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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 11 2006

EAC 05 079 51799

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant visa petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of Florida that is authorized to engage in the food and restaurant business in the State of New Jersey. The petitioner claims to be the subsidiary of the foreign entity, and seeks to employ the beneficiary as its general manager.

The director denied the petition concluding that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner contends that Citizenship and Immigration Services (CIS) incorrectly concluded that the beneficiary would not occupy a primarily managerial or executive position in the United States company. Counsel submits a brief and additional documentary evidence in support of the appeal.

Section 203(b) of the Act states, in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. – An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

The issue in the instant matter is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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), provides:

The term "executive capacity" means 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.

The petitioner filed the instant petition on January 20, 2005 noting that the beneficiary would be employed as its general manager. In an accompanying letter, dated December 1, 2004, counsel for the petitioner referenced the beneficiary's proposed employment as the company's president, during which he would supervise three employees who would run "the day-to-day affairs of the petitioning company's business in the United States." Counsel stated:

The beneficiary is responsible for directing and managing the overall administrative and financial operations of the petitioning company, including developing and implementing marketing, sales and promotion policies, strategies and goals. He is also responsible for making policy decisions for the company, hiring and firing employees, conducting negotiations with customers, suppliers, vendors and other third parties doing business with the company. Further, he is engaged in developing, formulating and implementing plans for long-term growth. A copy of the most recent business plan for the [petitioner's] [s]tore is enclosed as Exhibit J.

[The beneficiary] is independently responsible for all operational and administrative policy decisions concerning the well-being and profitability of the U.S. entity (and the parent

> company). As a matter of fact, [the beneficiary] has been instrumental in successfully launching the petitioner's food-related operations within a relatively brief period of time. He is also leading the effort to develop complimentary business ventures through the import agreement with Americano [a company based in the United Arab Emirates from which the petitioner seeks to import mopeds.]

Counsel further noted the following "executive level responsibilities" held by the beneficiary:

1. Hiring, training and supervising staff in the United Stat[e]s;
2. Developing strategic plans for growth and diversification of the business in the United States;
3. Provide financial management and direction to the company;
4. Ensure compliance with health related codes and regulations regarding proper food handling, storage[,] etc[.];
5. Hire the professional services of accountants, consultants and lawyers needed.

Counsel submitted with the petition a copy of the petitioner's business plan describing its operations as a "premier grocery, delicatessen and caterer . . . that caters to commuters into New York City and outlining boroughs," as well as its plans to rent mopeds as an "affordable and novel alternative to the typical public transportation system."

The director issued a request for evidence on August 3, 2005 directing the petitioner to submit the following documentation in support of the beneficiary's employment as a manager or executive: (1) a statement describing the management and staffing levels of the United States company, including the number of employees supervised and their job duties; (2) copies of Internal Revenue Service (IRS) Forms W-2 and W-3 issued by the petitioner in 2004, and IRS Form 941 for the first and second quarters of 2005; (3) documentation that the beneficiary has hired and trained employees, particularly those rendering professional services to the petitioner, as claimed by counsel in his December 1, 2004 letter; (4) a copy of the petitioner's "strategic plan for growth and diversification"; and (5) if applicable, documentation of the petitioner's use of outside contractors, and the associated job duties. The director also requested an explanation of the number of workers employed by the petitioner on the date of filing, noting that the petitioner indicated a staff of five on the Form I-140, yet subsequently claimed to employ three workers.

Counsel responded in a letter dated October 27, 2005, noting an error on Form I-140 with respect to the petitioner's staffing levels, and stating that on the date of filing, the petitioner employed the beneficiary and three subordinate workers. Counsel explained that the job duties performed by the beneficiary in the United States company "are mostly managerial and supervisory," noting that the company's operations manager and assistant manager are responsible for managing its day-to-day operations. With respect to the beneficiary's job responsibilities, counsel stated:

> The beneficiary is responsible for setting goals and policies, hiring and firing the managers and staff, and training them about the policies and procedures of the company. According to the company procedures, the manager and assistant manager attended day long training and orientation with the beneficiary before starting their duties.

