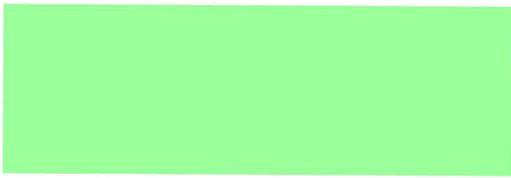


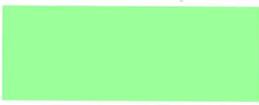
(b)(6)



U.S. Citizenship
and Immigration
Services

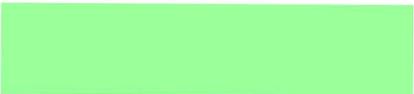


DATE: OFFICE: NEBRASKA SERVICE CENTER FILE:



FEB 07 2013

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner is an Illinois corporation that seeks to employ the beneficiary as president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition concluding that the petitioner failed to establish: (1) that it has a qualifying relationship with the beneficiary's last foreign employer; and (2) that it would employ the beneficiary in a qualifying managerial or executive capacity.

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 submits a brief and additional evidence asserting that the director's decision was in error.

I. The Law

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 a 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.

II. Employment in a Managerial or Executive Capacity

The first issue to be addressed is whether the petitioner established that the beneficiary would be employed in the United States in a managerial or executive capacity.

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

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

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.

The petitioner filed the immigrant visa petition (Form I-140) on August 1, 2011. The petitioner is a corporation engaged in commercial real estate focused on the hospitality industry. The record reflects that it operates the [REDACTED]. The petitioner stated on the Form I-140 that the corporation, established in 2003, has a gross annual income of \$85,000,000 and six employees. The petitioner seeks to employ the beneficiary as president.

The petitioner submitted a letter from its secretary, dated July 27, 2011. The letter stated that beneficiary had been employed by the petitioner since April 2004 with the following duties and responsibilities:

- Establish a business plan, which outlines current real estate opportunities, liquidation possibilities, future trends, foreclosure predictions, and financing options.
- Analyze the current hospitality real estate market, as well as the likely trends in tourism markets and available financing.
- Determine and formulate risk parameters and viable credit options and financing alternatives with banking and credit institutions for the real estate purchases in the volatile hospitality sector.
- Establish, develop, direct and implement an operational strategy for purchasing, which includes areas for investment, timeframes, banking facilities and risk analysis.
- Purchase unimproved and/or improved commercial real estate properties to expand the Company's holdings in the hospitality sector.
- Budgetary authority and exercise full discretion in maintaining the financial position of the company.
- Anticipate business challenges and changes in the hospitality real estate market and develop strategies and solutions to overcome and/or compensate for the challenges and changes.
- Formulate pricing policies for the sale of the commercial property.
- Negotiate purchase contracts with vendors and lending institutions.
- Plan and direct the Company's development, marketing operations and management functions.
- Develop and implement business policies and strategies to realize continued growth in occupancy revenue as well as in the Company's property holdings.
- Ensure that all the Company's investment and development activities are in full compliance with applicable local and state ordinances and laws, and federal laws.

The petitioner provided copies of three IRS Forms W-2, Wage and Tax Statement, issued to the beneficiary and two other employees in 2010, but did not provide any evidence to corroborate its employment of six workers, as stated on the Form I-140.

On September 14, 2011, the director sent a request for evidence (RFE) to the petitioner. The director requested additional evidence relating to the beneficiary's duties in the United States. Specifically, the director requested: (1) a more detailed duty description with specific day-to-day tasks for each area of responsibility; (2) an estimate of the percentage of time the beneficiary dedicates to each duty; and (3) an organizational chart for the U.S. petitioner representing the staffing at the time the petition was filed. The chart was to include the company's structure, the beneficiary's position within that structure, the names of all departments and teams, and detailed job descriptions for the beneficiary's immediate supervisor and subordinate employees.

On December 7, 2011, the petitioner responded with additional evidence including a second list of 11 broad job responsibilities for the beneficiary, which included such responsibilities as "direct and coordinate activities of the company," and "direct, plan and implement policies, objectives or activities of the company." The petitioner failed to provide a detailed duty description with specific day-to-day tasks as requested by the director. The petitioner also failed to provide the requested percentage breakdown of time dedicated to each of the beneficiary's duties.

