



U.S. Citizenship  
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FILE:

SRC 06 035 51277

Office: TEXAS SERVICE CENTER

Date:

APR 02 2009

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The director, Texas Service Center, initially approved the employment-based visa petition on December 8, 2006. Upon later review of the record, however, the director determined that the petitioner was not eligible for the benefit sought and therefore issued a Notice of Intent to Revoke (NOIR). The director ultimately revoked approval of the petition on April 15, 2008. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a limited liability company formed under the laws of the State of Florida and claims to be in the business of property management. It seeks to employ the beneficiary as its general manager. Accordingly, it 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.

Upon review and after providing proper notice, the director ultimately revoked the approval pursuant to section 205 of the Act, 8 U.S.C. § 1155. The director determined (1) that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive position in the United States; and (2) that the petitioner failed to establish that it had been doing business for at least one year prior to the filing of the petition on November 14, 2005.

On appeal, counsel claims that the record establishes that the beneficiary will primarily perform qualifying duties in the United States and that the petitioner engaged in the regular, systematic, and continuous provision of services for one year prior to the filing of the petition.

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

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

\* \* \*

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

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

A "United States employer" may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this

classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

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

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

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

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

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

U.S. Citizenship and Immigration Services (USCIS) regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed. See 8 C.F.R. § 245.1(a). If the beneficiary of an approved visa petition was ineligible or is no longer eligible for the classification sought, the director may seek to revoke his approval of the petition pursuant to section 205 of

the Act, 8 U.S.C. § 1155, for “good and sufficient cause.” By itself, a director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590. Notwithstanding the USCIS burden to show “good and sufficient cause” in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner’s burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

The first issue in the present matter is whether the petition in this matter was properly revoked because the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

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

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

- (i) directs the management of the organization or a major component or function of the organization;

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

In this matter, the petitioner does not clearly state in the underlying petition whether the beneficiary will be employed in a managerial *or* an executive capacity. Due to the lack of clarity, the AAO will assume that the petitioner is claiming that the beneficiary will be employed in either a managerial *or* executive capacity and will consider both classifications on appeal. The AAO reviews appeals on a *de novo* basis. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In the Form I-129, the petitioner claims to be a property management business and to employ four workers. The petitioner describes the beneficiary's proposed duties as "general manager" of this enterprise, and the staffing of the business, in a letter dated November 1, 2005 as follows:

As General Manager of [the petitioner], [the beneficiary] will continue to be responsible for the overall operation of the company (15%) in addition to:

- Defining and implementing company's goals and policies (15%)
- Supervising the administration and marketing managers (10%)
- Organizing weekly meetings with managerial employees to set up goals and review company's progress (5%)
- Meeting with accounting and legal representatives (5%)
- Negotiate with independent contractors for maintenance services (5%)
- Meet and negotiate contract services for main clients (20%)
- Establish financial goals and set up expenditures projections (10%)
- Attend Chamber of Commerce's meetings and luncheons along with other network organizations (5%)
- Report to member's [sic] abroad (5%)
- Visit properties and client's premises to assure quality of services (5%)

[The petitioner] currently has 3 direct employees in addition to [the beneficiary] consisting of an Administrative Manager, Marketing Manager and a Customer Service Representative. In addition, we also hire independent contractors for the lawn care, swimming pool maintenance and cleaning service.

The petitioner also submitted an organizational chart for the United States operation. The chart shows the beneficiary at the top of the organization directly supervising the administrative manager and the marketing manager. The administrative manager is shown, in turn, as supervising the customer service representative.

Finally, the petitioner described the duties of the administrative manager as follows:

- Provide general administrative support such as typing, answering phones, filing paperwork, receiving and reconciling invoices, processing expense reports, receiving and distributing department mail, shipping training materials, maintaining supplies, and coordinating meetings
- Maintain current knowledge of each assigned property
- Prepare service contracts and follow-up with clients
- Prepare and distribute memos, notices and other correspondence to clients
- Review application packages for sales and rentals
- Coordinate all property inspections
- Assist with contractor selection process
- Communicate with clients as needed
- Maintain database of clientele and properties being serviced
- Report to General Manager.

