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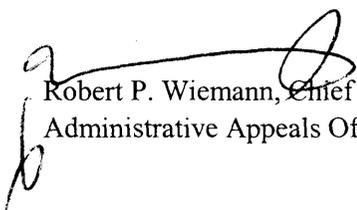
IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president/general manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation, is engaged in the purchase and export of fresh produce. The petitioner states that it is an affiliate of Sea Bulk (Pte.) Ltd., located in Singapore. The petitioner has employed the beneficiary in L-1A status since November 2000, and now seeks to extend his stay for two additional years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in the United States in a primarily 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 for review. On appeal, counsel for the petitioner asserts that the beneficiary will be employed in an executive capacity, and objects to the director's characterization of the beneficiary's job duties as "broad and general." Counsel suggests that the director failed to consider the size of the petitioner's staff, and the reasonable needs of the company in determining that the beneficiary would not be employed in a qualifying capacity. Finally, counsel asserts that the beneficiary will manage two professional employees. Counsel submits a brief and additional evidence in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

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.

The nonimmigrant petition was filed on October 31, 2005. In a letter dated October 31, 2005, the petitioner stated that the U.S. company employs five people, including the beneficiary and a Buyer/Warehouse Manager. The petitioner described the beneficiary's duties as follows:

[The beneficiary] as General Manager of US operations is solely responsible for managing the organization. He assigns tasks to subordinate staff, including the Buyer of perishable goods, and coordinates all financial reporting with the accountant. He reviews all contracts for the purchase of fresh produce, initiated by the Buyer. Once contract terms have been agreed to the buyer co-ordinates shipment of goods by road to Las Vegas, or by sea or air to [the foreign entity] in Singapore. The buyer is assisted by two other members of staff and reports directly to [the beneficiary].

* * *

In summary the General Manager. . . is directly responsible for supervising and controlling the work of staff with sole authority to hire and fire as necessary. In addition he is solely responsible for managing all US-based operations, including buying, shipping, and financial management functions. He spends virtually one hundred percent of his time managing the process of buying perishable goods in the US for immediate shipment to customers.

In support of the petition, the petitioner provided a copy of its California Form DE-6, Quarterly Wage and Withholding Report, for the third quarter of 2005, which indicates five employees, two of whom appeared to be employed on a part-time basis.

The director issued a request for additional evidence on November 10, 2005, in part, instructing the petitioner to submit: (1) a more detailed description of the beneficiary's duties in the U.S., including the percentage of time spent in each of the listed duties; (2) a list of all employees under the beneficiary's supervision, including their job titles and position descriptions; and (3) copies of the petitioner's California Forms DE-6, Quarterly Wage and Withholding Reports for the last six quarters.

In a letter dated February 3, 2006, the petitioner provided the following description of the beneficiary's duties:

- Coordinates buying of produce from growers
- Examines produce to determine quality/grade
- Reviews orders negotiated by buyer; gives approval regarding produce quantities, price and delivery terms
- Reviews orders entered into by buyer to determine if produce type/ mix and quantities meet demand
- Arranges for transportation/assigns drivers to pick up produce from growers for delivery to freight forwarder and/or customers
- Determines price of goods to be sold to Singapore market
- Determines and set[s] credit terms
- Manages the distribution of goods, domestically & for overseas shipment

- Reviews cash flow statements, forecasts, banking requirements, credit terms, currency exchange details. Confers with accountant on regular basis to review figures.
- Trains buyer in the specifics of buying perishable goods
- Determines staffing requirements based upon projected volumes of business.
- Assign[s] and oversees staff in performance of their duties.
- Coordinates with Singaporean company on regular basis to determine demand for produce from California.

(Bullets added)

The petitioner indicated that the beneficiary "spends 100% of time managing [the] company." The petitioner provided the following information regarding the beneficiary's subordinate staff:

██████████ Acting Buyer / Manager

Responsible for negotiating with growers for perishable goods; discusses contract terms with [the beneficiary]; coordinates shipment of perishable food stuffs to freight forwarder for overseas shipment; coordinates for pick up and delivery by drivers for domestic customers.

██████████ Administrator

Responsible for handling paperwork associated with business; duties include filing and other clerical work.

██████████ and ██████████ Packer/Driver

Pick up and delivery of produce between growers and customers, and freight forwarder.

The petitioner also submitted the requested California Forms DE-6 for the previous six quarters. During the fourth quarter of 2005, the quarter in which the petition was filed, the petitioner employed the beneficiary, ██████████ and ██████████ received wages in the third quarter of 2005 and in 2004, but does not appear to have been employed as of the date of filing. Another individual, ██████████ received wages during the fourth quarter of 2005, but the petitioner did not include him in its list of employees, and his role within the company has not been explained.