The petitioner's response included an undated organizational chart which identifies a total of 14 employees. The beneficiary's direct subordinates as depicted on the chart include a sales and office manager, a "housekeeping, supply & breakfast manager" and a chief maintenance manager. The chart also identifies two front desk staff, three housekeeping staff, and workers responsible for plumbing, electrical, heating, carpentry, and other maintenance work.

The petitioner also submitted copies of its IRS Form 941, Employer's Quarterly Federal Tax Return, and its Illinois Employer's Contribution and Wage Report for the third quarter of 2011. The petitioner reported two employees for the months of July and August 2011 and three employees in September 2011. The evidence reflects that the petitioner paid wages to the beneficiary and to two individuals identified on the organizational chart as housekeeping staff. These employees earned total quarterly wages of \$960 and \$1,440, respectively.

The director denied the petition on January 13, 2012. The director concluded that the petitioner did not establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. In denying the petition, the director emphasized that the record did not establish that the petitioner had sufficient employees to relieve the beneficiary from performing the day-to-day operations of the business.

On appeal, counsel for the petitioner asserts that the director "placed undue emphasis on the size of the beneficiary's operation in determining his qualifications as a manager or executive" and

failed to "take into consideration current global depressive economic conditions, as well as Petitioner's additional investments when making their denial."

Upon review, the petitioner's assertions are not persuasive. 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 performed by the beneficiary and indicate whether such duties were either in an executive or managerial capacity. *Id.*

The initial job description submitted by the petitioner was vague and non-specific, offering little insight into what tasks the beneficiary would be performing on a day-to-day basis on behalf of the petitioner's only investment, the [REDACTED]. Many of the duties initially described suggested that the beneficiary would be primarily responsible for planning and implementing an expansion of the company's investment activities and purchasing additional commercial properties. However, the petitioner failed to submit any supporting evidence to corroborate the petitioner's claim that these are or would be the beneficiary's primary duties, or that the company, which has operated one motel since 2004, is regularly engaged in the purchase of commercial properties. Notably, none of the duties described mentioned any responsibilities pertaining to the petitioner's existing motel, notwithstanding the fact that the beneficiary was one of only two to three employees working for the company at the time of filing. As such, much of the initial position description appeared to be inconsistent with the nature and scope of the petitioner's business.

Further, duties such as "develop and implement business policies and strategies," and "plan and direct the Company's development" are too vague to provide any meaningful understanding of what the beneficiary's position entails. 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 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, despite the director's request for evidence, the petitioner failed to use the opportunity to supplement the job description with a more detailed account of the beneficiary's duties. The position description the petitioner provided in response to the RFE was different from that initially provided, but equally as vague. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). 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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Overall, the petitioner's descriptions of the beneficiary's duties fail to address his actual duties within the context of the petitioner's business and therefore are insufficient to establish that he would be employed in a qualifying managerial or executive capacity.

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.

As noted, the petitioner's organizational chart for the U.S. company illustrates that the beneficiary has three managers reporting directly to him while the managers, in turn, supervise a total of 11 employees. A review of the petition, however, shows that the company claimed only six employees as of the date of filing, not 15 employees as depicted on the organizational chart. Confusing the issue further, and as noted above, the petitioner's IRS Form 941 and state quarterly wage report for the quarter during which the petition was filed indicates that only three personnel, including the beneficiary and two housekeepers, were paid during the quarter in which the petition was filed, and only two employees were paid in August 2011, the month in which the petition was filed. The other personnel employed during the third quarter of 2011 were housekeepers who received wages commensurate with part-time employment.

The record is devoid of any evidence that the petitioner employed the claimed managers, maintenance personnel or front-desk personnel at the time of filing. The petitioner has provided no documentation or explanation for these discrepancies. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Counsel correctly observes that 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). However, 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. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. See *Systronics*, 153

F. Supp. 2d at 15. Here, as noted above, there are discrepancies in the record as the petitioner claimed six employees at the time of filing, submitted an organizational chart that included 15 employees, but was able to document wages paid to only three employees.