On December 8, 2006, the director approved the petition.

On September 19, 2007, the director issued an NOIR. In the NOIR, the director indicated, *inter alia*, that the record does not establish that the beneficiary will be primarily employed in a managerial or executive capacity. Instead, the director noted that it appears the beneficiary will be, at most, a first-line supervisor of non-professional employees. The director also indicated that the record does not establish that the petitioner was "doing business" for one year prior to the filing of the petition.

In response, counsel claims in a letter dated October 15, 2007, that the beneficiary is a "function manager" and that the subordinate employees and intermittently engaged independent service providers, e.g., a handyman, a lawn service, an accountant, and a carpet cleaner, relieve the beneficiary of the need to primarily perform non-qualifying duties.

Counsel also submits a list of the petitioner's employees and their ascribed duties, which is largely identical to the evidence submitted with the initial petition. However, the new list omits the customer service representative and indicates that the administrative manager performs the duties previously ascribed to this worker. Accordingly, it appears that the beneficiary is now directly supervising two workers who perform the tasks necessary to provide a service.

On April 15, 2008, the director revoked the petition. The director concluded that the petitioner failed to establish in part that the beneficiary will be employed in a primarily managerial or executive position in the United States.

On appeal, counsel argues that the record establishes that the beneficiary will primarily perform qualifying duties in the United States.

Upon review, counsel's assertions are not persuasive and the appeal will be dismissed.

In examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will be "responsible for the overall operation of the company" and will define and implement goals and policies. However, the petitioner fails to specifically describe these goals and policies or explain what, exactly, the beneficiary will do to be "responsible for the overall operation of the company" other than act as a first-line supervisor of three claimed property management employees. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.* 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)).

Consequently, the record is not persuasive in establishing that the beneficiary will primarily perform qualifying duties in his operation of the enterprise. To the contrary, it appears more likely than not that the beneficiary will primarily perform first-line supervisory, administrative, and operational tasks. As the beneficiary's subordinate workers have not been established to be managerial, supervisory, or professional (*see infra*), it has not been established that the first-line supervisory tasks associated with the beneficiary's supervision of these workers will be qualifying duties. Furthermore, absent evidence to the contrary, the record is not persuasive in establishing that the other duties ascribed to the beneficiary will be truly managerial or executive in nature. For example, the petitioner claims that the beneficiary will devote substantial periods of time to meet with accountants and lawyers, negotiate with service providers, attend meetings, and visit managed properties. However, these duties do not appear to be managerial or executive in nature. Accordingly, it appears that the beneficiary will more likely than not "primarily" perform non-qualifying administrative, operational, or first-line supervisory 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As asserted in the record, the beneficiary will directly or indirectly supervise approximately three subordinate workers. Although the petitioner claims that one of these employees is a supervisory or managerial employee, the record is not persuasive in establishing that the "administrative manager" is a bona fide

supervisor or manager. The petitioner does not describe this worker as having supervisory responsibilities or duties. To the contrary, it appears that this worker primarily performs clerical tasks necessary to the business and is not truly supervising the customer service representative. An employee will not be considered to be a supervisor simply because of a job title or because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. Artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position. In this matter, the petitioner has not established that the reasonable needs of the United States operation compel the employment of a managerial or executive employee to oversee one or more subordinate supervisors. To the contrary, it is more likely than not that the workers are all primarily performing non-qualifying tasks. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9<sup>th</sup> Cir. 2006). Accordingly, it appears that the beneficiary will be, at most, the first-line supervisor of the non-professional subordinate employees. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. Section 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Finally, as the petitioner failed to establish the skills necessary to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will supervise professional employees.<sup>1</sup>

Furthermore, the record does not establish that the beneficiary will primarily manage an essential function of the organization. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary will manage an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. §§ 204.5(j)(2) and (5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform the tasks

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<sup>1</sup>In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by the subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the duties of any of the subordinate positions.

related to the function.

