U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

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JAN 11 2005

FILE: WAC 02 034 51079 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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, Director
Administrative Appeals Office

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

The petitioner is a corporation organized in the State of California in November 1999. It claims it designs, develops, markets, and supports computer software, information, and medical technology. It seeks to employ the beneficiary as its chief operation officer. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that the petitioner had not established a qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel for the petitioner asserts that the petitioner is a subsidiary of the beneficiary's foreign employer and that an individual, Salman Azhar, owns a majority interest in both the petitioner and the foreign entity.[1] Counsel also references the beneficiary's previous approval as an L-1A intracompany transferee and states that the beneficiary was approved on the basis of a parent/subsidiary qualifying relationship.

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.

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[1] The AAO acknowledges counsel's claim that the petitioner is in a parent/subsidiary relationship with a foreign entity; however, counsel is also claiming that an individual owns a majority interest in both the petitioner and the foreign entity. An individual or other legal entity that owns a majority interest in two companies establishes an affiliate relationship between the two owned companies. In this matter, if the evidence properly supported a qualifying relationship, the owner in this matter would be the parent of the petitioner and the parent of the foreign entity; thus the petitioner and the foreign entity would be affiliates. Only if the petitioner owned the foreign entity or the foreign entity owned the petitioner would the qualifying relationship result in a parent/subsidiary relationship.

The language of the statute is specific in limiting this provision to only those executives and 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.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

The issue in this proceeding is whether the petitioner has established a qualifying relationship with the beneficiary's foreign employer. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity. *See* section 203(b)(1)(C) of the Act.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

> *Affiliate* means:
>
> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
>
> (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.
>
> *Multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.
>
> *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

In a July 15, 2001 letter appended to the petition, the petitioner indicated that the beneficiary served as medical and computer technology manager and as manager of international operations for Softweb Pakistan. The petitioner noted that the beneficiary began his career with "Softweb" in 1987 with the petitioner's wholly owned subsidiary, Swans International, in Karachi, Pakistan. The petitioner also included the beneficiary's *curriculum vitae* showing that the beneficiary had been employed by Softweb Pakistan from 1995 to date in the role of chief operating officer and had been employed by Swans International from 1987 to 1992 in the role of medical and information technology director and continuing since 1992 as its managing director.

The petitioner also provided its 2000 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return. The 2000 IRS Form 1120 on Schedule E, Lines 1(d) showed that [redacted] owned 60 percent of the petitioner's common stock and that [redacted] owned 40 percent of the petitioner's common stock. The IRS Form 1120 on Schedule L, Line 22(b) showed the common stock had been valued at $40,000 at the beginning of the year and the end of the year. On a statement attached to the IRS Form 1120, the petitioner confirmed that [redacted] owned a 60 percent interest in the petitioner.

On March 13, 2002, the director requested: evidence that the foreign entity had, in fact, paid for its interest in the United States entity; an explanation for all funds paid to the foreign entity for shares that did not originate with the foreign entity; copies of all of the petitioner's stock certificates issued to date, the petitioner's stock ledger, a detailed list of owners and a Notice of Transaction Pursuant to Corporations; and minutes of the petitioner's meetings that listed the stockholders and interests they owned.

In response, the petitioner provided its Articles of Incorporation filed with the California Secretary of State on November 12, 1999. The petitioner also provided an agreement for the purchase and sale of stock of Softweb Corporation dated May 23, 2000 between [redacted] seller and [redacted] The agreement indicated that the seller owned one million shares of stock in Soft Web Corporation, a Nevada corporation and one million shares of Softweb Corporation, a California corporation and that the shares in each corporation comprised 100 percent of the outstanding shares. The agreement called for the purchase and sale of 100 percent of the outstanding shares for the purchase price of $120,000. The record also included a letter from the attorney who acted as escrow officer for the sale and purchase of Softweb. The attorney stated: that he received two cashier's checks totaling $120,000 from [redacted] in the amounts of $40,000 and $80,000; and, upon receipt of the $120,000, he issued a check in the amount of $120,000 to Shah Rizvi to complete the sale and purchase transaction.

