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FILE: SRC 06 113 53266 Office: TEXAS SERVICE CENTER Date: JUL 07 2008

IN RE: Petitioner:  
Beneficiary:

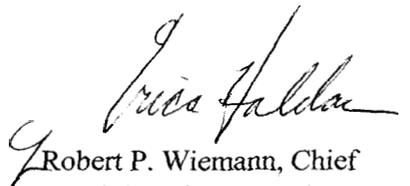


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida corporation that claims to be engaged in the import and export of construction machinery parts and accessories. The petitioner states that it is a subsidiary of Dipcon Engineering Services Limited, located in Trinidad and Tobago. The U.S. entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The beneficiary was initially granted L-1A status for a three-year period and the petitioner seeks to continue to employ the beneficiary in the position of export manager for an additional three-year period.

The director denied the petition on June 8, 2006, concluding that the petitioner did not establish that the beneficiary would be employed in a managerial or executive capacity by the petitioner in the United States. The director noted that since the U.S. company consists of only five employees, the beneficiary does not appear to supervise a staff of professional, managerial or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties, and the beneficiary will be primarily involved in performing the day-to-day services essential to running a business.

Counsel for the petitioner timely filed an appeal on July 11, 2006. On appeal, counsel for the petitioner states that the beneficiary is employed in a managerial capacity and contends the director erred by denying the petition. Counsel asserts that the beneficiary will manage the essential export function of the United States company. Counsel states that the export function is essential since the "company is an import/export company, designed specifically to procure any and all construction equipment to supply its parent company." Counsel further states that the beneficiary will supervise and control the work of a full-time purchasing agent, a secretary and a purchase and delivery courier, and will supervise the work of independent contractors. Counsel asserts that the U.S. entity has established agreements with outside companies to contract a freight forwarder, an equipment transporter, and a mechanic. Counsel further states that the U.S. entity has sufficient staff to relieve the beneficiary from performing non-qualifying duties. In addition, counsel cites several decisions to support the claim that a beneficiary who manages an essential function of a company may qualify as a position of managerial or executive capacity. Counsel submits a brief in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further 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 (I)(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 issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity by the U.S. entity.

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

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

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

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

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

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The nonimmigrant petition was filed on February 24, 2006. In a support letter, dated February 20, 2006, the petitioner described the beneficiary’s proposed duties in the U.S. as the following:

[The beneficiary] will continue to manage and direct the overall operation of the export function of the organization including the procurement of materials, parts, equipment and machinery to service the Foreign Company’s construction projects. This entails negotiating contracts with sales and distribution centers to purchase required equipment and accessories, as well as managing and directing support staff in both export correspondence and expediting purchase orders. [The beneficiary] will spend 40% of his time performing these duties.

In addition, as Export Manager[,] [the beneficiary] will continue to be responsible for managing and directing conversion of products from American standards to foreign standards and specifications to ensure efficient operation under foreign conditions. [The beneficiary] will spend 25% of his time performing these duties.

[The beneficiary] will continue to work on expediting import-export arrangements and maintaining current information on import-export tariffs, licenses and restrictions; arranging shipping details such as export licenses, customs declarations, and the packing, shipping and routing of equipment. [The beneficiary] will spend 20% of his time performing these duties.

Furthermore, as Export Manager[,] he will continue supervising other professionals such as the Purchasing Agent and five independent contractors including an accountant, an equipment transporter and mechanic, and a freight forwarder. The beneficiary will determine the materials and machinery to be purchased, as requested by the Foreign Company, and instruct the Purchasing Agent to procure this equipment. He will also continue delegating non-managerial duties to both the Purchasing Agent and the Secretary. The Beneficiary will supervise the packaging and shipping process handled by the Purchasing Agent, the Secretary, the Equipment Transporter and the Freight Forwarder. Additionally, he will continue to have the authority to hire support personnel as needed and fire any current personnel after evaluating their performance. [The beneficiary] will spend 15% of his time performing these duties.

The petitioner's support letter also explained that the U.S. entity was established in order to "supply parts and accessories to the construction machinery and equipment used by the Foreign Company." The petitioner explained that the foreign company is engaged in construction activities and it recently placed "competitive bids on two (2) major construction projects in Guyana with a total value of approximately US\$51 million." In addition, the foreign company is "in the process of completing a major construction project," and was "awarded a contract." Thus, the petitioner explained that the foreign company needs to purchase "US \$4 million in heavy construction equipment, (i.e., Caterpillar bulldozers, excavators, trucks, materials, parts and machinery)."

