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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
LIN 07 110 53553

Date: FEB 03 2010

IN RE: Petitioner: [REDACTED]
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)

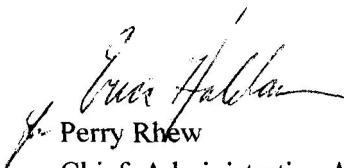
ON BEHALF OF PETITIONER:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner filed the immigrant petition seeking to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The petitioner, a Florida corporation, states that it is an information technology company that specializes in products and consulting services for enterprise resource planning and supply chain solutions. It seeks to employ the beneficiary as its vice president of operations.

On January 9, 2009, the director denied the petition determining that the petitioner failed to establish that a qualifying relationship exists between the beneficiary's foreign employer and the U.S. petitioner.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that an affiliate relationship exists between the two entities because the same individual owns the majority of the shares of both companies. Counsel submits a brief and additional evidence in support of this assertion.

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 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).

At issue in this proceeding is whether the petitioner has established that it has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. 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").

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 letter dated January 21, 2007, submitted with the Form I-140, the president and CEO of the U.S. company stated that the petitioner is an information technology company organized in Florida, "with two (2) wholly owned development and services centers in the cities of Karachi and Lahore in Pakistan." The letter further states that in 2001, the beneficiary co-founded the petitioner's "offshore subsidiary in Pakistan and held the functional capacity of Director of Operations," and that he "holds a 20% ownership-stake in the wholly owned Pakistani operations of the Company."

The petitioner submitted, among other things, copies of the U.S. company's articles of incorporation, financial statements for the years 2004 to 2006, and IRS Forms 1120S, U.S. Income Tax Return for an S

Corporation, for the years 2002 to 2005. However, no documentation evidencing the ownership of the U.S. company was submitted.

With respect to the foreign company, the petitioner submitted an undated and incomplete copy of a document entitled "Memorandum of Association for e-BizSoft (Private) Limited"; the foreign company's income tax return for 2005; a financial statement "for the period ended June 30, 2006"; and an unsigned chart dated 2004 showing that at that time, the company's shares were held by the following individuals:

████████████████████	300 shares
████████████████████	100 shares
████████████████████	100 shares

No other documentation relating to the foreign company's ownership was submitted.

On June 20, 2008, the director issued a request for further evidence (RFE). Among other things, the petitioner was asked to submit documentary evidence to establish the qualifying corporate interrelationship between the U.S. and foreign entities. The director specified that such evidence "may include, but is not limited to: annual reports, statements from the organization's president or corporate secretary, articles of incorporation, financial statements, and/or evidence of ownership of all outstanding stock for both entities."

In a letter dated July 13, 2008 responding to the RFE, the petitioner indicated that as evidence of the qualifying corporate relationship between the U.S. and foreign entities, it was submitting stock certificates of the U.S. company and a copy of the memorandum and articles of association of the foreign entity, which should demonstrate the ownership of the foreign entity. A review of the record shows that no U.S. stock certificates were submitted as claimed. Instead, the petitioner resubmitted the articles of incorporation of the U.S. company, which contains no information as to its ownership.

With respect to the foreign entity, the petitioner submitted a copy of the certificate of incorporation of the company dated October 11, 2004 and copies of undated memorandum and articles of association of the company. Attached to the latter two documents are copies of a shareholding chart dated December 6, 2004, listing three shareholders who cannot be conclusively identified because in the copies provided by the petitioner, their names were partially cut off, and the number of shares held by the first one is numerically stated as "100" and then written out as "three hundred," whereas the shares held by the third holder is numerically stated as "300" and then written out as "one hundred."

On October 10, 2008, the director issued a notice of intent to deny (NOID), noting that the stock certificates referenced in the petitioner's July 13, 2008 were not submitted. In addition, the director noted that "it is unclear how a petitioner can 'wholly own' the [companies in Pakistan], and the beneficiary can have a 20% ownership stake in the 'wholly owned Pakistani operations of the [U.S. company]'" as the petitioner claimed in its January 21, 2007 letter. The director found that, based on the submitted evidence, the ownership of the two entities remained unclear. The petitioner was given thirty days to

submit additional evidence, which "must include, but is not limited to stock certificates for the U.S. corporation and the corresponding stock ledger."