> The beneficiary is also responsible for making and implementing plans for further growth and expansion. The petitioner's business plan that was submitted with the I-140 petition was developed by the beneficiary. In light of the experience so far, a modified business plan has been developed by the beneficiary. A copy of the modified business plan is enclosed as Exhibit "G".
>
> The beneficiary has also been hiring the accountants, lawyers, [and] payroll service providers for the company. Enclosed as Exhibit "H" are copies of the retainer agreements with lawyer and accountants, their invoices, and checks paid. Recently, the beneficiary has retai[n]ed our law firm to represent the petitioner in the purchase of One Stop business and assets. An invoice for our services will be generated in due course.
>
> It is clear that the beneficiary's employment with the petitioner is in an executive capacity, and that he supervises the work of other manages and staff members. The beneficiary enjoys full discretion in the performance of his duties and reports only to the owner of the foreign parent company in the United Arab Emirates.

Counsel submitted with his letter an organizational chart of the petitioning entity noting the beneficiary's position as president-general manager, in which he would supervise the company's operations manager, assistant manager, food services provider-cashier, salesperson-cashier, suppliers, and contractors. Counsel provided a brief job description for each position.

Counsel also submitted the requested IRS Forms W-2 issued by the petitioner in 2004, and its quarterly state and federal wage reports. The petitioner's wage report for the quarter ending March 31, 2005, the period during which the instant petition was filed, listed six workers, five of which were identified on the petitioner's organizational chart. The AAO notes these five workers were identified on the quarterly wage report as working four weeks during the quarter, while the sixth employee was noted as working nine weeks. Conversely, a list of the petitioner's employees, also provided by counsel, contains each employee's date of hiring suggesting that all five workers were employed at the time of filing. The information contained on the petitioner's March 31, 2005 quarterly wage report and its employee list does not comport with counsel's original claims of a four-person staff. As a result, the AAO cannot determine the true staffing levels maintained by the petitioner on the filing date. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Counsel also provided copies of letters dated July and October 2003 confirming the petitioner's use of outside corporate counsel and an accountant.

In a decision dated January 30, 2006, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director reviewed the evidence presented by the petitioner, and stated that despite the beneficiary's job description, the petitioner had not demonstrated that "[it has] grown to a point where the duties of a 'President', regardless of job title, are primarily managerial or executive in nature." The director specifically noted that the petitioner claimed to use contracted workers, yet did not identify any costs paid to outside contractors. The director also noted that two of the beneficiary's three subordinate employees "carry

'managerial' titles." The director concluded that the beneficiary would not be employed in a primarily managerial or executive capacity. Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on March 2, 2006, claiming that the director's decision was "arbitrary" and contrary to the record. In a subsequently submitted appellate brief, dated March 29, 2006, counsel contends that as the president and general manager of the United States entity, the beneficiary would be employed in a primarily managerial or executive capacity. Counsel again notes the beneficiary's responsibilities of setting goals and policies for the company, and hiring, firing, and training personnel. Counsel references the petitioner's current staffing levels, which are comprised of an operations manager, accounts manager, and "junior level managers, clerks, and other staff," stating that "[i]t is evident that the beneficiary manages the US operations, supervises and controls the work of other supervisory and managerial staff, has [the] power to hire and fire them, and exercises full discretion over the day-to-day operations."

Counsel further contends that CIS ignored the petitioner's original and revised business plans developed by the beneficiary, which counsel claims evidences the beneficiary's employment in a primarily managerial or executive capacity. Counsel challenges that CIS "attached no significance to the revised business plan because it was not dated and appeared to have not yet achieved fruition." Counsel explains that the beneficiary had begun to implement the goals outlined in the petitioner's revised business plan, most notably, expanding the company's food services operations into New York City. Counsel claims that the director also ignored evidence that the beneficiary possesses the authority to hire personnel, and has retained the services of "accountants, lawyers, payroll service providers, and other consultants for the company." Counsel states that payments made to these outside consultants were reflected as general deductions on the petitioner's tax returns, not as labor costs as indicated by the director.

