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

U.S. Citizenship and Immigration Services

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 05 2010

IN RE: Petitioner: [redacted]
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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its 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 states that it is a qualified to do business in California. The beneficiary was initially granted L-1A status in 2006 and the petitioner now seeks to extend his status for three additional years.

The director denied the petition concluding that the petitioner failed to establish: (1) that the beneficiary would be employed in the United States in a primarily managerial or executive capacity; and (2) that the U.S. entity is doing business.

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 asserts that the beneficiary is responsible for managing a function in his role as manager of the U.S. office, and holds a position that "is so specialized and senior that job function itself is managerial." With respect to the petitioner's business activities, counsel notes that the petitioner is a representative office and as such relies on the support staff and infrastructure of its parent office in Korea. Counsel submits a brief and a letter from the beneficiary 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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate 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 first issue addressed by the director is whether the petitioner established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

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 petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 16, 2008. The petitioner indicated that the company had one employee as of the date of filing. In a letter dated November 15, 2008, counsel described the offered position as follows:

> [The beneficiary] has been offered a position of manager and director of the US Office. He is currently responsible for research of the footwear retail industry and market trend as well as new material items. [redacted] irectly to coordinate new product schedule for future orders.
>
> [The beneficiary] as a manager and director has the sole discretion [*sic*] power to control and manage the US Office's operations and to make decisions on the marketing to and communication with Nike HQ. His discretion and power are only subject to the board of directors, the executive manager and the president of [the petitioner] in Korea.

Counsel stated that the petitioner's parent company in Korea manufactures athletic shoes for companies such as Nike and Asics. Counsel further describes the purpose of the U.S. office as the following:

> For the better business relation with Nike and the better US customers' satisfaction, [the foreign entity] established its US office pursuant to the laws of the State of California. The purposes of the US Office were to research the continuously changing footwear and retail industry in the United States and to cooperate with Nike on the new products schedule. By virtue of the US Office's successful cooperation with Nike, [the company] could achieve its business goals.

The petitioner submitted an organizational chart for the Korean entity which depicts the beneficiary as reporting to [redacted] employees were listed on the chart.

The director issued a request for additional evidence on January 7, 2009, in which he instructed the petitioner to submit evidence to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. Specifically, the director requested: (1) a comprehensive description of the beneficiary's duties; (2) a list of U.S. employees which identifies each employee by name and position title; (3) complete position descriptions for all U.S. employees, including a breakdown of the number of hours devoted to each of these employee's duties on a weekly basis; and (4) copies of the company's IRS Forms 941 and W-2 evidencing wages paid to employees in 2007 and 2008.

In a response dated February 12, 2008, counsel for the petitioner reiterated that the beneficiary "is currently responsible for research of the footwear retail industry and market trend as well as new material items," and "responsible for communicating with Nike HQ directly to coordinate new product schedule for future orders." Counsel further stated that the beneficiary "has the sole discretion power to control and manage the US liaison office's operations and to make decisions on the marketing to and communication with Nike HQ."

The petitioner submitted copies of IRS Forms 1099, Miscellaneous Income, for wages paid to the beneficiary in 2007 and 2008. The petitioner did not submit evidence of wages paid to any other employees or contractors.

The director denied the petition on March 18, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity under the extended petition. In denying the petition, the director emphasized that the petitioner failed to respond to his request for a comprehensive description of the beneficiary's job duties and had otherwise failed to explain exactly what the beneficiary would be doing to qualify as a manager or executive in the context of the petitioner's staffing arrangement. The director determined that the beneficiary, as the petitioner's sole employee, would be primarily engaged in providing the services of the organization and performing other non-qualifying duties.

On appeal, counsel for the petitioner asserts:

> The service failed to consider beneficiary position in light of the functional manager. [The beneficiary's] job title is office manager and has the sole leadership to control and oversee the US Office's operations and provides strategic guidance. Also he is to make decisions on the marketing and coordinate communication with clients.
>
> Considering his job title and position, it is so specialized and senior that [the] job function itself is managerial position in nature. As a head of a representative office, he routinely is in touch with Korean support staff that follows his direction and he is in constant touch with board of directors and managers of the company.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

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 each 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). While the AAO does not doubt that the beneficiary exercises discretion over the petitioner's office as its manager and apparently only U.S.-based employee, the totality of the evidence submitted does not demonstrate that the beneficiary's actual duties will be primarily managerial or executive in nature.

