

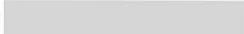


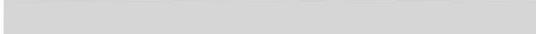
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 14 2015**

PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant petition. The petitioner filed a motion to reopen and reconsider with the service center. The director granted the motion to reopen the petition and subsequently affirmed the denial of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this Form I-129, Petition for a Nonimmigrant Worker, seeking to extend the beneficiary's status as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Texas corporation established in [REDACTED] states that it operates a retail, wholesale, and import business. It claims to be a subsidiary of [REDACTED] the beneficiary's employer in Pakistan. The petitioner currently employs the beneficiary in L-1A status as its vice president of marketing and seeks to extend his status for three additional years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary is employed in a qualifying managerial or executive capacity. The petitioner filed a motion to reopen and reconsider the denied petition. The director granted the motion and affirmed the denial of the petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to our office for review. The petitioner asserts that the evidence is sufficient to demonstrate that the beneficiary is an executive in the marketing field. The petitioner submits a brief and additional evidence in support of the appeal.

### I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended 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.

Finally, 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. Section 101(a)(44)(C) of the Act.

## II. U.S. Employment in a Managerial or Executive Capacity

The sole issue addressed by the director is whether the petitioner established that the beneficiary is employed in the United States in a qualifying managerial or executive capacity.

### A. Facts

The petitioner filed the Form I-129 to extend the beneficiary's L-1A status on May 29, 2012. The petitioner indicated on the Form I-129 that it has nine employees and an estimated gross annual income of \$1.2 million. The petitioner indicated on the petition that the beneficiary works at [REDACTED], Texas.

On the Form I-129, the petitioner indicated that the beneficiary is the "V.P. of Marketing and Business Development." The petitioner provided the following description of his duties on the petition:

As his Job title beneficiary approves contractual Marketing dealings of the company. The current conditions of the company and its corporate success require efficient operations at existing locations on systematic basis. We hope that by keeping [the beneficiary] on board, Company open the Wholesales location in [REDACTED] in which we provide quality products at very reasonable prices. [The beneficiary] has a[u]thority to hire, train, direct, supervise and discharge managerial personnel who in turn perform the same function on lower echelon staff members; VP of Marketing Directly report[s] to President and Executive team; he is responsible for oversee marketing communications including branding, public relations, advertising, attend trade shows, seminars and events collateral material. Develop and man[a]ge the company's entire Marketing Budget, research new product and market to general public as well as retailers [sic].

The petitioner did not submit a supporting letter or any further description of the beneficiary's duties.

The petitioner provided a "proposed organizational chart" in support of the petition. The board of directors holds the highest position on the organization chart under the foreign entity. The president ([REDACTED]) reports directly to the board of directors. The beneficiary and the director/general manager ([REDACTED]) are subordinate to the president. The chart indicates that the beneficiary has a subordinate office manager ([REDACTED]), who in turn oversees "office personnel." No individuals are specifically identified as holding the "office personnel" positions. The chart represents that [REDACTED] falls under the director/general manager. Under [REDACTED] is a store manager ([REDACTED]), who oversees an assistant manager [REDACTED]. The assistant manager has three subordinate cashier/clerk positions [REDACTED] and two subordinate cleaning/stocker positions [REDACTED].

The petitioner submitted its IRS Form 941, Employer Quarterly Federal Tax Return, and its Texas employer quarterly tax reports for the third and fourth quarters of 2011 and the first quarter of 2012. The federal employer quarterly tax returns indicate that the petitioner paid \$12,393.01 to four employees in the third quarter of 2011; \$48,539.81 to five employees in the fourth quarter of 2011; and \$9,700 to two employees in the first quarter of 2012. The petitioner's Texas quarterly wage report indicates that the petitioner paid wages

to three employees in January and February 2012 and two employees in March 2012. The report identifies the petitioner's employees as: [REDACTED] all of whom were identified on the organizational chart as employees of [REDACTED]. The quarterly returns indicate that the petitioner's address is [REDACTED], Texas.

