

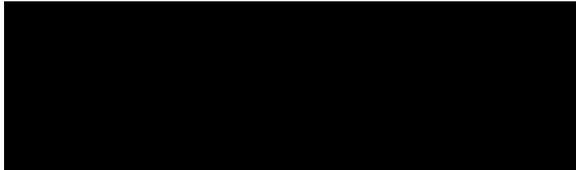
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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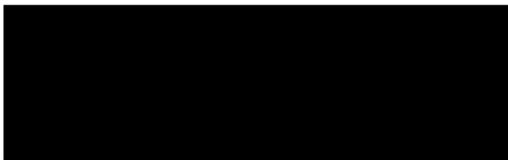
Petitioner:

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:

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 \$630. 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, California 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 beneficiary's employment 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 Delaware corporation, is a real estate development holding company and a subsidiary of [REDACTED]. The petitioner has employed the beneficiary as its president in L-1A status since January 2007 and now seeks to extend his status for two additional years. The director denied the petition, concluding that the petitioner failed to 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. On appeal, counsel for the petitioner asserts that the director failed to consider the beneficiary's supervision of independent contractors in evaluating whether he would be employed in a qualifying managerial or executive capacity under the extended petition. Counsel contends that the sheer size and complexity of the petitioner's real estate development projects located in Polson, Montana establishes the petitioner's reasonable need for a managerial or executive employee in the United States. Further, counsel emphasizes that the beneficiary was previously granted L-1A status based on similar facts. Counsel submits a brief and additional evidence in support of the appeal.

I. The Law

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.

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), 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.

II. The Issue on Appeal

The sole 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. The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 22, 2009. The petitioner indicated on the petition that the beneficiary will serve as president of the company responsible to "oversee real estate project development." In a letter dated September 29, 2009, the petitioner described the beneficiary's duties as follows:

As President, [the beneficiary] oversees our real estate project development and supervises consultants, subtrades and suppliers. He is responsible for site selection and investigation and analysis of new development opportunities. He also supervises subcontractors and legal, financial and marketing professionals, and serves as our liaison with investors, both American and Canadian.

The petitioner indicated that its group of companies, based in Alberta, Canada, has real estate development projects in various stages of development in Alberta and British Columbia, Canada, and in Polson, Montana. The petitioner indicated a Scottsdale, Arizona address as both the beneficiary's worksite and his residential address on the Form I-129 petition. The petitioner's initial evidence included: (1) company information from the website for its corporate group; (2) a brochure for The Shores of Flathead Lake, a residential real estate project in Montana; (3) charts showing the structure of the corporate group in the United States and Canada; and (4) 2008 unaudited financial statements for the petitioning company, and related U.S. companies including [REDACTED].

The director issued a request for additional evidence ("RFE") on January 6, 2010. The director instructed the petitioner to submit, *inter alia*, the following: (1) a detailed description of the beneficiary's duties including the percentage of time spent in each specific duty listed; (2) an organizational chart for the U.S. company that clearly shows the company's organizational hierarchy and staffing levels; (3) names, job titles, position descriptions, wages, beginning and end dates of employment, immigration status and source of remuneration for all U.S. employees; and (4) evidence of wages paid to U.S. employees, including copies of IRS Forms W-3 and W-2, and state quarterly wage reports for the last four quarters. The director also requested evidence of the beneficiary's performance of executive or managerial duties, such as explanations of specific goals and policies he has established, examples of work products from the last six months, and, if applicable, evidence that the beneficiary oversees professional employees, contract employees or evidence that he manages an essential function of the organization. The director emphasized that if the petitioner is claiming that the beneficiary will be directing the work of contract employees, it should provide evidence such as copies of the contracts, proof of payment for services, and evidence of the amount of time the beneficiary allocates to supervising contractors.

In a response dated February 2, 2010, the petitioner stated that the beneficiary is "responsible for protection of the company's investments in the U.S., and for the total management of the U.S. projects, including transactions with realtors, property managers, guest services coordinator, key financial institutions and legal

counsel." The petitioner indicated that its U.S. based projects are both located in Polson, Montana and include The Shores of Flathead Lake and Watermark on Flathead Lake.

The petitioner further described the beneficiary's responsibilities as the following:

- Planning and Approvals: liaison with all planning authorities including the City of Polson, Lake County, Montana.
- Engineering: oversees all engineering including DEQ and Shoreline Protection approvals.
- Architecture: [The beneficiary] oversees all architecture and design decisions.
- Suppliers: coordination of all purchases for projects, including building materials, furniture, fixtures, etc.
- Fractional Exchange Program: responsible for coordinating with Registry Collection International, our exchange program provider for the Watermark project.
- Marketing: coordinating all marketing materials, including print, web, radio, signage, etc.
- Title: coordinate all Title and Condominium Plan issues with Title Companies (Stewart Title – Missoula, and title companies used by buyers).
- Customer Liaison: meeting with and ensuring good relations with all buyers.