Counsel's initial description of the beneficiary's duties was vague and failed to provide any insight into what it is the beneficiary does on a day-to-day basis as the petitioner's manager. For example, counsel stated that the beneficiary "has the sole discretion power to control and manage the US Office's operations and to make

decisions on the marketing," and that such "discretion and power are only subject to the board of directors, the executive manager and the president of [the foreign entity]." While such responsibilities provide a broad view of the scope of the beneficiary's activities, they fail to illustrate what specific tasks the beneficiary performs to accomplish his objective of managing the U.S. office. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, counsel stated that the beneficiary is directly responsible for researching the footwear industry and its marketing trends and new materials, as well as for directly communicating with Nike headquarters to coordinate the manufacturing schedule for future orders. Without further explanation, these duties cannot be distinguished from marketing and sales tasks. While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act; *see also Brazil Quality Stones, Inc. v. Chertoff*, 531, F.3d 1063, 1069-70 (9th Cir. 2008). Given that the only stated purposes of the U.S. office are to research the U.S. market and to communicate with the petitioner's major customer, it appears that the beneficiary is performing the functions of the U.S. office rather than managing or overseeing such functions.

Accordingly, the director requested a comprehensive description of the beneficiary's duties and a breakdown of the number of hours he will allocate to specific job duties on a weekly basis. In response to the RFE, counsel simply reiterated the job description provided at the time of filing, which was already reviewed by the director and found to be deficient. Any 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).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both general managerial and operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's tasks, such as performing market research or communicating with the petitioner's client regarding manufacturing orders, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Overall, the descriptions of the beneficiary's duties submitted prior to the adjudication of the petition included a combination of vaguely described managerial duties and non-qualifying duties suggesting that the beneficiary, despite being the "head" of the U.S. office, actually performs all non-managerial duties associated with the operation of the office.

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 has not submitted evidence that the beneficiary has any subordinate personnel in the United States. Counsel claims for the first time on appeal that the beneficiary is "in touch with Korean support staff that follows his direction," however, this vague and unsupported statement is insufficient to establish that the beneficiary is primarily engaged in the direction and control of the foreign staff, that such staff is comprised of managerial, supervisory or professional employees, or that the beneficiary has the authority to hire and fire such employees. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The petitioner has not established that the beneficiary qualifies 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 detailed job description clearly stating 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. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. As noted above, the petitioner has not provided the requested comprehensive description of the beneficiary's duties and it cannot be concluded that his primary duties are managerial in nature.

Counsel states on appeal that the beneficiary is responsible for overseeing the overall operation of the petitioner, including management of essentially all of the company's functions. However, it is the petitioner's obligation to establish that the day-to-day non-managerial tasks of the functions managed are performed by someone other than the beneficiary. While the AAO does not doubt that the beneficiary is in contact with the foreign entity's personnel, the petitioner has not explained how the Korean employees obviate the need for the beneficiary to primarily perform the day-to-day functions of the U.S. office, which include conducting market research and communicating with the petitioner's client.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), 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. 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)). Other relevant factors may include 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).

Here, the petitioner has not established that a company established for the purpose of researching U.S. market trends and communicating with a major client regarding manufacturing orders has a reasonable need for its sole employee to perform primarily managerial duties associated with the "oversight" of the one-person office. Thus, while the beneficiary may exercise discretion over his own activities and act with minimal supervision, the petitioner has failed to explain how the beneficiary's actual duties are managerial in nature when he is the only person available to perform the office's day-to-day, non-managerial operational and administrative functions. While some of the beneficiary's tasks as manager of the U.S. office could conceivably be deemed as qualifying if they were adequately described, the petitioner has the burden of establishing that a majority of his tasks would be qualifying. This determination cannot be based on the beneficiary's job title, the fact that he is the "head" of an office, or a job description that fails to explain his daily tasks. Again, the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium-size businesses. However, the AAO has required the petitioner to establish that the beneficiary's position consists of primarily managerial or executive duties and that the petitioner will have sufficient personnel to relieve the beneficiary from performing operational and/or administrative tasks. Our holding is based on the conclusion that the beneficiary is not primarily performing managerial duties; our decision does not rest on the size of the petitioning entity.

