



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 18 2014**

OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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, Nebraska Service Center, denied the employment-based immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed Form I-140, Immigrant Petition for Alien Worker, to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner, a Michigan corporation, operates a [REDACTED]. It seeks to employ the beneficiary as its general manager.

The director denied the petition, concluding that the petitioner failed to establish that it will employ the beneficiary in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the director failed to consider the totality of the petitioner's business operations and the outsourcing of many routine activities to outside firms and service providers. Counsel contends the petitioner established by a preponderance of the evidence that the beneficiary will primarily perform managerial or executive duties.

I. THE LAW

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. – An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement, which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that it will employ the beneficiary in a primarily managerial or executive capacity.

A. Facts and Procedural History

The petitioner filed the petition on December 4, 2012. The petitioner stated on the Form I-140 that it operates a [REDACTED] with 11 current employees and gross annual income of \$504,816. It seeks to employ the beneficiary as its general manager. The petitioner described her duties as follows:

- Overall management of the company. This includes developing long-term operational strategies for increased growth, including plans for facility improvements, maintaining the highest standards of quality to maximize profits and remain competitive in every area in order to produce and achieve budgetary goals. (40%)
- Develop department heads. This includes selecting and training department heads, keeping them informed of company policies, observe their performance, delegate responsibilities and assist them in improving their level of performance, and attend seminars, meetings, and training organized by the franchise and update staff. (20%)
- Forecast and Planning. This includes developing and overseeing quarterly, and annual operating budgets, analyze operations and meet with department heads to review operations for future planning. (10%)
- Correspondence and Meetings. This includes meeting with franchise operations manager and establish a positive relationship to meet brand standards and develop new marketing strategies through online bookings, and social media sites. (10%)
- Customer Relations. This includes analyzing all customer related issues and directing them to their respective departments, and ensuring all issues are resolved so as to obtain a positive guest experience. (5%)
- Accounts and bank related work. This includes ensuring accurate financial record keeping by overseeing night auditor reports are correctly filed, and quarterly revenue reports are accurately prepared. (10%)
- Hiring, supervision and termination of employees. This includes interviews with new hiring [*sic*], directly work with department heads and employees, establish programs to improve employee morale and motivation, delegate work responsibilities in order to best utilize all personnel. (5%)

The petitioner submitted an organizational chart which indicates that the beneficiary reports to a CEO and supervises a hotel front office manager who, in turn, oversees two desk clerks, two night auditors, and one maintenance man, as well as a head housekeeper who supervises two housekeepers and one laundry maid. A total of nine employees are identified on the chart, as one individual is listed as holding the positions of both desk clerk and night auditor.

The petitioner provided copies of its IRS Forms 941, Employer's Quarterly Federal Tax Return, for the last quarter of 2011 and the first three quarters of 2012, indicating that the petitioner typically employs seven to nine employees, with total quarterly salaries and wages between \$28,000 and \$38,000. The petitioner reported nine employees as of September 2012.

The director subsequently issued a request for evidence (RFE) instructing the petitioner to provide: (1) a much more detailed description of the beneficiary's specific, day-to-day tasks and an estimate of the percentage of time allocated to each specific duty; (2) a detailed organizational chart reflecting the petitioner's staffing at the time of filing; and (3) detailed position descriptions for the beneficiary's supervisor and all subordinate employees.

In response, the petitioner submitted a lengthier description of the beneficiary's duties. The petitioner stated that the beneficiary's time will be divided among the following areas of responsibility:

1. 25% - Developing long term operations strategies for increased growth, including plans for facility improvements.
2. 10% - Forecasting and Planning. Developing and overseeing quarterly and annual operating budgets, analyze operations and meet with department heads to review operations for future planning as well as compliance with city and state codes.
3. 20% - Developing staffing plans, including hiring, supervising, developing, and terminating employees.
4. 10% - Liaising with franchise support office to maintain brand standards.
5. 15% - Developing and directing marketing strategies in consultation with the franchise marketing director.
6. 15% - Ensuring proper financial controls and accurate financial records.
7. 5% - Customer Relations: This includes analyzing all customer related issues and directing them to their respective departments, and ensuring all issues are resolved so as to obtain a positive guest experience.

The petitioner submitted a new organizational chart which depicts the same employees in the positions of front office manager, desk clerk, night auditor, head housekeeper, laundry maid, maintenance, and housekeeper. The petitioner added [REDACTED] and an employee of [REDACTED] as maintenance staff, and indicated that a contracted CPA and a payroll processor also report to the beneficiary.

