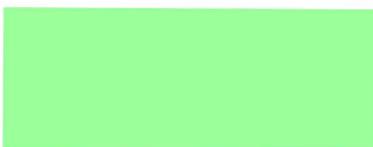




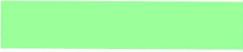
U.S. Citizenship  
and Immigration  
Services

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DATE: **MAR 22 2013**

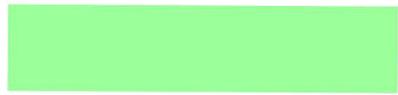
Office: VERMONT SERVICE CENTER

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:

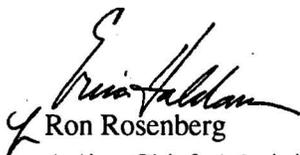


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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, 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 a 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 New Hampshire corporation, states that it operates a media advertising, photo finishing, inks and hotel supply business. It claims to be a wholly owned subsidiary of [REDACTED] located in India. The petitioner has employed the beneficiary since May 2007 and is seeking to extend his L-1A status for two additional years so that he may continue to serve as its president.

The director denied the petition finding that the petitioner failed to establish that it will employ the beneficiary in a qualifying 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 for review. On appeal, counsel for the petitioner asserts that the director made errors of fact in the denial and that the evidence of record establishes that the beneficiary will function in a qualifying managerial or executive position. Counsel 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 the 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. FACTS AND PROCEDURAL HISTORY

The sole issue addressed by the director is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity under the extended petition.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 22, 2011. The petitioner indicated on the petition that it operates a media advertising, photo finishing, inks and hotel supply business with four employees and no gross or net income.

In a letter submitted with the initial petition, the petitioner stated that the company was previously in the business of importing and exporting acid, solvent dyes, and reactive dyes. The petitioner explained that the beneficiary was initially transferred to the United States to try to "improve the business," but according to the petitioner, "there was no major improvement." The beneficiary proposed a change in the business model to media advertising, photo finishing, and inks. The petitioner further explained that under the beneficiary's direction, the petitioner "went into this new business. And on 2010 [the petitioner] has 33% Partner with [REDACTED]." (Emphasis in original). The petitioner states that it is now doing business as [REDACTED]. The petitioner described the beneficiary's responsibility under the new business model as follows:

In this position, [the beneficiary] is responsible for hiring and supervising employees, negotiating with the existing and potential clients of our products and finalizing contracts with them, defining goals and developing strategies, following and studying market trend and co-coordinating with the Principal in India.

The petitioner included a copy of a purchase and sale agreement between the petitioner and [REDACTED] for partial assets and business operations executed on December 29, 2008. On January 27, 2009, the petitioner entered into a second agreement to rent an ink cartridge refill system, manual, and temporary license of use of the [REDACTED] name.

An organizational chart submitted with the petition shows a General Manager reporting to the beneficiary as President. A Marketing/Sales position and Accountant/Secretary are shown reporting to the General Manager. The petitioner submitted job descriptions with percentage breakdown of duties for each of the employees listed on the organizational chart. The beneficiary's duties include the following: manage the entire business on a daily basis (30%); establish long-term goals and objectives (10%); develop relations with designers and hire forecasting agencies (5%); develop a system for periodic comprehensive review of inventory as well as to develop a status report system (10%); participate in various trade shows (10%); hire more employees for a regional office to be opened (5%); develop a reporting system between the United States office and the parent company (20%); and, liaise with banks and financial institutions (10%).

The petitioner stated that the General Manager's duties include the following: managing the day-to-day operations; implement business plans formulated by the president; supervise and train the sales executive and commissions agents; supervise the work of the accountant. The petitioner indicated that the Sales and Marketing position is responsible for all sales related activities of the petitioner, while the Secretary and Accountant is responsible for all secretarial work, maintaining a daily account register, and preparing profit and loss statements and balance sheets to submit to the CPA.

