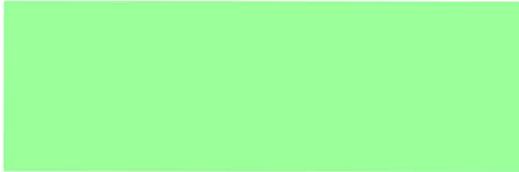




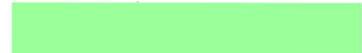
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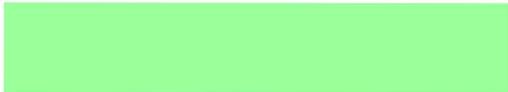


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Office: CALIFORNIA SERVICE CENTER

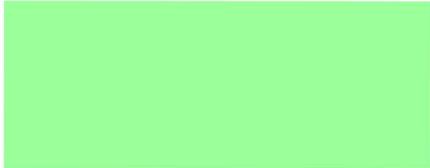


IN RE: Petitioner:
Beneficiary:



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 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you

Ron Rosenberg
Acting 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 AAO will dismiss the appeal.

The petitioner filed this petition seeking to extend the beneficiary's L-1A status 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, an Ohio limited liability company, is in the business of chemical products. It is a subsidiary of [REDACTED] (the foreign entity), located in [REDACTED] China. The beneficiary was previously granted L-1A status for a one-year period in order to open a new office in the United States, and the petitioner now seeks to extend his status in the position of managing director for three additional years.¹

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary is 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 asserts that the beneficiary is employed in a primarily managerial or executive capacity and submits a brief 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 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

¹ The petitioner requests to extend the beneficiary's status for an additional three years. However, pursuant to 8 C.F.R. § 214.2(l)(15)(ii), an extension of stay may only be authorized in increments of up to two years.

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

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 Issue on Appeal

The sole issue to be addressed is whether the petitioner established that the U.S. company will employ the beneficiary in a primarily managerial or executive capacity.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker. On Form I-129, the petitioner indicated that it currently employs four employees.

In support of the petition, the petitioner provided the following descriptions of the beneficiary's job duties in the United States:

- Strategic Planning and Answerable to the president about the performance of [the petitioner];
- Scrutinize, assess, and monitor various departments. To achieve these goals, the beneficiary will scrutinize, assess, and monitor not only his own company but also the shipping company, freight forwarding company, carriers and others;
- Perform competitive market analysis that would influence product directions and allow the company to sale [*sic*] more effectively;
- Direct company's sales programs, assign sales territories, and set goals for the sales persons;
- Budget planning and management;
- Set goals and establish training programs for marketing and sales persons;
- Regulate, modify, and implement changes that are aimed to boost staffs [*sic*] efficiency and garner profit to the company;
- Lead go-to-market planning efforts to ensure that the company has a well-coordinated market plan;
- Direct new business development. Help bring new clients to the company. This includes directing staff as to how to find new potential clients;
- Ensure that the work culture and working environment in the department are conducive to promote positive work environment;
- Full contract authority of the company;
- Monitor the preferences of clients which is vital to develop sales and maximize profits, including reporting the issues of client quantity, manufacturing and packaging preferences to the president;
- Ensure that keeping present clients satisfied is as important as developing new business;
- Initiates, leads, and implements the change of company business direction;
- Direct company's product promotion and management for sales in the U.S. and North American market;

- Coordinates resources of the whole company to meet the goal of change of company business direction;
- Budget planning and Management;
- Deal with the issues of the present customers and focus on resolving those issues;
- Maintain contact with existing customers and organize an appropriate level of ongoing customer interaction to stay close to the needs of the company's customers and prospects;
- Direct new business development and help to bring new customers to the company; and
- Meet with potential customers to generate and develop business.

The petitioner submitted its Operating Agreement, which lists the members as follows: (1) the foreign entity (89%); (2) [REDACTED] (5%); (3) the beneficiary, 5%; and [REDACTED] (1%). The Operating Agreement states that the company shall have one managing director. The Operating Agreement states that the company shall have the following officers: a President, a Secretary, and a Treasurer. The Operating Agreement then states that the following individuals have been appointed initial officers of the company in the following capacities: (1) [REDACTED] President; (2) [REDACTED] Vice President; (3) the beneficiary, Secretary and Managing Director; and (4) [REDACTED], Treasurer.

The petitioner submitted its bank account statements from JPMorgan Chase Bank, N.A., addressed to the petitioner and [REDACTED]. The petitioner submitted its IRS Notice [REDACTED] notifying the petitioner of its Employer Identification Number, also addressed to the petitioner and [REDACTED].

The petitioner submitted its recent payroll records for [REDACTED] the beneficiary, [REDACTED], and [REDACTED].

The petitioner submitted a "Detailed Organizational Chart of [the petitioner] depicting [REDACTED] on top as President. The next tier depicts [REDACTED] as Vice President. The third tier depicts the beneficiary as Managing Director, who directly oversees: (1) Sales: [REDACTED]; (2) Sales assistant in training: [REDACTED] and (3) Office work: [REDACTED]. The chart notes that [REDACTED] is no longer the president due to age limit requirements, and that the new president is [REDACTED]. The chart further notes that, despite the change in president, the ownership of the petitioner and the foreign entity has not changed.

