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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: NOV 18 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 employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a California corporation engaged in office furniture manufacturing, states that it is an affiliate of the beneficiary's former foreign employer. It seeks to employ the beneficiary as its 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.

On August 3, 2013, the director denied the petition concluding that: (1) the petitioner failed to establish the existence of a qualifying relationship between the petitioner and the beneficiary's foreign employer; and, (2) the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity.

On appeal, counsel disputes the director's findings and provides an appellate brief laying out the grounds for challenging the denial.

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.

With regard to the petitioner's initial filing requirements, 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. Qualifying Relationship

The first issue in this proceeding is whether the petitioner submitted sufficient evidence to establish that it has a qualifying relationship with the beneficiary's foreign 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:
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> (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.

A. Facts

In a letter of support dated July 23, 2012, the petitioner explained that it is part of the [redacted] which opened its first U.S. subsidiary, [redacted] in 1996. The petitioner also explained that the "Group has subsidiaries and factories in seven countries." The petitioner stated that the beneficiary's former employer, [redacted] was established on April 19, 2004 in [redacted] In addition, the petitioner explained that, in 2004, [redacted] established a new company in the United States, [redacted] which has "three wholly owned subsidiaries, [redacted] and [the petitioner]." The petitioner provided a chart of the corporate relationships between all the companies which depicts [redacted] as the owner of 100 percent of the foreign company, [redacted] and 100 percent of [redacted], the company that owns the petitioner. Accordingly, the petitioner contends that the foreign company its affiliate.

The petitioner provided a copy of the articles of association of the limited liability company, [redacted] which state that [redacted] and the beneficiary are the "participants" in the company and that Mr. [redacted] made an initial investment equal to 100% of the authorized capital.

The petitioner also submitted a copy of its articles of incorporation filed with the State of indicating that the company is authorized to issue 1,000,000 shares. It also provided: (1) a copy of the minutes of its organizational meeting which state that 350,000 shares were issued to and (2) a copy of its stock certificate number 1 reflecting the issuance of these shares to Inc. on January 8, 2005.

As evidence of the ownership of the petitioner submitted a copy of Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, for 2011. According to the tax return, the owners of are (49.21%) and (49.21%). The tax return states that wholly owns the petitioner. The 2011 Form 1120 was a consolidated tax return which included the petitioner, and

The director issued a request for evidence (RFE) on January 4, 2013, in which he advised the petitioner that its initial evidence did not support its claim that ultimately owns 100% of both the petitioner and the foreign entity. Specifically, the director observed that the evidence submitted indicates that Mr. indirectly owns only 49.21% of the petitioner's U.S. parent company. Accordingly, the director requested additional evidence to establish the ownership and control of

In a response dated March 22, 2013, counsel for the petitioner emphasized that Mrs. is 's wife and that the couple are residents of California, "a community property state." Counsel asserted that "Mr. retains full control of all companies.

The petitioner also submitted a copy of its IRS Form 1120, U.S. Corporation Income Tax Return, for 2012. The petitioner indicated at Schedule K that it is a subsidiary in an affiliated or parent-subsidiary controlled group and that is its parent corporation. However, at Schedule G, Information on Certain Persons Owning the Corporation's Voting Stock, the petitioner indicated that and each directly own 45.00% of the petitioner's voting stock. The petitioner did not submit the requested evidence to establish the ownership and control of

The director denied the petition, concluding that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's former employer, In denying the petition, the director observed that the petitioner failed to submit a complete response to the RFE and provided inconsistent evidence regarding the ownership of the petitioner and of its claimed U.S. parent company, Further, the director found that none of the submitted evidence corroborated the petitioner's initial claim that ultimately owns and controls the 100% of the petitioning company. The director acknowledged counsel's claim that Mr.

controls both his own and his spouse's shares in any marital property under California law, but emphasized that the petitioner failed to submit any evidence to support this assertion.

