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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **APR 28 2009**
LIN 07 243 52087

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, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner, a California corporation, states that it is engaged in investment trading consulting. It seeks to employ the beneficiary as its chairman and chief executive officer.

The director denied the petition on two independent grounds, concluding that the petitioner failed to establish: (1) that the beneficiary would be employed in the United States in a primarily managerial or executive capacity; and (2) that the U.S. company is doing business as defined in the regulations.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the beneficiary is engaged in only executive and managerial duties and is in charge of the overall management of the company. Counsel notes that U.S. Citizenship and Immigration Services (USCIS) already approved an extension of the beneficiary's L-1A nonimmigrant status and asserts that "immigration law does not apply different standards on the qualifications of an L-1A holder and an I-140 beneficiary based on the same company's petition for the same person, job title and same duty." Counsel submits a brief in support of the appeal.

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 or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and 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 first issue addressed by the director is whether the petitioner established that the beneficiary would 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.

The immigrant visa petition was filed on July 26, 2007. The petitioner indicated on Form I-140 that the beneficiary would be employed as chairman and chief executive officer of the U.S. company, and stated that it employed four persons as of that date. In a letter dated July 20, 2007, the petitioner described the beneficiary's proposed duties as follows:

[The beneficiary] was assigned to be in charge of the overall management of the company. In this executive capacity, [the beneficiary] has absolute and discretionary authority and control over the entire domestic and international business operations as well as the authority to recruit and dismiss supervisory personnel. He was tasked to direct and coordinate the overall business operations; prepare, plan and supervise day-to-day operations of [the petitioner]; render work instructions and assignments to subordinates; participate in the management of personnel matters including recruiting and dismissing employees of [the petitioner]; prepare periodic sales reports showing sales volume and potential sales; report to [the parent company] the business operations and other related matters of [the petitioner] in a timely manner.

In the same letter, the petitioner described the U.S. company's business activities as follows:

[The petitioner] mainly engages in electric power operation management, investment, international trade, project contract, scientific and technology research, international conferencing, consulting, training, traveling and business trip services, etc. . . . It introduces advanced electric power technology and equipment to Chinese enterprises, provides training programs of the advanced U.S. management system in power industry, collects the most updated information on world power and energy trends and contributes to the modernization and globalization of [the parent company].

Despite stating on the Form I-140 visa petition that the company employed four employees, the petitioner submitted its California Form DE-6 quarterly wage report for the second quarter of 2007, which shows that the company employed only the beneficiary and two other employees as of June 30, 2007.

On February 22, 2008, the director issued a request for additional evidence in which he instructed the petitioner to submit, in part: (1) a more detailed description of the beneficiary's proposed duties, identifying the actual, specific day-to-day tasks to be performed and an estimate of the percentage of time the beneficiary will dedicate to each duty; and (2) a detailed organizational chart for the U.S. company, including the names and detailed position descriptions for all employees subordinate to the beneficiary. The director also requested additional information regarding the "complete scope and nature" of the petitioner's daily business operations in the United States.

In response, the petitioner submitted the following position description for the beneficiary:

In the executive capacity, [the beneficiary] is tasked in supervising and controlling the entire domestic and international business operations as well as assisting to manage the personal [sic] matters. [The beneficiary] spent 30% of his time in directing and coordinating overall business operations, 30% of his time in developing marketing strategies and establishing cooperation and alliance in North America Market, 10% of his time in conducting marketing research and analysis, 10% of his time in rendering work instructions to subordinates, 10% of his time participating in hiring and firing of employees of the subsidiary, 10% of his time in preparing periodic sales reports showing sales volume and potential sales and reporting to the parent company regarding the business operations and other related matters in a timely manner.

The petitioner submitted an organizational chart which indicates that the beneficiary supervises: a chief financial officer, [REDACTED]; an employee identified as "President Office," [REDACTED] a financial department employee, [REDACTED]; and a business development employee, [REDACTED]. The chart also identifies a vacant vice president position and an un-staffed technical department.