The petitioner's IRS Form 1120 U.S. Corporate Income Tax Return for 2010 shows \$236,000 in gross sales and \$1,555 in taxable income. The petitioner reported \$24,000 for compensation of officers and \$8,960 in salaries and wages in 2010. Additionally, the IRS Form 941, Employer's Quarterly Federal Tax Return, for the fourth quarter of 2010 shows four employees on payroll with \$14,245 paid in wages.

The director instructed the petitioner to submit additional evidence including, *inter alia*, the following: (1) a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the first three quarters of 2010 and first quarter of 2011; (2) the petitioner's business hours and work schedule for January through May of 2011;

(3) a letter describing the managerial decisions to be performed by the beneficiary; and (4) the number of subordinates under his management and duties for those employees.

In a response, the petitioner submitted the requested IRS Forms 941 for 2010 and the first two quarters of 2011, and IRS Forms W-2 for 2010. All of the IRS Forms 941 submitted in response to the RFE show three employee total on payroll. However, the petitioner issued four W-2 Wage and Tax Statements in 2010. The Form W-2 statements show the beneficiary receiving \$24,500 in wages. The other three employees received \$7,800, \$1,799.07, and \$1,126.75 in wages during the year.

The petitioner also submitted the requested work schedules for the employees including the beneficiary. The charts show that the beneficiary is the only employee in the office from 9 a.m. to 5 p.m. and works four to five days per week. Additionally, the charts show that the General Manager, Sales and Marketing employees, and Accountant/Secretary work on a part-time basis. The Accountant/Secretary appears to work a total of 4 to 5 hours a week on a regular basis, while the Sales and Marketing employee intermittently works one day per week for 4 to 5 hours. The General Manager works for two to four hours per day, four to five days per week, for a total of 10 to 13 hours per week. The petitioner also submitted the same organizational chart and position descriptions submitted with the initial Form I-129.

Finally, the petitioner submitted documentation showing that it owns a 33% membership interest in [REDACTED], a New Hampshire limited liability company. The petitioner included invoices issued by [REDACTED] to various hotel chains for hotel supplies including bedding and toiletry items, dating from July of 2010 to June of 2011. The invoices identify the beneficiary as a "salesperson" for [REDACTED]. The petitioner also submitted purchase orders, a detailed invoice summary and bank statements for this company.

The director denied the petition, concluding that the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity under the extended petition. In denying the petition, the director noted that the petitioner's work schedule shows that the beneficiary is the company's only full-time employee and therefore is often required to perform all day-to-day duties required to operate the business. The director further noted that the petitioner failed to identify any employees who actually provide the services of the business, such as developing photos and preparing media advertising for the petitioner's clients, and determined that it was reasonable to assume that the beneficiary performs these duties.

Furthermore, the director stated that while the General Manager appears to supervise two part-time employees based on the petitioner's organizational chart, it does not appear that her actual duties are supervisory or managerial in nature. The petitioner, therefore, failed to establish that the beneficiary will be involved in the supervision and control of supervisory, professional, or managerial employees who will relieve him from performing the services of the corporation. Finally, the director noted that the beneficiary appears to be working simultaneously for the petitioner and for [REDACTED], an entity which does not have a qualifying relationship with the petitioner or its foreign employer.

On appeal, counsel asserts that the beneficiary's position is primarily managerial or executive in nature. Counsel states that the beneficiary functions at a senior level in the organization and is responsible for supervising a subordinate staff of professional personnel. Counsel further claims that the director erroneously concluded that there were no other employees to relieve the beneficiary of non-qualifying duties as the

subordinate personnel are able to complete all the necessary tasks on a part-time basis. Additionally, counsel asserts that the Marketing and Sales employee works additional hours in the field which were not disclosed on the weekly work schedule charts.