On appeal, counsel for the petitioner states:

> Although the foreign affiliate was under the husband's name, i.e. [redacted] his wife, [redacted] as his wife, actually owns half of the interest in the foreign affiliate. While the Petitioner is owned by a holding company that is owned equally under the names of the husband and wife, the ownership and control structure satisfies [the regulatory definition of "affiliate"].
>
> The 49.21% as reflected in the tax return was caused by the fact that the husband and wife gave some portion of the holding company's shares to their children for estate planning purpose. As the percentage of shares held by their children (1.58%) was way below reporting threshold, the children's ownership was not reflected on the tax return. Nevertheless, the husband and wife, as a group, owns 98.42% of the Petitioner through the holding company and owns 100% of the foreign affiliate.

B. Analysis

Upon review, the petitioner has not established that it has a qualifying relationship with the foreign entity.

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 initially claimed that it is wholly owned by , which is, in turn, wholly owned by However, the petitioner has failed to submit evidence to support this claim and has instead introduced inconsistencies into the record with respect to its ownership and the ownership of

The petitioner provided a copy of its stock certificate number 1 indicating that it issued 350,000 of its 1 million authorized shares to IRS Form 1120 supports the petitioner's claim that is its parent company; however, the petitioner stated on Schedule G of its own IRS Form 1120 for 2012 that and each directly own a 45% interest in the petitioning company. Therefore, in light of this inconsistency, the petitioner's single stock certificate issued in 2005 is insufficient to support its claim that remains the petitioner's sole shareholder. 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).

Although the director noted these inconsistencies in the decision, the petitioner has not addressed the 2012 tax return on appeal, nor has it provided additional primary evidence of its ownership, such as copies of all issued stock certificates or a stock transfer ledger. Accordingly, the petitioner has not submitted sufficient evidence to establish the identity of its shareholders.

In addition, the petitioner initially that is the sole owner of but the tax returns indicate that and his spouse are both owners of Counsel for the petitioner contends that since Mr. and Mrs. are married and live in California, a community property state, has full control of all companies. In addition, on appeal, counsel for the petitioner states that although the foreign affiliate is under name only, his wife "actually owns half of the interest in the foreign affiliate." However, the petitioner did not provide any documentation to support this 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). Further, upon review of the foreign entity's articles of association, it is unclear whether it corroborates the petitioner's initial claim that Mr. is the company's sole owner, as the beneficiary is identified along with Mr. as a "participant" in the foreign company.

Due to the unresolved inconsistencies and other evidentiary deficiencies in the record, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer. There is insufficient evidence to establish that Mr. [redacted] and his spouse jointly own and control both companies, particularly in light of the petitioner's initial claim that Mr. [redacted] is the sole owner of all companies in the [redacted]. Accordingly, the appeal will be dismissed.

III. Managerial or Executive Capacity

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

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

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

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

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

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

In examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Published case law clearly supports the pivotal role of a clearly defined job description, as the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *see also* 8 C.F.R. § 204.5(j)(5). That being said, however, USCIS reviews the totality of the record, which includes not only the beneficiary's job description, but also takes into account the nature of the petitioner's business, the employment and remuneration of employees, as well as the job descriptions of the beneficiary's subordinates, if any, and any other facts contributing to a complete understanding of a beneficiary's actual role within a given entity.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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

At the time of filing, described the beneficiary's position of president by merely restating the statutory definitions of managerial and executive capacity found at section 101(a)(44) of the Act. The petitioner stated that the beneficiary, as president, currently "directs the management of the company, establishes goals and policies of our company, exercises wide latitude in discretionary decision-making and reports directly to the Board of Directors." The petitioner further stated that the beneficiary "is responsible for managing our company, supervising and controlling the works of our company's other supervisory professional or managerial employees, hiring and firing . . . and exercising discretion over the day-to-day operations of our 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.).

The petitioner also submitted an organizational chart depicting the beneficiary as "C.E.O." with four direct subordinates: production and assembly supervisor, sales and marketing director, chief finance officer, and project manager. The chart listed a total of nine additional employees, including two production and assembly workers, two sales and marketing staff, an accountant and four onsite laborers/installers.

