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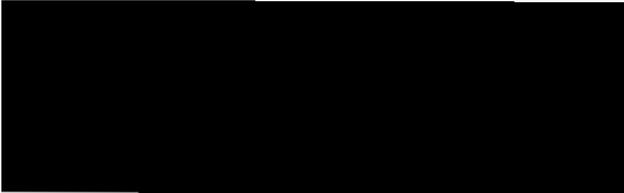
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U.S. Citizenship  
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FILE: [REDACTED]  
LIN 07 032 53705

Office: NEBRASKA SERVICE CENTER

Date: DEC 19 2008

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:



**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 is a Texas corporation engaged in exporting oil derivative products and services. It 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 the determination that the petitioner failed to establish that it would employ the beneficiary in the United States in a managerial or executive capacity.

On appeal, counsel disputes the director's conclusions and submits an abbreviated list of the beneficiary's duties and responsibilities as well as additional documents in support of the petitioner's claim.

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 primary issue in this proceeding is whether the petitioner established at the time it filed the Form I-140 that the beneficiary would be primarily employed in a 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 provided a brief letter dated February 28, 2006, stating that the beneficiary was being offered the position of president of the U.S. entity for which he would be compensated at a rate of \$60,000 annually. In a separate, undated statement, the petitioner further stated the following:

In this executive/managerial position, [the beneficiary] will continue to manage, supervise, and operate, with the assistance of a staff, the business in the United States. He will also continue to direct the training of [the] United States employees who will be employed by the company to staff the Texas office. These duties are crucial to a developing business and an individual such as [the beneficiary] is needed for his experience and executive/managerial skills.

The petitioner also provided an organizational chart, depicting the beneficiary at the top of the petitioner's organizational hierarchy, an office manager as the beneficiary's direct subordinate, one purchasing manager and one customer service employee as the office manager's direct subordinates, and one warehouse employee as the direct subordinate of the purchasing manager and customer service employee.

On September 13, 2007, the director issued a request for additional information (RFE) instructing the petitioner to provide detailed job descriptions accompanied by percentage breakdowns of the specific duties the beneficiary would perform in his proposed position in the United States as well as the types of employees the beneficiary would supervise. The petitioner was also asked to provide Form W-2 statements issued to all employees subordinate to the beneficiary from 2004-2006.

In response, the petitioner provided a letter dated October 1, 2007, written by the foreign entity's general sales manager, who stated that the beneficiary's position with the U.S. entity would include hiring, firing, and evaluating the performance of company employees; establishing purchasing policies and signing agreements with manufacturer; and ensuring financial development of the company by handling the petitioner's relationships with banking institutions. In addition, the petitioner provided a list of the following duties and responsibilities with an assignment of the percentage of time allotted to each item on the list:

- Supervising and training subordinate managers and professionals (including hiring and firing) (10%);
- Serving at the highest level of the organization in the United States in the position of [p]resident;
- Exercising discretion over the daily operations of the organization, including over subordinate managers and professionals, to ensure departmental coordination and completion of projects (10%);
- Planning, developing, and recommending policies and procedures for successful exportation operations, and making any necessary changes to improve company performance (10%);
- Approving the budget and managing finances in order to fund business operations and ensure cost-efficiency [sic] (15%);

- Formulating pricing and discount policies for the sale of oil production machinery and parts and related services (10%);
- Analyzing financial statements and sales reports to measure productivity and determining areas that need cost reductions and/or improvement (10%);
- Establishing sales and market share targets for the sale of oil production machinery and parts, and evaluating the sales channels in the region (10%);
- Cultivating and sustaining strategic business relations with clients, potential clients, providers, and governmental agencies in the oil and gas industry (15%); and
- Pursuing new markets and new customers for the sale of oil-related products and services (10%).

In a separate document, the petitioner indicated that 35% of the beneficiary's time is allotted to supervision of the purchasing department; another 35% is allotted to supervision of the administration department; and the remaining 30% is allotted to supervision of the receiving and shipping activities.

