

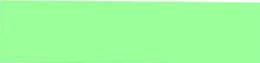
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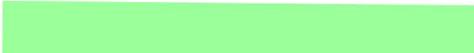
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



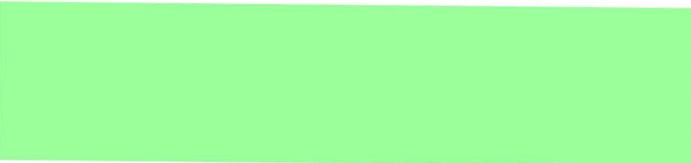
U.S. Citizenship
and Immigration
Services



DATE: **MAY 01 2014** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida limited liability company established in 2010, operates a restaurant. The petitioner states that it is a subsidiary of [REDACTED] located in Italy. The beneficiary was previously granted one year in L-1A nonimmigrant status as the petitioner's chief executive officer (CEO) in order to open a "new office" in the United States. The petitioner now seeks to employ the beneficiary in this position for two additional years.

The director denied the petition, concluding that the petitioner did not 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. On appeal, counsel asserts that the petitioner has demonstrated with sufficient evidence that the beneficiary will be employed in a qualifying managerial and executive capacity.

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, Petition for a Nonimmigrant Worker, 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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a "new office" petition must submit 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. The Issue on Appeal

The sole issue to be addressed on appeal is whether the petitioner has established that the beneficiary will be employed in a qualifying executive or managerial capacity.

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.

In denying the petition, the director emphasized that the petitioner had failed to establish that the beneficiary has managerial, supervisory, or professional subordinates to relieve him from primarily performing non-qualifying operational duties. Further, the director found that the beneficiary's proposed duties in the United States were overly vague and merely reiterated the statutory definitions of managerial and executive capacity.

On appeal, counsel states that the beneficiary will manage subordinate supervisors and that no applicable law requires that such subordinates supervise managers or professionals. Counsel contends that the petitioner has submitted "abundant proof" to establish that the beneficiary oversees subordinate supervisors and other personnel who relieve him from primarily performing non-qualifying operational duties. Counsel asserts that the petitioner has demonstrated that the beneficiary qualifies as both a manager and an executive.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity.

The petitioner states that it is an Italian restaurant doing business under the name [REDACTED] that it has generated over \$500,000 in sales during its first eight months in operation, and that it employs approximately thirty employees.

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). At the time of filing, the petitioner submitted the following description of the beneficiary's duties as CEO:

1. Verifying compliance with all food safety regulations including, storage of perishable items, temperature controls, issuance of appropriate food safety and food handling licenses, and generally devising policies to avoid food contamination.
2. Contacting food vendors, selecting appropriate partners and negotiating for purchase of stock, ensuring weekly deliveries, product availability and quality, and negotiating terms of sales.
3. Selecting vendors of alcoholic beverages and negotiating with vendors of wine, beer and other alcoholic beverages for discounts for bulk purchases, quality and quantity of orders and frequency of deliveries and resupplying.
4. Recipe formulation and pricing, considering availability of raw materials, pricing of the same, expected labor costs and overhead, and desire theme of the restaurant.
5. Hiring and firing all kitchen staff and dining room staff- a total of 30 employees.
6. Formulation of policies for all facets of restaurant operations: food safety, interaction with public, tip sharing, hours of operations, standards of conducts in front of the customers, sales techniques to improve total amount of each single ticket, training for managers on employees discipline for tardiness, how to handle customers complaints, how to ensure compliance with local state and federal laws for worker's compensation, employees wages, employees maternity and personal leaves and in general all labor laws.
7. Reviewing of the company financial statements to ensure a positive cash flow, biggest sellers, most profitable items, and how to improve sales of most profitable menu items while reducing labor costs and overhead.
8. Negotiating with banks and other financial institutions for access to capital, line of credit, overdraft protection, and other banking needs of the company.
9. Formulating an effective tax strategy, in conjunction with outside counsel and tax advisers, considering the company membership (composed of both U.S. Permanent Residents, U.S. Citizens, and Foreign Company), preparing and reviewing the company financial reports and tax returns and ensuring that all payroll, income tax and sales tax obligations are timely met.
10. Setting goals for the company yearly, monthly, and weekly sales, gross annual profits, net profits before and after taxes, and individually for each employee's bonuses and profit sharing if appropriate. All these metrics will have to be adjusted for seasonality, which will be particularly difficult without a prior year of operations to compare to.

