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

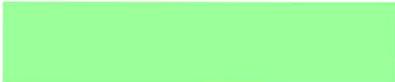


U.S. Citizenship
and Immigration
Services



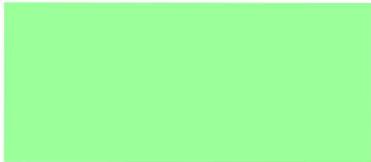
DATE: **DEC 19 2013** Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary 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 Texas corporation, claims to be engaged in directional drilling and export services. The petitioner states it is an affiliate of [REDACTED] located in Nigeria. The petitioner currently employs the beneficiary as its president and seeks to extend his L-1A status for two additional years.

The director denied the petition, concluding that the petitioner did not establish that it was currently doing business or that the beneficiary would be employed in a managerial or executive capacity. Additionally, the director questioned whether the petitioner maintains sufficient premises to house its business operations.

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 evidence submitted establishes that the petitioner will employ the beneficiary in both a managerial and an executive capacity. In addition, the petitioner submits additional evidence to demonstrate that the petitioner is doing business and has sufficient premises to conduct business.

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 three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

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

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;

- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

II. The Issues on Appeal

A. Employment in a managerial or executive capacity

The primary issue addressed by the director was whether the petitioner established that it will employ the beneficiary in a qualifying 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). In a support letter accompanying the petition, the petitioner provided the following brief overview of the beneficiary's duties in his capacity of president:

The position of President is solely executive in nature and its duties and responsibilities remain unchanged. As President, [the beneficiary] will continue to be responsible for direction and development of the company by establishing its goals and objectives, formulating its policies and procedures, ensuring proper capitalization and managing the company's finances, executing or negotiating services contracts, delegating duties and responsibilities, directing the acquisition of additional personnel, and otherwise directing the operations of the company. He will not assume or be responsible for any of the day to day activities of the business except to review and ensure their compliance with his established policies and objectives.

In an RFE issued on February 11, 2013, the director requested that the petitioner submit a comprehensive description of the beneficiary's duties and indicate how these duties would be managerial or executive in nature. The director also requested additional information regarding the organizational hierarchy of the petitioner's business and the position and duties of other employees.

In response, the petitioner claimed that the beneficiary, in the position of president, holds the highest executive position in the company. The petitioner further claimed that he has "dual" responsibilities for both executive direction of the company and overall management of operations. The petitioner provided the following overview of the beneficiary's executive duties:

- **Establishes goals and objectives for the company.** The President is responsible for establishing a 5-7 yr business plan for company growth and success. This requires initial review and ongoing research of the oil and gas industry in the United States,

directional drilling service requirements and trends, market conditions and review of competitors, and determination of staffing requirements for entry into the industry. Due to the complexity of services in this highly regulated industry, initial review and research is currently underway. However, enclosed please find the company initial business plan for directional drilling services. However, please note that modification of the business plan will be required as additional information on the industry, market conditions, and service requirements are determined. The President devotes approximately 30% of daily time on this duty.

- **Formulates policies and procedures.** The company's business plan is to primarily engage in directional drilling services for the oil and gas industry. This is a highly regulated area of industry and which requires the company to meet precise job order requirements. As such, the President is responsible for ascertaining such requirements, devising company rules to ensure the company meets industry requirements for directional drilling services. Additionally, the company is also engaged in product acquisition for export to Nigeria. This requires review of export requirements and the formation of procedures for compliance. At this stage of development, the President spends approximately 10% of daily time on this duty.
- **Ensures proper capitalization and manages company finances.** The President is also tasked with responsibility to ensure the company has sufficient capital for business operations. As such, he manages the company's finances, determines the need for additional capitalization for current and future operations, and ensures proper funding of the company operations from its foreign affiliate until business operations are profitable for self-sustainment. The President currently devotes approximately 10% of time on this duty.
- **Negotiates and executes service contracts.** The President is also responsible for acquisition of service contracts for directional drilling services. As such, he promotes the company services by communicating with industry executives and managers, negotiating terms and conditions for directional drilling services and or product acquisition for export activities, and executing contracts as the sole executive representative for the company. The President is currently actively engaged in promotion and negotiation of service contracts and requirements contracts for various products for its export activities. The President devotes approximately 30% of time on this duty.

