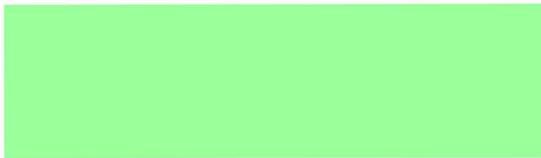


(b)(6)

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

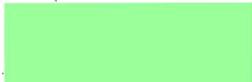


U.S. Citizenship  
and Immigration  
Services

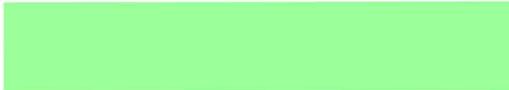


DATE: **NOV 07 2013**

OFFICE: TEXAS SERVICE CENTER

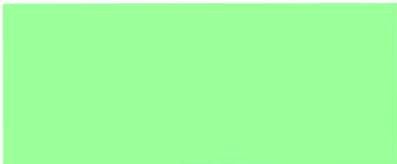
FILE: 

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:

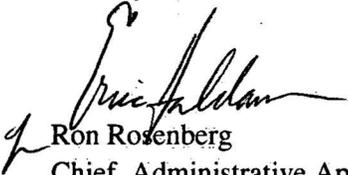


**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
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 is a Texas professional association that seeks to employ the beneficiary as its accounting director. 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 the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (2) that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

On appeal, counsel disputes the director's decision and submits a supporting appellate brief asserting that the petitioner submitted sufficient evidence to establish that the beneficiary's former employment abroad and his proposed employment with the U.S. petitioner meet the statutory criteria for managerial or executive capacity.

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 and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

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

statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

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

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

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

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

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

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and

- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Additionally, the regulations at 8 C.F.R. § 204.5(j)(3)(i) state that the petitioner must provide the following evidence in support of the petition in order to establish eligibility:

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

## II. Procedural History

The record shows that the petitioner filed the Form I-140 on June 7, 2012 and submitted a supporting statement dated May 2, 2012, which contained descriptions of the beneficiary's former and proposed employment. The petitioner stated that the beneficiary's proposed position would require the beneficiary to use information gained from examining, analyzing, and interpreting financial and accounting records in order to formulate reports and advise the owner on the subject of the company's operating procedures. The petitioner further stated that the beneficiary would oversee a staff of accounting and support personnel as well as invoicing assistants within the accounting department. Such oversight would entail making sure that the subordinates receive proper training in handling daily invoices and collections. The beneficiary would also set goals and set and implement policies within the accounting department, maintain authority over personnel and operations, conduct quarterly reviews of the subordinate staff, and determine whom to hire or fire within the department. The petitioner went on to discuss the beneficiary's subordinates for a second time within the same supporting statement, this time claiming that the beneficiary would oversee the work of two quality coordinators who were claimed to hold professional degrees and who oversee a staff of medical assistants and a receptionist. It is noted that the petitioner provided two sets of inconsistent facts with respect to the number and types of subordinates the beneficiary would supervise. Additionally, the petitioner asserted that managing

the accounting department is tantamount to managing an essential function and thus claimed that the beneficiary is both a personnel manager and a function manager to the extent that the accounting department impacts the company's profit and operations and is therefore essential to the organization.

With regard to the beneficiary's employment abroad, the petitioner provided a similar job description, claiming that the beneficiary examined, analyzed, and interpreted financial and accounting records to determine the company's financial status and operating procedures and to prepare reports in order to convey the necessary information to the company's owners. The petitioner claimed that the beneficiary managed a staff of accounting and support personnel as well as invoicing assistants and exercised discretionary authority over the goals and policies within the accounting department. The beneficiary similarly conducted quarterly reviews of subordinates' performances and based on such assessments recommended various personnel actions, including hiring, firing, or promotion of employees within the accounting department.

Additionally, the petitioner provided a number of wage, tax, and bank documents along with organizational charts pertaining to the petitioner and the beneficiary's former employer abroad. The petitioner's organizational chart shows the beneficiary's position as being directly subordinate to the general manager, who is subordinate to the company's president. The beneficiary is depicted as the director of the accounting/billing department, which is shown to include three quality coordinators and a receptionist. It is unclear which of these positions, if any, could be deemed as accounting personnel or invoicing assistants, both of which the petitioner claimed would be the beneficiary's subordinates within the accounting department. The chart also shows not two, but three, quality coordinators and indicates that the beneficiary, rather than the quality coordinators, would oversee the work of the receptionist. Moreover, while the petitioner's supporting statement indicated that the quality coordinators would oversee the work of medical assistants, and would thereby hold supervisory positions, the chart indicates that the petitioner's two physicians would oversee the physician and medical assistants. The chart makes no indication that the quality coordinators would oversee the work of any subordinate employees.