In a letter dated October 20, 2008 responding to the NOID, the petitioner states that the author of the letter and the CEO of the U.S. company, "held at the time of filing of this petition and holds 100% of the stock/shareholding of the United States business entity," and "held at the time of this petition and holds the majority part of the stock of 60% shareholding (300 shares) in the foreign business entity." The petitioner further claimed that the designation of the Pakistani development and service centers in Pakistan as "wholly owned" by the U.S. company was an unintentional error.

The petitioner submitted copies of two stock certificates for the U.S. company, both dated April 1, 2000. Certificate number 1 states the number of shares in the top right hand corner as "100," but states below that [REDACTED] is the owner of ninety Shares of no par value of the . . . transferable only on the books of this Corporation in person or by Attorney upon surrender of this Certificate properly endorsed [sic]." Certificate number 2 also states the number of shares in the top right hand corner as "100," but certifies below that [REDACTED] is the owner of ten shares of no par value," with the same syntactical defect in the certification paragraph as quoted above. The petitioner did not submit a stock ledger for the company as requested, or any other documentation relating to the share ownership of the U.S. company.

In support of its claims regarding the ownership of the foreign company, the petitioner resubmitted copies of the memorandum and articles of association of the foreign entity, along with the same partially cut off shareholding chart. The petitioner also submitted a copy of the company's partnership deeds, dated July 10, 2002, which states the profit and loss sharing of the partners as follows:

[REDACTED]	60%
[REDACTED]	20%
[REDACTED]	20%

In a letter responding to the NOID, the petitioner confirmed the above share distribution in the initial partnership and stated that on October 11, 2004, the foreign company changed its status as a partnership to that of a private limited company. The petitioner further stated that, at that time, [REDACTED] was the majority shareholder with 300 shares (60%) pending completion of the necessary procedures to transfer those shares to [REDACTED] who was located in the United States. According to the petitioner, [REDACTED] and the beneficiary were each allocated 100 shares, or 20%, of the foreign entity at that time. The petitioner claims that on June 27, 2006, [REDACTED] transferred his 60% shareholdings in the foreign entity to [REDACTED] who then replaced the former as company director. The petitioner submitted a "Form 29, Particulars of Directors and Officers," of the foreign company, which confirms the change of directors as the petitioner described, but provides no information regarding the corresponding change in shareholding.

The petition was denied on January 9, 2009. In denying the petition, the director determined that, based on the record, the petitioner has not established that a qualifying relationship exists between the U.S. and foreign entities. The director noted the petitioner's failure to include the stock certificates of the U.S.

company as claimed in its letter responding to the RFE. The director further observed that, contrary to the petitioner's claim in its letter responding to the NOID that [REDACTED] owns 100% of the U.S. company, the stock certificates indicate that the shares of the company are owned by both [REDACTED] and [REDACTED]. Additionally, the director noted certain defects in the stock certificates, such as the discrepancy between the numerical and word descriptions of the number of shares on both certificates and the missing text in the body of the certificates. The director determined that, given the numerous inconsistencies in the record, U.S. Citizenship and Immigration Services (USCIS) cannot determine whether a qualifying relationship exists between the petitioner and the beneficiary's overseas employer, and the petition must be denied.

On appeal, counsel asserts that the deficiency of the evidence previously submitted by the petitioner was due to the fact that the petitioner prepared the petition without the benefit of legal counsel. Counsel claims that a qualifying relationship does exist between the U.S. and foreign entity as [REDACTED] owns 90% of the U.S. company and 60% of the foreign company. In support of this claim, counsel submits further evidence, including:

1. Copies of "proper and corrected stock certificates" of the U.S. company showing that [REDACTED] owns 90, and [REDACTED] owns 10, of the company's shares.
2. Copies of the U.S. company's 2006 and 2007 IRS Forms 1120S, U.S. Income Tax Returns for an S Corporation, each with Schedules K-1 attached stating that [REDACTED] owns 90% and [REDACTED] owns 10% of the company.
3. The foreign company's Shareholders Filings to the Securities and Exchange Commission of Pakistan for 2006, 2007 and 2008 showing that [REDACTED] owned 60% of the company's issued and outstanding shares during those years.
4. A copy of an affidavit by [REDACTED] confirming that he was contractually bound to follow the instructions of [REDACTED] with respect to the shares of the foreign company under his name prior to June 2006.
5. A copy of a letter from an attorney in Pakistan confirming that the custodial arrangement between [REDACTED] and [REDACTED] with respect to the foreign company's shares was legal and customary in Pakistan.