The petitioner submitted several invoices and "typical documents" of its shipments to customers. Several of these documents identified [REDACTED] as the contact person for a different company, [REDACTED].

The director issued a request for additional evidence ("RFE"), in which she requested, *inter alia*, the following: (1) a more detailed description of the beneficiary's duties in the United States including the percentage of time required to perform the duties of the managerial or executive position; (2) U.S. organizational chart showing the organization's hierarchy and staffing levels, listing all employees in the beneficiary's immediate division by name, job title, summary of duties, education level, and salary; and (3) a copy of the U.S. company's state quarterly wage reports for the 1st and 2nd quarters of 2012.

In response to the RFE, the petitioner provided a letter listing the beneficiary's duties in the United States and providing broad breakdowns of his time. The listed duties were the same or substantially similar as the ones previously provided. The petitioner also provided a description of the subordinate staff's duties. In particular, the petitioner described the job duties of [REDACTED] in Marketing and Sales as follows:

- Collects data and understands market growth in each segment of the market. Tracks all relevant sales trends, and gathers available information on the external environment such as annual reports, internet search engines, publications of trade associations, and private search firms and so on, and submits his own analysis reports to the Managing Director;
- Finds which customer and external events are appropriate while understanding market needs, growth and trends, as well as the company's own strengths and weaknesses. Finally, he will analyze all the intelligence collected, drawing conclusions and making recommendations to the Managing Director based on it;
- Carry out the company's selling plans and strategic vision through fulfilling sales tasks and optimal selling behavior;
- Bring in new business, i.e. setting meetings with potential clients, researching and implementing new strategies that could help increase company's sales, etc.;
- Be part of go-to-market planning efforts to ensure a well-coordinated market plan in the company;
- Attending training programs assigned by the Managing Director so as to meet desired requirements in a changing marketplace;
- Maintain contact with present clients and be part of the company's program of an ongoing client interaction, etc.;
- Keeping clients happy, i.e. nurturing clients, addressing the client's major concerns on an ongoing basis, staying abreast of new developments in the client's industry so that to recommend new strategies and focuses for the company, etc.;
- Always be aware of the preferences of clients, which is vital to develop sales;
- Take care of the issues of present clients and focus on solving the issues;
- Write case studies reports to the Managing Director;
- To have a good knowledge of freight charges of shipping companies around the world, and to get a most competitive price from them; and
- Keep track of the status of every shipment after the goods leave the factory until they arrive safely at destinations, and the empty containers are returned to the shipping company in time to avoid any detention, storage or demurrage.

The petitioner described the job duties of [REDACTED] as follows:

- Presently he works on a part time basis. Our goal is to have him as a full time employee. Now he mainly does research work in internet for this company and gives consulting advices as to potential new products to be introduced into the company business, etc.
- He is required to stay abreast of new developments in the client's industry so that to recommend new strategies and focuses for the company, etc.
- He is good at computer practice and takes care of company computers' technical issues.

The petitioner described the job duties of [REDACTED] as involving document preparation and "taking care of all miscellaneous matters of the company." The petitioner explained that it has recently hired a new employee, [REDACTED] to perform bookkeeping duties. The petitioner also explained that the President and Vice President are not salaried employees because they derive their income from the parent company.

The petitioner submitted its Quarterly Summary from the Ohio Department of Job and Family Services, confirming that the petitioner employed the following four employees in the first and second quarters of 2012: (1) [REDACTED] (2) the beneficiary; (3) [REDACTED] and (4) [REDACTED].

Also in response to the RFE, the petitioner provided an amended U.S. organizational chart, depicting [REDACTED] on top as President, followed by [REDACTED] as Vice President, and then the beneficiary as Managing Director. The beneficiary is depicted as overseeing: (1) Marketing and Sales: [REDACTED] (2) a new staff person to work in November 2012; (3) Consulting: [REDACTED] (4) Office work: [REDACTED] and (5) [REDACTED], to start work in October 2012.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director found that the petitioner failed to establish that the petitioner had an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. The director also found that the beneficiary appears primarily involved in the performance of routine operational activities rather than the management of a function of the business.

The petitioner filed Form I-290B, Notice of Appeal or Motion. On appeal, counsel for the petitioner asserts that the beneficiary supervises three departments: marketing and sales, consulting, and office. Counsel also asserts that the director erred in basing its decision on the petitioner's organizational chart rather than the stated job duties for the beneficiary. Counsel asserts that the director failed to apply the agency directive involving visa extension petitions, citing a memorandum from [REDACTED] Assoc. Director of Operations, dated April 23, 2004. Counsel asserts that the director erred by failing to fully consider all of the stated duties for the beneficiary. Counsel concludes that the beneficiary is employed in a primarily executive or managerial capacity.