It is incumbent upon the petitioner provide independent objective evidence in order to resolve any inconsistencies in the record. 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). The inconsistencies described above contribute to the AAO's incomplete understanding of the petitioner's organization and the beneficiary's placement therein, as the beneficiary's position must be reviewed within the scope of the petitioner's overall organization, particularly in light of the individuals who are claimed to be the beneficiary's subordinates.

Looking to the foreign entity's organizational chart, the AAO observes that only position titles were provided. The beneficiary's position of accounting director was depicted as overseeing the work of a digitations assistant, an accounting assistant, an invoicing assistant, support personnel, a phone assistant, a file assistant, an "A/R assistant," and a customer service assistant. The AAO notes that despite the fact that the petitioner provided virtually identical job descriptions pertaining to the beneficiary's positions with the foreign and U.S. employers, the beneficiary's support staff at each entity was almost entirely different, with the exception of

the receptionist, who was shown as the beneficiary's subordinate in his proposed position with the U.S. entity and would likely perform similar tasks as the phone and/or file assistant, who were identified as the beneficiary's subordinates in his former position with the foreign entity.

After reviewing the petitioner's submissions, the director determined that the petition did not warrant approval. Accordingly, on February 5, 2013, the director issued a request for evidence (RFE) instructing the petitioner to provide, in part, supplementary job descriptions for the beneficiary's former and proposed employment. The director instructed the petitioner to list the beneficiary's specific daily job duties in both positions and to assign time allocations indicating the portion of time the beneficiary spent and would spend performing each of the listed job duties. Additionally, the director asked for the submission of both entities' organizational charts depicting the beneficiary's respective positions within each entity as well as the positions of the beneficiary's subordinates, their job duties, educational credentials, and an identification of each employee's full- or part-time employment status.

The petitioner's response to the RFE included a statement dated March 11, 2013, which contained an hourly breakdown of the beneficiary's job duties and responsibilities in his proposed position with the U.S. entity. The petitioner claimed that the beneficiary would distribute his time in the following manner: 7-9 hours weekly would be spent examining, analyzing, and interpreting financial and accounting records in order to assess the company's financial status and advise the owner and he would prepare reports concerning operating procedures; 2-3 hours weekly would be spent doing tax planning and preparing the petitioner's preliminary tax returns and period financial reports to be given to the CPA and the petitioner's owner, respectively; 3-5 hours per week would be allocated to analyzing billing and collections trends to determine profitability and productivity and planning strategies for the billing and collections processes; 20-24 hours per week would be allocated to overseeing staff to ensure their proper training in the handling of daily invoices and collections, preparing quarterly staff reviews, and making personnel decisions, including recruiting, hiring, and disciplinary actions; 2-3 hours would be spent monitoring the billing company's performance and facilitating communications between the billing company and the petitioner's patients; another 1-3 hours of the beneficiary's time would be spent attending meetings with insurance carriers to discuss changes in codes and/or procedures and to optimize the billing process; and the remaining 1-2 hours weekly would be spent ensuring the company's compliance with current legislation and implement necessary changes to comply with any new legislation.

The petitioner went on to restate the beneficiary's role and discretionary authority in setting and implementing policies within the accounting department and overseeing the quality coordinators who are responsible for initiating and coordinating billing, timing, coding, and interfacing with insurance companies regarding patient procedures. The petitioner did not indicate that the beneficiary would oversee accounting and support personnel or invoicing assistants, as was indicated originally in one part of the petitioner's previously submitted supporting letter.

Additionally, the petitioner maintained the latter claim that was made originally in the same supporting letter, indicating that the quality coordinators oversee the work of a receptionist and "several" medical assistants.