At the time of filing, the petitioner was engaged in the operation of a motel and claimed an annual income of \$85,000.00. The company employed the beneficiary as president, and according to the record, one to two part-time housekeepers at the time of filing. The petitioner did not submit sufficient consistent evidence that it employed any subordinate staff members who would perform the actual day-to-day, non-managerial operations of the company. Based on the petitioner's representations, it does not appear that the reasonable needs of a motel might plausibly be met by the services of the beneficiary as president and two housekeepers. Absent evidence that the petitioner had more than two to three total employees at the time of filing, the petitioner has not established that two part-time housekeepers could relieve the beneficiary from performing the day-to-day operational and administrative tasks associated with the business.

The AAO has long interpreted the statute to prohibit discrimination against small or medium-size businesses. However, the AAO has also consistently required the petitioner to establish that the beneficiary's position consists of "primarily" managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks. Reading section 101(a)(44) of the Act in its entirety, the "reasonable needs" of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. 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. *See Brazil Quality Stones v. Chertoff*, 531 F.3d 1063, 1070 n.10 (9th Cir., 2008).

Here, based on the evidence of record, the beneficiary is the sole full-time employee of a company that operates a motel. The petitioner has failed to document that the motel has a manager, front desk staff, or any administrative or clerical staff. Thus, while the position descriptions submitted by the petitioner indicate that the beneficiary is not involved in day-to-day operations of the motel, the evidence does not support the petitioner's general accounts of the beneficiary's duties, thus they have limited probative value in establishing that he will be employed in a primarily managerial or executive capacity.

Based on the overly vague position description provided by the petitioner, the petitioner's failure to submit the detailed position description requested in the RFE, the unexplained discrepancies in the record pertaining to the petitioner's staffing levels and organizational structure, and the absence of personnel to perform the day-to-day non-managerial functions of the petitioner's service oriented business, the petitioner has not satisfied its burden to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. Our

conclusion derives from these evidentiary deficiencies and does not rest on the size of the petitioning company.

Accordingly, the appeal will be dismissed, as the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity, as required by section 203(b)(1)(C) of the Act.

III. Qualifying Relationship

The remaining issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the beneficiary's last foreign employer, [REDACTED], located in India.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliate." See generally § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); see also 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary."

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

* * *

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(b)(6)

The petitioner asserts that it is a subsidiary of the foreign corporation. According to the petitioner, the U.S. corporation is owned by the foreign company through a deed of trust, held by the beneficiary. Further, the petitioner indicates that the foreign company is owned by three equal partners, with the beneficiary identified as one of the partners. In support of these assertions, the petitioner submitted, *inter alia*, the following: (1) a "Statement of Ownership." dated July 26, 2011, and signed by the secretary of the U.S. corporation; (2) page 1 of the U.S. corporation's Articles of Incorporation filed February 20, 2003; and (3) U.S. Federal Tax Employer Identification Number (EIN) letter.

In the request for evidence, the director requested additional documents to establish the corporate relationship between the petitioner and the foreign business entity that employed the beneficiary. The type of evidence requested included stock certificates, stock ledgers, evidence of percentage owned by members of a limited liability company, evidence of shares of the trust and stock ledgers for it.

In response to the RFE regarding the qualifying relationship the petitioner provided, *inter alia*, the following relevant documentation: (1) one page of what appears to be a registration of the foreign partnership and eight additional pages of un-translated documentation written in a language other than English; (2) a letter dated January 7, 2003, and signed by two alleged partners of the foreign entity asserting that the beneficiary is the third partner and has permission to buy or merge with a corporation in the United States; and (3) a signed but not notarized or certified "Declaration of Trust By Shareholder" owed to the foreign entity, dated January 20, 2003, identifying the beneficiary as trustee and the other two partners as beneficiaries of the trust.

The director found that ownership of the petitioning entity was not established because the second page of the articles of incorporation document was missing and discrepancies regarding shares of the petitioning company had not been resolved. Accordingly, the director determined that the petitioner failed to establish the required qualifying relationship.