The petitioner further claimed that "until further operational development and acquisition of all company employees, the President is also responsible for overseeing company operations," and claimed that his duties included the following:

- **Directs the operations of the company.** The President is responsible for overseeing and directing the Manager (Operations) and the Manager (Secretary/Finance). In this regard, he conveys the company's short term goals and objectives, formulates specific policies and procedures, delegates duties and responsibilities, assigns daily and/or weekly tasks as applicable, and monitors performance and compliance with stated goals and procedures. At this time, the President devotes about 10% of time on this duty.
- **[Direct] acquisition of additional personnel.** The President also determines the company's staffing requirements and the timing for acquisition of personnel based on the stage of development and current operations. Once the need for personnel is determined, he directs the Manager (Secretary/Finance) to begin recruitment of competent personnel or directs the hire of independent contractors to perform such duties temporarily until permanent staffing for the intended position is acquired. At this time, the company is actively pursuing a manager (Operations) to replace Olabode Sheriff, who has left has since resigned [*sic*] the position to pursue his educational goals. Additionally, the company is also actively in recruitment for its Business Support/Administrative Office position to assist the Manager (Secretary/Finance) with administrative tasks and current export activities. The President currently devotes approximately 10% of time on this duty.

The petitioner also provided an overview of all internal departments and the vacant positions within each department, noting that it employed only the beneficiary and the Manager (Secretary/Finance) at the time it submitted the RFE response.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director noted the lack of subordinate staff, and questioned the basis for this since the petitioner had been established in 2007. The director further noted that the petitioner had not established that the beneficiary supervised a subordinate staff of managerial, supervisory or professional employees.

On appeal, counsel for the petitioner contends that the director's findings were erroneous. Counsel individually addresses each criterion included in the definition of managerial capacity in an attempt to explain how the beneficiary's duties conform to the regulatory definition. Counsel also contends that the beneficiary's duties include executive tasks as well. The petitioner submits an affidavit from the beneficiary in support of the appeal.

Upon review, the AAO concurs with the director's findings. The petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity.

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).

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. Although the petitioner provided a lengthy position description in response to the second RFE, it failed to provide specifics as to how the beneficiary will carry out the general tasks and goals listed above as a part of his daily duties. For instance, the petitioner did not provide specific examples or supporting documentation regarding goals, strategies, policies or visions that have been or will be implemented, methodologies created for financial viability, training programs that will be implemented and ultimately offered to employees, or specific financial plans or decisions made. Indeed, there is little in the provided duties to distinguish them from those of any executive or manager, as they provide no specific details with regard to the services provided by the petitioner, which include directional drilling and export services. Given that the petitioner asserts that it has employed the beneficiary as its president since 2009, it is reasonable to expect a detailed discussion of his specific duties and responsibilities along with examples of his managerial or executive authority. The petitioner has provided no evidence to differentiate the beneficiary's listed duties from those of any executive or manager in any industry, and the duties make no specific mention of the actual services provided by the petitioner aside from the occasional use of the words "drilling" and "export" in the position description. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Further, when examining the managerial or executive capacity of a beneficiary, USCIS reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business.

In a letter of support accompanying the petition, the petitioner states that it is engaged in "directional drilling services for the oil and gas industry and export of oil and gas equipment, parts, and machinery and other goods." The petitioner subsequently submitted an IRS Form 1120, U.S. Corporation Income Tax Return, indicating that the petitioner earned \$186,528 in revenue in 2012. The petitioner also submitted an IRS Form W-3 for 2012 indicating that the petitioner paid \$24,999.96 in salaries and wages. Finally, the petitioner submitted a copy of IRS Form W-2, Wage and Tax Statement, for the beneficiary and for [REDACTED] for 2012, demonstrating that they earned annual wages in the amount of \$16,666.68 and \$8,333.28, respectively.

