U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 2 4 2013 OFFICE: TEXAS SERVICE CENTER

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

The petitioner, a Tennessee company engaged in the operation of a gas station, seeks to employ the beneficiary as its executive. 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.

In support of the Form I-140, the petitioner submitted a statement dated December 16, 2011, which contained relevant information pertaining, in part, to the beneficiary's proposed employment with the petitioning entity. The petitioner also provided supporting evidence in the form of corporate, business, and financial documents pertaining to the beneficiary's U.S. and foreign employers.

The director reviewed the petitioner's submissions and determined that the petition did not warrant approval. The director therefore issued a request for evidence (RFE) dated April 5, 2012 informing the petitioner of various evidentiary deficiencies. The petitioner was instructed to provide additional evidence to establish that it would employ the beneficiary in a qualifying managerial or executive capacity.

After reviewing the petitioner's response, the director denied the petition, concluding that the petitioner failed to establish that the petitioner would employ the beneficiary in a qualifying managerial or executive capacity. The director determined that based on the number of individuals employed and the wages paid, the petitioner failed to establish how the minimal staffing would free the beneficiary to perform primarily managerial or executive duties. In addition, based on inconsistencies in the record, the director determined that the petitioner failed to establish a qualifying relationship between the petitioner and the beneficiary's foreign employer.

On appeal, counsel for the petitioner disputes the denial of the petition and the director's underlying findings and application of the law. Counsel submits a brief and additional evidence in support of the appeal.

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 addressed by the director is whether the petitioner established that it would employ the beneficiary 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.

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 reviewing the beneficiary's employment capacity, the AAO gives primary consideration to the petitioner's description of the beneficiary's proposed position, as a detailed description of the beneficiary's actual daily tasks tends to 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 AAO also gives ample consideration to the job duties of the beneficiary's subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts that contribute to a comprehensive understanding of the beneficiary's actual role in a business.

In the present matter, the AAO finds that the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity. According to its Form I-140, the petitioner claims to operate a convenience store/gas station with three to four employees. The beneficiary was to perform services as an executive, with responsibility for planning, directing and coordinating activities for the petitioner. The petitioner's letter dated December 16, 2011 explained that the "company presently employs a manager and store clerks, who will perform the day-to-day operations." The petitioner also described the beneficiary's duties and responsibilities are as follows:

- Formulating and Administering corporate policies, including the development of long range goals and objectives;
- Review and analysis of cost and operations in order to maximize productivity;
- Fiscal management, including development and implementation of budgetary control systems;
- Procurement and investment of company funds;
- Marketing and sales direction and supervision;
- Executive decision-making authority.

The petitioner further explained that the beneficiary's weekly schedule will include, but will not be limited to, the following duties:

- Supervise office procedures and personnel to expand growth, including sales and clerical staff (15 hours per week):
- Create and monitor financial policies, monitor budgets and costs (10 hours per week);
- Liaise with senior management abroad to maximize potential growth is [*sic*] U.S. and abroad (10 hours per week):

Finally, the petitioner stated that the beneficiary's financial supervision duties will include:

> Monitoring of payroll, cash flow income and disbursements, budget preparation, tax requirements and payments, and the like. He is the individual responsible for the development, design, operations and improvement of the systems for our business. He is responsible for: ensuring that business operations are efficient and effective and that the proper management of resource, distribution of goods and services to customers, and analysis of processing systems is conducted.

Notwithstanding the petitioner's letter describing the beneficiary's duties as outlined above, counsel for the petitioner also provided a description of the beneficiary's duties in a cover letter that accompanied the initial filing. Counsel stated that the beneficiary will be employed as vice president and general manager performing the following duties:

> Set corporate financial goals and objectives. (10%)
> Company representative on all tax and legal matters. (5%)
> [P]rocure and invest corporate funds. (20%)
> Analyze the Market for gasoline cost, availability and demand. (5%)
> Review cost analysis, market survey, and other reports prepared by accountant. (15%)
> Authorize expenditures for costs related to direct services/products. (15%)
> Authorize expenditures for costs related to subcontracted services/products. (10%)
> Negotiate, execute contracts and lease purchases. (10%)
> Oversee managerial and subordinate staff. (10%)

Additionally, counsel stated that the beneficiary "oversees subordinate employees who are responsible for the daily operation including handling cash, balancing receipts; maintaining inventory and ordering supplies; ensuring equipment is operating and maintained according to the applicable regulations and performing customer services."

The beneficiary's duty description provided by petitioner's counsel is inconsistent with the duty description contained in the petitioner's letter, and the petitioner provided no explanation for the submission of two different descriptions of how the beneficiary's time would be allocated on a weekly basis 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).