With regard to the beneficiary's supervision of the purchasing department, the petitioner provided a list of the following responsibilities:

- Directs and supervises all purchases made, establishing all policies for our distributors and manufacturers based on the requirements and instructions sent by [the] main office.
- Chooses [the] manufacturers and distributors upon receiving requirements from [the] main office.
- Meets with manufacturers and distributors in order to audit and check that all comply with [the] policies and quality control based on manufacturing procedures.
- Approves all quotes from the manufacturers and distributors. Also checks that all the materials meet all quality requirements based on [the] manufacturing and [the company's] quality procedures.

With regard to the beneficiary's supervision of the administration department, the petitioner provided a list of the following responsibilities:

- Supervises and controls all established parameters and policies of the company in the administration area, accounts receivable and payable for the U[.]S[.] office.
- Applies and supervises the instructions received by the [b]oard of [d]irectors in Venezuela in the administrative area adapting these to the accounting standards usually accepted in the U.S. in agreement with the company's certified accountant.

- Reviews and approves all financial reports of the [c]ompany.
- Approves all payments generated from the simple operation in [the] U.S. in order to maintain the rate and development of the company[,] such as payments to vendors, operation expenses, payroll, taxes, among others.

The petitioner did not expand on the beneficiary's responsibilities with respect to his role as supervisor of the receiving and shipping department.

The petitioner also provided an additional organizational chart, which listed the same positions as those listed in the earlier organizational chart, but illustrated a different organizational hierarchy. Namely, while the beneficiary was once again depicted at the top of the hierarchy, the administrative assistant and purchasing manager were depicted at the same level within the organization. The position of receptionist was depicted as being subordinate to the administrative assistant and the position of shipping and receiving was depicted as subordinate to the purchasing manager. The petitioner's employment of all five individuals was supported with the submission of 2006 Form W-2s.

On January 22, 2008, the director denied the petition, noting a discrepancy between information conveyed via the petitioner's quarterly tax returns for 2005 and the Form W-2s for the same year. Specifically, the director noted that each of the four quarterly tax returns indicated that the petitioner had only one employee throughout all of 2005, despite the fact that Form W-2s were submitted for a total of five employees during the 2005 calendar year. The director noted that the petitioner did not provide documentation to reconcile these inconsistencies. The director ultimately concluded that the petitioner failed to establish that the beneficiary would primarily supervise professional, managerial, or supervisory personnel and that he would be relieved from having to primarily perform non-qualifying tasks.

On appeal, counsel emphasizes the beneficiary's skills resulting from his years of experience with the petitioner and the foreign entity. Counsel also provides a broad list of the beneficiary's responsibilities, claiming that the beneficiary prepares work schedules and assigns duties to subordinate staff, reviews various financial and sales reports, establishes and implements goals and policies, oversees service providers, directs the company's budget and investment activity, determines which goods and services will be sold, and ensures the movement of goods into and out of production. Counsel's statements, however, are not persuasive in overcoming the director's ground for denial.

In examining the executive or managerial capacity of the beneficiary, the AAO 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.

With regard to the description of the beneficiary's prospective employment, the director expressly instructed the petitioner to include a list of specific job duties. This request was reasonable in light of precedent case law, which places great emphasis on the beneficiary's actual duties, as they are key to revealing the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The job description provided by the petitioner, however, focuses primarily on general job responsibilities that are too general to convey an understanding of exactly what the beneficiary will be doing on a daily basis. For instance, the petitioner stated that 10% of the beneficiary's time would be spent supervising and training managerial and professional subordinates. However, according to the petitioner's organizational chart, only one of the beneficiary's subordinates is either managerial or professional and no explanation has been provided to explain which specific tasks would be involved in the supervision of a single managerial employee and a part-time office administrator. Although the petitioner indicated that another 10% of the beneficiary's time would be spent exercising discretion over his subordinates, without a specific delineation of the job duties involved herein, there is no way to distinguish between the exercise of discretion over the employees and supervising the same employees.