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

The second issue addressed by the director is whether the petitioner is a qualifying organization doing business in the United States. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) defines "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and at least one other country directly or through a

parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as "the regular systematic, and continuous provision of goods and services by a qualifying organization and does not include the mere presence of an agent of office of the qualifying organization in the United States and abroad."

. The petitioner indicated a Pennsylvania mailing address on the Form I-129. Part 5 of the Form I-129 asks the petitioner to indicate the address where the beneficiary will work, if different from the mailing address. The petitioner left that item blank. The petitioner indicated that the type of business is a "liaison office," and did not complete the gross or net annual income information on the Form I-129.

The petitioner submitted a Certificate of Qualification issued by the California Secretary of State in July 2002 which indicates that the foreign entity will do business in California as The petitioner also provided the foreign entity's certificates of tax payment and export record, proof of international trade conducted by the foreign entity, and the petitioner's IRS Forms 1120-F, U.S. Income Tax Return of a Foreign Corporation and Pennsylvania Corporate Tax Reports for the years 2005 through 2007. The tax returns show no sales or other income, but do include expenses such as rent, insurance, cable service, professional fees, office expense, minimal utilities, and telephone service.

In the RFE issued on January 7, 2009, the director requested the following evidence to establish that the U.S. entity is doing business: (1) photographs of the interior and exterior of the premises secured for the U.S. entity, clearly depicting the organization and operation of the entity; (2) addresses and directions to each facility used by the entity; (3) copies of the petitioner's phone records for the last three months; (4) a copy of the petitioner's business phone listing; (5) samples of advertising copy for print media; and (6) proof of business conducted at the location listed on the petition, including utility bills, rent receipts, copies of all local, county and state licenses, and a letter from the owner of the leased premises confirming the petitioner's occupancy.

In response, the petitioner submitted a copy of its 2008 IRS Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, and its IRS Forms 1096 and 1099 for 2007 and 2008 evidencing payments to the beneficiary. The petitioner's response also included three photocopies of photographs depicting the interior of an office.

The director denied the petition based on the petitioner's failure to provide the requested evidence regarding the U.S. business. Accordingly, the director noted that "the veracity of the instant petitioning entity as a functioning business for immigration purposes is called into question." The director further noted that the petitioner's tax return shows that no compensation or wages were paid, and questioned whether the beneficiary is employed by or compensated by the petitioner.

On appeal, counsel states:

> The service failed to properly consider the records in support of the petitioner and overly emphasized and relied upon not available documents which were not submitted in support of the petition. The filed corporate tax return itself is proof that the entity is existing under the laws of the United States and complying with all the relevant regulations and duly paying taxes. Furthermore, there was ample evidence in regards to petitioner's parent company which produces Nike shoes. The fact that the current office is a representative office heavily relies on the support staff and infrastructure of the parent company.

Upon review, the petitioner has not submitted sufficient evidence to establish that the petitioner is a qualifying organization doing business in the United States.

A representative office is not specifically excluded by the definition of "doing business," provided that it shows that it is engaged in the provision of goods or services, albeit on behalf of a related foreign entity. However, contrary to counsel's assertions, the fact that the foreign entity registered in California and files tax returns is insufficient to establish that the company is doing business pursuant to 8 C.F.R. 214.2(l)(1)(ii)(H).

Although the petitioner claims to be primarily performing market research and customer liaison activities on behalf of the foreign entity and is not selling a product or service, it is reasonable to expect the petitioner to provide certain basic types of evidence to establish that the company, though small, exists and is performing the functions stated. The petitioner was unwilling or unable to provide basic evidence such as an office address, directions to its office, the requested photographs clearly depicting the operation of the entity, a letter from its lessor, or any other evidence of business activities, all of which were specifically requested in the RFE. 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Accordingly, the petition will be denied for this additional reason.

The AAO acknowledges that USCIS has approved two prior petitions granting the beneficiary L-1A status. The prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals 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 request to extend the beneficiary's status.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1025, 1043 (E.D. Cal. 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.