, expanding the business, and reviewing the work performed by subordinate

employees. However, these assertions are not credible either with respect to the beneficiary's foreign employment or with respect to his prospective position with the U.S. entity.

First, with regard to the foreign entity, the petitioner claims that the beneficiary spent 25% of his time formulating policies and procedures, determining the business's employment structure, and deciding which menu items to "push." However, no specific job duties were provided to explain how the policies and procedures are formulated, nor did the petitioner explain how determining the business's employment structure is associated with any ongoing daily tasks. Rather, this sounds like something that would have been part of the decision-making process during the beginning stages of the foreign business. The petitioner also indicated that 20% of the beneficiary's time was allotted to decisions regarding menus, pricing, and the services to be offered. Again, no explanation was provided as to the specific job duties performed. Although the petitioner claimed that 15% of the beneficiary's time was devoted to reviewing financial reports, there is no further explanation as to why this was done on a daily basis or why the foreign entity's restaurant required the daily review of financial reports. In light of this analysis, the AAO is left to question how the beneficiary spent 60% of his time. The petitioner's undocumented claims do not appear credible in the scheme of the foreign entity's business operation.

Second, with regard to the U.S. petitioner, similar deficiencies are present. For instance, the petitioner stated that 25% of the beneficiary's time would be spent directing, managing, and training his subordinate employees. However, there are no specific job duties associated with the beneficiary's general personnel management responsibility. Next, the petitioner indicated that 30% of the beneficiary's time would be allotted to executive decision-making and development of goals and policies. Examples of the decision-making included deciding the petitioner's employment structure and assigning job duties. However, the petitioner did not explain why establishing the employment structure is something that would need to be done on a daily basis or, more importantly, why this is something that needs to be done beyond the company's initial stage of development. The petitioner also did not explain what job duties are entailed in directing the organization, which was included in the 30% discussed herein. The petitioner indicated that 10% of the beneficiary's time is devoted to hiring, firing, and promoting personnel. However, the size of the petitioner's staff at the time of filing, even if it were adequately documented, does not explain how hiring, firing, and promoting employees is something the beneficiary would be required to do on a daily basis. Thus, at least 65% of the beneficiary's time has been unaccounted for with actual enumerated job duties.

In summary, the petitioner has not provided sufficient information or supporting documentation to warrant a withdrawal of the director's decision. Therefore, based on the two grounds of ineligibility discussed above, this petition cannot be approved.

Furthermore, the record does not support a finding of eligibility based on at least one additional ground that was not previously addressed in the director's decision. Specifically, contrary to the director's finding, the AAO is not satisfied that the evidence of the petitioner's ownership as submitted thus far is sufficient to meet the requirement in 8 C.F.R. § 204.5(j)(3)(i)(C), which states that the petitioner must establish that it has a qualifying relationship with the beneficiary's foreign employer. In the present matter, the petitioner initially provided its articles of incorporation in which Article Four stated that the U.S. entity is authorized to issue up to 50,000 shares of its stock. The stock certificate that accompanied the articles of incorporation conveyed the same information and further showed that the petitioner issued 25,500 shares of its stock, or 51%, to the foreign entity. Although both documents are dated in 2004, it is noted that Schedule L of the petitioner's

2005 tax return does not show that the petitioner received any monetary compensation in exchange for its issuance of stock.

In response to the RFE, the petitioner claimed that the stock certificate referenced above was not properly issued and was therefore invalid. However, no mention was made of the petitioner's articles of incorporation, which the AAO assumes remained valid. That being said, the AAO notes an inconsistency between stock certificate no. 5, which shows that 510 out of an authorized 1,000 shares were issued, and the petitioner's articles of incorporation, which showed that 50,000 shares were authorized for issue. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The inconsistency discussed herein has not been resolved. Furthermore, the petitioner has not provided any evidence documenting the foreign entity's payment for the issued stock, despite the fact that this documentation was expressly requested in the RFE. The director's finding with regard to the petitioner's sale of stock suggests an apparent oversight of the petitioner's failure to submit highly relevant documentation, which is necessary to resolve the inconsistency noted above. 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).

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

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

As a final note, counsel makes a brief reference to the petitioner's previously approved L-1 employment of the beneficiary. 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 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, 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. USCIS is not required to assume the burden of searching through previously provided evidence submitted in support of other petitions to determine the approvability of the petition at hand in the present matter. 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 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

Furthermore, if the initial nonimmigrant petition was 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 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). Moreover, it should be noted that USCIS records indicate the petitioner's L-1A extension petition was denied and that the subsequent appeal was dismissed (SRC 05 235 51872).

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

**ORDER:** The appeal is dismissed.