The petitioner also submitted copies of its state and federal quarterly reports for 2007 and 2008. The records show that only the beneficiary, [REDACTED] and [REDACTED] were on the petitioner's payroll at the time the petition was filed. [REDACTED] was on the petitioner's payroll during the month of March 2007, but not at the time the petition was filed. There is no evidence in the record of any wages or other payments made to [REDACTED].

Nevertheless, the petitioner submitted position descriptions for all four claimed subordinates. The petitioner indicated that [REDACTED] answers and forwards calls, greets visitors, orders and receives stock and office supplies, and performs general office duties. [REDACTED] is responsible for: preparing and analyzing accounting records and financial statements; analyzing business operations, trends, costs, revenues and financial commitments to project future revenues and expenses; reporting to management regarding finances; developing and analyzing budgets and preparing periodic reports comparing budgeted costs to actual costs; developing recordkeeping and accounting systems; and advising management about resource utilization and tax strategies.

The petitioner stated that [REDACTED] directs the preparation of financial reports, tax returns and reports for government agencies; oversees the accounting department, budget preparation and audit functions; and reviews financial reports. Finally, the petitioner stated that [REDACTED] forecasts and tracks marketing and sales trends; seeks and provides information to help companies determine their position in the marketplace; measures the effectiveness of marketing advertising and communications strategies; conducts research on consumer opinions and marketing strategies; attends staff conferences to provide management with information and proposals concerning product and service promotion, distribution, design and pricing; gathers data on competitors; and monitors industry statistics.

In response to the director's request for clarification regarding the scope and nature of the petitioner's business activities, the petitioner submitted an excerpt from its company web site which states:

[The petitioning company] mainly engages in electric power operation management, investment, international trade, project contracting, scientific and technical research, international conference, consulting, training, traveling and business trip service, etc.

The director denied the petition on June 6, 2008, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director determined that the petitioner did not establish that the beneficiary would be primarily supervising a subordinate staff of

¹ According to an excerpt from the petitioner's web site submitted in response to the RFE, the petitioner's Chief Financial Officer is [REDACTED]. USCIS records indicate that the petitioner filed an I-129 petition on behalf of this individual, requesting L-1A classification, in 2003. The petition was denied on July 14, 2004 (WAC 04 060 53511).

professional, managerial or supervisory personnel, or managing an essential function of the organization. The director concluded that, given the limited staffing, it is reasonable to conclude that the beneficiary will primarily be performing duties outside the scope of the definitions of managerial and executive capacity.

The director also found that the beneficiary's salary appears to be low in relation to "other managerial/executive positions," and stated that "it does not appear that this would be considered usual and customary for a position managerial/executive in nature within a company." The director's comments regarding the beneficiary's salary will be withdrawn. The director's consideration of the beneficiary's salary as a factor in determining whether he will be employed in a managerial or executive capacity is not supported by the statute or regulations.

On appeal, counsel for the petitioner asserts that the beneficiary is "primarily engaged in all executive or managerial duties for the company and took full charge of overall management of the company." Counsel reiterates the previously submitted position description and notes that the beneficiary is assigned to the United States to conduct "projects in the fields of energy cooperation, EPC and technical consulting and global sourcing." Counsel emphasizes that the beneficiary's extension of L-1A status was approved based on the same job description submitted in support of this petition. Counsel asserts that USCIS should not apply a different standard to the instant immigrant petition.

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity.

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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In addition, 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 show 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).

The petitioner's initial description of the beneficiary's duties offered little insight into what he does on a day-to-day basis. For example, the petitioner stated that the beneficiary will be "in charge of the overall management of the company," "have absolute discretionary authority and control over the entire . . . business operations"; "direct and coordinate the overall business operations"; and "supervise day-to-day operations." The petitioner did not indicate how the beneficiary would carry out his responsibilities or what specific tasks he would perform. 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.).

