



U.S. Citizenship  
and Immigration  
Services

HQOPRD 72/11.3

## Interoffice Memorandum

To: Service Center Directors  
Regional Directors

From: William R. Yates   
Associate Director for Operations

Date: **APR 23 2004**

Re: 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.

### Purpose

This memorandum provides guidance on the process by which an adjudicator, during adjudication of a subsequent request for petition extension, may question another adjudicator's prior approval of the nonimmigrant petition where there is no material change in the underlying facts.

### Authority

CIS has the authority to question prior determinations. Adjudicators are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Each matter must be decided according to the evidence of record on a case-by-case basis. See 8 CFR § 103.8(d). However, because a recent review of CIS practices has shown that in certain instances, adjudicators have been questioning prior determinations where there is no material change in the underlying facts as a matter of routine, the below policy is being set forth.

### Policy

In matters relating to an extension of nonimmigrant petition validity involving the same parties (petitioner and beneficiary) and the same underlying facts, a prior determination by an adjudicator that the alien is eligible for the particular nonimmigrant classification sought should be given deference. A case where a prior approval of the petition need not be given deference includes where: (1) it is determined that there was a material error with regard to the previous petition approval; (2) a substantial change in circumstances has taken place; or (3) there is new material