The petitioner also submitted Texas and federal employer quarterly tax reports for [REDACTED]. The documents indicate that [REDACTED], paid [REDACTED] and [REDACTED] a total of \$5,307 in both the fourth quarter of 2011 and the first quarter of 2012. These individuals were both identified as the petitioner's employees on the submitted organizational chart.

The petitioner also submitted formation documents, a stock certificate, and stock ledger for [REDACTED]. The certificate of formation indicates that [REDACTED] was formed on [REDACTED]. The stock certificate is dated June 4, 2012; it indicates that the petitioner owns 7000 of the 10000 shares of stock authorized. The documents indicate that [REDACTED] is located at [REDACTED] in [REDACTED], Texas.

The director issued a request for evidence ("RFE") informing the petitioner that the evidence provided was insufficient to establish eligibility for the requested visa and instructing the petitioner to submit additional evidence to establish, in relevant part, the following: (1) the organization's name and location; (2) the beneficiary's continued employment with the petitioner; (3) the beneficiary's employment in a managerial or executive capacity in the United States; (4) the foreign entity's continued business operations; and (5) the beneficiary's prior employment in a managerial or executive capacity with the foreign entity.

In response to the RFE, the petitioner submitted a "Definitive Statement of the Beneficiary at U.S. Company" dated January 14, 2011, and a "Definitive Statement of the Beneficiary at Foreign Parent Company" dated January 17, 2011. Both documents reference [REDACTED] describe his duties as president of the petitioner and vice president of the foreign entity, and do not provide any information regarding the beneficiary in the instant matter. The letter from the petitioner stated that the company operates from "several locations in Arkansas and a Texas location in [REDACTED]"

The petitioner did not provide any further description of the beneficiary's position. It did provide a copy of a document that appears to be the beneficiary's resume, but this document does not include any dates, identify the names of employers, or provide the beneficiary's job titles. It provides three lists of duties with the following headings: "Area of Advisory and Consultancy Services. New Business Trade & Industrial Promotion Services (TIPS)"; "Establishment of EPZs, SEZs in Private Sector"; and "Event Management Services."

In a letter dated November 6, 2012, the petitioner's former counsel confirmed that the petitioner's primary business address is [REDACTED], Texas. Counsel indicated that the petitioner was submitting its proposed organizational chart and stated that the beneficiary "manages the members that fall below him in the chain of command, specifically the business development manager, the office manager, and the sales manager." The attached proposed organizational chart showed the beneficiary as vice president of marketing supervising a finance manager/accountant ([REDACTED]), a business development manager [REDACTED]

█, an office manager █ and a sales manager █. The chart indicates that the sales manager supervises four store managers who each supervise assistant managers, cashiers, and stockers, while the office manager supervises the manager of the █ store, an assistant manager and three cashiers. The chart also includes four office personnel, and two office clerks/store auditors. In total, the chart identifies 17 employees by name and shows 21 additional positions. The petitioner submitted lease agreements for retail locations located in █ Arkansas and █ Florida, all of which were dated in October 2008.

In addition to the organizational chart, the petitioner submitted an employee list which identifies the company employees as: █ (president); the beneficiary (vice president); █ (sales manager); █ (business development manager); █ (accountant); █ (shift in charge); █ (support staff); █ (office assistant); █ (cashier); and █ (cashier). The employee list indicates that as vice president, the beneficiary leads marketing efforts and supports the president.

The director denied the petition finding that the petitioner failed to establish that the beneficiary is employed in the United States in a managerial or executive capacity. The director noted that in response to the RFE, the petitioner identified █ as the beneficiary of the petition and provided additional documents explaining █ duties rather than the beneficiary's. The director found that the petitioner failed to provide consistent evidence of its staffing or evidence that the petitioner's staffing is sufficient to relieve the beneficiary from performing the non-qualifying routine duties to provide the petitioner's sales and services. The director also noted that the petitioner provided leases and other documentation to suggest that it had several locations, but failed to explain how the limited number of employees adequately staffs the various locations. The director stated that the beneficiary and his subordinate employees did not receive salaries commensurate with managerial or executive positions. The director further found no evidence that the beneficiary oversees the work of professional level employees.