### III. DISCUSSION

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.*

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the 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)(15)(L) of the Act. See 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

In the initial submission and in response to the RFE, the petitioner stated that the beneficiary's duties included managing the entire business of the petitioner on a daily basis, establishing long-term goals and objectives, establishing systems in the office within the framework of the parent company's policies, and liaison with banks and financial institutions. These duties provided little or no insight into what the beneficiary primarily does on a day-to-day basis or how he carries out his objectives as President. 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).

Thus, while several of the duties broadly described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity found in the beneficiary's job description, raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position descriptions alone are insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity.

When examining the managerial or executive capacity of a beneficiary, U.S. Citizenship and Immigration Services (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. The evidence must substantiate that the duties of the beneficiary and his or her 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.

Here, the petitioner failed to establish that the beneficiary supervises and controls the work of other professional, supervisory, or managerial employees. Further, a critical analysis of the nature of the petitioner's business undermines counsel's assertion that the subordinate employees relieve the beneficiary from performing non-qualifying duties. As noted by the director, the petitioner's weekly work schedules, and IRS Form W-2 Wage and Tax Statements, submitted in response to the RFE, show that the beneficiary is the only employee that works for the petitioner on a full-time basis, and that he is frequently the only employee working in the petitioner's store for half of each work day. The petitioner's sales and marketing employee appears to work only one to two days per month, and it is unclear if his wages were even reported in the first two quarters of 2011, as the petitioner reported only three employees on its IRS Forms 941 for this time period.

Counsel for the petitioner claims on appeal that the subordinate employees are able to complete their required tasks on a part-time basis, and that the marketing and sales employee actually works additional hours "in the field" which were not reported on the weekly schedules previously submitted. While these part-time employees may complete their stated tasks in the time worked, it has not been established that these employees actually sufficiently relieve the beneficiary from performing duties such as greeting customers, and taking and completing customer orders. Further, if the sales and marketing employee works additional hours, it is reasonable to believe that such additional hours would be reflected in his salary. The petitioner paid him less than \$1,800 in 2010, and, as noted above, it is not clear whether he was on the company's payroll in 2011.

In addition, the AAO notes other discrepancies when comparing the petitioner's IRS Forms W-2 with the wages reported on the company's IRS Form 1020 and Form 941. According to the petitioner's IRS Forms W-2, the company paid total wages of \$1799.07 to its sales and marketing employee and \$1,126.75 to its accountant/secretary in 2010. However, according to the petitioner's New Hampshire Employer Quarterly Tax and Wage Report for the fourth quarter of 2010, the petitioner paid \$1,200 to the accountant/secretary and \$2,801.50 to the sales and marketing employee in this quarter alone. Further, the wages reported on the beneficiary's Form W-2 (\$24,500) for 2010 were higher than what was reported as "compensation of officers" on the petitioner's IRS Form 1120 (\$24,000) and what he reported on his IRS Form 1040 for 2010 (\$22,477). 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).

Regardless, the petitioner does not clarify who is available to complete sales orders, answer telephones, greet customers, meet with clients, and otherwise perform the administrative and clerical work related to the regular operation of the petitioner's retail business when the part-time staff is not in the office. Further, as noted by the director, the petitioner did not indicate that any of its employees actually perform the photo and media services that the petitioner claims to offer. On appeal, counsel states: "please note that our organization gets the order for the production of photos and the media advertising, but we give it to other manufacturers or companies, who do the production work for us." The petitioner has not submitted sufficient evidence in

support of this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner purchased a business that included equipment needed to provide photo processing, passport photos and other photo services. The petitioner's advertisement shows a storefront and indicates that the company provides film and digital prints and enlargements, ink and toner refills, conversions of photos, negatives and slides to CDs and DVDs, movie transfers, passport and ID photos, and photoshop and photo restoration work. The petitioner submitted cash register receipts which show that the company sells digital prints, photo reprints, enlargements, frames, passport photos, ink refills, and scans. Even if the petitioner outsources certain services, the petitioner clearly requires someone to operate a cash register and perform the routine services of the business. As the evidence of record indicates that the beneficiary is the only person in the store during half of its operating hours, it is reasonable to conclude, and has not been shown otherwise, that he is performing these non-qualifying duties.