Next, the petitioner stated that 10% of the beneficiary's time would be devoted to planning, developing, and recommending policies and procedures. However, no policies or procedures were discussed in any detail and the petitioner provided no indication as to the means by which such policy planning and development would be accomplished. Similarly, the petitioner provided no insight as to the steps the beneficiary would take prior to approving the budget nor is there any indication as to the tasks involved in managing the petitioner's finances and how such tasks could be distinguished from daily operation duties. The petitioner was equally as general in claiming that the beneficiary would formulate pricing and discount policies, as there is no indication as to any underlying job duties. In view of this lack of specific information regarding the beneficiary's daily tasks, the AAO is entirely uninformed as to the nature of the job duties that would consume at least 55% of the beneficiary's time.

Additionally, the petitioner indicated that approximately 25% of the beneficiary's time would be spent cultivating and sustaining business relationships with clients and pursuing clients in new markets, both of which suggest that the underlying duties are sales-related and, therefore, not within a qualifying capacity. Thus, based on the job description alone this petition cannot be approved, as the petitioner has failed to establish that the beneficiary's daily activities would consist primarily of tasks within a qualifying 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).

That being said, even if the focus were shifted away from the beneficiary's deficient job description, the documentation on record does not establish that the petitioner has the organizational complexity to relieve the beneficiary from having to primarily perform the daily operational tasks. As properly pointed out by the director, the photocopies of the Form W-2s that were purportedly issued by the director suggest that the petitioner had three employees in 2005. However, the quarterly tax returns for the same tax year indicate that the petitioner had only one employee during any given period in 2005. This inconsistency casts doubt as to the authenticity of some or all of the submitted

documents. Although the director informed the petitioner of this considerable discrepancy in his denial, thereby giving the petitioner the opportunity to address and possibly resolve the inconsistency, the petitioner has not taken the opportunity to do so. 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). While the AAO acknowledges that information contained in the petitioner's 2005 financial documents is not directly relevant to the petitioner's eligibility at the time of filing the present Form I-140, the discrepancy discussed herein applies directly to the matter of the petitioner's credibility. Precedent case law permits U.S. Citizenship and Immigration Services (USCIS) to question and reevaluate the reliability and sufficiency of evidence offered in support of the visa petition when doubt has been cast on any aspect of the petitioner's proof. *Id.* It follows, therefore, that even if the 2005 quarterly tax returns and W-2 wage and tax statements are not directly relevant to the petitioner's eligibility at the time of filing, their lack of credibility leads to an overall doubt as to the reliability of the 2006 Form W-2s.

In light of the above, the AAO cannot conclude that the beneficiary would be employed in a managerial or executive capacity, where the primary portion of his time would be spent performing tasks of a qualifying nature. The record lacks a sufficiently detailed description of the beneficiary's proposed employment, nor does it establish that the petitioner, given its organizational complexity at the time the Form I-140 was filed, is capable of relieving the beneficiary from having to engage in the performance of non-qualifying operational tasks on a daily basis. Based on these findings, the AAO cannot conclude that this petition warrants approval.

Furthermore, the record does not support a finding of eligibility based on additional grounds that were not previously addressed in the director's decision.

First, 8 C.F.R. § 204.5(j)(3)(i)(B) states that the petitioner must establish that the beneficiary was employed abroad in a qualifying managerial or executive position for at least one out of the three years prior to his entry to the United States as a nonimmigrant to work for the same employer. In the instant matter, the record lacks a description of the beneficiary's foreign employment, other than the beneficiary's position title and a brief statement claiming that the beneficiary supervised and directed the foreign entity. The AAO cannot determine, based on the minimal information provided, that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

Second, 8 C.F.R. § 204.5(j)(3)(i)(C) states that the petitioner must establish that it has a qualifying relationship with the beneficiary's foreign employer. In the present matter, the petitioner claimed to be the foreign entity's wholly-owned subsidiary. In support of this claim, the petitioner provided a photocopy of a stock certificate dated December 5, 1997, indicating that 1,000 shares of the petitioner's stock were issued to the foreign entity. However, this information is inconsistent with Form 1120, Schedule E for 2004, where the beneficiary is shown as owning 100% of the petitioner's stock. While the petitioner did not complete Schedule E of the 2006 Form 1120, Schedule K indicated that the petitioner is 100% owned by an individual, partnership, corporation, or estate and Statement 5, which provided greater detail to the Schedule K response, indicated that the beneficiary is the owner. Despite a finding that the beneficiary's full ownership of the petitioning entity coupled with his alleged 50% ownership of the foreign entity would indicate that the two entities are

affiliates, as defined in 8 C.F.R. § 204.5(j)(2), the fact that the petitioner has provided inconsistent documentation regarding the issue of its ownership causes the AAO to question the validity of the petitioner's claim and the documentation that has been submitted in support thereof. *See Matter of Ho*, 19 I&N Dec. 591.

