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20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

By

FILE:

[REDACTED]  
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Office: NEBRASKA SERVICE CENTER

Date: OCT 29 2008

IN RE:

Petitioner:  
Beneficiary:

[REDACTED]

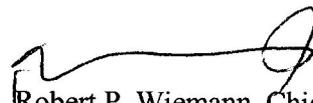
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner was incorporated in the Commonwealth of Virginia in 2003 and claims to be engaged in management sales training and consulting.<sup>1</sup> It seeks to employ the beneficiary as its president 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, determining that the beneficiary would not be employed in a managerial or executive capacity in the United States. On appeal, counsel for the petitioner alleges that the director's decision misstated and misapplied the law and asserts that the facts of the case warrant an approval of the petition. In support of these contentions, counsel 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

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<sup>1</sup>A review of corporate records as maintained by the Virginia State Corporation Commission indicates that as of December 31, 2007, the petitioner's corporate status as a limited liability company was canceled. Accordingly, the appeal appears to be moot because the petitioner appears to no longer be conducting business. See 8 C.F.R. § 204.5(j)(3)(i)(D). Nonetheless, in the interest of entering a full decision on the record, the AAO will address the merits of the appeal.

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.

Prior to addressing the issues, the AAO must emphasize that the critical facts to be examined are those that were in existence at the actual time of filing the petition. It is a long-established rule in visa petition proceedings that a petitioner must establish eligibility as of the time of filing. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

If the petitioner or beneficiary become eligible under a new set of facts, the proper course of action is to file a new petition. Despite the previous denial, there is no bar to the petitioner's filing of a new petition supported by new evidence of eligibility.

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

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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.

On Form I-140, which was filed on October 24, 2006, the petitioner claimed that it currently employed three persons. In a letter of support dated October 15, 2006, the petitioner provided an abundant description of the beneficiary's role in the company and duties performed. In relevant part, the petitioner provided the following overview of the beneficiary's duties in the United States:

As President, [the beneficiary] is in charge of determining target markets for The Sales Activator®, pricing, overseeing budgets and expenses, directing operations, reporting results to the overseas parent company as well as communicating results to the Board of Directors. Furthermore, as The Sales Activator® is the primary product represented by the Petitioner, the Beneficiary of this Petition was integral in the creation of the product along with determining updates as necessary to the product on the cutting edge of current sales trends.

\* \* \*

The Beneficiary of this Petition . . . has overseen all aspects of the development of The Sales Activator® and the work performed to sell the product throughout the United States. As our President, the Beneficiary ensured the right tools were put into The Sales Activator® for sales professionals. Also he had the final decisions on which markets to target along with the budgetary expenses for each market. Clearly major decisions made by the Beneficiary have been well thought out for [the petitioner], as the Petitioner has experienced strong profitable growth in a short amount of time.

Regarding the need for the beneficiary's services on a permanent basis, the petitioner stated:

[The beneficiary] is largely responsible for developing the services offered by [the petitioner]. Additionally, as our president, [the beneficiary] has the final say on budgets, expenses, sales determinations and overseeing any representatives to further the business of the Petitioner. The Beneficiary determined a core group of consulting services to be offered and is recognized among customers as being the cornerstone of the sales consulting team. The Beneficiary uses his contacts to generate strong consultancy revenue and is the driving force behind the agreement for consultant services with Shell Oil, a major customer of the Petitioner.

[The beneficiary] has proven success in establishing new market channels and achieving high levels of sales. He is a seasoned senior executive who has the skills, knowledge and wherewithal to move the company forward. His industry networking will allow him to amass a large number of US based clients for the Petitioner as long as he remains President. Therefore, his services are crucial to the future success of [the petitioner].

Finally, the petitioner provided an overview of the beneficiary's duties and the percentage of time he devoted to each. In relevant part, the petitioner identified these duties as follows:

**Overall direction and execution of all aspects of [the petitioner's] marketing and development initiatives.** (8 to 12 hours per week).

**Initial identification, communication, and compliance with statutory and regulatory agencies related to contacts, exports and promotions in the United States.** (0-2 hours per week).