Counsel states:

> The revised business plan, related correspondence, and the hiring of professionals such as accountants and lawyers by the beneficiary are clear proof that the beneficiary acts in an executive capacity, directing the management of the US petitioning entity, and establishing goals and policies under the general supervision of the foreign owners of the company. The petitioner's organizational structure shows that the beneficiary performs primarily managerial functions. There is, therefore, no doubt here that the requirements of Section 101(a)(44) [of the Act] have been satisfied.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

The record contains unresolved inconsistencies as to the true position and capacity in which the beneficiary would be employed. Despite counsel's repeated claims of the beneficiary's employment in a primarily executive position, he contends on appeal that the beneficiary's job duties are "managerial and supervisory," and subsequently states that "the beneficiary performs primarily managerial functions." The title of general manager initially assigned to the beneficiary on the Form I-140 also raises questions as to the credibility of the claims that the beneficiary would occupy a primarily executive position. The beneficiary's additional role as president, subsequently noted by counsel in his appended December 21, 2004 letter, fails to clarify the position to be held by the beneficiary. The AAO notes that a petitioner may not claim to employ the beneficiary as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If

the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

When examining the executive or managerial capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5).

The job descriptions offered by the petitioner are not sufficient to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In support of the claim that the beneficiary would be employed in a primarily executive capacity, the petitioner provided vague representations that the beneficiary would direct and manage the company's "overall administrative and financial operations," develop marketing, sales, and promotional strategies, make "policy decisions", hire and fire employees, conduct negotiations with third parties, develop plans for long-term growth, and set goals. The limited claims made by the petitioner do not detail the specific managerial or executive job duties to be performed by the beneficiary in his role as president-general manager of the petitioning entity. 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 answer a critical question in this case: What does the beneficiary primarily do on a daily basis? 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).

Counsel's claims on appeal are equally vague, again stating that the beneficiary would develop the company's goals and policies and hire, fire, and train employees. Counsel also emphasizes the beneficiary's role in creating the company's original and revised business plans, as well as his duty of contracting with outside professionals, as evidence of his employment in a primarily qualifying capacity. While these responsibilities are probative of the beneficiary's employment capacity, the petitioner has overlooked its obligation to clearly describe the managerial or executive job duties to be performed by the beneficiary. *See* 8 C.F.R. § 204.5(j)(5). Again, the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Section 101(a)(44)(C) of the Act states that if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. A review of the above conditions demonstrates that the petitioner would not support the beneficiary in a primarily managerial or executive capacity.

Here, the petitioner claimed to employ the beneficiary and three employees on the date of filing. The AAO again notes discrepancies in the staffing levels claimed by the petitioner and the information contained on its quarterly wage report ending March 31, 2005. The exact positions occupied at the time of filing are not clear from the record. 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). Moreover, counsel's representations on appeal of the petitioner's current staffing levels will not be considered herein as evidence of the beneficiary's managerial or executive employment. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (stating that a petitioner must

establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts).

Even if the AAO were to consider the staffing levels represented by the petitioner on its initial organizational chart, it does not appear that the reasonable needs of the petitioner might be met through the services of its five employees. The petitioner represents itself as a retail grocery store and delicatessen, offering breakfast, lunch and dinner and catering options. The petitioner also discussed its intent to rent mopeds in addition to operating its grocery store.[1] As the petitioner is offering meals for breakfast, lunch, and dinner, it is reasonable to assume that it operates at least ten to twelve hours a day. A review of the staffing levels, however, reflects the employment of one food service provider who shares the responsibilities of processing sales with another salesperson, an operations manager who records inventory, sales and work schedules, and an assistant manager who order supplies and negotiates with suppliers. Based on this analysis, it does not appear that the workers employed at the time of filing could meet the reasonable needs of the petitioning entity without the beneficiary actively participating in non-qualifying duties of the business, such as food preparation, sales, purchasing, receiving and stocking inventory, and maintaining the store's appearance.