The petitioner also submitted an organizational chart for the U.S. entity. The chart included the president as the head of the U.S. entity, who in turn supervises the beneficiary as the export manager. The chart also indicated that the beneficiary supervises a secretary, a purchasing agent, and a purchase and delivery courier. The petitioner submitted job descriptions for all of the five employees and the independent contractors. According to the list of duties provided by the petitioner, it appears that the president is responsible for "directing [the] overall management of the organization and establishes the goals and policies of the organization." The beneficiary is responsible for the management of the export function for the company. In addition, the beneficiary will supervise the purchasing agent who is in charge of "coordinating activities involved with procuring materials, equipment, tools, parts, supplies, and machinery to service the foreign company's construction projects." The purchasing agent is also responsible for "reviewing requisitions, conferring with vendors to obtain product or service information, such as price, availability, and delivery schedules"; and "preparing purchase order or bid requests"; and "has the authority to approve invoices for payment and coordinates the delivery of goods to the foreign company." The beneficiary also supervises a secretary who manages the administrative tasks of the office, and a purchase and delivery courier who "picks up orders and delivers them to shippers." The petitioner also submitted a list of independent contractors which include an accountant and four companies that provide the services of an equipment transporter and mechanic, a freight forwarder, a provider of replacement auto parts, and a provider of flatbeds and flatbed drivers.

On March 10, 2006, the director determined that the petitioner did not submit sufficient evidence to process the petition. The director requested that the petitioner submit additional evidence in support of its petition. Specifically, the director requested: (1) a detailed description for each of the company's five current employees; (2) a more specific description of the day-to-day duties of the proffered position, including the percentage of time spent of each duty; and, (3) evidence of wages paid to employees, including the Employer's Quarterly Federal Tax Return, Form 941, for the last four quarters; copies of the U.S. company's payroll summary, Forms W-2 and W-3, for all employees since 2005, and Forms 1099 for all contracted employees.

In response to the director's request regarding information of the duties that the beneficiary will perform, the petitioner re-submitted the job descriptions for the beneficiary and the current employees that were submitted initially and already found to be deficient. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner submitted Form 1099 for 2005 for a "[REDACTED]" in the amount of \$2,600.00. According to the list of independent contractors utilized by the petitioner, Mr. [REDACTED] is the petitioner's accountant.

The fact that his earned wages for 2005 was only \$2,600, it is reasonable to conclude that Mr. Brown provided his services on a limited or intermittent basis.

The petitioner also submitted Form W-2 for 2005 for the five individuals currently employed by the U.S. entity. According to the W-2 forms for 2005, it appears that the purchase and delivery courier received gross wages of \$13,200, the purchasing agent received gross wages of \$18,000, and the secretary received gross wages of \$18,000. It is not clear if these individuals are working a full-time schedule due to their low annual wages.

The director denied the petition on June 8, 2006, concluding that the petitioner did not establish that the beneficiary would be employed in a managerial or executive capacity by the petitioner under the extended petition. The director noted that since the U.S. company consists of only five employees, the beneficiary does not appear to supervise a staff of professional, managerial or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties, and the beneficiary will be primarily involved in performing the day-to-day services essential to running a business.

On appeal, counsel for the petitioner states that the beneficiary is employed in a managerial capacity and contends the director erred by denying the petition. Counsel asserts that the beneficiary will manage the essential export function of the United States company. Counsel states that the export function is essential since the "company is an import/export company, designed specifically to procure any and all construction equipment to supply its parent company." Counsel further states that the beneficiary will supervise and control the work of a full-time purchasing agent, a secretary and a purchase and delivery courier, and will supervise the work of independent contractors. Counsel asserts that the U.S. entity has established agreements with outside companies to contract a freight forwarder, an equipment transporter, and a mechanic. Counsel states that the U.S. entity has sufficient staff to relieve the beneficiary from performing non-qualifying duties. In addition, counsel cites several decisions to support the claim that a beneficiary who manages an essential function of a company may qualify for the benefit sought.

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity. 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(l)(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 prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Here, while the beneficiary evidently exercises discretion over the day-to-day operations of the petitioner's export activities, the petitioner's description of his proposed duties suggest that the beneficiary's actual duties include a number of non-managerial and non-executive duties.

The beneficiary's proposed job description includes vague duties such as the beneficiary will "manage and direct the overall operation of the export function of the organization including the procurement of materials, parts, equipment and machinery to service the Foreign Company's construction projects;" and, "manage and direct conversion of products from American standards to foreign standards and specifications to ensure efficient operation under foreign conditions." The petitioner does not explain how the beneficiary will perform these requirements or clarify what specific managerial tasks are required to "direct conversion of products." 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)).

In addition, the job duties required of the beneficiary include non-qualifying duties such as the beneficiary will "negotiate contracts with sales and distribution centers to purchase required equipment and accessories"; "expedite import-export arrangements and maintain current information on import-export tariffs, licenses and restrictions"; and, "arrange shipping details such as export licenses, customs declarations, and the packing, shipping and routing of equipment." It appears that the beneficiary will be directly responsible for performing the shipping and purchasing duties of the business and performing administrative tasks associated with these functions rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary will spend on various duties. While the petitioner has provided a breakdown of the percentage of time the beneficiary will spend on various duties, the petitioner has not articulated whether each duty is managerial or executive. Thus, the AAO must attempt to glean the nature of the beneficiary's proposed duties from the vague descriptions submitted.