**Evaluation of feasibility of further expansion** (2-5 hours per week).

**Development of business relationships with potential clients including hiring and managing staff that maintain individual accounts, trainings and contacts** (15-25 hours per week).

**Establishment of ongoing business goals, policies and procedures for [the petitioner]** (8-12 hours per week).

The petitioner also submitted an organizational chart, which indicated that the beneficiary, as president, oversaw the following employees:

 Administrative Assistant

 Administrative / Financial Assistant

 VP of Sales Development, who in turn oversaw  Sales Support.

In addition, the petitioner submitted a list of thirteen additional responsibilities of the beneficiary, plus copies of sponsorship and consultation agreements.

In a request for evidence issued on July 23, 2007, the director requested detailed information pertaining to all aspects of the beneficiary's role in the petitioner's business, including a more detailed overview of his duties and a specific explanation with regard to what staff members perform the training and consulting services which the petitioner claimed to provide. The director further requested that the petitioner list all employees under the beneficiary's supervision, along with a more detailed description of their duties.

The petitioner, through counsel, submitted a response on August 31, 2007. With regard to the beneficiary's duties, the petitioner submitted a lengthy and more detailed overview of the time devoted to the beneficiary's claimed duties. The duties were broken down as follows:

- Hiring of and ensuring specialized professionals are properly trained (1-3 hours/week)
- Developing business plans, products and platforms (2 hours/week)
- Determining goals and procedures (3-4 hours/week)
- Overseeing initiatives to engage new clients and revenue streams (2-5 hours/week)
- Overseeing communication with client compliance departments (0-2 hours/week)
- Overseeing corporate actions to ensure liability issues as well as major contract responsibilities and duties are properly considered (0-2 hours/week)
- Overseeing the interface of the Petitioner with government agencies, both for corporate goodwill for the Petitioner as well as for the purpose of attempting to create further markets for products and services offered by the Petitioner (0-2 hours/week)
- Directing the expansion of the Petitioner into new markets, both domestically and overseas, based upon the need to efficient[ly] and effectively generate new revenue (1-4 hours/week)
- Directing the effort to determine new products and services and overseeing the ongoing effort to improve products and services offered by the Petitioner (1-4 hours/week)
- Direct the development of both a strong team with clear points of contact as well as a continually present organization structure to maximize customer satisfaction and profits (5-12 hours/week)
- Oversee the evaluation of employees to ensure members of [the petitioner's] team are performing at the highest level (2-5 hours/week)
- Oversee the implementation and overall efforts performed toward the achievement of sales goals and objectives. He is also needed to ensure sales goals and objectives are communicated to all levels in the structure of the Petitioner (3-5 hours/week)
- Direct the evaluation of service quality provided to customers of the Petitioner. Based on his findings, the Beneficiary will develop procedures to improve quality of services as needed (2-5 hours/week)
- Oversee the establishment of major ongoing business goals, policies and procedures for the Petitioner with only limited oversight/supervision from shareholders of the Petitioner (8-12 hours/week)

Regarding the staffing of the petitioner and the performance of the training and consulting services, the petitioner explained that currently, the petitioner's staff was composed as follows:

Beneficiary, President

[REDACTED], Senior VP of Consulting

VP of Business Development

Administration and Support

The AAO notes that this organizational structure differs from that claimed at the time of filing. The petitioner claimed that it would hire two additional consultants on an as-needed basis. The petitioner claimed that the hands-on training was done by [REDACTED] and [REDACTED]. The petitioner noted that [REDACTED] is a part-time employee who works 15-20 hours per week. The petitioner further stated that the beneficiary also provides supplemental “consulting assistance” for major clients, “performs executive sales training along with consultant work at the highest level,” and “often must oversee and add to work performed by our two consultants on site.” In addition, despite the director’s specific request for all Form W-2, Wage and Tax Statements, issued to its employees in 2006, the petitioner responded by submitting only two forms: one for the beneficiary, and a second for [REDACTED] indicating that [REDACTED] earned only \$5,000 from October 2006 to December 2006.