Additionally, the petitioner did not address who would perform the non-qualifying tasks related to its moped rental department, including the duties associated with importing the mopeds to the United States, as well as the rental and maintenance functions. The AAO notes that 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). Based on the petitioner's representations, it does not appear that its reasonable needs might plausibly be met through the employment of the beneficiary in a primarily managerial or executive capacity and the work of his subordinate staff.

Based on the foregoing discussion, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, an additional issue is whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

Counsel mentioned in his October 27, 2005 letter that the beneficiary was employed as the general manager of the foreign entity. Counsel referenced the foreign entity's organizational chart, which identified the beneficiary as supervising three subordinate staffing levels, as evidence of his employment in a primarily executive capacity. On appeal, counsel states that the responsibilities associated with the beneficiary's position in the overseas company included hiring, firing, and supervising managerial and supervisory personnel, establishing goals and policies, and exercising discretion over the company's daily operations. The record does not contain additional evidence describing the beneficiary's position of general manager.

[1] While the counsel noted in his October 27, 2005 letter that the petitioner had abandoned its plans to import and rent mopeds, the petitioner's revised business plan, although undated, again mentions its "hopes to implement a [m]oped [r]ental [d]epartment," thereby suggesting that the petitioner would offer these services.

The limited and vague statements regarding the beneficiary's employment in the foreign entity are not sufficient to demonstrate that it was primarily managerial or executive in nature. The petitioner did not offer a description of the specific managerial or executive job duties associated with the beneficiary's employment as general manager. As noted previously, 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 answer a critical question in this case: What did the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The AAO notes that the foreign entity's organizational chart, in which the beneficiary is depicted as supervising two managerial and four supervisory employees, is not adequate to overcome this finding. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this additional reason, the petition will be denied.

An additional issue not addressed by the director is whether at the time of filing the foreign and United States entities enjoyed a qualifying relationship as required in section 203(b)(1)(C) of the Act.

To establish a qualifying relationship under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e. a United States entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

Counsel claimed in his December 1, 2004 letter that the petitioning entity is a wholly owned subsidiary of the foreign company as a result of the foreign entity's ownership of 200 shares of stock issued by the petitioner. Counsel cites the petitioner's May 6, 2002 stock certificate naming the foreign entity as a stockholder as "sufficient" evidence of the claimed parent-subsidiary relationship. With respect to the shares purportedly issued to the foreign company, the AAO notes that the petitioner is authorized under its articles of incorporation to issue a total of 100 shares, 100 shares less than the foreign entity claims to own. The record does not contain copies of organizational meetings or amended articles of incorporation permitting the petitioner to issue more than 100 shares of stock. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

More importantly, Schedule F of the petitioner's 2004 New Jersey Corporation Business Tax Return identifies the beneficiary as personally owning 100 percent of the organization's stock. The record is devoid of documentation clarifying the petitioner's ownership or substantiating the claim that the petitioner is a wholly owned subsidiary of the foreign entity. As a result of these inconsistencies, the AAO cannot conclude that the foreign and United States entities enjoyed the claimed parent-subsidiary relationship, or any qualifying relationship, at the time of filing. The petition will be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See*

Spencer Enterprises, Inc. v. United States, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The AAO recognizes the CIS previously approved two L-1A nonimmigrant petitions filed by the petitioner for the benefit of the beneficiary. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

In addition, unless a petition seeks extension of a "new office" petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and CIS normally accords the petitions a less substantial review. *See* 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Because CIS spends less time reviewing L-1 petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003).

Moreover, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The prior nonimmigrant approvals do not preclude CIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch,* 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava,* 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, 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. 1988). It would be absurd to suggest that CIS 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). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approvals by denying the present immigrant petition.

Finally, 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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.