The record also includes the petitioner's amended Articles of Incorporation, amended on January 5, 2001, by [redacted] the chief executive officer and [redacted] the secretary. The amendment changed the Articles of Incorporation to allow the petitioner to authorize the issuance of one hundred and twenty million shares. On January 26, 2001, the directors of Softweb Corporation resolved to issue shares of the corporation to the "founders" of the corporation as follows:

Shareholder:	[redacted]
Shares:	20,400,000; Common shares
Consideration:	Cash
Shareholder:	[redacted]
Shares:	6,000,000; Common shares
Consideration:	Cash
Shareholder:	[redacted]
Shares:	6,000,000; Common shares

[redacted] is also the beneficiary in this matter.

Consideration: Cash

Shareholder: [redacted]
Shares: 4,000,000; Common shares
Consideration: Past Performance

Shareholder: [redacted]
Shares: 2,400,000; Common shares
Consideration: Past Performance

Shareholder: [redacted]
Shares: 1,200,000; Common shares
Consideration: Past Performance

The petitioner provided copies of stock certificates issued to the above named individuals in the amount set out next to their names on January 26, 2001. The record also contains an unfiled document titled "Partnership Deed," dated December 7, 1997. The partnership agreement sets out a contractual relationship between four individuals setting up a partnership identified as M/s. SOFTWEB, 40-A/2, Gulberg – 3, Lahore. The agreement set out the sharing ratio of profits or losses of the partnership as:

[redacted] 55 percent
15 percent
15 percent
15 percent

On October 16, 2002, the director requested: (1) a copy of both sides of the $80,000 check from [redacted] to the escrow attorney; (2) bank account statements or bank wire transfers to show the source of fund [redacted] used to pay to [redacted] for the purchase of the petitioning entity; (3) bank statements from Branch Banking and Trust company account of [redacted] for the period May 11, 2000 through July 30, 2000; and, (4) an explanation why [redacted] did not directly pay the escrow attorney for his purchase of an interest in the petitioner.

In response, the petitioner provided a copy of the $80,000 check from [redacted] to the escrow attorney; documents establishing the financial status of [redacted] bank statements from March 11, 2000 through August 11, 2000; and, a statement indicating that all the "partners" made the business decision that [redacted] should negotiate the purchase of the business because of his experience and acquaintance with the seller.

The petitioner also submitted a chart indicating that: on May 8, 2000 [redacted] transferred $40,000 to [redacted] by check number 4025; on May 30, 2000 [redacted] transferred $40,000 to [redacted] by check number 4026; on June 1, 2000 [redacted] transferred $30,000 to [redacted] by check number 2984; and, on May 23, 2000 and June 14, 2000 [redacted] transferred $40,000 and $80,000 to the escrow

officer for the purchase of the petitioner. The petitioner also provided copies of photographs purportedly of the foreign entity as well as driving directions to the foreign entity.

On July 23, 2003, the director requested a copy of the petitioner's Notice of Transaction Pursuant to Corporations and a copy of the petitioner's latest IRS Form 1120. In response, the petitioner provided a California Notice of Transaction dated October 14, 2003. The Notice showed that the value of the petitioner's securities sold was $120,000 in money. The petitioner explained that a new Notice had been filed because its previous attorney had retired and his successors had been unable to locate a copy of the original filing.

The petitioner also provided its 2001 and 2002 IRS Forms 1120. Both the 2001 and 2002 IRS Forms 1120 on Schedule E, Lines 1(d) showed that [redacted] owned 60 percent of the petitioner's common stock and that [redacted] owned 40 percent of the petitioner's common stock. Both the 2001 and 2002 IRS Forms 1120 on Schedule L, Line 22(b) showed the common stock had been valued at $40,000 at the beginning of the year and the end of the year. On a statement attached to the IRS Forms 1120, the petitioner confirmed that [redacted] owned a 60 percent interest in the petitioner.