Although the petitioner complied with the director's request for an organizational chart, it provided the very same chart that was originally submitted in support of the petition. Thus, the anomalies concerning the specific structural hierarchy within the accounting department remained without supporting evidence to establish that the quality coordinators, whom the beneficiary oversees, have their own subordinate staff as previously indicated. Furthermore, while the petitioner provided documents establishing the educational credentials of [REDACTED] one of the three quality coordinators identified in the petitioner's chart, no evidence was provided with regard to the two remaining individuals identified as quality coordinators. Moreover, Ms. [REDACTED] educational documents showing that she received a medical degree in 2002 does not establish that her position of quality coordinator is that of a professional employee, as the petitioner provided no evidence or indication to establish that a medical degree is required or is even relevant to the billing and coding tasks that are inherent to the position she currently holds. While the record also shows that the petitioner provided evidence of educational credentials for two of the petitioner's six medical/physician assistants, this evidence is irrelevant to the matter at hand, as the neither individual is depicted as a subordinate of the beneficiary or an employee within the accounting department that the beneficiary heads. Next, a review of the record shows that the petitioner provided a statement dated November 15, 2010 from the foreign entity's legal representative, who included a general description of the beneficiary's prior employment with the foreign entity. The statement recited all the same information that was previously provided with regard to the beneficiary's employment abroad and did not include a listing of the beneficiary's specific daily job duties with an accompanying percentage breakdown. 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).

The petitioner also resubmitted the same organizational chart that was previously provided without disclosing any names of the beneficiary's subordinates during his employment abroad. As such, while the petitioner provided a résumé for [REDACTED] the relevance of this document cannot be assessed because the petitioner provided no information that would indicate which position this individual occupied within the foreign entity's organization, whether her position was among those directly subordinate to the beneficiary, or whether she was even employed by the foreign entity at the time of the beneficiary's employment abroad.

The director reviewed the petitioner's submissions and determined that the record lacked sufficient evidence to establish that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial or executive capacity. Accordingly, the director issued a decision dated May 29, 2013 denying the petition. The director determined that the petitioner failed to provide a comprehensive job description of the beneficiary's position abroad and further noted that based on the little information that was provided, the beneficiary was carrying out accounting tasks rather than tasks that are deemed as managerial or executive. Although the director acknowledged the hourly breakdown that the petitioner provided with regard to the beneficiary's proposed position with the petitioner, he found that the job description gave no real insight into the beneficiary's managerial capacity. The director also found that the petitioner lacked organizational complexity at the time of filing and thus did not warrant the hiring of an employee who would primarily perform job duties within a managerial capacity. Additionally, turning to the petitioner's

organizational chart, the director determined that the petitioner did not provide sufficient evidence to establish that the beneficiary would oversee a staff of professional, managerial, or supervisory personnel.

The petitioner subsequently filed a timely appeal seeking to reverse the director's decision. In support of the appeal, counsel contends that the denial is based on the director's "erroneous conclusions of fact" and a "misapplication of the law." Counsel further states that the director failed to properly consider and assign probative value to relevant supporting evidence. Additionally, counsel offers an appellate brief, which will be discussed below.

### III. Analysis

As indicated above, the two primary issues to be addressed in this proceeding require a review of the facts pertaining to the beneficiary former employment with the foreign entity and his proposed employment within the petitioning entity. Specifically, the AAO will review the record to determine whether the petitioner offered sufficient evidence to establish that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial or executive capacity.

In general, when examining the executive or managerial capacity of a given position, the AAO reviews the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). As the director stressed in the RFE and later in his denial of the petition, a detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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 beneficiary's job description can then be considered in light of other relevant factors, including (but not limited to) job descriptions and size of the beneficiary's subordinate staff, the nature of the business conducted by the entity in question, and any other relevant facts that may contribute to a comprehensive understanding of the beneficiary's actual role within a given organization. Among these factors, a company's staffing is highly relevant and should be considered as a means of allowing USCIS to gauge the extent to which a given entity is able to relieve the beneficiary from having to carry out the company's daily operational tasks. In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for 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. Sysstronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Turning first to the beneficiary's prospective employment with the U.S. entity, the record shows a number of factual inconsistencies that directly affect the job duties the beneficiary would perform in his proposed position. As noted, the petitioner has offered varying information with regard to the beneficiary's support personnel. Specifically, the petitioner did not maintain the same claim regarding the number and types of employees the beneficiary would supervise, and in fact offered two different sets of facts within one supporting statement. On the one hand the petitioner stated that the beneficiary would oversee accounting and support personnel as well as invoicing assistants, but it simultaneously stated in the same letter that the beneficiary would supervise quality coordinators who would oversee the work of a receptionist and an unspecified number of medical assistants. The petitioner's organizational chart does not support either of the petitioner's claims with regard to the beneficiary's subordinate 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).