Percentage of time spent in each area of executive and management responsibility:

1. Financial Institutions – 15%
2. Legal – 15%
3. Construction – 15%
4. Planning and Approvals, Engineering, Architecture, Suppliers and Customers – 10%
5. Real Estate Agents, Fractional Exchange Program and Marketing – 15%
6. Property Manager – 10%
7. Customer Liaison – 10%
8. Miscellaneous – 10%

The petitioner indicated that the beneficiary is responsible for managing subcontracted employees associated with its real estate development projects in Montana, including: a general contractor that serves as the builder for both Montana projects; a realtor who reports to the beneficiary regarding sales promotions, prospective buyers and termination of sales; a property manager who reports to the beneficiary regarding all issues arising with respect to the properties; and a guest services coordinator who is responsible for the petitioner's relationship with clients and guests at the Watermark property. The petitioner also listed two banks and two attorneys among the beneficiary's subcontracted subordinates.

The petitioner submitted a copy of the 2008 IRS Form 1120, U.S. Corporation Income Tax Return for the petitioner and subsidiaries, which indicates that the company achieved gross receipts or sales of \$275,000 and reported a loss of \$337,182. The record reflects that these receipts were in the form of "management fees" paid by the related entity [REDACTED] p. The petitioner's costs included \$119,426 in "administration," and \$5,307 in legal and professional fees. While the financial statements indicate that the petitioning company paid rent in the amount of \$44,716, consulting fees of \$25,000, and management fees in

excess of \$160,000 in 2007, the petitioner reported no expenses in these areas for 2008. The petitioner's response to the RFE also included copies of its bank statements for 2009. The petitioner had an account balance of \$313.51 as of November 30, 2009.

The petitioner submitted closing statements indicating that several buyers purchased a "fractional 1/8 interest in Unit [REDACTED] in November 2009. The petitioner also submitted brochures and photographs of "The Shores" and "Watermark" real estate developments. The Shores is comprised of sixteen (16) three-level condominiums. The Watermark development offers investors the opportunity for shared ownership of 12 luxury condominium units. The photographs of both developments appear to show fully-completed real estate projects.

The director denied the petition on March 2, 2010, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. In denying the petition, the director determined that several of the beneficiary's duties do not fall within the statutory definitions of managerial or executive capacity. The director acknowledged the petitioner's claim that it contracts the services of a builder, realtor, property manager, and guest services coordinator, but noted that the petitioner failed to provide any description of the duties the contractors perform or the scope of the services they provide.

On appeal, counsel contends that the director overlooked the information that the petitioner provided with respect to its contracted personnel. Counsel asserts that "these individuals and entities are clearly contracted to [the petitioner] and answer to [the beneficiary]." In addition, counsel objects to the director's characterization of the beneficiary's duties as those "akin to 'providing a service or product.'" Counsel emphasizes that it began development of its projects in Montana in 2004, and that "an investment of this size and complexity requires, at the very least, that [the petitioner] have its own executive and managerial employees available to oversee the project and ensure that the planning, legal work, construction and other related activities be successfully completed as directed." Counsel contends that the beneficiary's duties demonstrate that he primarily manages the organization, or, in this case, the development project in Polson, Montana. Counsel states that the beneficiary "controls the professional entities and individuals who are responsible for the day-to-day activities of the project" and "is responsible for the policies and management of [the petitioning company]."

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary would be employed in the United States in a primarily managerial 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.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the beneficiary's claimed managerial or executive capacity, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of employees or contractors to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

At the time of filing the petition, the petitioner provided a very brief description of the beneficiary's duties, noting that he "oversees our real estate project development," supervises "consultants, subtrades and suppliers," supervises "legal, financial and marketing professionals," holds responsibility for site selection and investigation and analysis of new development opportunities," and serves as a liaison with Canadian and American investors. This description offered little insight into what the beneficiary actually does on a day-to-day basis as the president of the U.S. company. Absent additional details regarding the nature of the beneficiary's work, the AAO cannot determine how several of these tasks rise to the level of managerial or executive capacity as contemplated in the statutory definition. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The deficiencies of the position description were compounded by the lack of evidence of the nature of the petitioner's current business operations. The petitioner provided evidence of what appear to be completed vacation property developments marketed as Watermark and The Shores, but the evidence provided little insight into how the company operates. The petitioner provided financial statements for the U.S. holding company and three related U.S. companies, but these documents reflected little combined revenue, no payment of salaries, and minimal recent payments to outside consultants, contractors or other external staff to support the petitioner's suggestion that the beneficiary operates the business chiefly through outside contractors, consultants and professionals. The petitioner provided a screenshot from its group's website which indicates that the petitioner's Canadian parent company maintains a staff that includes a vice president and CFO, three managers responsible for investor relations and marketing, planning and development, and construction, as well as a controller, and office management and administrative staff. However, the petitioner has never claimed that the beneficiary manages these staff members in relation to the U.S.-based projects. Further, the petitioner indicated on the petition that beneficiary will be working from his residential address in Arizona, several states removed from the U.S. real estate project located in Montana. The petitioner has not provided evidence of any business activities in Arizona.