On appeal counsel provides the missing page of the petitioner's articles of incorporation but asserts that the record already contains sufficient evidence to establish the qualifying relationship. Specifically, counsel refers to the self-prepared "Statement of Ownership" and schedule K-1 of the petitioner's IRS Form 1120S, U.S. Income Tax Return for an S Corporation, on which the petitioner indicated that the beneficiary owns 100% of the company's stock. In his decision the director expressed concern that in a previously submitted Form I-140, which was also denied, the petitioner submitted a share certificate that the petitioner did not include with this instant petition. On appeal counsel relies on his assertion that the record adequately establishes that "the beneficiary holds the shares in trust for the corporate owner." Nevertheless, the petitioner includes a copy of the share certificate as part of the appeal. Counsel urges the record as a whole be considered in making a decision.

The AAO concurs with the director's determination that the petitioner failed to establish a qualifying relationship. The assertions made by petitioner regarding the ownership and control of the foreign and U.S. corporation raise unresolved questions and inconsistencies that prohibit a favorable finding.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra*. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The petitioner's articles of incorporation, filed February 20, 2003, reflect 1,000 shares of common stock to be issued at a par value of \$1.00 per share. Page two of the articles of incorporation reflect two directors, the beneficiary and secretary of the corporation.

Despite the director's explicit request for evidence of stock certificates to establish ownership and control of the U.S. corporation, the petitioner submitted a copy of its stock certificate for the first time on appeal. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

A review of that stock certificate shows that it is stock certificate #1 and it reflects that 100% of the one thousand authorized shares were issued to the foreign corporation on February 20, 2003. Nevertheless, petitioner provided tax returns stating that the beneficiary claimed ownership of 100% of the U.S. entity's stock. The petitioner failed to provide a stock ledger, corporate bylaws, or meeting minutes for the U.S. corporation.

The AAO acknowledges the petitioner's claim that the beneficiary holds the shares in trust for the beneficiaries. The petitioner provided a document entitled "Declaration of Trust by Shareholder," dated February 20, 2003, signed by the beneficiary as "Trustee" and signed by two others as "Beneficiary" under the trust. The document is not notarized or certified. The first page of this declaration of trust references persons who are listed as the members under the document entitled "Memorandum and Articles of Association of [the foreign entity]" but this document is not contained in the record. Notably, this declaration of trust document does not reference the beneficiary as also being a beneficiary under the trust despite the petitioner's claim that the beneficiary is a 1/3 partner of the foreign entity. Therefore this document appears to establish the beneficiary as trustee of the shares but does not reflect his 1/3 part ownership as beneficiary under the trust. Accordingly, ownership and control of these shares is unclear based on this evidence. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner claims that it is a wholly-owned subsidiary of the foreign entity but the ownership and control of the U.S. corporation is also unclear. The petitioner filed a U.S. Income Tax Return for an S Corporation (Form 1120S) in tax year 2010. According to that form, the election to be treated as an S corporation was effective January 1, 2003. The beneficiary did not identify the trust or himself as a trustee on the tax documents. To qualify as a subchapter S corporation, a corporation's shareholders must be individuals, estates, certain trusts, or certain tax-exempt organizations, and the corporation may not have any foreign corporate shareholders. *See* Internal Revenue Code, § 1361(b)(1999). A corporation is not eligible to elect S corporation status if a foreign corporation owns it in any part.

Accordingly, since the petitioner would not be eligible to elect S-corporation status with a foreign parent corporation, it appears that the U.S. entity is owned by one or more individuals residing within the United States rather than by a foreign entity. This conflicting information has not been resolved. 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).

In light of the above deficiencies and discrepancies in the evidence, the AAO finds the petitioner has failed to establish that it has a qualifying relationship with the foreign entity. For this additional reason, the appeal will be dismissed.

IV. Conclusion

The petitioner noted that USCIS approved several L-1A classification nonimmigrant petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the nonimmigrant petitions. If the previous

nonimmigrant petitions were 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'r 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).

It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant 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). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 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. Because USCIS spends less time reviewing I-129 nonimmigrant petitions than 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). The record reflects that USCIS has denied a previous Form I-140 filed on behalf of the beneficiary.

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).

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

ORDER: The appeal is dismissed.