The director denied the petition on February 16, 2006, concluding that the petitioner had not established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition. The director observed that the job description submitted suggested that the beneficiary's duties are "primarily comprised of marketing, bookkeeping and production tasks, rather than managerial or executive duties." The director further determined that the beneficiary's subordinates, based on the position descriptions submitted, are not employed in professional positions, and that the beneficiary is therefore acting as a first-line supervisor of non-professional employees. Finally, the director found that the record did not establish that the beneficiary has been or will be primarily managing the organization, or a department, subdivision, function or component of the organization.

On appeal, counsel asserts that the detailed job description submitted, "when analyzed in the context of the nature of the business of the company and size of the company," establishes that the beneficiary's duties are primarily executive in nature. Counsel further describes the beneficiary's duties as follows:

The beneficiary is the President/General Manager of the company, whose primary duties are to focus on the growth of the company by managing and supervising personnel and finances of the company.

The beneficiary has been and will be primarily overseeing and managing purchase and distribution of perishable foods both domestically and internationally, overseeing the company's business activity reports, hiring and supervising personnel, evaluating the performance of the employees, and conferring with an accountant on a regular basis to analyze the accounting and financial data to make projections of financial health of the company. He acts as a liaison between the company in the United States and branches of the company in Singapore. He also negotiates with the all [sic] major customers and signs the contracts and manages the rest of the company only by exception as when a problem arises.

In a company with a size of operations of the petitioner, it is inevitable that the President/General Manager is more involved in managing the company on a day-to-day basis than in a larger company. This cannot and should not be a basis to conclude that the alien is not performing the duties of an executive nature. As such, the aforementioned job duties do not appear to be lacking in executive content if viewed in the context of the size of the petitioner's company.

Counsel further objects to the director's determination that the beneficiary will not supervise professional employees, and provides more detailed job descriptions for the Acting Buyer/Manager and Administrator positions. Counsel asserts that both types of positions are recognized by the U.S. Department of Labor (USDOL) as professional positions requiring completion of a four-year bachelor's degree program. In support of the appeal, the petitioner attaches occupational information from the USDOL's Occupational Information Network or O*NET web site, in support of his assertion that the beneficiary's subordinates are employed in professional positions.

Upon review, counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(1)(3)(ii). 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.*

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 show 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). The test is basic to ensure that a person not only has the requisite

authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower-level employees or the performance of the duties of another type of non-managerial or non-executive position.

Here, while the beneficiary evidently exercises discretion over the day-to-day operations of the petitioning company as its president/general manager, the petitioner has failed to show that the beneficiary's actual duties will be primarily managerial or executive in nature. The director specifically requested that the petitioner provide a detailed account of the beneficiary's duties and the percentage of time he spends on each duty. While the petitioner provided a lengthy list of duties, the petitioner failed to provide the percentage of time allocated to each duty, and instead vaguely stated that the beneficiary "spends 100% of time managing [the] company." 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). As noted by the director, the beneficiary's job description include a number of duties that have not been shown to be managerial or executive, and the petitioner has not supported its assertion that the beneficiary devotes 100% of his time to performing managerial duties.

For example, the beneficiary's responsibilities for examining produce, arranging for transportation and assigning drivers to pick up deliveries, coordinating buying, reviewing orders, training the buyer, and coordinating with the foreign entity to determine demand have not been shown to be managerial in nature. The beneficiary appears to be directly involved in the day-to-day purchasing, quality control, and logistics activities of the company, rather than performing primarily managerial or executive duties associated with these functions. The AAO recognizes that the beneficiary supervises one buyer, who is also described as a "Buyer/Warehouse Manager," and "Acting Buyer/Manager," however, as discussed further below the record does not persuasively establish that this employee has been employed on a full-time basis, or that he was solely responsible for the petitioner's nearly \$2 million in purchases during the first nine months of 2005. None of these non-qualifying tasks appear to be incidental to the beneficiary's daily duties, and in fact represent the basic operational activities of the U.S. company. 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).

The petitioner also indicates that the beneficiary is responsible for managing "financial management," but has not identified any employees who perform the routine banking, bookkeeping and other routine financial tasks of the company. Although the company employs an "administrator," neither job description for this employee suggests that she relieves the beneficiary from performing these non-qualifying tasks. Similarly, while it appears that the U.S. company utilizes an independently contracted accountant to prepare tax documents and annual statements, there is no evidence that the accountant would relieve the beneficiary from performing non-qualifying duties associated with the day-to-day finances of the company. 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)).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of providing that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. The word "primarily" is defined as "at first," principally,' or "chiefly." *Webster's II New*

College Dictionary 877 (2001). Where an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, that individual cannot also be "principally" or "chiefly" performing managerial or executive duties. The petitioner has failed to establish any clear distinctions between the proposed qualifying and non-qualifying duties of the beneficiary, yet, the petitioner bears the burden of documenting what portion of the beneficiary's duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). It is especially relevant when several of the beneficiary's daily tasks, as discussed above, do not fall directly under traditional managerial or executive duties as defined in the statute. *See e.g. IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Given the lack of these percentages, the record does not demonstrate that the beneficiary will function primarily as a manager or executive.