The director observed that the petitioner's stock certificates and stock ledger showed that [redacted] owned 20,400,000 shares of the petitioner and five other individuals owned various percentage interests in the petitioner. The director noted that the petitioner's IRS records showed that [redacted] owned 60 percent of the petitioner and [redacted] owned 40 percent of the petitioner's common stock. The director also noted that [redacted] owed a 55 percent interest in the foreign entity partnership. The director determined that the inconsistencies in the record regarding the petitioner's ownership cast doubt on the veracity of the evidence submitted in support of the petition. The director determined that the evidence did not establish a qualifying relationship between the petitioner and the foreign company.

On appeal, counsel for the petitioner asserts that the petitioner is a subsidiary of the beneficiary's foreign employer and that an individual [redacted] owns a majority interest in both the petitioner and the foreign entity. Counsel also references the beneficiary's previous approval as an L-1A intracompany transferee. Counsel explains the discrepancy in the petitioner's tax returns and the share certificates issued in January 2001 by noting that: (1) prior to January 2001, 60 percent of the petitioner's shares were issued to [redacted] and 40 percent were issued to [redacted] and the 2000 IRS Form 1120 reflected this division of shares; (2) in January 2001 the petitioner's shares were issued according to the stock certificates and stock ledger provided to CIS, but the 2001 and 2002 IRS Forms 1120 failed to reflect the actual ownership during those two years; and, (3) in January 2003, subsequent to the petitioner's filing this I-140, the petitioner's shares were again transferred to establish that [redacted] held a 60 percent interest in the petitioner and that [redacted] held a 40 percent interest in the petitioner. Counsel claims that amended IRS Forms 1120 for the years 2001 and 2002 will be filed with the IRS. Counsel argues that despite the changes in the petitioner's stock ownership, [redacted] has always held a majority interest in both the petitioner and the foreign entity partnership and that this establishes a qualifying parent/subsidiary relationship between the foreign entity and the petitioner.

Counsel's assertions are not persuasive. Eligibility for this visa classification begins with the qualifying relationship between the petitioning company and the foreign entity that employed the beneficiary. The

beneficiary must seek to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate of the foreign entity in a capacity that is managerial or executive. In this matter, the record contains the foreign entity's organizational chart and the petitioner's secretary's statement describing the beneficiary's duties for the foreign entity. The foreign entity's organizational chart shows that the beneficiary held the position of chief operating officer for Softweb Pakistan prior to entering the United States as a nonimmigrant. The petitioner also states that the beneficiary was promoted to the position of chief operating officer of Softweb Pakistan in 1998. As noted above, in a July 15, 2001 letter appended to the petition, the petitioner indicated that the beneficiary served as medical and computer technology manager and as manager of international operations for Softweb Pakistan. The petitioner stated that the beneficiary began his career with "Softweb" in 1987 with the petitioner's wholly owned subsidiary, Swans International, in Karachi, Pakistan. The petitioner also included the beneficiary's *curriculum vitae* showing that the beneficiary had been employed by Softweb Pakistan from 1995 to date in the role of chief operating officer and had been employed by Swans International from 1987 to 1992 in the role of medical and information technology director and continuing since 1992 as its managing director.

The record does not clearly support that the beneficiary was employed in a primarily managerial or executive capacity for Softweb Pakistan, the foreign entity in this matter. The record does not clarify the beneficiary's role with Swans International and does not substantiate with documentary evidence how this organization is related to the foreign entity or the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record also contains inconsistencies regarding the beneficiary's employment date(s) and position with the foreign entity. 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 AAO is unable to determine the beneficiary's foreign employer prior to his entry into the United States.