The petition in this matter was filed on September 14, 2012. The petitioner originally asserted on the Form I-129 that it employed three persons; however, the financial records for 2012 indicate that only two persons were employed by the petitioner during that year. Although the petitioner claims that the position of Manager (Operations) was recently vacated, there is no evidence that this position was occupied at the time of filing or at any time in 2012. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).¹

As such, the record demonstrates that at the time of filing, the petitioner employed only the beneficiary and one other individual, who it claims served in the position of Manager (Secretary/Finance). Although it identifies numerous vacant positions within multiple departments on the organizational chart submitted into the record, petitioner confirms that these positions are not currently staffed. This lack of operational employees suggests that the beneficiary and the other employee primarily perform the administrative and operational tasks necessary for the continued existence of the petitioner's business. Moreover, since the beneficiary's duties include delegating duties, assigning tasks, and directing personnel, the record as currently constituted does not corroborate the claimed duties of the beneficiary in this regard given the lack of staff.

On appeal, counsel contends that the beneficiary qualifies as a manager based on his supervision of other professionals, and claims that in 2012 he supervised [REDACTED] in the position of operations manager, who the petitioner claims is also an engineer by profession, as well as [REDACTED] in the position of secretary/finance manager.²

¹ The AAO also notes that, on the Form I-129 petition, the petitioner indicates that it will pay the beneficiary an annual salary of \$50,000. The record also contains a Form W-2 for the beneficiary from 2011, indicating that he earned \$50,000 in wages that year. There is no explanation as to why, in 2012, the beneficiary earned only \$16,666.68 in wages for what the petitioner contends is a primarily managerial or executive position. This unexplained discrepancy, coupled with the petitioner's unsupported claim that it employed three persons at the time of filing, calls into question the veracity of the statements set forth on the petition and within the evidence submitted in support of the petition. An inaccurate statement anywhere on the Form I-129 or in the evidence submitted in connection with the petition mandates its denial. *See* 8 C.F.R. § 214.2(h)(10)(ii); *see also* 8 C.F.R. § 103.2(b)(1). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

² The organizational chart identifies this individual as [REDACTED] which corresponds to the name on the other Form W-2 submitted for 2012.

Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

Though requested by the director in the second RFE, the petitioner did not provide the level of education required to perform the duties of its secretary/finance manager. 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). Thus, the petitioner has not established that this employee possesses or requires a bachelor's degree, such that she could be classified as a professional. Nor has the petitioner shown that this employee supervises subordinate staff members or manages a clearly defined department or function of the petitioner, such that he or she could be classified as a manager or supervisor. Thus, the petitioner has not shown that the beneficiary's subordinate employee occupies a managerial, supervisory or professional position, as required by section 101(a)(44)(A)(ii) of the Act.

Counsel further asserts on appeal that the beneficiary also qualifies as an executive because he directs the management of the company, sets its goals and policies, and acts as the ultimate decision-maker for the petitioner in all matters. 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.*

The petitioner has not established that it would employ the beneficiary in an executive capacity. First, as discussed, the petitioner has submitted a vague and unsupported duty description for the beneficiary. Although counsel asserts on appeal that the beneficiary is fully engaged in management and executive duties, such as setting goals and policies, the petitioner has provided no specific examples of actual goals and policies that have been, or will be, implemented. Indeed, on appeal, counsel largely reiterates the statutory language in asserting that the beneficiary qualifies as acting in an executive capacity. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Additionally, counsel correctly observes on appeal that 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. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

The petitioner claims to be engaged in directional drilling for the oil and gas industry as well as the purchase and export of goods to Nigeria. The record indicates that the petitioner employs the beneficiary as president and one part-time "manager" who is stated to spend the bulk her time "in acquisition of competent personnel and financial matters related to export activities." According to the petitioner's business plan for the years 2013-2015, the beneficiary and the manager are currently "jointly" responsible for "processing quotes, arranging financing, as needed, scheduling invoices for pickup and delivery and contract sales and rentals." The petitioner has not established that the beneficiary's sole subordinate employee relieves him from primarily performing the day-to-day operational and administrative tasks associated with operating a drilling and export company. The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. Regardless, the AAO emphasizes that its holding is not based on the size of the petitioning entity, but rather, the petitioner's failure to provide complete, credible descriptions of its organizational structure and staffing, and ultimately, its failure to establish that the beneficiary would perform primarily managerial or executive duties.