On December 3, 2007, the director denied the petition, finding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director noted that based on the size of the petitioning entity and the current organizational structure, it did not appear that the reasonable needs of the petitioner warranted the employment of the beneficiary in a primarily managerial or executive capacity.

On appeal, counsel contends that the director erred in reaching this conclusion. Counsel asserts that the beneficiary is clearly employed in a qualifying capacity, and that the director improperly issued a request for evidence that omitted crucial information. Counsel submits a brief and additional evidence in support of this contention.

Upon review, the AAO concurs with the director’s findings. Prior to analyzing the evidence of record, the AAO will first address counsel’s contention that the director’s request for evidence omitted specific information regarding the deficiencies in the evidence. Specifically, counsel asserts that had the director specifically outlined the reasons why the evidence in the record was insufficient, the petitioner could have responded more appropriately and established eligibility. This argument is flawed.

The regulation at 8 C.F.R. § 103.2(b)(8) provides that the issuance of an RFE is discretionary. The director is not required to issue a request for further information in every potentially deniable case. According to the regulation at 8 C.F.R. § 103.2(b)(8)(iii), if all required initial evidence has been submitted but the evidence submitted does not establish eligibility, Citizenship and Immigration Services (CIS) *may* request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by CIS. Therefore, the director was not required to issue a request for evidence in this matter, but by doing so, the petitioner was afforded an additional opportunity to supplement the record with additional evidence. The director further is not required to state potential grounds for denial in the request for evidence, in contrast to the petitioner’s contentions. Furthermore, the petitioner has supplemented the record on appeal to rebut the director’s basis for denial.

When 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). Although the petitioner provided a lengthy overview of the beneficiary's duties in both the initial letter of support and the response to the request for evidence, the descriptions provided are nondescript and also seem to identify duties not typically reserved for managers or executives. Based upon the evidence submitted, it did not appear that the beneficiary would be primarily engaged in qualifying managerial or executive duties. The AAO agrees with the director's conclusions.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In both the initial letter of support and in response to the request for evidence, the description of duties provided simply adopts many of the key phrases used in the statutory definitions of managerial and executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act. General statements such as "determining goals and procedures," "oversee the evaluation of employees" and "oversee the implementation and overall efforts performed toward the achievement of sales goals and objectives" do little to clarify the exact nature of the beneficiary's duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Although the petitioner provided an overview of a "typical" work week for the beneficiary in both the initial letter of support and the response to the request for evidence, the duties claimed therein are more akin to tasks performed by sales and marketing staff as opposed to employees primarily engaged in managerial or executive duties. Specifically, in the October 15, 2006 letter of support, the petitioner states that "[the beneficiary] is largely responsible for developing the services offered by [the petitioner]." Additionally, the petitioner claims that the beneficiary was integral in the creation of The Sales Activator®, which is the petitioner's main product. Finally, the petitioner stated that the beneficiary also provides supplemental "consulting assistance" for major clients, "performs executive sales training along with consultant work at the highest level," and "often must oversee and add to work performed by our two consultants on site."

These claims, in and of themselves, render the beneficiary ineligible for the benefit sought, since he is obviously playing a crucial role in developing the petitioner's main product and promoting it through sales and marketing. The petitioner failed to clearly indicate how much of the beneficiary's time is devoted to product development, sales, and consulting tasks. 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 Int’l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Additionally, the AAO will look at the beneficiary’s subordinate staff to determine whether these employees, by virtue of being managerial, supervisory, or professional employees, adequately relieved the beneficiary from performing non-qualifying duties. The organizational structure of the petitioner at the time the petition was filed on October 24, 2006 indicated that the petitioner employed a Vice President of Sales Development, two administrative assistants, and a sales person. Although an updated organizational chart was submitted in response to the request for evidence, showing the hiring of an additional employee with the title of vice president and the elimination of the sales person and an administrative assistant, the AAO notes that this new chart demonstrated the petitioner’s current hierarchical structure, and not the structure of the petitioner at the time of filing as specified in the request for evidence.