Counsel correctly observes 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. *Family Inc. v. USCIS*, 469 F.3d 1313 (9<sup>th</sup> Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Here, as discussed above, the petitioner has not shown how the petitioner's part-time staff relieves him from primarily performing non-qualifying duties associated with the operation of the business, particularly in light of the fact that the petitioner operates a retail storefront and the beneficiary is the sole employee in the store during half of the company's operating hours. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a qualifying managerial or executive role. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The AAO has long interpreted the statute to prohibit discrimination against small or medium-size businesses. However, the AAO has also consistently required the petitioner to establish that the beneficiary's position consists of "primarily" managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks.

Reading section 101(a)(44) of the Act in its entirety, 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. 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 Brazil Quality Stones v. Chertoff*, 531 F.3d 1063, 1070 n.10 (9<sup>th</sup> Cir., 2008). Counsel's unsupported assertions on appeal are insufficient to overcome the director's conclusion that the petitioner does not have sufficient subordinate staff to relieve the beneficiary from performing primarily non-managerial and non-executive duties.

The AAO acknowledges that the petitioner's response to the RFE included voluminous documentation related to [REDACTED] a company of which the petitioner claims to own a one-third interest. The director appropriately determined that the operations of this partially-owned company and any duties the beneficiary performs for this company cannot be considered in determining whether the petitioner employs the beneficiary in a qualifying managerial or executive capacity, as it has not been shown to have a qualifying relationship with the petitioner. However, the evidence submitted indicates that the beneficiary is working for this company in the capacity of a sales representative and that he appears to devote significant time to this separate entity, thus calling into question how much time he actually allocates to this role as president of the petitioning company. 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).

The proposed position of the beneficiary is a President of a supply business consisting of two to three employees other than the beneficiary. The petitioner has not demonstrated that the beneficiary, as a personnel manager, will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. *See* section 101(a)(44)(A)(ii) of the Act. Furthermore, the petitioner has not established that it employs a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial duties. Regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will function at a senior level within an organizational hierarchy. For these reasons, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity and the appeal will be dismissed.

#### IV. QUALIFYING RELATIONSHIP

Beyond the decision of the director, a remaining issue in this matter is whether the petitioner maintains a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner claims to be a wholly-owned subsidiary of [REDACTED]. The evidence of record indicates that this business is an Indian sole proprietorship owned by [REDACTED]. The petitioner submitted a copy of its stock certificate no. 1 indicating that it issued all 200 of its authorized shares to the foreign entity at the time of its incorporation in 2007. However, the petitioner's IRS 2010 Form 1120, U.S. Corporation Income Tax Return, Schedule G (Information on Certain Persons Owning the Corporation's Voting Stock) indicates that the beneficiary owns 100% of the petitioner's stock. 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).

Based on this conflicting information, the AAO cannot determine the current ownership of the petitioning company, and the petitioner has not established that it maintains the claimed parent-subsidiary relationship with the foreign entity. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

## V. CONCLUSION

The AAO acknowledges that the instant petition was the petitioner's third request for an extension of the beneficiary's previously approved L-1A status. 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. 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 the beneficiary's eligibility, the approval would constitute gross error on the part of the director. Further, the petitioner acknowledges that it is no longer pursuing the type of business for which the beneficiary was initially granted approval, and the record reflects that the beneficiary is currently allocating some unidentified portion of his time to a separate entity that has no qualifying relationship with either the petitioner or the foreign entity. Therefore, it is evident that the underlying facts have indeed changed subsequent to the approval of the previous extension granted in April 2009. In addition, as noted above, there is conflicting evidence in the record as to whether the petitioner currently maintains a qualifying relationship with the beneficiary's foreign employer.

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

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center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.