Lastly, if the AAO were to ignore the inconsistency created by the above documentation and to strictly focus on the information contained within the petitioner's tax returns, the petitioner's description of its business organization and the beneficiary's proposed relationship to this business, indicate more likely than not that the beneficiary will not be an "employee" of the United States operation. As required by 8 C.F.R. § 204.5(j)(3)(C), the petitioner must establish that 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. *See* 8 C.F.R. § 204.5(j)(2) for definitions of *affiliate* and *subsidiary*. It is noted that "employer" and "employed" are not specifically defined for purposes of the Act even though these terms are used repeatedly in the context of addressing the current employment-based immigrant classification. However, section 101(a)(44), 8 U.S.C. § 1101(a)(44), defines both managerial and executive capacity as an assignment within an organization in which an "employee" performs certain enumerated qualifying duties.

Furthermore, the Supreme Court of the United States has determined that where a federal statute fails to clearly define the term "employee," courts should conclude "that Congress intended to describe the conventional master-servant relationship as understood by common-law agency doctrine." *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 322-323 (1992) (hereinafter "*Darden*") (quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989)). That definition is as follows:

In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

*Darden*, 503 U.S. at 323-324; *see also* *Restatement (Second) of Agency* § 220(2) (1958); *Clackamas Gastroenterology Associates, P.C. v. Wells*, 538 U.S. 440 (2003) (hereinafter "*Clackamas*"). As the common-law test contains "no shorthand formula or magic phrase that can be applied to find the answer, . . . all of the incidents of the relationship must be assessed and weighed with no one factor being decisive." *Darden*, 503 U.S. at 324 (quoting *NLRB v. United Ins. Co. of America*, 390 U.S. 254, 258 (1968)).

Within the context of immigrant petitions seeking to classify the beneficiary as a multinational manager or executive, when a worker is also a partner, officer, member of a board of directors, or a major shareholder, the worker may only be defined as an "employee" if he or she is subject to the

organization's "control." See *Clackamas*, 538 U.S. at 449-450; see also *New Compliance Manual* at § 2-III(A)(1)(d). Factors to be addressed in determining whether a worker, who is also an owner of the organization, is an employee include:

- Whether the organization can hire or fire the individual or set the rules and regulations of the individual's work.
- Whether and, if so, to what extent the organization supervises the individual's work.
- Whether the individual reports to someone higher in the organization.
- Whether and, if so, to what extent the individual is able to influence the organization.
- Whether the parties intended that the individual be an employee, as expressed in written agreements or contracts.
- Whether the individual shares in the profits, losses, and liabilities of the organization.

*Clackamas*, 538 U.S. at 449-450 (citing *New Compliance Manual*).

Applying the *Darden* and *Clackamas* tests to this matter, the petitioner has not established that the beneficiary will be an "employee" employed in a managerial or executive capacity. The petitioner is a corporation, which, according to the corporate tax returns discussed above, is ultimately owned and controlled by the beneficiary. There is no evidence that any other individual has any control over the work to be performed by the beneficiary.

In view of the above, it appears that the beneficiary will be a proprietor of this business and will not be an "employee" as defined above. It has not been established that the beneficiary will be "controlled" by the petitioner or that the beneficiary's employment could be terminated. To the contrary, assuming the beneficiary actually owns the petitioner as claimed in the corporate tax returns, he *is* the petitioner for all practical purposes. He will control the organization; he cannot be fired; he will report to no one; he will set the rules governing his work; and he will share in all profits and losses. Therefore, based on the tests outlined above, the petitioner has not established that the beneficiary will be "employed" as an "employee."

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 grounds of ineligibility discussed above, this petition cannot be approved.

As a final note, counsel makes a brief reference to the petitioner's current 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. 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 previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that 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).

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).

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 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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.