Regardless, neither version of the beneficiary's position description is sufficiently detailed to establish the actual duties the beneficiary will perform or the amount of time he will allocate to qualifying managerial or executive tasks. The record indicates that the beneficiary's role involves "executive decision making authority," setting corporate goals and objectives, "Formulating and Administering corporate policies," and generally overseeing the personnel and finances of the company. 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.). Further, many of the duties included in counsel's description are related to monitoring the company's costs and finances, but the petitioner has not indicated that the petitioner actually employs staff to perform non-qualifying duties related to the company's day-to-day finances, and the AAO cannot determine that the beneficiary's duties in this regard would be qualifying duties.

Overall, while several of the duties generally described by the petitioner and counsel suggest that the beneficiary exercises authority over the day-to-day operations of the petitioner's business, the lack of specificity and the petitioner's submission of two different descriptions of the beneficiary's weekly duties raises questions regarding beneficiary's actual proposed responsibilities. The petitioner did not provide sufficient relevant or credible information to establish what the beneficiary primarily does on a day-to-day basis. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Beyond the required description of the beneficiary's 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.

At the time of filing, the petitioner stated on the Form I-140 that it has three to four employees (noting that the number "may vary") and submitted an organizational chart identifying five employees. The chart depicts a president at the top of the organization and indicates that he oversees a general manager (the beneficiary), a store keeper , and a "register clerk" ( ) The chart depicts a second clerk reporting to the store keeper, and no employees reporting to the beneficiary. In an attachment to the chart, the petitioner stated that the president is responsible for "general and finance," the beneficiary is responsible for "accounts purchase and management," the store keeper is responsible for "store maintenance," is responsible for "taking care of customers' complaints and suggestions," and the clerk is responsible for "operating register." The employee list identified as a "customer care" employee rather than as a clerk or cashier. The information presented in the organizational chart is inconsistent

with the petitioner's claims that the beneficiary supervises a manager or subordinates as stated in his position descriptions. The record also does not adequately explain the role of the president in the company. Although it appears that he has not been on the petitioner's payroll in the year preceding the filing of the petition, the petitioner indicated on its IRS Form 1120 for 2011, at Schedule E, that the president allocates 100% of his time to the business.

While the petitioner indicates that the beneficiary will supervise subordinate personnel, the company's true personnel structure is unclear. The submitted organizational chart indicates that both the beneficiary and his claimed subordinate, report to the President and depicts no employees reporting to the beneficiary. Again, 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. at 591-92. The job titles and brief duty descriptions accompanying the organizational chart do not support the claim that the beneficiary is primarily performing managerial or executive duties and do not support the petitioner's statements that the beneficiary supervises a subordinate staff comprised of managers, supervisors or professionals.

In response to the director's RFE, the petitioner provided a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2012, which includes the month in which the petition was filed. The total wages paid to each employee during the first three months of the year were as follows:

	$4,605.78
	$1,299.40
	$690.00
	$690.00

While there is no requirement that the petitioner employ full-time employees, it is reasonable to expect the company to have sufficient lower-level staff to keep the store open for business during its normal operating hours. The wages paid to the petitioner's cashiers, assuming a minimum wage of $7.25 per hour, are commensurate with less than 8 hours of work per week during this 13 week period. Assuming that also receives minimum wage, it appears that she worked less than 14 hours per week. Thus, contrary to counsel's assertion on appeal that "there is sufficient staff to perform the everyday functions of the business," the record reflects that the two cashiers are each working one shift per week and the store keeper or store manager is working no more than two days per week. The petitioner has not provided its operating hours, but given the nature of the business as a gas station and convenience store, it is likely open six or seven days per week, for more than eight hours per day. It is unclear who is operating the store in the absence of the cashiers and store keeper, given their minimal hours. The petitioner has not explained how the staffing levels documented at the time of filing would be sufficient to relieve the beneficiary from involvement in the day-to-day operations of the company. The AAO acknowledges that the petitioner's cashiers have received significantly higher wages in the past, however, the petitioner's IRS Forms 941 for 2011 reflect a steady decline in their quarterly

wages throughout the year, and they received even lower wages during the quarter in which the petition was filed.

Therefore, the petitioner has not established that it had adequate staff to perform the routine, non-managerial tasks associated with operating a convenience store at the time of filing. As the beneficiary is the only other documented employee and he works at the store, it is reasonable to conclude, and has not been shown otherwise, that a significant portion of his time would in fact be allocated to performing non-qualifying duties in order to keep the store open for business. The petitioner's claims that he allocates all of his time to supervising employees and establishing company policies is not supported by the evidence of record. The totality of the record does not support a conclusion that any of the other employees are supervisors, managers, or professionals, or that they relieve the beneficiary from engaging in primarily non-qualifying duties. Instead, the record indicates that the beneficiary and his claimed subordinates are more likely than not require to perform the actual day-to-day tasks of operating the gas station and convenience store.

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.

