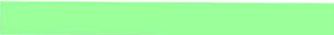


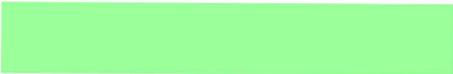
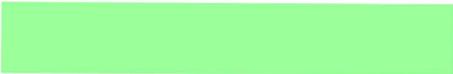


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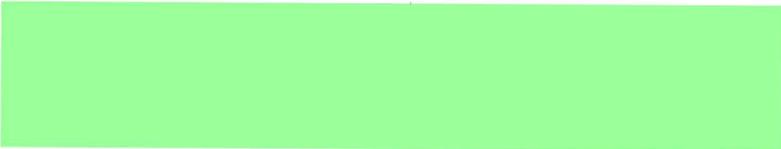


DATE: **MAR 27 2014** OFFICE: VERMONT SERVICE CENTER 

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 (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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an 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 Florida limited liability company established in 2011, is engaged in real estate management services, and claims to be a subsidiary of [REDACTED] the beneficiary's former employer located in Canada. The beneficiary was previously granted one year in L-1A classification in order to open the petitioner's new office as its general manager. The petitioner now seeks to extend his L-1A status for two additional years.

The director denied the petition concluding that the petitioner failed to establish: (1) that it will employ the beneficiary in a primarily managerial or executive capacity; and (2) that a qualifying relationship exists between the petitioner and the foreign employer.

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 director erred in finding that the beneficiary was not performing in a primarily managerial or executive capacity. Counsel also asserts that the director erred in finding that the petitioner failed to establish a qualifying relationship.

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.

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.

II. Issues on Appeal

A. Managerial or Executive Capacity in the United States

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

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.

1. Facts

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary would continue to serve as general manager for the its real estate management company. The company claims to have three current employees and it indicated minimal annual income due to its new office status.

In a supporting letter dated January 26, 2012, the petitioner explained that the beneficiary's former Canadian employer is a commercial investment company that created the petitioning company as a cost effective way to manage three properties it owns in Florida. The petitioner indicated that the beneficiary previously served as the Canadian employer's officer and director and has been working for the petitioner as general manager. The petitioner described the beneficiary's responsibilities as follows:

[The beneficiary] has been responsible for expanding our operations through planning, directing and coordinating all aspects of our U.S. company. His duties have included managing the three existing commercial properties owned by [REDACTED]. His duties have also included formulating company policies for marketing, sales, personnel and finances. [The petitioner's] intention over the next two years is to manage other commercial properties owned by both other investors as well as securing additional commercial property for [REDACTED]. [The beneficiary] has also be [sic] managing the daily operations of [the petitioner] by directing and managing staff with on-going projects and maintenance. [The beneficiary] has also been responsible for directing and coordinating [the petitioner's] financial and budget activities to fund operations, maximize investments and increase efficiency.

[The beneficiary] is well qualified for the position of General Manager of [the petitioner] as he has been primarily responsible for the overall growth of [REDACTED], since he joined the company in 1992. [The beneficiary] currently supervises many employees at [REDACTED] Inc. including two certified management accountants As the General Manager of [the petitioner], [the beneficiary] currently oversees a full time maintenance department and an architect and intends to hire additional employees and contractors as needed.

The petitioner provided a copy of its property management agreement with the foreign entity which identifies the properties to be managed and the scope of the services the petitioner provides as manager. These services include: (1) landscaping supervision; (2) refuse and trash supervision, pest control, pressure cleaning of walkways; (3) supervising building repairs and maintenance and maintenance of parking areas; (4) supervising fit ups for new tenants, cleaning and repair of vacated spaces, instructions to attorneys to enforce rent arrears; (5) contracting with suppliers requiring on site meetings to discuss the scope of work and acceptance of proposals; and (6) meetings with attorneys to discuss lease renewals, interpretation of lease provisions, etc. In addition, the petitioner provided a copy of its contract with an architect, copies of invoices issued by the architect, and copies of checks paid to a landscaping company.

The director issued a request for evidence (RFE) on June 8, 2012. The director instructed the petitioner to submit information including: (1) evidence of the beneficiary's duties in the past year and duties to be performed if the petition is approved; (2) evidence of the U.S. company's staffing including number of employees, duties of all employees, and organizational structure of the company; (3) copies of contract agreements and duties expected of all contractors hired; (4) the latest federal income tax returns filed by the petitioning company; and (5) IRS Form 941, Employer's Quarterly Federal Tax Return, for the fourth quarter of 2011 and the first quarter of 2012.

In response to the RFE, the petitioner submitted a business plan, its 2011 IRS Form 1065 U.S. Return of Partnership Income, and other business documents.

The petitioner's business plan explained that the Canadian entity previously had a United States branch office that managed its properties in Florida. The petitioner asserts that it was established as the Canadian entity's subsidiary in 2011 as a cost effective measure to better manage the United States properties. The petitioner further explained "[t]he first year of operations was a developmental period for the Company. It was also a learning process and an excellent primer for the Florida real estate market." The petitioner noted "the properties did not generate enough cash flow to pay the Company market rate management fees. As a result the Company earned a small management fee and was unable to hire personnel." The petitioner's IRS Form 1065, U.S. Return of Partnership Income for 2011 reports gross income of \$10,210.