In a request for evidence (RFE), the director asked that the petitioner submit a letter from an authorized representative of the petitioner describing the beneficiary's managerial or executive duties, including the percentage of time he would spend on each duty. The director advised the petitioner that the job duties provided at the time of filing, listed above, were insufficient. In response, the petitioner's vice president, Paulo Simoes, reiterated these same ten job duties. He further described the beneficiary's duties in the capacity of CEO as follows:

[The beneficiary], who has considerable experience in the Food Service Industry, will be responsible for both major strategical decisions such as: setting the restaurant theme, menus, average ticket price, number and compensation of employees, number of items on the menus, whether to expand operations to additional locations, hours of operations, policies for employees conduct (dress code, tardiness, disciplinary issues, standards of conducts with the public, conflict resolution etc.) as well as managing the day-to-day operations of the restaurant which will include a myriad of decisions including whether to include daily special, pricing, allocation of resources, how to ensure that the staff is adequate in number and that compensation level[s] are adequately set to ensure employees loyalty while maximizing the restaurant profitability, resolving conflicts with vendors, overseeing the restaurant cash flow to ensure that revenues are matched to expenditures etc.

Upon review, the duty descriptions submitted for the beneficiary do not demonstrate that he will be primarily engaged in performing qualifying managerial or executive duties.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Here, the petitioner failed to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial, despite the director's request for information regarding the percentage of time the beneficiary would allocate to specific tasks. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

As a result, the petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as assuring the appropriate storage of perishable items, purchasing stock, ensuring weekly deliveries from vendors, making bulk purchases of alcoholic beverages, and formulating recipes do not fall directly under traditional managerial or executive duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager or executive. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Indeed, to the extent the petitioner references duties of an executive or managerial nature, such as those consistent with the formulation of policies and goals or direction of subordinates, the petitioner has not

provided sufficient detail or supporting documentation. For instance, the petitioner states that the beneficiary has formulated policies regarding food contamination, public interaction, sales techniques, handling customer complaints, and manager training, but the record includes no specifics or supporting documentation to corroborate that the beneficiary performs this policy formulation. Further, the duties indicate that the beneficiary sets sales and profit goals for the company, yearly, monthly, and weekly, but again, none of these goals are articulated on the record to substantiate the beneficiary's stated executive or managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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). 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)).

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 company'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 business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

In the RFE, the director requested that the petitioner submit an organizational chart listing all employees, their names, titles, duties, educational levels and salaries. In response, the petitioner submitted an organizational chart indicating that the beneficiary has two direct subordinates, [REDACTED] - Business/Service Manager and [REDACTED] - Food and Beverage Manager. The chart depicts eight servers, two servers/hostesses, two bartenders, and four bussers reporting to the Business/Service Manager. Additionally, the chart reflects that the Food and Beverage Manager supervises a head cook, who in turn supervises three pizza makers, three food prep/cook employees, two line cooks, and two dishwashers.

However, the petitioner did not submit requested job duties for any of the employees listed in the organizational chart, including the beneficiary's claimed managerial or supervisory subordinates. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The petitioner has not submitted sufficient evidence to substantiate its claim that the beneficiary supervises subordinate managers or supervisors. First, as noted above, the petitioner has not submitted job descriptions for the beneficiary's subordinates. Further, the beneficiary's duties indicate that he is responsible for hiring and firing all employees, and make no indication that he delegates any responsibilities, goals, or policies to subordinate managers or supervisors.

In addition, the petitioner has submitted payroll documentation which conflicts with its claims that Mr. [REDACTED] the claimed Business/Service Manager, is employed in a supervisory or managerial position. In the petitioner's internal payroll records, Mr. [REDACTED] is compensated at a lower hourly wage of \$4.77 for tipped employees thus suggesting that he works as a server or bartender. Further, the petitioner's internal payroll report indicates that he earned gross wages of only \$1820.19 for the six bi-weekly pay periods ended between January 14, 2013 and March 28, 2013.

Additionally, the same payroll documentation from the first quarter of 2013 includes a separate section for "management." However, this management section of the payroll does not list Mr. [REDACTED] or the head cook claimed to report to the food and beverage manager, but does list an employee identified on the organizational chart as a server. 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. 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, 591-92 (BIA 1988).

On appeal, counsel contends that the director erred by requiring that the petitioner establish that the beneficiary's subordinate supervisors oversee professional employees. If the petitioner established that the beneficiary supervises subordinate supervisors, the amount of time he allocates to this duty will be considered time spent performing qualifying managerial duties; there is no requirement that the beneficiary's subordinate supervisors oversee professionals. However, the petitioner has not established with sufficient evidence that the beneficiary will be employed as a personnel manager. First, the beneficiary's duty description makes no mention of his supervision of, or control over, any subordinate managers or supervisors. Further, as discussed above, the petitioner has failed to submit job duties for his proposed direct subordinates as necessary to corroborate the claim that they are in fact managers or supervisors. Further, the supporting evidence submitted with respect to these employees includes discrepancies which leave question as to whether they act in their claimed managerial or supervisory capacities. It is the petitioner's burden to demonstrate with sufficient credible evidence that a beneficiary has managerial, supervisory, or professional subordinates to establish that he or she qualifies as a personnel manager. Here, due to the insufficiencies and discrepancies described above, the petitioner has not sustained this burden. Therefore, the petitioner has not established that the beneficiary qualifies for the benefit sought as a personnel manager.