Although the petitioner has submitted an organizational chart with tiers of proposed subordinate employees, it failed to identify sufficient lower-level employees as of the date of filing to actually provide the petitioner's services. The evidence must substantiate that the duties of the beneficiary and his subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. Further, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). The petitioner's hiring plans will not be considered in determining whether the petitioner established eligibility as of the date of filing.

In conclusion, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity. For this reason, the appeal must be dismissed.

B. Doing Business

The next issue to be addressed is whether the petitioner established that it is doing business as defined by the regulations, and whether the petitioner maintains sufficient physical premises to conduct business.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that an individual petition filed on Form I-129 shall be accompanied by evidence that the petitioner and the organization that will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section. In order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic and continuous manner. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Further, inherent to that requirement, the petitioner must maintain sufficient physical premises to conduct business.

In response to the director's second RFE, the petitioner submitted photographs of its office purportedly located at [REDACTED]. These photographs included a business sign and images of the working areas and employees, but did not include the requested external photographs of the building. The director noted that the petitioner submitted no corroborating documentation to establish the petitioner's legal occupancy of such premises and further observed that the four or more individuals pictured in the photographs were not identified. The petitioner also submitted a copy of its IRS Form 1120, U.S. Corporation Income Tax Return for 2012 in response to the RFE. The petitioner did not report any rent expenses for the fiscal year.

On appeal, the petitioner submits a copy of its initial one-year lease agreement, executed in 2010, for the premises located at [REDACTED]. The petitioner also provides an amendment to a lease agreement, effective July 2012, for the premises at [REDACTED]. The petitioner has not provided a copy of the referenced "Original Lease" dated March 7, 2012. The petitioner contends that it relocated from [REDACTED] to [REDACTED] and submits an unsigned letter dated June 29, 2012 from a property management company which confirms the petitioner's tenancy at both addresses. The petitioner also submits a copy of a rent check for the month of May 2013 which was deposited by the same property management company.

The petitioner has not submitted sufficient evidence that it has maintaining sufficient physical premise from which to conduct business at the time the petition was filed. While the petitioner has submitted copies of lease agreements on appeal, the record reflects that the company did not report any rent expenses on its 2012 IRS Form 1120, and the photographs do not clearly reflect the petitioner's claimed business premises. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the

petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

With respect to doing business, and as noted previously herein, the petitioner provided IRS Form 1120 U.S. Corporation Income Tax Return for 2012 indicating that the petitioner earned \$186,528 in revenue and had no assets. The petitioner has submitted copies of some purchase orders, bills of lading and packing lists related to items that were purportedly purchased and exported to Nigeria. However, with the exception of three documents dated in January 2012, most of this evidence is dated in 2011, and several documents were dated in 2013. On appeal, the petitioner submits evidence that it signed a cooperative business agreement to market, sell or lease water purification solutions to potential clients in Africa. However, the agreement also post-dates the filing of the petition.

Overall, the limited evidence submitted does not establish that the petitioner was maintaining physical premises and doing business as defined in the regulations as of the date the petition was filed. For this additional reason, the appeal will be dismissed.

III. Prior Approval

It is acknowledged that USCIS previously approved a petition to extend the beneficiary's L-1A status. The prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the petitioner'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 some 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. 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 establish eligibility. In both the request for evidence and the final denial, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. If the previous petition was approved based on the same minimal evidence of eligibility, the approval would constitute 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'r 1988). It would be absurd to suggest that USCIS 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).

IV. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.