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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 2 2 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 preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida limited liability company that seeks to employ the beneficiary as its sales and logistics manager. 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 record shows that the petitioner filed the Form I-140 on June 12, 2012 claiming eight employees and a gross annual income of $55,360. The petitioner submitted a number of supporting documents including a statement from counsel dated June 11, 2012. The petitioner's evidence included corporate, financial, and business documents pertaining to the beneficiary's former employer abroad and the petitioning U.S. employer. Counsel claimed that the petitioner had nine employees at the time of filing and described the basis for the affiliate relationship between the petitioner and the beneficiary's former employer abroad.

After reviewing the petitioner's submissions, the director determined that the petition did not warrant approval. Accordingly, on November 9, 2012, the director issued a request for evidence (RFE) instructing the petitioner to provide supplementary job descriptions for both positions, listing the beneficiary's specific daily job duties with each entity and the amount of time allocated to each of the listed tasks. The director also instructed the petitioner to provide both entities' organizational charts. With regard to the petitioning entity, the director asked that the petitioner state the job titles, job descriptions, and educational levels of any subordinate employees or contractors who performed services for the petitioner and to indicate whether the subordinates are employed on a part- or full-time basis. Lastly, the director instructed the petitioner to provide the IRS Form W-2 Wage and Tax statements issued during the relevant time period as well as the petitioner's quarterly tax returns for 2012.

The record shows that the petitioner's response was received on February 1, 2013. The response included a statement from counsel dated January 31, 2013 in which counsel claimed that the beneficiary was employed abroad in an "Executive/Managerial position" until his transfer to work for the petitioning entity. The petitioner submitted a separate statement dated January 28, 2013, which included job descriptions pertaining to the beneficiary and his subordinates in his foreign and U.S. positions, organizational charts, and the petitioner's quarterly and annual tax returns as well as the petitioner's employees' Form W-2 statements for 2012. The record shows that while the petitioner provided a list of the beneficiary's former job duties during his employment abroad, the list was not accompanied by the requested time constraints indicating how much time the beneficiary allocated to each of his assigned tasks.

The director reviewed the petitioner's response and supporting documents and issued a decision dated March 15, 2013 concluding that the petitioner failed to establish: (1) that it had the ability to pay the beneficiary's proffered wage at the time the Form I-140 was filed: (2) that the beneficiary was employed abroad in a qualifying managerial or executive capacity; or (3) that the petitioner would employ the beneficiary in a qualifying managerial or executive capacity.

Although the director briefly observed that the record contains insufficient evidence of a qualifying relationship between the petitioner and the beneficiary's former employer abroad, the analysis that preceded

and subsequently followed this single statement was focused entirely on the beneficiary's employment capacity in his prior position with the foreign entity, his proposed position with the petitioning entity, and the petitioner's ability to pay the beneficiary's proffered wage. The lack of an analysis or further explanation expounding on the issue of a qualifying relationship leads the AAO to conclude that director's adverse conclusion regarding the petitioner's qualifying relationship with the beneficiary's foreign employer was made in error due to inadvertent oversight. Moreover, looking to the evidence of record, the director's conclusion regarding the petitioner's qualifying relationship with the foreign entity was not warranted. In light of these factors, the AAO hereby withdraws the conclusion regarding the lack of a qualifying relationship, as such conclusion appears to have been unintentionally included in the decision and is not supported by the evidence of record.

On appeal, counsel submits an appellate brief in which he disputes the director's adverse findings. Counsel provides an analysis of the petitioner's 2012 tax return and urges the AAO to consider the additional tax evidence, which addresses the issue of the petitioner's ability to pay. With regard to the two remaining issues that pertain to the beneficiary's managerial or executive capacity in his former and proposed employment, counsel asserts that most of the beneficiary's subordinates have been supervisory or professional employees. Counsel points out that the beneficiary is currently classified as an L-1A nonimmigrant and further states that the petitioner has had a total of two approved L-1 nonimmigrant petitions, thus indicating that the instant petition should also be approved given that the same definitions of managerial and executive capacity apply to both the instant immigrant petition and the previously filed nonimmigrant petitions.

After reviewing the petitioner's submissions on appeal, the AAO finds that sufficient evidence has been provided to overcome the director's adverse finding with regard to the petitioner's ability to pay. Therefore, the remainder of this discussion will focus on the two remaining issues that pertain to the beneficiary's employment capacity in his positions with the foreign and U.S. entities.

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):
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> * * *
>
> > (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--
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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 general, when examining the executive or managerial capacity of the beneficiary, 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). 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 AAO will then consider this information in light of other relevant factors, including (but not limited to) job descriptions of the beneficiary's subordinate employees, the nature of the business conducted by the entity or entities in question, the size of each entity's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual roles in the two respective entities.