In response to the RFE, counsel also stated that the beneficiary qualified as a function manager through his management of an essential function of the organization. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of

the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. 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 *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

The petitioner has not demonstrated with that the beneficiary will be employed as a function manager. Again, the beneficiary's duties do not establish that he will spend a majority of his time performing qualifying managerial duties, given prevalence of non-qualifying operational duties included in the beneficiary's duty description, and the petitioner's failure to specifically articulate the day-to-day managerial duties performed by the beneficiary. Further, the petitioner claims that the beneficiary is managing the whole of the organization as the CEO and not a "department, subdivision, function, or component of the organization." The petitioner has not clearly articulated how the beneficiary qualifies as a function manager. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

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

We do not doubt that the beneficiary is the company's senior employee or that he exercises discretionary authority over the day-to-day operation of the petitioner's restaurant. However, the petitioner has not submitted sufficient detail regarding the beneficiary's claimed direction of management or establishment of goals and policies to substantiate that he primarily performs these duties. In fact, the beneficiary's duties include many non-qualifying operational duties thereby leaving question as to whether the beneficiary will primarily perform executive level tasks. Further, the petitioner has not provided specific duty descriptions

for his asserted managerial subordinates and offers contradictory supporting evidence with respect to these subordinates. As such, the petitioner has not established that the beneficiary has a subordinate level of managerial employees necessary for the beneficiary to primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. Therefore, the petitioner has not established that the beneficiary will act in a qualifying executive capacity.

Overall, the petitioner has failed to establish any clear distinctions between the beneficiary's proposed qualifying and non-qualifying duties. The petitioner operates a 6,000 square foot restaurant and has established that it has employees to perform duties such as cooking, bartending, bussing tables, and seating and serving customers. However, there is no mention in the record of any administrative personnel working for the company, thus suggesting that the beneficiary is responsible for many operational aspects of the restaurant, such as marketing, maintaining licenses and standards, menu design, day-to-day finances, purchasing inventory and supplies, record keeping and other back office functions. Further, although the petitioner claims to have two subordinate supervisors it has only credibly documented the employment of one of these supervisors. Collectively, this brings into question how much of the beneficiary's time can actually be devoted to managerial or executive duties rather than operational or first-line supervisory tasks. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Furthermore, the petitioner bears the burden of documenting what portion of the beneficiary's duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). For all the reasons stated above, the petitioner has not met this burden.

Counsel also submits a non-precedent AAO decision to support the petitioner's assertion that a beneficiary may act in a qualifying managerial or executive capacity without overseeing managerial or professional subordinates, as that term is defined by the regulations. This office does not announce new constructions of law nor establish agency policy through non-precedent decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Regardless, this office does not take exception with the petitioner's assertion that a beneficiary may qualify as a manager or executive without being established as supervising other managerial or professional subordinates. However, as previously discussed herein, the petitioner has not met this burden as the evidence does not demonstrate that the beneficiary primarily performs qualifying duties, or that the beneficiary qualifies as a function manager.

Furthermore, counsel states that USCIS is mandated "to approve the petition or articulate as reason why the adjudicators found material error, a substantial change of circumstances, or a new material information" pursuant to a USCIS Memorandum from William Yates issued on April 24, 2004 titled "The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity." Counsel contends that since there has been no material change in the facts or circumstances from the previous approval that USCIS should give deference to the director's prior approval of the beneficiary's L-1A status.

The aforementioned mentioned Yates memo clearly states in a footnote on page 2 that "this memorandum does not cover petitions, or extensions of petitioner validity, or any other nonimmigrant cases, where initial approval is granted to allow the petitioner and/or beneficiary to effectuate a tentative or prospective

business plan." In other words, the policy referenced in the Yates memo is not applicable to the current new office extension petition. Further, it should be noted that the mere fact that USCIS 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 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. Consistent with the aforementioned Yates memo, the director specified reasons why the petitioner had not met its burden to establish eligibility. Further, it should be noted that the petitioner is seeking to qualify the beneficiary pursuant to the extension of a new office, rather than the initial new office petition, thereby providing a different burden of proof under the current matter. *See* 8 C.F.R. § 214.2(l)(3)(v) and 8 C.F.R. § 214.2(l)(14)(ii). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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

III. Conclusion

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.