The petitioner subsequently filed a motion to reopen and reconsider the director's decision. On motion, the petitioner stated that the evidence is sufficient to establish that the beneficiary is primarily assigned to:

- Direct the major component, Marketing and Sales, of the organization;
- Further, during his assignment, he is involved in establishing goals and policies of the marketing and sales division of the organization;
- Exercising wide latitude in discretionary decision-making related to marketing, and Sales aspect of the organization, while receiving only general supervision for the President of the corporation.

The petitioner indicated that the beneficiary "was taking care of the organization on a broad scale as Vice President-Marketing and sales within United States, and further, coordinating with different organizations, business dealers, and vendors, and manufacturers, supplying company's chiefs, and head of departments to expand the marketing, and sales factors of the petitioning company." The petitioner indicated that the numbers were inconsistent because the recession necessitated that fewer employees were hired than had been proposed and that it intends to hire additional employees in the future. The petitioner stated that the director

erred when considering the number of employees and cited to non-precedent cases that were approved with minimal staffing levels. The petitioner also stated that the director erred in considering the beneficiary's salary in determining whether he is employed in a qualifying managerial or executive capacity.

The petitioner also clarified that its business premises are in [REDACTED] Texas and submitted photographs of its premises showing a warehouse store selling tobacco, soda and other products.

The director granted the motion and affirmed the denial of the petition in a decision dated September 4, 2014. The director found that the evidence was insufficient to establish that the beneficiary is employed in a managerial or executive capacity. The director stated that the position description was overly general and that the evidence did not establish the existence of sufficient employees to relieve the beneficiary from performing non-qualifying duties.

The petitioner subsequently filed the instant appeal. The petitioner states that it provided all the required documentation to establish eligibility and resubmits the brief it provided in support of its motion to reopen and reconsider.

#### B. Analysis

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

When examining the executive or managerial capacity of the beneficiary, we 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 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 provide a detailed description of the beneficiary's duties sufficient to establish that he performs primarily managerial or executive duties. The petitioner indicated that the beneficiary: directs a major component of the organization; establishes the goals and policies of the marketing division; and exercises wide latitude in discretionary decision making. However, these duties merely paraphrase the statutory definitions of managerial and executive capacity. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

The petitioner also stated that the beneficiary is "taking care of the organization on a broad scale"; "develop[s] and manage[s] the company's entire marketing budget"; and "oversee[s] marketing communication." Again,

the duties are described in conclusory language to suggest the beneficiary's level of authority without describing his actual activities. Specifics are clearly important to indicate 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. *Id.*

Moreover, the petitioner indicated that the beneficiary develops the company's marketing budget; "coordinat[es] with different organizations, business dealers, and vendors, and manufactures, supplying company's chiefs, and head of departments to expand the marketing, and sales factors of the petitioning company." Without additional details, it is unclear whether the beneficiary is directly providing marketing services for the petitioner. 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 International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The petitioner was given the opportunity to submit an expanded description of the beneficiary's duties in response to the RFE, but instead submitted additional information related to its president and his duties. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Further, the petitioner submitted a resume for the beneficiary that contains a list of activities such as: event planning; legal analysis for establishing business in Pakistan; free trade zones of the UAE and Jordan; economic feasibility analysis for investment projects; technology implementation and strategy development; acquisition of land; and the planning and development of special economic zones, free trade zones, and export processing zones. The petitioner has not explained where the beneficiary gained this experience or how it is related to his current position. We cannot speculate that the duties described in the resume are related to either his current position or his position with the foreign entity.

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that her/his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Overall, the petitioner failed to provide a detailed description of the beneficiary's duties or to document what proportion of the beneficiary's time would be spent performing executive and managerial versus non-executive functions. Therefore, the position description is insufficient to establish that the beneficiary would be working in a qualifying managerial or executive capacity.