Assuming *arguendo* that Softweb Pakistan employed the beneficiary in a full-time managerial or executive role, the petitioner has presented conflicting information regarding the alleged purchase of the petitioner. For example, the petitioner provides evidence that [redacted] paid $110,000 to [redacted] for the purchase of the petitioner and another entity incorporated in Nevada. However, the record does not contain evidence that [redacted] was purchasing the petitioner and the Nevada organization in trust. In addition, counsel claims that initially [redacted] was purchasing a 60 percent in the petitioner. However, the record suggests that his interest should have been greater if he, in fact, paid $110,000 of the total purchase price of $120,000.[3] Further, the record does not contain any evidence of the transfer of stock from the purported seller [redacted] to [redacted] or [redacted] or [redacted] A petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the organization, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical*

[3] The ease with which the petitioner's stock is manipulated draws into question the petitioner's true ownership. It is not possible to determine [redacted] s the petitioner's majority owner or if the petitioner's stock has been manipulated to attempt to correspond with the majority ownership of the beneficiary's purported foreign employer.

Systems, Inc., 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

In January 2001 the petitioner allegedly issued 40,000,000 shares to various individuals for either cash or past services. Simultaneously, the petitioner increased its authorized common stock to 120,000,000 shares. The record does not indicate who owns the remaining 80 million authorized shares. The petitioner's October 14, 2003, Notice of Transaction depicted the value of the petitioner's stock as $120,000 while the petitioner's 2001 and 2002 IRS Forms 1120, showed that the stock was valued at $40,000. Counsel contends that the IRS Forms failed to reflect the actual ownership in those years due to error and that amended IRS Forms 1120 will be filed. However, the record does not contain evidence that amended returns have been filed and the need to amend tax returns raises serious questions regarding the credibility of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). Moreover, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Counsel's assertion that [redacted] the majority owner of the claimed foreign entity, has consistently owned a majority of the petitioner despite the record's numerous inconsistencies is not persuasive. The inconsistencies raise doubt regarding the petitioner's ownership and control. 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. at 591. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N at 362; *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N at 595. The record does not contain consistent and independent documentation establishing a qualifying relationship between the petitioner and the beneficiary's foreign employer.

Beyond the decision of the director, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity for the United States entity.

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. 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), 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 provided a broad description of the beneficiary's duties. The petitioner indicated that the beneficiary functioned as its healthcare information and management systems department manager and that as chief operating officer had a group of 15 managerial employees reporting directly to him. The petitioner noted that each of the management level employees had technology and/or engineering personnel reporting to them. The petitioner also noted that the managers and staff of its subsidiaries also reported to the beneficiary.

On March 13, 2001, the director requested further evidence regarding the beneficiary's duties for the petitioner. In response, the petitioner stated that the beneficiary supervised its software development projects. The petitioner indicated that the beneficiary spent 60 percent of his time supervising technical managerial employees including a development/project manager and a release manager who in turn supervised software engineers, quality assurance engineers and others. The petitioner also provided its 2001 fourth quarter

California Form DE-6, Employer's Quarterly Wage Return, the quarter in which the petition was filed. The California Form DE-6 showed that the petitioner employed six individuals including the beneficiary. The five individuals under the beneficiary's supervision were employed as the development/project manager, release manager, quality assurance engineer, and two software engineers. The petitioner indicated the project/development manager managed multiple projects and the overall software solutions and supervised team leaders and technical managers and that the release manager managed the processes of composing and executing test plans and supervised the quality assurance engineer.

The petitioner has not provided sufficient evidence that the beneficiary supervises managerial, supervisory, or professional employees. The record does not sufficiently establish that the either the development/project manager or the release manager spend a majority of their time supervising others rather than performing the tasks of a senior member of a team. The record does not establish that the positions subordinate to the beneficiary require the services of professional employees rather than individuals who are skilled technicians. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N at 190. The AAO observes, in addition, that the petitioner's organizational chart lists a number of employees subordinate to the beneficiary but that the petitioner's California Form DE-6 does not substantiate their employment. Again, 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 at 591-92.

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).

Finally, 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 at 597. 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). It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 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. Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L1-A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 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).

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 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.