In this matter, the petitioner has not established that the beneficiary will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, the record indicates that the beneficiary will more likely than not primarily perform non-qualifying tasks and be a first-line supervisor of non-professional workers. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The beneficiary's job description is so vague that it cannot be discerned what, exactly, the beneficiary will do on a day-to-day basis. Also, as explained above, it appears more likely than not that the beneficiary will primarily perform administrative or operational tasks and work as a first-line supervisor of non-professional workers. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

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

Accordingly, as the record does not establish that the beneficiary will primarily perform managerial or executive duties, the petition was properly revoked, and the petition may not be approved for that reason.

The second issue in the present matter is whether the petition was properly revoked because the record does not establish that the prospective United States employer has been "doing business" for at least one year. 8 C.F.R. § 204.5(j)(3)(D). "Doing business" is defined in pertinent part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 204.5(j)(2).

The instant petition was filed on November 14, 2005. In support of its claim to have been "doing business" for at least one year, the petitioner submitted, *inter alia*, bank account statements, tax returns, wage reports, licenses, financial statements, and copies of eight "Property Management Agreements" pertaining to the various properties the petitioner purportedly manages. The Agreements obligate the petitioner to secure tenants, collect rents, and generally care for the properties in exchange for \$100.00 monthly payments plus the first months' rents. However, the petitioner did not submit evidence that it has received any of these payments or that it has in fact found tenants for any of these properties.

On September 19, 2007, the director issued an NOIR. In the NOIR, the director indicated, *inter alia*, that the record does not establish that the petitioner was "doing business" for at least one year prior to the filing of the petition.

In response, counsel submits evidence indicating that the petitioner had intermittently compensated third party service providers during the one-year period prior to the filing of the petition. The petitioner also submits an unsigned copy of its 2005 tax return. However, the petitioner did not submit any evidence that it received any compensation from its "property management" customers prior to the filing of the instant petition. The petitioner also submitted business records dated after the filing of the instant petition.

On April 15, 2008, the director revoked the petition. The director concluded that the petitioner failed to establish that the prospective United States employer has been "doing business" for at least one year. 8 C.F.R. § 204.5(j)(3)(D).

On appeal, counsel argues that the record establishes that the petitioner was doing business for at least one year prior to the filing of the petition.

Upon review, counsel's assertions are not persuasive and the appeal will be dismissed.

As correctly noted by the director, the record is devoid of evidence that the petitioner was engaged in the "the regular, systematic, and continuous provision of goods and/or services" for at least one year prior to the filing of the petition on November 14, 2005. 8 C.F.R. § 204.5(j)(2). Although the record contains copies of "Property Management Agreements," the petitioner did not submit evidence that it was ever compensated by customers pursuant to the Agreements. Merely signing agreements to manage properties, or paying wages to contractors and employees, does not establish that the petitioner was actually engaged in the regular, systematic, and continuous provision of a service. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Furthermore, it is noted that the submitted business records pertaining to business activity occurring after the filing of the instant petition are not relevant to determining whether the petitioner was engaged in business for at least one year prior to the filing of the

petition on November 14, 2005. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Accordingly, the petition was properly revoked, because the record does not establish that the prospective United States employer has been "doing business" for at least one year. 8 C.F.R. § 204.5(j)(3)(D).

As a final note, USCIS records indicate that the beneficiary has previously been approved for L-1 employment with the instant petitioner. However, with regard to the beneficiary's L-1 nonimmigrant classification, it should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by USCIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

In addition, unless a petition seeks extension of a "new office" petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and USCIS normally accords the petitions a less substantial review. *See* 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Because USCIS spends less time reviewing Form I-129 nonimmigrant petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30 (recognizing that USCIS approves some petitions in error).

Moreover, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The prior nonimmigrant approvals do not preclude USCIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that USCIS will approve an immigrant petition filed on behalf of the same beneficiary. USCIS denies many I-140 immigrant petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals 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

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suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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

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 decision of the director is affirmed and the petition is revoked.