In the request for evidence, the director clearly and explicitly instructed the petitioner to explain "what actual, specific day-to-day tasks" the beneficiary will perform, and the amount of time he will devote to each duty. The position description submitted in response, much like the initial position description, was lacking in

specificity. For example, the petitioner indicated that the beneficiary devotes 30% of his time to "directing and coordinating overall business operations" and 30% of his time to "developing marketing strategies and establishing cooperation and alliance in North America Market." Without a delineation of the actual tasks the beneficiary performs in order to "direct" business operations and establish "cooperation and alliance," it cannot be determined that the beneficiary's tasks are primarily managerial or executive in nature. 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 provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Furthermore, the time the beneficiary devotes to conducting market research (10%) and preparing sales reports (10%) cannot be considered managerial or executive in nature. Overall, these duties, which amount to 80% of the beneficiary's time, are either excessively vague and nonspecific, or non-qualifying tasks, and thus, the position description does not establish that the beneficiary's duties will be primarily managerial or executive in nature.

In addition, the petitioner has provided inconsistent and contradictory evidence with respect to the company's staffing structure as of the date the petition was filed, which undermines its claim that the beneficiary devotes essentially all of his time to managerial or executive duties and carries out his objectives through subordinate personnel. On July 26, 2007, the petitioner stated on the Form I-140 immigrant visa petition that it employed a total of four persons. The organizational chart submitted in May 2008 depicts five employees and two or more vacant positions. However, the petitioner's payroll records and Federal and State quarterly tax reports confirm that the petitioner did not employ more than three people at any point between January 2007 and May 2008. Although the evidence shows that [REDACTED] worked for the petitioner only for the month of March 2007, the petitioner claims that she serves as its business development manager as of May 2008. There is no evidence that the petitioner ever employed [REDACTED], the claimed chief financial officer, and the petitioner's tax returns do not reflect any payments to contractors, officers or other external staff. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

The only confirmed employees are the administrative worker and the accountant, both of who earn only \$1,000 per month, which suggests part-time employment.² Therefore, a critical analysis of the nature of the petitioner's business undermines a determination that the petitioner has employees to relieve the beneficiary from performing non-qualifying duties. As noted above, the petitioner states that it "engages in electric power operation management, investment, conferencing, consulting, training, traveling and business trip services." It is evident that the petitioner's accountant and office worker are not providing these types of services, and the petitioner has not documented the employment of any other personnel.

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). Instead, an executive's duties must be the critical factor. However, if USCIS

² One month's salary at the 2007 California minimum wage of \$7.50 would amount to \$1,300.

fails to believe the facts stated in the petition are true, then that assertion may be rejected. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Here, the lack of a subordinate staff to provided the services of the U.S. company brings into question how much of the beneficiary's time can actually be devoted to the claimed managerial or executive duties. 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). The absence of a subordinate staff sufficient to perform the non-qualifying duties of the petitioner's business is a proper consideration in the analysis of the beneficiary's employment capacity. *See Q Data Consulting, Inc. v. INS*, 293 F. Supp. 25, 29 (D.D.C. 2003) (holding that the INS' finding that the beneficiary did not work in a primarily managerial or executive capacity was "bolstered by the absence of evidence that a sufficient 'subordinate staff' will 'relieve her from performing non-qualifying duties'").

An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In this matter, the petitioner has not adequately described the nature of the beneficiary's duties or the nature of the petitioner's business, nor has it corroborated the employment of any workers besides the beneficiary and part-time administrative and financial support staff. The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive"). While the AAO does not doubt that the beneficiary exercises discretion over the petitioner's day-to-day operations and has the appropriate level of authority, the petitioner has failed to demonstrate that his duties would be in a primarily managerial or executive capacity as of the date of filing.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner established that the U.S. company is doing business as defined in the regulations. The petitioner is required to submit evidence to establish that it has been doing business for at least one year. 8 C.F.R. § 204.5(j)(3)(D). "Doing business" means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office. 8 C.F.R. § 204.5(j)(2). The director acknowledged that the petitioner submitted some evidence of business activities, but found the evidence submitted insufficient to demonstrate a regular, systematic and continuous provision of goods and/or services.

Counsel for the petitioner does not directly address this issue on appeal, but does note that the beneficiary is assigned to conduct "projects in the fields of energy cooperation, EPC and technical consulting, and global sourcing."