Counsel repeatedly asserts that the petitioner has sufficient employees to relieve the beneficiary from performing non-qualifying duties but the record does not support that conclusion and counsel presents no evidence to support the claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also cites *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.5 (5th Cir. 1989), and *Mars Jewelers, Inc. v. INS*, 702 F.Supp. 1570, 1573 (N.D. Ga. 1988), to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. First, the AAO notes that counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *National Hand Tool Corp.*, where the Fifth Circuit Court of Appeals decided in favor of the legacy Immigration and Naturalization Service (INS), or *Mars Jewelers, Inc.*, where the district court found in favor of the plaintiff. With respect to Mars Jewelers, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning

underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

In both *National Hand Tool Corp.* and *Mars Jewelers, Inc.*, the courts emphasized that the former INS should not place undue emphasis on the size of a petitioner's business operations in its review of an alien's claimed managerial or executive capacity. The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium-size businesses. However, consistent with both the statute and the holding of *National Hand Tool Corp.*, the AAO has required the petitioner to establish that the beneficiary's position consists of primarily managerial or executive duties and that the petitioner will have sufficient personnel to relieve the beneficiary from performing operational and/or administrative tasks. Like the court in *National Hand Tool Corp.*, we emphasize that our holding is based on the conclusion that the beneficiary is not primarily performing managerial duties; our decision does not rest on the size of the petitioning entity. 889 F.2d at 1472, n.5.

Based on the foregoing, the AAO concurs with the director's conclusion that the petitioner has failed to establish it will employ the beneficiary in a primarily executive or managerial capacity. Accordingly, the appeal will be dismissed.

III. Qualifying Relationship

The second issue addressed by the director is whether petitioner has established that it has a qualifying relationship with the beneficiary's overseas employer. 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 "affiliates." *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.

In this matter, the petitioner asserts that it is a wholly-owned subsidiary of an Indian company. In support of its assertion, the petitioner provided a single stock certificate identified as number 1, issuing 100 shares of common stock to the foreign entity, ., on May 15, 2008.

The director determined that the petitioner failed to establish a qualifying relationship between the petitioner and the foreign entity because of an inconsistency with other evidence presented. Specifically, the director noted that the petitioner provided copies of its 2009 and 2010 IRS Form 1120, U.S. Corporation Income Tax Returns and neither form reflected that the foreign entity owned stock in the company.

On appeal, the petitioner provided a letter dated September 19, 2012 prepared by its accountant stating that the Indian foreign entity owned 100% of the outstanding shares but the accountants failed to accurately report the ownership due to oversight. The accountant further stated that amendments to the tax filings were suggested to the petitioner in order to correct the errors. However, no tax return amendments were submitted with this appeal.

Upon review, the AAO concurs with the director's finding that the petitioner has not established that it has a qualifying relationship with the foreign entity.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates 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 a 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, the AAO is unable to determine the elements of ownership and control.

Here, the petitioner's Articles of Incorporation dated May 13, 2008 reflect that the company is authorized to issue 1000 shares of common stock with no par value. The petitioner submitted none of the documents identified above to corroborate or clarify stock holdings of the company, apart from a single share certificate. The petitioner offered one document indicating a wire transfer in the amount of $100,000 was made from one bank into the petitioner's bank account on July 15, 2008. The document contained a notation saying it was for "expansion of business." It is unclear whether this document was intended to establish payment for the initial 100 shares;

however, the transfer was made two months after the issuance of the stock and it is unclear who made the transfer. No other documentation was submitted to allow the AAO to determine the elements of ownership and control.

The letter from the petitioner's accountant, submitted on appeal, is insufficient to overcome the discrepancies and omissions in the record. As noted, the petitioner did not provide evidence that the petitioner actually prepared and filed amended tax returns reflecting its ownership by the foreign company, nor has it offered any additional evidence to supplement the single stock certificate in the record. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner has not provided sufficient evidence to establish that it has a qualifying relationship with the beneficiary's foreign employer. For this additional reason, the appeal will be dismissed.

Counsel asserts that "this case is predicated upon a previously approved L-1A case that has expanded as promised." The AAO notes that, based on counsel's explanation of the petitioner's filing history, the petitioner has filed one "new office" L-1A nonimmigrant petition, a request for an extension of the beneficiary's L-1A status at the end of one year "new office" period, and two immigrant petitions on behalf of the beneficiary. Of these four petitions, USCIS approved only the initial nonimmigrant petition granting the beneficiary one year in which to establish the petitioner's new office in the United States.

Regardless, 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).

Further, nonimmigrant petition filings and immigrant petition filings are separate proceedings with separate records and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Counsel further relies on a 2004 USCIS memorandum to support his assertion that the director should have given deference to the prior approval the L-1A petition filed on behalf of the beneficiary by the same employer. *See* Memorandum of William R. Yates, Assoc. Dir. Operations, "The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity," (April 23, 2004). Counsel's reliance on this memorandum is misplaced. The memorandum applies only to extensions of nonimmigrant petitions. Further, it exempts "new office" petitions from deference in future filings submitted by the same petitioner on behalf of the same beneficiary. *See* Yates memorandum at p.2, fn. 1. Counsel indicates that the sole petition that USCIS has approved was a "new office" L-1A nonimmigrant petition.

IV. Conclusion

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.