The organizational chart submitted with the petition indicated that the beneficiary supervised the two administrative assistants and the vice president of sales development, who in turn supervised a sales person. Upon review of the evidence in the record, however, the petitioner has failed to corroborate its claimed organizational hierarchy with evidence of wages paid to these employees. The petitioner has submitted documentation of the employment of the beneficiary and [REDACTED], in the form of Forms W-2. However, [REDACTED]’s W-2 form indicates that he earned only \$5,000 from October 2006 to December 2006. Since no evidence of payments to [REDACTED] as an independent contractor was submitted, it would appear that based on these minimal wages, [REDACTED] at best was a part-time employee.

Additionally, the petitioner claims that [REDACTED] has been working for the U.S. entity since 2004, and that she was hired as a full-time employee in December of 2006. However, the petitioner submitted insufficient evidence of her claimed employment. Specifically, the record contains only a Form 1099, Miscellaneous Income, issued to her for the year 2006 in the amount of \$2,000. Despite its claim to have hired [REDACTED] as a full-time employee, the petitioner has not submitted her Form W-2 for 2006, and no other evidence was submitted to corroborate the petitioner’s claims. In addition, despite the submission of a Form 1099, the petitioner’s Form 1065, U.S. Return of Partnership Income for the year 2006 does not list any compensation paid to independent contractors during this period. 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).

Finally, it is noted that [REDACTED], the petitioner’s alleged senior vice president of consulting, was not hired until November 2006, after the filing of the petition. Moreover, the petitioner failed to submit any documentation of wages paid to him. Based on these deficiencies, the claimed organizational structure of the petitioner at the time of filing cannot be verified. 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)).

Moreover, the director noted that the small size of personnel and the nature of the petitioner's business did not support a finding that the petitioner could support the beneficiary in a capacity that was primarily managerial or executive. Although the director based his decision partially on the size of the enterprise and the number of staff, the director did not fully analyze the reasonable needs of the enterprise. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "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 (9<sup>th</sup> 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 CIS 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).

At the time of filing, the petitioner was a three-year-old company providing consulting services and sales training workshops that claimed to have a gross annual income of \$191,984. The petitioner claimed to employ the beneficiary as president, plus a vice president of sales development, two administrative assistants, and a sales person. As discussed above, however, the petitioner has failed to sufficiently document the employment of these persons as claimed on the organizational chart. Therefore, while the petitioner claimed that the beneficiary would not engage in the day-to-day operations of the company, it failed to provide evidence that a subordinate staff was in fact employed which would relieve him from performing the non-managerial operations of the company. Moreover, the petitioner supplemented the record with information on staff members hired after the petition was filed, and not the staff members on staff at the time of filing. Finally, the petitioner specifically states in the supporting documentation that the beneficiary was directly responsible for producing the petitioner's chief product and for executing the consulting agreements with clients. It appears that the beneficiary is the crucial person in the petitioner's enterprise as a result of his creation of the product, his contacts with clients, and his marketing skills. To establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not explained how the reasonable needs of the petitioning enterprise justify the beneficiary's continued performance of these duties which are clearly sales, marketing and consulting tasks. 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. at 165.

While the petitioner on appeal submits additional documentation to support the beneficiary's eligibility, this documentation consists primarily of testimonials clients and business associates, in addition to the resubmission of previously-reviewed descriptions of the beneficiary's duties. Despite counsel's assertions in the appeal brief, this documentation is insufficient to establish that the beneficiary is not engaged in the

provision of the petitioner's services. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Although the petitioner claimed, in response to the request for evidence, that it has since hired an additional executive employee and that both of these vice presidents perform the consulting and sales-based services of the petitioner, the fact remains that at the time of filing in October 2006, the petitioner did not have the organizational complexity to support the beneficiary in a qualifying capacity. For the reasons set forth above, the director correctly concluded that the beneficiary was not employed in the United States in a primarily managerial or executive capacity.

The petitioner noted that CIS approved another petition that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approval of the other immigrant petition. If the previous immigrant 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 CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Therefore, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.