The petitioner indicated that the beneficiary will spend 40 percent of his time to "manage and direct the overall operation of the export function of the organization including the procurement of materials, parts, equipment and machinery to service the Foreign Company's construction projects. This entails negotiating contracts with sales and distribution centers to purchase required equipment and accessories, as well as managing and directing support staff in both export correspondence and expediting purchase orders." Meeting with clients and negotiating contracts are not qualifying duties because they are not managerial or executive in nature. Instead, it appears that the beneficiary is the only employee within the company who is responsible for acquiring the contracts. The lack of managers or subordinate employees for the beneficiary to direct in the purchasing and negotiating tasks for the U.S. company, and the job description indicating that the beneficiary is directly in charge of negotiating and meeting with clients, raises questions as to whether the beneficiary is managing these activities or actually performing duties related to purchasing and client relations. Although the petitioner employs a purchasing agent, the agent's duties appear to be limited to gathering information on products from vendors, assisting the beneficiary with paperwork, and resolving problems concerning quality. An employee who "primarily" performs the tasks necessary to produce a product or provide a service is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring

that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I & N Dec. at 604.

The petitioner further stated that the beneficiary will spend 25 percent of his time to "manage and direct conversion of products from American standards to foreign standards and specifications to ensure efficient operation under foreign conditions." It is not clear what would be the duties entailed in order to achieve this goal. Although the petitioner requested a more specific description of the duties to be performed by the beneficiary, the petitioner failed to submit that in response to the director's request for evidence. Without further information regarding this duty, the AAO cannot determine if the duty is managerial or executive in nature. 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)).

In addition, the petitioner stated that the beneficiary will spend 15 percent of his time to "supervise other professionals such as the Purchasing Agent and five independent contractors including an accountant, an equipment transporter and mechanic, and a freight forwarder. The beneficiary will determine the materials and machinery to be purchased, as requested by the Foreign Company, and instruct the Purchasing Agent to procure this equipment. He will also continue delegating non-managerial duties to both the Purchasing Agent and the Secretary. The Beneficiary will supervise the packaging and shipping process handled by the Purchasing Agent, the Secretary, the Equipment Transporter and the Freight Forwarder." Although the petitioner states it has contractual employees in the areas of accounting, shipping and packaging, the petitioner has neither presented evidence to document the existence of these employees, such as contractual agreements between the petitioner and the independent contractors. Additionally, the petitioner has not explained how the services of the contracted employees obviate the need for the beneficiary to primarily conduct the petitioner's business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

Thus, even if the petitioner does utilize the services of one independent contractor, the record does not reflect that the employee is professional, maintains a supervisory position, works on a full-time basis, or that he takes direction from the beneficiary in performing his duties. There is no evidence of formal agreements or contracts entered into by the petitioner that explains the usage of outside sources. The petitioner has failed to submit a detailed job description or duties performed by the independent contractor. There is no evidence on record to show that the claimed independent contractor would engage in the day-to-day operations of the business or that he would relieve the beneficiary from performing other routine, non-qualifying tasks associated with the business' daily marketing, sales, administrative, operational and financial functions.

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. An employee who "primarily" performs the tasks necessary to produce a product or provide a service is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one

"primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I & N Dec. at 604.

In addition, although the beneficiary is not required to supervise personnel, if it is claimed that he is employed in a managerial capacity based on his supervision of employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

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 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. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the responsibilities required of the beneficiary's subordinates.

Furthermore, the petitioner has not established that the beneficiary will be managing an essential function of the U.S. company. 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 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 neither claimed nor provided evidence that the beneficiary manages an essential function.

As discussed above, the totality of the record supports a conclusion that the beneficiary would be required to perform primarily non-qualifying duties associated with the petitioner's day-to-day functions, as the petitioner has not identified sufficient staff within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to operating the

business. Based upon evidence submitted, it appears that the beneficiary has been and will be performing the services of the U.S. entity rather than performing primarily managerial duties as its export manager. The petitioner has not demonstrated that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title. The fact that the beneficiary has been given a managerial job title and general oversight authority over a component of the business is insufficient to elevate his position to that of a "function manager" as contemplated by the governing statute and regulations. 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).

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "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 at 1316 (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 CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive position. Accordingly, the appeal will be dismissed.

The AAO notes that CIS previously approved an L-1A nonimmigrant petition filed on behalf of the beneficiary. 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 approval do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). If the previous nonimmigrant petition was 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. 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). Based on the lack of evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the prior approvals and denying the instant petition requesting an extension of the beneficiary's status.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.