In the RFE issued on January 4, 2013, the director requested a definitive statement regarding the position, including all specific daily duties to be performed and the percentage of time the beneficiary would spend on each specific task. In addition, the director requested the petitioner's detailed organizational chart, as well as job titles, job duties, educational levels and full- or part-time status for all employees. Finally, the director requested copies of IRS Forms W-2 for all employees, as well as information and evidence regarding any contract labor used by the petitioner.

In response, the petitioner provided a list of job duties that was accompanied by a percentage breakdown. However, while the petitioner indicates that 100% of the beneficiary's time is spent performing various types of "management" responsibilities, the listed areas of responsibility (general management, finance management, production management, and sales and marketing management) each encompass both qualifying and non-qualifying duties. Further, the description did not include the requested level of specificity, and does not provide a meaningful understanding of how much time the beneficiary will spend performing qualifying tasks versus those that would be deemed non-qualifying.

For instance, in describing the beneficiary's proposed employment, the petitioner indicated that the beneficiary will spend 15 percent of her time in "general management" to include: "daily meetings with personnel"; "maintain daily contact with all employees"; "address any issues and concerns that arise between staff members"; "oversee maintenance issues and meet with maintenance contractors"; "check and answer emails"; and, "correspond with oversee [*sic*] suppliers." The petitioner did not explain how the majority of these duties, which include several administrative tasks, fall within the statutory definition of managerial capacity. 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 her 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).

The petitioner also stated that the beneficiary will spend 30 percent of her time on finance management. These duties include "work with finance to develop budgets, oversee expenditures and

assist with financial reports"; "review activity reports and financial statements to determine progress and status in attaining objectives and revise goals and plans in accordance with the current situation"; "become familiar with terms of all contracts and agreements"; "control banking A/R and A/P"; "analyze cash flow"; "check prices": and, "calculate bonuses." According to the organizational chart, the petitioner employs a chief financial officer and an accountant. However, after reviewing the job duties of the chief financial officer and accountant, it appears that the beneficiary will be the only person in charge of the contracts and agreements and the analysis of cash flow. Thus, the beneficiary may be the only one to carry out these operational functions, which are outside the parameters of the definitions of managerial and executive capacity.

Finally, the petitioner indicated that the beneficiary will spend 35 percent of her time in sales and marketing management. The listed duties include: "meet/negotiate with customers and suppliers"; "attend business events to develop new contacts"; "study competitor's prices and marketing strategies"; "meet with the customers"; "check and answer e-mails"; "correspond with oversea suppliers"; and "checking POs, purchase and sales agreements." While the petitioner indicates that it employs a sales and marketing director, a sales manager and a marketing manager, several of these duties overlap with those of the subordinates and reflect that the beneficiary herself is involved in sales and market research activities that do not qualify as managerial.

No beneficiary is required to allocate 100% of her time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to her proposed position. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Here, the petitioner has failed to establish any clear distinctions between the beneficiary's proposed qualifying and non-qualifying duties and thus failed to establish that the beneficiary's duties are primarily managerial or executive in nature.

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. The petitioner has documented that it employed a total of twelve full- and part-time employees subordinate to the beneficiary at the time of filing, including seven employees with managerial or supervisory job titles. Here, as noted by the director, there is a significant amount of overlap between the beneficiary's job description and the brief job descriptions provided for her subordinates. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. While the beneficiary likely allocates some portion of her time to oversight of subordinate

supervisors, the petitioner has not described her position with sufficient specificity to warrant a finding that she will allocate her time to duties that are primarily within a qualifying managerial or executive capacity.

Overall, the petitioner's claims fail on an evidentiary basis as the job descriptions provided for the beneficiary were overly vague, included a number of non-qualifying duties, and overlapped with those of her claimed subordinates. Although the director specifically noted these deficiencies, the petitioner has not offered further information regarding the beneficiary's actual duties in support of the appeal. 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)).

Accordingly, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity and the appeal will be dismissed.

IV. Prior Nonimmigrant Approvals

The record indicates that the petitioner currently employs the beneficiary pursuant to an approved L-1A nonimmigrant petition. 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).

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.

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).

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).

V. 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.