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

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).

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 beneficiary's subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. Here, the petitioner claims that the beneficiary oversees three departments/employees: (1) [REDACTED] Sales and Marketing; (2) [REDACTED] Sales Assistant and/or business consulting and computer issue solving; and (3) [REDACTED]

office work.² The petitioner has neither claimed nor established that any of the subordinate employees are supervisory or managerial employees.

The petitioner failed to establish that the beneficiary's subordinate employees can be considered professional employees. In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not established whether a bachelor's degree is actually necessary to perform the work of the positions of "Marketing and Sales," "Sales Assistant in training" and "office work." Notably, the petitioner indicates that level of education is "high school," and level of education is "Institute." While the petitioner indicates that has a bachelor's of arts, the petitioner failed to establish that the actual position of "Marketing and Sales" requires a bachelor's degree as a minimum for entry. Further, even if the petitioner were able to establish that the "Marketing and Sales" position requires a bachelor's degree, the petitioner failed to submit any evidence establishing that possesses a bachelor's degree. Based on the above, the petitioner failed to establish that the beneficiary's position is higher than a first-level supervisor of non-professional personnel. Accordingly, the petitioner failed to establish 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 clearly 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 the instant matter, the petitioner has not specifically claimed that the beneficiary is a function manager, nor identified any essential function with specificity. The petitioner failed to establish that the beneficiary qualifies as a function manager.

² The AAO acknowledges the petitioner's subsequent employment of in October 2012. However, as was not employed until after the instant petition was filed, her employment cannot be considered in assessing the beneficiary's employment capacity. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

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.

Here, the petitioner failed to establish that its organizational structure is sufficiently complex to support the beneficiary in a primarily executive position, as the petitioner does not have a subordinate level of managerial employees for the beneficiary to direct. On appeal, counsel for the petitioner asserts that the organizational chart shows that the beneficiary supervises three departments (marketing and sales, consulting, and office work). However, none of the beneficiary's subordinate employees within these departments are managerial employees; instead, the beneficiary is the first-line manager to all the employees within the three claimed departments. Each of the petitioner's "departments" consists of only one employee. Therefore, the petitioner failed to establish that the beneficiary is employed in a primarily executive capacity.

The petitioner's descriptions of its organizational structure and staffing are not entirely credible. While the petitioner claims to have three departments, the petitioner's initial organizational chart depicted only two departments: sales and office work. As noted above, each of the petitioner's "departments" consists of only one employee. Furthermore, the petitioner's initial organizational chart showed [REDACTED] as a "sales assistant in training." In response to the RFE, however, the petitioner removed [REDACTED] from sales, and placed him in a new position and department of "business consulting and computer issue solving." 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). 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. *Id.*

The petitioner claims to employ [REDACTED] as the company's Vice President. However, the petitioner's Operating Agreement does not list the position of Vice President in its list of officers. The petitioner has not explained how it can employ [REDACTED] as the company's Vice President when such position is not provided for by its Operating Agreement.

The petitioner's description of [REDACTED] job duties and level of authority is not entirely credible. The petitioner depicts [REDACTED] as performing marketing and sales, subordinate to the beneficiary, with no membership or ownership interest in the petitioner. However, the petitioner's bank statements and IRS notice list [REDACTED] as a member of the petitioning limited liability company. Moreover, the petitioner lists several of the same job duties for [REDACTED] and the beneficiary. In particular, both are responsible for: performing market analysis; bringing in new business by meeting with potential clients and researching and implementing new strategies that could help increase company's sales; maintaining contact with existing customers; dealing and resolving issues with present customers; and keeping clients satisfied. In addition, several of the petitioner's invoices and shipping documents identified [REDACTED] as the contact person for a different company, [REDACTED]. The

petitioner failed to explain its relationship with [REDACTED] and offered no explanation as to why [REDACTED] acts as the contact person for this company when the petitioner claims he is its full-time employee.

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. *Id.* 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. *Id.*

On appeal, counsel asserts that the director erred by considering the petitioner's organizational structure rather than the beneficiary's job duties. However, counsel's assertions are unpersuasive and unsupported by any legal authority. The regulations provide strict evidentiary requirements for the extension of a "new office" petition and specifically require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D) (requiring the petitioner must submit a statement describing the staffing of the new operation, including the number of employees and types of positions). Counsel provides no authority to support its assertion that the director's conclusion "must be based on the duties" and cannot be based on the petitioner's organizational structure.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. Not only has the petitioner failed to establish that the beneficiary meets the statutory and regulatory definitions of an "executive" or "managerial" employee, but the petitioner failed to establish that it has a sufficient organizational structure and staffing to employ the beneficiary in a predominantly managerial or executive position. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

The AAO acknowledges that USCIS previously approved a nonimmigrant petition filed on behalf of the beneficiary. 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. *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 establish eligibility. The director sufficiently articulated the objective statutory and regulatory requirements and applied them to the case at hand.

Accordingly, the appeal will be dismissed.

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.