Applying the above analysis to the beneficiary's former position with the foreign entity, the job description that was provided in response to the RFE indicates that the beneficiary's position was comprised, in part, of non-qualifying tasks. As such, assigning time allocations to the beneficiary's individual job duties becomes a crucial aspect of establishing that the beneficiary spent the primary portion of his time performing qualifying, rather than non-qualifying job duties. In the present matter, despite the director's express RFE instruction asking the petitioner to indicate how much time the beneficiary spent on each of his assigned job duties, the petitioner did not provide the requested information. 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).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Given the lack of time constraints, the AAO cannot determine whether the beneficiary, in his role as sales and logistics manager the, have allocated his time primarily to qualifying tasks, or whether he primarily performed non-qualifying tasks, such as negotiating loans and credit terms, meeting with potential clients, bidding on upcoming projects, and overseeing subordinates who do not qualify as supervisory or professional employees.

With regard to latter to the beneficiary's responsibility for overseeing non-supervisory or non-professional personnel, the foreign entity's organizational chart shows that the beneficiary's direct subordinates included a logistics supervisor, a sales supervisor, and one employee in the legal department. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8

C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

The subordinate who could be deemed a supervisory employee is the logistics supervisor based on his supervision of two subordinate employees, as indicated in the submitted organizational chart. Neither the sales supervisor nor the legal department employee was shown as overseeing the work of subordinates. Further, the record is devoid of evidence establishing the requested educational credentials for either of these employees. The petitioner therefore failed to establish that either the sales supervisor or the legal department employee occupied professional roles within the foreign entity, thus any time spent overseeing and managing the work of these employees may not fall within the parameters of managerial or executive capacity.

On appeal, counsel for the first time contends that the beneficiary qualified as a function manager within the foreign company. Counsel focuses on his level of discretionary authority, top placement within the foreign entity's organizational hierarchy, his effect on profits and operations, and oversight of subordinate personnel. It is noted, however, 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). Any petitioner claiming that the beneficiary is managing an essential function must furnish a written job offer that clearly describes the duties to be performed, i.e., identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily job duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be 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. 593, 604 (Comm. 1988). Here, the petitioner did not establish that the beneficiary was employed as a function manager, as it failed to establish that his role was comprised of primarily managerial duties and it failed to articulate the essential function that he managed. The beneficiary cannot be considered to manage an "essential function" simply because he was the senior employee in the foreign entity's organization.

The petitioner maintains the burden of establishing eligibility by the preponderance of the evidence standard, which requires the petitioner to establish that the beneficiary was more likely than not employed in a qualifying capacity. In light of the deficiencies discussed thus far, it cannot be concluded that the beneficiary more likely than not allocated his time primarily to the performance of qualifying managerial or executive job duties during his employment abroad. Accordingly, the petition cannot be approved.

Next, turning to the beneficiary's proposed employment with the U.S. entity, the AAO will first review the beneficiary's job description, which, like the beneficiary's job description with the foreign entity, fails to conform to the express instructions of the RFE. Specifically, the RFE instructed the petitioner to list the beneficiary's specific job duties and to assign a time allocation to each individual task. The record in the present matter shows several job duties and responsibilities grouped together into subcategories with a specific time allocation assigned to categories A-G, each of which includes anywhere from three to six job

duties. For instance, the petitioner indicated that the beneficiary would spend one hour of his time performing the five job duties that comprise category B. However, the petitioner did not indicate the specific time breakdown among the individual job duties, despite the fact that not all of the job duties within this category, including meeting with clients for new project developments, have been established as fitting the criteria of managerial or executive capacity. The petitioner also failed to specifically define what is entailed in organizing and overseeing the development of different forms of marketing, which was included in category B. In other words, the petitioner failed to identify beneficiary's specific role with respect to marketing given the petitioner's staffing and stage of development at the time of filing. Given that hiring marketing companies was listed among the beneficiary's job duties within category B, the petitioner is expected to provide evidence to establish who was available to provide the required marketing services at the time the petition was filed. 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)). Without such evidence, it is unclear whether the beneficiary himself was carrying out marketing-related tasks and thus performing the petitioner's non-qualifying operational tasks to some degree.

Turning to the job duties within category C, which would consume another hour of the beneficiary's time, the petitioner indicated that the beneficiary would "manage" the relationship between the petitioner and the entity performing the environmental evaluation. However, the petitioner did not clarify how the beneficiary planned to manage the company that would provide this important service given that the service would apparently be outsourced and performed by individuals who would not be directly employed by the petitioning entity. The petitioner was similarly vague in failing to explain what specific tasks would be performed in the beneficiary's effort to "oversee" the companies hired to perform various water pollution studies.

The AAO encountered similar ambiguities when reviewing the job duties in several other categories, which also left the beneficiary's specific tasks undefined. Namely, in category D, the petitioner indicated that the beneficiary would monitor purchase orders and product delivery. However, there is no information identifying who would make purchase orders and delivery arrangements. Similarly, the petitioner's claim that the beneficiary would manage the procurement of equipment and replacement parts is not accompanied by a discussion of who actually completes the procurement tasks. If the beneficiary's role as monitor and manager also includes carrying out the underlying operational tasks, then it cannot be concluded that the beneficiary's role is limited to that of a manager or executive under the statutory definition of managerial or executive capacity. The job duties listed under category E pose similar complications, as the underlying job duties broadly state that the beneficiary would direct new expansion projects and supervise and implement engineering studies. The petitioner did not explain what tasks would be entailed in directing new expansion projects; nor did the petitioner clarify who would conduct the engineering studies that the beneficiary would supervise or how, precisely he would implement such studies without carrying out daily operational tasks. That being said, the petitioner did not establish that studying the development of new products, which was the third job duty include in category E, fits within the statutory criteria of managerial or executive capacity.