The petitioner indicated that its business plan for the years 2012 to 2014 includes continuing with present property management assignments, implementing an aggressive marketing program to obtain new assignments, obtaining its first new contract in 2012, hiring staff, and intensifying marketing activities. The business plan also further outlines the services provided by the petitioner, which are stated to include: rent collection, repair and maintenance, bookkeeping, security, landlord-tenant relationships, advertising for tenants, screening tenants, and compliance with state and local codes.

The petitioner's business plan stated that the beneficiary "has been the sole staff member. He has been responsible for the day to day activities of the Company. He presently supervises more than a dozen contractors. When the staff is assembled he will supervise managers and staff."

The business plan includes a description of the beneficiary's duties as follows:

His responsibilities include establishing and implementing company policies, goals and procedures and making all company financial decisions. He will supervise and control the work of other supervisory, professional or managerial employees including sales and administrative personnel. [The beneficiary] will have the authority to hire and fire or recommend personnel actions including promotions, leave authorizations and other personnel actions. The L-1 applicant will oversee all day to day activities and participate in marketing programs, public relations and customer relations activities.

As a part of the business plan, the petitioner provided the beneficiary's "responsibilities detailed as a percentage of working time" as follows:

Responsibility	Percent of Working Time
Supervise Contractors	30
Marketing Activities	30
Personnel Matters and Supervision	20
Administrative Activities	15
Miscellaneous	05
Total	100

The business plan indicates that the petitioner plans to hire one sales person in the last quarter of 2012, as well as a maintenance person, an administrative assistant to be hired in 2014.

The petitioner provided evidence that it contracted with vendors to provide services in support of the petitioner's management contracts. The petitioner also provided several letters dated July 3, 2012 from the Canadian entity addressed to several of its Florida-based service providers advising that the petitioning company "will be handling all services and payments" pertaining to the customer's accounts with the Canadian company.

The director denied the petition, concluding that the petitioner failed to establish that it will employ the beneficiary in a qualifying managerial or executive capacity. In denying the petition, the director noted that the petitioner did not establish that the beneficiary's duties would be primarily managerial or executive in nature or that the business had grown to support a qualifying managerial position.

On appeal, counsel asserts that the director erred in denying the petition and states that the evidence of record establishes "the continued necessity for a General Manager to oversee the growth of its office after only one year of operation in an adverse real estate economy." Counsel emphasizes the "dozen or so contractors being managed on an on-going basis" by the beneficiary. In support of the appeal, the petitioner resubmits documentation that was provided in response to the RFE.

2. Analysis

On review, the petitioner has not established that the beneficiary will be employed 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). The petitioner has consistently failed to provide a detailed description of the beneficiary's actual duties. Initially, the petitioner provided a broad and vague overview of the beneficiary's responsibilities, indicating that he would be engaged in expanding the business, directing and coordinating the business, and managing the daily operations of the business and staff. In response to the RFE, the petitioner submitted its business plan, which indicates that the beneficiary would be responsible for establishing company policies, goals and procedures and making all company financial decisions, among other general duties. 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. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, to the limited extent that the petitioner provided a breakdown of the time the beneficiary allocates to specific responsibilities, the record indicates that the beneficiary spends at least half of his time to duties that have not been established as managerial or executive in nature. For example, the petitioner indicates that the beneficiary allocates 30 percent of his time to undefined "marketing duties," 15 percent of his time to "administrative activities" and 5 percent of his time to "miscellaneous." These non-qualifying duties are inconsistent with the petitioner's claims that the beneficiary is primarily responsible for establishing goals and policies and overall management of the company. Even if the petitioner established that the beneficiary's responsibility for supervising contractors is a qualifying duty, the petitioner indicates that this responsibility requires only 30 percent of his time. Finally, the petitioner indicates in its business plan that the beneficiary allocates an additional 20 percent of his time to "personnel matters and supervision," but does not yet have any employees or even claim to be in the process of recruiting employees. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Overall, the breakdown of the beneficiary's duties suggests that it is more likely than not that the beneficiary allocates more than half of his time to marketing, administrative, operational and other non-qualifying duties, and therefore does not perform primarily qualifying duties.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner indicated it had three employees at the time the petition was filed and the beneficiary's broad description indicated that he managed staff. Nevertheless, in response to the director's RFE regarding employees and company structure the petitioner contradicts its claim on the petition and submits a business plan stating that the beneficiary has been the sole staff member since the company was established in 2011. 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). Furthermore, 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.* at 591.