The record contains the petitioner's Forms 1120, U.S. Corporation Income Tax Return, for the years 2006 and 2007. The petitioner reported gross receipts of \$206,802 in 2006 and \$399,300 in 2007. The petitioner indicates on its tax returns that it is engaged in the import/export of power systems. As noted above, the petitioner, which was incorporated in 2001, has also stated that it "engages in electric power operation management, investment, international trade, project contract, scientific and technology research, international conferencing, consulting, training, traveling and business trip services, etc." At the time of filing, the petitioner also submitted an exhibit labeled "Evidence of Business Activities," which included:

- (1) An invoice dated June 20, 2006 issued to SGCC in the amount of \$42,002 for various travel services, including boarding, lodging, transportation within the United States and Canada, flights, and tickets and entertainment.
- (2) A receipt dated April 5, 2006, issued to [REDACTED], in the amount of \$10,600 which is described as a "service fee" for a six-person delegation.
- (3) An invoice dated November 30, 2004 issued to [REDACTED] in the amount of \$63,350 for various travel services including boarding and lodging, flights, tickets, travel insurance and intercity transportation within the United States and Canada.
- (4) Electronic mail correspondence between the beneficiary and a procurement employee with Southern California Edison, in which SCE solicited information regarding high voltage circuit breakers. The correspondence is dated between June 2003 and May 2004. Based on the correspondence, the beneficiary appears to be acting as a liaison between SCE and Chinese manufacturers who may be interested in supplying the electrical equipment.

In the request for evidence, the director instructed the petitioner to "describe, in general terms the complete scope and nature of your daily business operations." The petitioner did not elaborate upon its initial description of the company's services.

Upon review, the AAO concurs with the director's conclusion that the petitioner submitted insufficient evidence that it is doing business as defined in the regulations. The petitioner's tax returns show substantial income, but the returns have not been signed or dated, and there is no evidence that they have been submitted to the IRS. The minimal evidence of business activities provided was all more than one year old at the time the petition was filed. Furthermore, counsel states on appeal that the beneficiary "stays in China for several months in a year," and is paid by the Chinese company when he is abroad. In 2006, the petitioning company paid the beneficiary only \$22,157, thus suggesting that he spent a significant portion of the year outside the United States. Also, the record shows that the beneficiary was the petitioner's only employee during the months of January and February 2007, and the petitioner paid total salaries and wages of only \$28,125 during 2006. It is unclear how the petitioner operated in a regular, systematic, and continuous manner during the one-year period immediately preceding the filing of the petition or how it operates during the beneficiary's absences from the United States.

The petitioner has been given an opportunity to clarify the exact nature of the petitioner's business activities and to provide additional evidence on appeal, but has chosen not to do so. 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)). Accordingly, the appeal will be dismissed.

The last issue in this matter regards the previous approval of an L-1A nonimmigrant intracompany transferee petition filed on behalf of the beneficiary, and an extension of his L-1A status. The AAO has consistently determined that prior nonimmigrant approvals do not preclude USCIS from denying an extension or a separate immigrant petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity and on similar definitions of qualifying relationship/organization. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44) and 8 C.F.R. § 204.5(j)(2) and 8 C.F.R. § 214.2(l)(1)(ii). Although the statutory definitions for managerial and executive capacity are the same and the definitions of qualifying relationship/organization are similar, the question of overall eligibility requires a comprehensive review of all of the provisions, not just these definitions. 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 general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. Accordingly, many Form I-140 immigrant petitions are denied after CIS approves prior nonimmigrant Form I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *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). Because CIS spends less time reviewing Form I-129 nonimmigrant petitions than Form I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 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).

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. *See* 8 C.F.R. § 103.8(d). The approval of a nonimmigrant petition does not guarantee that USCIS will approve an immigrant petition filed on behalf of the same beneficiary. As the evidence submitted with this petition does not establish eligibility for the benefit sought, the director was justified in departing from the previous nonimmigrant approvals by denying approval of the immigrant petition.

In addition, if the previous nonimmigrant petitions were approved based on the same unsupported 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 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).

Further, 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). The petitioner has not provided evidence or argument for the record that is sufficient to overcome the director's decision.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.