Upon review, the AAO concurs with the director's conclusion that the petitioner has failed to establish that a qualifying relationship between the petitioner and the beneficiary's foreign employer existed at the time the petition was filed.

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 Dec. 362 (BIA 1986); *Matter*

of *Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the 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 Dec. at 595.

To establish eligibility in this case, it must be shown that the foreign employer and the petitioner share common ownership and control. Control may be *de jure* by reason of ownership of 51 percent or more of outstanding stocks of the entity or it may be *de facto* by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). If one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. Here, the petitioner claims that the U.S. and foreign companies are affiliates because the same individual, [REDACTED] owns 90% of the U.S. company and 60% of the foreign company.

With respect to the foreign entity, the AAO found the evidence that was before the director to be insufficient to establish that [REDACTED] owned 60% of the company's shares at the time of the filing of the petition. Although the petitioner submitted a Pakistani Companies Ordinance Form 29 showing that [REDACTED] replaced [REDACTED] as director in June 2006, and the petitioner claimed that the shares held by [REDACTED] constituting 60% ownership of the company, were transferred to [REDACTED] at that time, the evidence submitted did not clearly establish the number of shares of the company held by [REDACTED] as custodian for [REDACTED] before June 2006, nor those held directly by [REDACTED] after June 2006. However, in light of additional evidence submitted by counsel on appeal, specifically the foreign company's Shareholders Filings to the Securities and Exchange Commission of Pakistan for 2006, 2007 and 2008, the AAO finds the evidence sufficiently demonstrates that [REDACTED] owns 60% of the company's issued and outstanding shares during those years.

Notwithstanding the foregoing, the AAO finds that the record fails to establish that the U.S. company is majority-owned or controlled by [REDACTED], as the petitioner claimed. In the letter responding to the NOID, the petitioner stated that [REDACTED] owns 100% of the U.S. company. However, the stock certificates submitted with that letter indicate that [REDACTED] owns 90 shares of the U.S. company and another 10 shares are owned by [REDACTED], although no mention was made as to whether these constitute all of the issued and outstanding share of the U.S. company. The petitioner failed to provide any explanation or further documentation that would clarify this inconsistency between its letter and the copies of the company's share certificates, or the discrepancies between the numerical and word representations of the number of shares and the missing text on the share certificates. 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). 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. *Id.*

On appeal, counsel offered the general explanation that any defects in the evidence submitted in connection with the petition were simply due to the fact that the petition and subsequent submissions "were not prepared by trained legal experts." Counsel failed to address how the CEO of the company could misstate such a fundamental fact as the shareholding of the company in his letter responding to the NOID. In addition, counsel simply substituted on appeal new copies of what he called "proper and corrected stock certificates" of the U.S. company for the previous ones. Given that the new certificates bear the same numbers 1 and 2 as the previous ones, bears the same April 1, 2000 date and still lack the same crucial words in the certification paragraph as did the previous ones, the AAO must question the authenticity of the new certificates, and thereby counsel's claim as to the ownership of shares in the U.S. company as represented by those certificates. Again, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Furthermore, as general evidence of a petitioner's claimed qualifying relationship, in addition to stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Here, the petitioner failed to submit any supplemental documentation relating to the ownership of the U.S. company, such as those described above. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The AAO acknowledges that the petitioner submitted Forms 1120S for the years 2002 through 2007, and that these tax returns provide some information as to the ownership of the company. However, the information contain therein appear to be inconsistent with counsel's and the petitioner's claims on the issue. For example, although counsel and the petitioner claim that there are two shareholders, each of the company's tax returns for 2002, 2003, 2004, 2005 and 2007 state in box G on the first page that there is only one shareholder at the end of each of those tax years (box G in the 2006 return was cut off in the copy submitted). The petitioner also submitted Schedules K-1 along with the Forms 1120S for 2006 and 2007, which disclose that the company's shares are owned 90% by [REDACTED] and 10% by [REDACTED]. Again, this information is inconsistent with the disclosure regarding shareholders on the Form 1120S itself, at least for the year 2007. In addition, the value of the company's common stock was stated as \$1,000 on the Forms 1120S for the years 2002 and 2003, left blank on the 2004 and 2005 tax returns, and then stated as \$500 on the returns for the years 2006 and 2007. These inconsistencies in the U.S. company's tax returns were not addressed by the petitioner or counsel. Again, doubt cast on any aspect of the petitioner's proof may 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 591-92.