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 petitioner indicates on appeal that the beneficiary will manage two professional employees, an administrator and an acting buyer/manager. While the record establishes that the beneficiary has the authority to hire and fire employees, the petitioner has not demonstrated that the beneficiary's subordinates are professionals. In evaluating whether the beneficiary manages professional employees, the AAO must 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. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. As noted above, the petitioner, in response to the director's request for job descriptions for the beneficiary's subordinates, indicated that the administrator "handles paperwork" and is responsible for clerical and filing duties, and that the "acting buyer/manager" is responsible for negotiating purchases, discussing purchase contract terms with the beneficiary, and coordinating shipments. The petitioner now submits more detailed descriptions for both employees, which indicate that they perform more complex duties than those previously described. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and

has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.*

Furthermore, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Here, it appears that the petitioner is attempting to augment the job duties of the beneficiary's subordinates in order to establish that the beneficiary supervises professional employees. Notwithstanding counsel's assertions that the buyer position requires a bachelor's degree and extensive training, the petitioner previously stated the beneficiary has been providing on-the-job training in the selection of produce to the worker, thus suggesting that the position is not overly complex such that it would require specific educational preparation at the bachelor's degree level. Furthermore, there is no evidence in the record of the educational qualifications of either employee, and the petitioner has not established that a bachelor's degree is actually necessary to perform the duties of either position.

On appeal, counsel asserts that the beneficiary "has been and will be managing an essential function of the company and operating at a senior level within an organized hierarchy." 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. § 214.2(l)(3)(ii). 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 "primarily" employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function, as the petitioner has not established that the beneficiary performs primarily managerial or executive duties. Furthermore, the petitioner has not identified the claimed function with specificity, nor indicated the proportion of time allocated to managing the function. Counsel's unsupported assertion that the beneficiary manages an unidentified "essential function" is insufficient. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Counsel asserts on appeal, that "in a company the size of operations of the petitioner, it is inevitable that the [beneficiary] is more involved in managing the company on a day-to-day basis." Counsel states that the beneficiary's job duties "do not appear to be lacking in executive content if viewed in the context of the size of the petitioner's company." As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a

factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

At the time of filing, the petitioner was a five-year-old export company that claimed to have a gross annual income of \$1.1 million for the first six months of 2005. The record shows that the company employed the beneficiary as president/general manager, plus a buyer, an administrator and one driver. As noted above, it appears that the petitioner had one other employee whose duties have not been identified. It also appears that the buyer received wages consistent with part-time employment for the majority of 2005. The petitioner has a reasonable need for staff to source suppliers, inspect products for purchase, negotiate terms and complete purchases, manage inventory, contact the petitioner's affiliate to determine demand for various products overseas, arrange for transport of products from suppliers to freight forwarders and/or U.S.-based customers, schedule deliveries, liaise with the freight forwarder, manage the petitioner's warehouse operations, resolve problems and inquiries with customers and suppliers, issue invoices, perform routine financial and bookkeeping tasks, perform payroll and other personnel functions, and perform other administrative and clerical tasks associated with operating any small business. The petitioner also claims to sell produce to a large customer in the United States, but has not identified who is responsible for sales tasks.

Based on the evidence submitted, which shows that the company generated over \$2 million in sales in the first nine months of 2005 alone, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of a president/general manager who performs primarily managerial or executive duties, one buyer, an administrator who performs clerical tasks, and a driver. When examining the managerial or executive capacity of a beneficiary, CIS reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. Here, the totality of the record does not support a conclusion that the petitioner has a reasonable need for the beneficiary to perform primarily managerial or executive duties. Instead, the record indicates that the beneficiary would be required to perform a combination of managerial, first-line supervisory and operational duties necessary to operate the business on a day-to-day basis. The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his time to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties.

The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium-size businesses. However, the AAO has also long required the petitioner to establish that the beneficiary's position consists of primarily managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks. Moreover, to establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the

present matter, the petitioner has not established the basic eligibility requirement in this matter, that the beneficiary is primarily performing managerial or executive duties. Accordingly, the appeal will be dismissed.

Finally, the AAO acknowledges that CIS previously approved three L-1A nonimmigrant petitions filed on the beneficiary's behalf. However, each nonimmigrant petition has a separate record of proceeding with a separate burden of proof; each individual petition must stand on its own merits. *See* 8 C.F.R. § 103.8(d). The prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's and beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Moreover, if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the prior approval would constitute material and gross error on the part of the director. Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approvals by denying the present extension petition.

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 CIS 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).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.