The petitioner provided the requested position descriptions for all employees and copies of IRS Forms W-2 issued to 11 employees in 2012. The salaries and wages paid to each employee were as follows:

CEO -	\$3,000
Beneficiary -	\$49,400
Front Office Manager -	\$10,744
Desk Clerk -	\$4,248
Desk Clerk/Night Auditor -	\$6,506
Night Auditor -	\$16,040
Head Housekeeper -	\$14,105
Housekeeper #1 -	\$13,383
Housekeeper #2 -	No Form W-2
Laundry Maid -	\$11,449
Maintenance Man -	No Form W-2; paystub dated November 1, 2012 indicates year-to-date payments of \$4,570

The petitioner also submitted two Form W-2s for two individuals who were not on the organizational chart. These employees earned \$1,306.89 and \$275, respectively, in 2012.

The director denied the petition on December 11, 2013, concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. In denying the petition, the director observed that the petitioner paid only \$81,000 to a total of ten employees in the year in which the petition was filed, and found that, given the limited staffing, it is likely the primary part of the beneficiary's job assignment is outside the scope of the definitions of managerial or executive capacity.

On appeal, counsel for the petitioner cites *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.5 (5th Cir. 1989) in support of her assertion that the statute was not intended to limit the multinational manager category to persons who direct a large number of employees or serve a large enterprise. Counsel contends that the director should have looked first to the petitioner's description of the beneficiary's duties, and emphasizes that the director did not conclude the beneficiary's job description was deficient.

Further, counsel asserts that the director erred by failing to consider the totality of the business operations, and instead relied solely on the number of direct employees and their salaries. In this regard, the petitioner asserts that many of the petitioner's routine activities are outsourced and

therefore are managed, and not performed by, the beneficiary. Counsel emphasizes that accounting and some maintenance services are outsourced, and, because the petitioner operates a franchise, performs many support services for and in consultation with the petitioner. In this regard, counsel notes that the franchisor operates a guest relations portal to gather customer reviews, operates an online reservation system, and plans and executes national brand promotions and advertising, thereby reducing the staffing levels necessary to operate the business.

Finally, counsel emphasizes that the organizational chart shows that the beneficiary is the sole manager of a business valued at \$1.7 million and income of more than \$500,000 annually, such that "substantial managerial duties" are necessary for the continued successful operation of the business. Counsel concludes that the petitioner established by a preponderance of the evidence that the beneficiary performs primarily managerial duties. Counsel does not claim that the beneficiary performs executive duties.

B. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a primarily managerial or executive capacity.

When 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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's 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). We 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, the size of the beneficiary's subordinate staff, and any other facts that may contribute to a comprehensive understanding of the beneficiary's actual role in the organizational hierarchy of the entity in question.

The petitioner submitted a lengthy description of the beneficiary's duties in response to the RFE which included a number of duties that would reasonably be associated with the management of a franchised hotel. While the duties attributed to the beneficiary are credible, the petitioner did not provided the requested breakdown of the estimated percentage of time allocated to specific tasks, but rather, assigned percentages to seven areas of responsibility. The description indicates that the beneficiary is responsible for qualifying duties, such as long-term planning and operations strategies, making decisions regarding renovations and facility upgrades, developing budgets, hiring and training staff, and ensuring financial controls. However the petitioner also indicates that beneficiary is directly responsible for local sales, marketing and advertising efforts, purchasing goods from suppliers and making arrangements with service providers, reviewing guest feedback and some customer relations duties. Although specifically requested by the director, 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).

The fact that the beneficiary manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). While the beneficiary may exercise discretion over the petitioner's day-to-day operations and possesses the requisite level of authority with respect to discretionary decision-making, the position description alone is insufficient to establish that her actual duties, as of the date of filing, would be primarily managerial or executive in nature.

The petitioner asserts on appeal that the beneficiary's position is in a managerial capacity. 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. 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.

Here, the petitioner indicates that the beneficiary allocates 20% of her time to personnel management duties. The petitioner states that the beneficiary has one direct subordinate, the front office manager. In reviewing whether the beneficiary manages professional employees, we evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). The petitioner has not indicated that any of its employees are employed in professional positions, that any of them possess bachelor's degrees, or that any of the hotel's positions require completion of a bachelor's degree.