While category F is comprised of budget-related duties that focus on the beneficiary's executive role as a board member, these duties would consume only 45 minutes of the beneficiary's day and thus would not comprise the primary portion of the proposed employment. Lastly, in reviewing the human resources and

maintenance tasks that comprise job category G, it is unclear how interviewing or conducting repair audits on plant equipment qualify as tasks within a managerial or executive capacity.

In reviewing the beneficiary's job description, the AAO will not base an adverse decision on any single job duty, as the objective is to assess the job description cumulatively in order to determine whether the total amount of time the beneficiary would allocate to the qualifying tasks significantly surpasses the time that would be spent performing operational tasks that are not within a qualifying managerial or executive capacity. While no beneficiary is required to allocate 100% of his or 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 the beneficiary's 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. 593, 604 (Comm. 1988). In the present matter, the petitioner failed to provide a job description that would allow USCIS to determine how much time the beneficiary would allocate to each of his individual tasks.

In reviewing the totality of the evidence, the petitioner's organizational structure has also been considered. The record shows that the petitioner provided two organizational charts in the RFE response. The petitioner explained that one chart provides a general overview of the organization while the other chart's depiction is more detailed. The general expectation from the charts' respective titles is that both charts would have the same basic foundation and that the more detailed chart would simply build on the broader scope of information found in the general chart. However, a comparison of the two charts shows several inconsistencies that go beyond mere differences in the degree of detail. Specifically, while both charts contain an operations department headed by and a sales and logistics department headed by the beneficiary, the subordinate positions that support each department are not consistent from one chart to the other. Looking first to the beneficiary's sales and logistics department, the general organizational chart shows a logistics assistant, an international sales supervisory, and a payroll supervisory as the beneficiary's direct subordinates, followed by a packing position and an office and maintenance cleaning position subordinate to the logistics assistant. However, the detailed chart shows that the following five positions are the beneficiary's direct subordinates: sales logistics, a maintenance department, a molds and tools workshop, an accountant, and ' ' The chart claimed to be detailed does not show a logistics assistant, an international sales assistant, or a payroll supervisor; nor does this chart indicate that someone from sales and logistics oversees the packing or office maintenance and cleaning. Rather, the beneficiary is show as directly overseeing one individual in the maintenance department as well as ' which may be an outsourced company contracted to perform a certain service. Finally, in reviewing the supporting evidence, which included the petitioner's business invoices, the record shows that the individual whom the detailed organizational chart identified under molds and tooling shop actually issued invoices for molds he made and subsequently sold to the petitioner. It has not been established that this individual is actually an employee of the petitioning entity. Rather, he appears to be a vendor who provides a service for, but is not employed by, the petitioning entity.

The AAO reveals similar inconsistencies during a comparison of the two charts' respective depictions of the operations department. While the general chart shows the operations manager overseeing a maintenance department, a furnace department, and a cutting department, the detailed chart shows the operations manager

overseeing a laminate department, which was not included at all in the general chart, a cutting department, a furnace department, and autoclave operations, the latter of which was also not included in the general chart. In fact, the detailed chart does not include a maintenance department, and confusingly lists the laminate department twice—once directly subordinate to the beneficiary, and a second time under the cutting department's management. While the chart shows two different employees occupying positions in the two laminate departments, it is unclear why this department is depicted in two different places within the operations department. Lastly, while the general chart shows the operations manager overseeing a maintenance department, which then oversees the molds and tooling workshop, the detailed chart shows no difference between the hierarchical placement of the maintenance department and the molds and tooling workshop, both of which are listed under the sales and logistics department rather than the operations department. Furthermore, there is no indication that either chart is actually relevant to the matter at hand, as the petitioner claimed only eight employees on the Form I-140 at the time of filing, while the detailed chart lists a total of twelve positions, thus indicating that the staffing structures described therein do not pertain to the petitioner's organizational structure at the time of filing, but rather reflect additional staff that may have been hired after the filing took place. While counsel claimed in one of his supporting statements that the petitioner had nine employees at the time of filing, this claim is not corroborated by the evidence on record. 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).

A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, the petitioner must 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). None of the above described inconsistencies have been addressed or resolved.

In the present matter, the record has been supplemented with a deficient job description and inconsistent organizational charts that fail to establish who specifically the petitioner employed at the time of filing and what services were being provided by outside contractors. These considerable deficiencies contribute to an overall lack of understanding of the specific job duties performed by the beneficiary and his subordinates. Without this material information, it cannot be determined that the beneficiary would allocate his time primarily to the performance of tasks within a qualifying managerial or executive capacity and on the basis of this additional finding the instant petition cannot be approved.

The AAO acknowledges that USCIS approved two L-1 nonimmigrant petitions filed on behalf of the beneficiary. 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 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).

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). If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, 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.