In light of the deficiencies and inconsistencies in the record as discussed above, the AAO is unable to ascertain that the U.S. company is indeed majority-owned by the majority shareholder of the foreign company, as the petitioner claimed, such that the two entities could be considered affiliates. Accordingly, based on the evidence submitted, it is concluded that the petitioner has not established that a qualifying relationship exists between the U.S. and foreign companies. For this reason, the petition will be denied.

Beyond the decision of the director, the AAO finds that the record does not establish that the petitioner has the ability to pay the beneficiary the proffered wages for his position in the United States as required by the regulations.

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

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

In determining the petitioner's ability to pay the beneficiary's proffered wage, USCIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner initially submitted a letter dated January 23, 2007 stating the salary offered to the beneficiary as \$4,000 per month, with an annual bonus of \$15,000. Upon the director's request for further evidence of the petitioner's ability to pay the beneficiary's proffered wages, the petitioner submitted the beneficiary's 2007 IRS Form W-2, which states the beneficiary's wages for 2007 as \$6,182.12. In a letter dated July 17, 2008, the petitioner claimed that the inconsistency between the beneficiary's offered salary the amount on his Form W-2 for 2007 "is due to the fact that he is in the U.S. for short periods of time [and his] W-2 reflects the time when he is in the United States." It is noted that nowhere in the record was it stated that the beneficiary would not be paid a salary when he is traveling outside of the United States. Moreover, given the small amount of wages actually paid to the beneficiary in 2007 as reflected on the Form W-2, the petitioner has not presented *prima facie* evidence that it was able to pay the beneficiary his proffered wages.

As an alternate means of determining the petitioner's ability to pay the beneficiary's proffered wage, the AAO will next examine the petitioner's net income figure as reflected on the federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In *K.C.P. Food Co., Inc. v. Sava*, the court held the Immigration and Naturalization Service (now USCIS) had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than on the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. at 537; *see also Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054.

As the petition's priority date falls on March 5, 2007, the AAO must examine the petitioner's tax return for 2007. The petitioner's IRS Form 1120S for calendar year 2007 presents a net taxable income of \$5,466. The petitioner could not pay a proffered wage of \$48,000 per year, plus bonus, out of this income.

Finally, if the petitioner does not have sufficient net income to pay the proffered salary, the AAO will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as the AAO is satisfied that the petitioner's current assets are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage. Based on the petitioner's IRS Form 1120S, Schedule L Balance Sheets, the petitioner's assets for the year 2007 (including cash; trade notes and accounts receivable; inventories; U.S. government obligations; tax exempt securities, and other current assets) amounted to approximately \$64,700. The petitioner's 2007 liabilities (including accounts payable; mortgages, notes, bonds payable in less than 1 year; and other current liabilities) added up to \$60,472. With net current assets of little more than \$4,000, it cannot be concluded that the petitioner has demonstrated its ability to pay the petitioner's proffered wages at the time the petition was filed in 2007. For this additional reason, the petition will be denied.

Finally, the AAO acknowledges that USCIS has previously approved an L-1A petition filed by the petitioner on behalf of the instant beneficiary. It must be noted that many I-140 immigrant petitions are denied after USCIS 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; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103. 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 USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A 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).

Despite the previously approved petition, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. See section 291 of the Act. Each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). 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). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous nonimmigrant petition approval by denying the instant petition.

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). When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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.