Turning to the question of whether the beneficiary's subordinates would be acting as managers or supervisors at the time of filing, we note that the front office manager, the only subordinate whose duties are supervisory, received only \$10,744 in wages during the year in which the petition was filed, which would be equivalent to a 28 hour workweek at minimum wage. Further, the two desk clerks who are claimed to work under her supervision earned combined wages of only \$10,754, and

the petitioner indicates that one of the desk clerks also holds the position of night auditor. It is reasonable to believe that the petitioner's front desk is staffed for more than 28 daytime hours per week. As such, it is not clear to what extent the front office manager serves as a supervisor versus having to assist with desk clerk duties during the many hours in which no clerk is available. Further, it is unclear who supervises the hotel's non-professional staff when the office manager is not available, if not the beneficiary. Overall, the evidence does not support a conclusion that the beneficiary allocates a significant portion of her time to supervision and control of subordinate supervisors or managers, such that she could qualify as a personnel manager.

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 term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 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.

Here, counsel states on appeal that the beneficiary "has managerial control and authority over all essential functions of the business," and thus, is a manager of a function. Counsel cites to a non-precedent decision in which the AAO determined that a company president qualified as a function manager where he oversaw all aspects of the company and managed only non-professional employees. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The fact that the beneficiary has managerial control over all aspects or functions of the business does not establish that she qualifies as a function manager. While such authority is consistent with the statutory definition of managerial capacity, it is not sufficient to establish that the beneficiary is employed in a managerial capacity. Whether the beneficiary is a "function" manager turns in part on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial. 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). Here, the petitioner has not established that the beneficiary's actual duties are within a managerial capacity.

As noted by counsel, a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C).

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 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. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner in this matter operates a 54-room hotel and claimed to have 11 employees as of the date of filing. Based on the Form W-2s for 2012, the petitioner's actual staffing level appears to have been no more than nine employees, including a part-time front office manager, a part time desk clerk, a part-time laundry maid, and a part-time desk clerk/night auditor. The petitioner also did not provide any evidence of wages paid to one of its two housekeepers. The petitioner indicates that it uses contracted accounting, and lawn services, and uses reservation systems and guest feedback systems operated by its franchisor.

While there is no requirement that the petitioner employ full-time workers, it is reasonable to expect the petitioner to have sufficient part-time staff to answer phones, check-in guests, clean guest rooms, prepare and serve the daily free breakfast offered by the hotel, respond to guest inquiries and requests at any hour, order supplies, maintain the facilities, and perform daily administrative and clerical tasks associated with the operation of the hotel. The petitioner is not a business that maintains standard office hours; it is open seven days per week and reasonably requires someone at its front desk at all times. The petitioner has not indicated how the beneficiary's subordinates are able to relieve her from performing these duties such that she would be free to perform primarily managerial or executive duties. As addressed above, it is clear that the petitioner does not have the front desk staff to perform the duties assigned to them seven days per week, and the company's only subordinate supervisor is also a part-time employee. It is unclear who would perform the office and front-desk functions during the times when these employees are unavailable, if not the beneficiary.

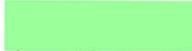
Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility due to its failure to provide a sufficiently detailed description of the beneficiary's day-to-day duties.

Counsel cites *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.5 (5th Cir. 1989), in support of her assertion that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. First, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *National Hand Tool Corp.*, where the Fifth Circuit Court of Appeals decided in favor of the legacy Immigration and Naturalization Service (INS). In *National Hand Tool Corp.*, the court emphasized that the former INS should not place undue emphasis on the size of a petitioner's business operations in its review of an alien's claimed managerial or executive capacity. The regulations and statute should be interpreted to prohibit discrimination against small or medium-size businesses. However, consistent with both the statute and the holding of *National Hand Tool Corp.*, the petitioner the petitioner must establish with specificity that the beneficiary's duties comprise primarily managerial or executive responsibilities, as contemplated in the statutory definitions, and not the routine operational or administrative tasks. Like the court in *National Hand Tool Corp.*, we emphasize that our holding is based on the conclusion that the petitioner did not establish that the beneficiary would be primarily performing managerial duties; our decision does not rest on the size of the petitioning entity. 889 F.2d at 1472, n.5.

All companies, regardless of size, require leaders or individuals who plan, formulate, direct, manage, oversee and coordinate activities. However, the record should support a finding that someone other than the beneficiary is available to perform the company's non-managerial tasks. Again, the fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(44) of the Act. Here, the record fails to establish that the majority of the beneficiary's duties will be primarily directing the management of the organization or a component or function of the organization. Accordingly the appeal will be dismissed.

We acknowledge that USCIS had approved an L-1A classification petition filed on behalf of the beneficiary prior to denying the instant immigrant petition. Each visa petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

We note that I-140 immigrant visa petitions are frequently denied after USCIS approves prior nonimmigrant visa 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 the present immigrant E-13 visa petition, which would permit the beneficiary 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).

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).

III. CONCLUSION

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.