With regard to the claim that the beneficiary would oversee accounting and support personnel as well as invoicing assistants, the chart does not identify any employee with the position of invoicing assistant. Based on the brief job descriptions provided for the receptionist and the quality coordinators, the job title of invoicing assistant would not be applicable to either type of position. Therefore, it appears that the petitioner originally claimed that the beneficiary would oversee employees who are not readily identifiable in the organizational chart the petitioner provided. Although the petitioner's organizational chart partially supports the latter claim to the extent that the chart shows the beneficiary as overseeing quality coordinators, the chart does not support the remaining portion of that claim, which indicates that the quality coordinators would oversee the receptionist and an unspecified number of medical assistants. More simply put, the chart shows that the beneficiary would oversee a total of a receptionist and three quality coordinators and none of the subordinate employees is shown as having subordinates of their own. Thus, not only did the petitioner put forth two inconsistent claims within the body of a single document, but it failed to maintain either of those claims in an organizational chart that was intended to illustrate and clarify the petitioner's staffing hierarchy.

It is noted that doubt cast on any aspect of the petitioner's proof may 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. at 591. In the present matter, the petitioner repeatedly put forth competing statements while failing to provide evidence to establish which, if any, of the statements was a true reflection of the petitioner's organizational hierarchy at the time the petition was filed. In light of these considerable inconsistencies, the petitioner has not established which employees would serve as the beneficiary's subordinates, thus precluding the AAO from conducting further review to determine whether the beneficiary's subordinates are professional, supervisory, or managerial personnel. See section 101(a)(44)(A)(ii) of the Act. Given that the petitioner's hourly breakdown indicates that at least half, and possibly more, of the beneficiary's time would be spent directly overseeing subordinate employees, it is critical that the petitioner establish exactly who those subordinates are and what aspects of their positions and/or educational credentials would qualify them as professional, supervisory, or managerial personnel.

Additionally, while the petitioner repeatedly asserted that the beneficiary would assume the role of a function manager, the record lacks evidence to support this claim as well. First and foremost, the AAO notes that the term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The petitioner's function manager claim appears to be focused around the fact that the beneficiary would head a department that is essential to the petitioner's operation. However, this factor alone is not sufficient to establish the beneficiary's function manager role, particularly given the claim that the beneficiary would allocate at least fifty percent of his time to managing subordinate staff.

In summary, the record shows that the petitioner presented multiple inconsistent claims with regard to the beneficiary's subordinate staff and it failed to provide evidence to substantiate which, if any, of the claims it put forth was a true reflection of the beneficiary's position within the petitioner's organizational hierarchy at the time the petition was filed. Thus, given the absence of this relevant and material evidence, the AAO cannot conclude that the beneficiary would allocate his time primarily to job duties that are within a qualifying managerial capacity and on the basis of this initial conclusion the instant petition cannot be approved.

Next, turning to the beneficiary's former position with the foreign employer, the record shows that the petitioner failed to comply with the director's request for a breakdown of the job duties the beneficiary performed and the length of time he spent performing each job duty. Rather, the petitioner repeatedly provided the same information and ultimately claimed that the same job description that applies to the beneficiary's proposed position could be used to describe the beneficiary's former employment with the foreign entity. The AAO questions the reliability of such a claim given that the organizational hierarchy of the foreign entity's accounting department was considerably different from the hierarchy depicted in the organizational chart of the petitioning U.S. employer. Moreover, even if the AAO were to rely on the percentage breakdown of the proposed employment and apply this job description to the foreign employment, the AAO would be unable to determine whether the time spent overseeing the work of subordinate employees was time spent within a qualifying managerial capacity given that the petitioner failed to provide job descriptions and educational credentials of the positions that are depicted as subordinate to the beneficiary in his former position abroad. 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)).

While counsel refers to the petitioner's current approved L-1 employment of the beneficiary as an indicator that the petitioner provided adequate proof to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity, the prior approval cannot serve as evidence of the petitioner's eligibility. First, the AAO points out that there are significant differences between the nonimmigrant visa classification and the immigrant visa classification in the matter at hand. Among the key distinctions is that unlike the immigrant visa classification addressed in this matter, the L-1A nonimmigrant visa classification

does not require the petitioner to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(iv).

Second, 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. USCIS is not required to assume the burden of searching through previously provided evidence submitted in support of other petitions to determine the approvability of the petition at hand in the present matter. The approval of a nonimmigrant petition in no way guarantees that USCIS will approve an immigrant petition filed on behalf of the same beneficiary. USCIS denies many I-140 immigrant petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

Finally, 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).

For the reasons stated above, the record in the present matter lacks the necessary relevant and reliable evidence to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity and on the basis of this second adverse conclusion, the instant petition cannot be approved.

#### IV. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.