The petitioner explained that during the first year, the business failed to generate the necessary cash flow to enable hiring of personnel. The petitioner further explained that the beneficiary will oversee managers and staff when they are hired. However, 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 business plan states that the beneficiary "presently supervises more than a dozen contractors." While the petitioner provided evidence that contractors perform landscaping, architectural, renovation and other services at the properties the company manages, the petitioner did not establish that the beneficiary is relieved from other non-qualifying duties associated with operating the business, such as the aforementioned marketing, administrative and miscellaneous duties that are attributed to him. Further, the petitioner indicates that the services it provides include rent collection, repair and maintenance, bookkeeping, security, landlord-tenant relationships, advertising for tenants, screening tenants, and compliance with state and local codes. While contractors may perform repair and maintenance activities, the petitioner has not established that contractors perform the other services provided by the company. Therefore, since there are no employees, it is reasonable to conclude that the beneficiary performs the duties necessary to maintain the daily operation of the petitioner's business and has no one to relieve him from primarily performing non-qualifying duties. 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).

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Further, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). 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. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a qualifying managerial or executive position. Accordingly, the appeal will be dismissed.

B. Qualifying Relationship

The remaining issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the beneficiary's Canadian foreign employer.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The director found that the petitioner failed to establish that it has a qualifying relationship with the foreign entity, either as parent and subsidiary or as affiliates.

On appeal counsel for the petitioner asserts that the petitioner submitted "clear documentary evidence" of the parent-subsidary relationship for both this petition and the previously approved L-1A visa petition and asserts that the director erred in finding no qualifying relationship. No additional relevant documentation is submitted on appeal.

The petitioner indicated on the Form I-129 that it is a subsidiary of the foreign entity and provided the following statement regarding the ownership and control of each company: "[The beneficiary] & [REDACTED] each own 50% of [the petitioner]."

Despite its claim that it is a subsidiary of the foreign entity, the petitioner submitted no evidence to demonstrate that the Canadian employer owns any portion of the petitioning company's stock. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The petitioner has not established that it has a parent-subsidary relationship with the foreign entity as claimed.

Further, despite the petitioner's claim of common ownership and control between the U.S. and foreign employers, the petitioner to submit sufficient evidence to establish a qualifying affiliate relationship as defined at 8 C.F.R. § 214.2(1)(1)(2)(L).

As evidence of its ownership, the petitioner submitted: its articles of organization identifying the beneficiary and [REDACTED] as the company's managing members; a "shareholders agreement" indicating that the beneficiary and [REDACTED], each own "50 common shares" of the limited liability company; and its IRS Form 1065 for 2011 which indicates at Schedule B-1 that the beneficiary and [REDACTED] are 50-50 partners. The petitioner did not explain why a limited liability company owned by members would have a shareholder agreement, and there is no evidence that the petitioner was ever formed as a stock-based corporation. Therefore, the petitioner has not submitted probative evidence of its ownership.

With respect to the foreign entity, the petitioner submitted corporate documents including the Canadian entity's articles of incorporation indicating that it is authorized to issue an unlimited number of shares, and a copy of the foreign company's by-laws. However, neither of these documents identifies the foreign entity's shareholders, and the petitioner submitted no share certificates, stock ledgers or other corporate documents from the Canadian entity to establish share holdings by the beneficiary or [REDACTED]. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Further, although the petitioner stated on the Form I-129 that the beneficiary and [REDACTED] each own one-third of the shares of the foreign entity, the petitioner's shareholder agreement states: "[the

beneficiary] and [REDACTED] are the principal shareholders of corporations which own two-thirds (2/3rds) of the common shares of [REDACTED]. Based on these conflicting statements, it is not clear whether the petitioner claims that the beneficiary and [REDACTED] are direct or indirect shareholders of the foreign entity.

The only evidence submitted which identifies the foreign entity's shareholders is the Canadian company's 2010 IRS Form 1120-F, U.S. Income Tax Return of a Foreign Corporation. According to the accompanying IRS Form 5472, Information Return of a Foreign Corporation Engaged in a U.S. Trade or Business, the Canadian company's direct and indirect foreign shareholders include:

[REDACTED] The petitioner has provided no evidence of ownership for any of these companies and thus the record does not support a finding that the petitioner's two claimed shareholders are "the principal shareholders of corporations which own two-thirds" of the foreign entity's shares. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). 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.

Overall, the record contains inconsistent information and is lacking in primary evidence of the ownership of the U.S. and foreign entities. As such, the petitioner did not establish that it is a subsidiary of the Canadian entity, nor did it establish an affiliate relationship with the Canadian employer based on common ownership and control by the same individual or same group of individuals. See 8 C.F.R. § 214.2(l)(1)(ii)(L)(I). Based upon the unresolved inconsistencies and significant omissions in the record, the petitioner has not established that it has a qualifying relationship with the beneficiary's prior foreign employer. Accordingly, the appeal will be dismissed.

The AAO acknowledges that USCIS previously approved an L-1A petition filed on the beneficiary's behalf. Counsel suggests that the prior approval establishes that the petitioner provided clear documentary evidence of a qualifying relationship between the petitioner and the foreign entity. If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record with respect to the qualifying relationship, the approval would constitute material and 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).

Moreover, the 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). In making a determination of statutory eligibility, USCIS is limited to the information contained in the individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

III. 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.