Accordingly, the director reasonably requested extensive information regarding the beneficiary's specific job duties, his supervision of subordinate employees or contractors, or his management of essential company functions, documentation substantiating his performance of qualifying duties, as well as evidence of the petitioner's business activities. The petitioner responded that the beneficiary is responsible for coordinating all aspects of the project from planning, engineering, architecture, suppliers, to marketing, legal, financing, customer liaison and property management. The petitioner also offered percentages of time the beneficiary allocates to eight extremely broadly-defined areas of responsibility. For example, the petitioner indicated that half of the beneficiary's time would be allocated to "financial institutions," "construction," "customer liaison," and "miscellaneous." 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 has 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).

In addition, given that the petitioner has submitted photographs and brochures for what appear to be completed real estate projects, it is not clear why the beneficiary would still be extensively involved in coordinating construction, planning, engineering, architecture and supply issues, as claimed by the petitioner. The minimal evidence submitted of the petitioner's business transactions appears to show that the condominiums are completed and being marketed to investors. In that regard, the beneficiary is responsible for "coordinating" marketing matters, title issues, and an exchange program, duties that have not been shown to be managerial or executive in nature.

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). While it is evident that the beneficiary exercises authority over the U.S. operations as the sole company employee in the United States, the fact that a beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(44)(A) and (B) of the Act. Again, the actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Here, despite the director's issuance of a detailed request for evidence of the beneficiary's duties, the petitioner failed to establish what the beneficiary actually does on a day-to-day basis, such that his duties could be classified as primarily managerial or executive in nature. The 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 AAO acknowledges the petitioner's claim that the beneficiary supervises a general contractor/builder, realtor, property manager, and guest services coordinator, and that he works closely with bank personnel and attorneys to carry out his duties. Although requested by the director, the petitioner did not provide evidence of its contracts with these workers, evidence of payments to them, or detailed descriptions of the services they provide. Again, 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). 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'r 1998). As noted above, the financial statements for the petitioner's group do not reflect extensive payments to external contractors, consultants or service providers and the record does not establish the scope of the services these businesses and individuals provide.

While it is evident that the beneficiary is not directly engaged in designing and building condominiums and the AAO is satisfied that the petitioner has relationships with attorneys, banks and realtors, the record does not establish that the beneficiary, who is not claimed to have even an administrative assistant or secretary under his direct supervision, is relieved from performing other non-managerial tasks associated with the day-to-day operations of the company, such as marketing, administrative, financial and clerical tasks. A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS 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. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

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. The beneficiary's only claimed subordinates are subcontracted staff or external service providers, and, as discussed above, the petitioner has not provided sufficient evidence of the scope and nature of services they provide to support a finding that the beneficiary could qualify as a personnel manager.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 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 the case of a function manager, the AAO recognizes that other employees carry out the functions of the organization, even though those employees may be contractors or otherwise not directly under the function manager's supervision. Again, while the petitioner has established that the beneficiary is responsible for oversight of the petitioner's real estate development project in the United States, which appears to be the sole function of the U.S. entity, the record does not establish that the beneficiary performs primarily managerial duties. Performing non-qualifying tasks will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties; however, 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. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial. As discussed above, the petitioner has not met this burden.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* Again, while the beneficiary holds the title of president and holds decision-making authority over the U.S. operation, the petitioner has not

established that it has a structure in place that would support a qualifying executive position or that the beneficiary performs primarily executive-level duties. Rather, the petitioner indicates that the beneficiary “coordinates” operational functions such as marketing, banking and exchange programs.

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

III. Prior Approval and Conclusion

The AAO acknowledges that USCIS approved a previous petition granting the beneficiary L-1A status in December 2006. A prior approval does not preclude USCIS from denying an extension of the original visa based on reassessment of the petitioner's or beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). 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'r. 1988).

Each nonimmigrant petition filing is a separate proceeding with a separate record of proceeding 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). In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for an extension of the nonimmigrant visa petition's validity based on the petitioner's failure to submit evidence that satisfies the regulatory criteria at 8 C.F.R. § 214.2(l). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

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 approves 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). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous petition approval by denying the instant petition.

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.