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 understanding the beneficiary's actual duties and role in a business.

The petitioner has not provided a consistent or accurate organizational chart or other representation of its structure, nor has it consistently identified or documented its staffing levels as of the date of filing the petition. As such, we cannot determine the number or type of employees the beneficiary directly or indirectly supervises, determine whether there are employees available to relieve him from performing non-qualifying

duties associated with the petitioner's day-to-day operations, or determine his level of authority within the petitioning company.

The petitioner stated on the Form I-129 that it had nine employees as of May 2012 when the petition was filed. The petitioner's most recent quarterly wage report indicated that it had two employees as of March 2012, while its claimed subsidiary, [REDACTED], also had two employees as of March 2012. At the same time, the petitioner submitted an organizational chart showing a total of eleven employees. The most recent payroll documents showed the employment of only the director and general manager, an office manager, and two store personnel. Further, the quarterly wage reports indicate that the petitioner was paying the employees who were identified on the chart as employees of [REDACTED] while [REDACTED] was paying employees who were identified as staff of the petitioning company.

In response to the RFE, the petitioner submitted an organizational chart showing a total of 37 employees working at five locations in Arkansas and [REDACTED] Texas. While it appears that the petitioner had lease agreements for premises located in Arkansas in the past, it currently claims to do business in [REDACTED] Texas. Therefore, we cannot conclude that this chart provides an accurate illustration of the petitioner's organization at the time of filing. The petitioner simultaneously submitted an undated employee list with ten named employees which appeared to more closely coincide with the petitioner's claim that it currently operates a single store. However, with the exception of the beneficiary and the company president, none of the employees appeared on the organizational chart submitted at the time of filing. Further, the petitioner has not provided any evidence of wages paid to employees during the quarter in which the petition was filed.

Based on these inconsistencies and omissions, we cannot determine the petitioner's actual organizational structure or staffing levels as of the date of filing. 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).

The petitioner indicated that the discrepancies noted by the director are due to the economic recession and stated that it intends to hire additional employees. However, this explanation does not exempt the petitioner from providing an accurate illustration of its actual staffing levels as of May 2012 when the petition was filed, along with evidence of wages paid to employees at that time. Regardless, a petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r. 1971) *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). In affirming the denial of the petition on motion, the director informed the petitioner that it must establish eligibility at the time the petition is filed; however, the petitioner provided no explanation or evidence of its organizational structure for the relevant period.

The petitioner correctly asserts 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 nonimmigrant visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In reviewing the relevance

of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9<sup>th</sup> Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). It is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Here, while the petitioner indicated that the beneficiary has the authority to hire, train, direct, supervise, and discharge managerial personnel, there is no reliable evidence of lower-level staff to perform the operational marketing duties or to support a managerial or executive marketing position. The minimal evidence submitted indicates that the petitioner has only two employees, rather than nine employees as stated on the petition. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of a president, a vice president and only two additional employees. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility as it has not provided the requested detailed description of the beneficiary's actual duties.

The petitioner refers to three unpublished decisions, in which we determined that a beneficiary met the requirements of serving in a managerial or executive capacity despite working for companies with a limited number of employees. While 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Further, the petitioner asserts that the facts of this matter are comparable to the cited matters based solely upon the small size of the businesses. The petitioner has not demonstrated that the beneficiary in the instant matter is similarly relieved from performing non-qualifying duties related to the company's marketing function or overall business operations.

We acknowledge that USCIS previously approved an L-1A nonimmigrant petition filed on behalf of the beneficiary. In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give some deference to a prior determination of eligibility. However, the prior approval does not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for an extension of the nonimmigrant visa petition's validity based on the petitioner's failure to establish eligibility. In both the request for evidence and the final denial, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. If the previous petition was approved based on the same minimal evidence of the beneficiary's eligibility, the approval would constitute gross error on the part of the director. Furthermore, our 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).

For the foregoing reasons, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

### III. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. 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.