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

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File: LIN 05 042 52480 Office: NEBRASKA SERVICE CENTER Date: DEC 01 2006

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF BENEFICIARY:

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, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of project leader as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is engaged in software development and claims a qualifying relationship as the parent of UAB Blatijos Programine Iranga of Lithuania. The petitioner seeks to employ the beneficiary for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish that (1) the position offered requires an employee with specialized knowledge or that the beneficiary has such knowledge; or (2) the petitioner has a qualifying relationship with the foreign employer in Lithuania.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Specifically, counsel asserts that the beneficiary has specialized knowledge of a proprietary software product, MagicDraw, including the program's technical features and source code which permits its integration with other software applications. Counsel also asserts that the petitioner has established that it has a qualifying relationship with the foreign employer and claims that its failure to produce stock certificates evidencing ownership of the foreign entity is excusable because the foreign entity, as a Lithuanian business entity, does not issue such certificates as permitted by local law and the company's bylaws.

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

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

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in this matter is whether the petitioner has established that the position offered requires an employee with specialized knowledge or that the beneficiary has such knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

> [S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In a statement attached to the initial petition, the petitioner described the beneficiary's job duties with the foreign entity as follows:

> [With the foreign entity], [the beneficiary] is a "Project Leader, MagicDraw Development." [The beneficiary] manages the MagicDraw development team, assists the System Architect in the product design, composes and/or approves technical specifications, conducts code reviews, and is responsible for bug fixing. [The beneficiary] periodically visits customer sites to gather requirements and to provide MagicDraw customers with technical support.[1]

In the same statement, the petitioner asserts that the beneficiary has specialized knowledge of its MagicDraw product and breaks this knowledge down into five types and situations in which specialized knowledge of the product is necessary: (1) knowledge of MagicDraw's unique DDL (data definition language), which is necessary to support the design of relational databases using MagicDraw; (2) knowledge of requirements modeling; (3) knowledge of MagicDraw's application for business process modeling; (4) knowledge of the performance tuning of MagicDraw's Teamwork Server edition; and (5) knowledge of how to break MagicDraw down into modules or "shared packages" for customers. The petitioner specifically states that the

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[1]In the statement attached to the initial petition, MagicDraw is described as follows: "Magic Draw UML is a Unified Modeling Language (UML) software design tool with forward and reverse engineering capabilities in Java, C# and C++. MagicDraw UML has teamwork capabilities."

beneficiary has specialized knowledge of the fourth and fifth areas identified above. The petitioner also provides a breakdown of the beneficiary's job duties. As these duties appear in the record, they will not be repeated here.

On January 20, 2005, the director requested additional evidence establishing that the beneficiary's knowledge is indeed specialized. Specifically, the director requested evidence demonstrating that the beneficiary's knowledge is advanced, uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by practitioners in the beneficiary's field of endeavor. The director also instructed the petitioner to provide evidence describing and distinguishing the beneficiary's knowledge from the elementary or basic knowledge possessed by others who are similarly employed within the same occupation and who regularly utilize similar systems, programs, products, processes, and/or procedures.

In response, the petitioner provided a letter dated April 13, 2005 providing more information regarding the beneficiary's purported specialized knowledge. In the letter, the petitioner asserts that part of its business includes the provision of MagicDraw to other software companies for integration into other applications. Because these integrations will require the writing and developing of interfaces between two applications, only an employee with intimate knowledge of the source code and technical features of MagicDraw can perform these functions. The petitioner further asserts that this "specialized knowledge" can only be gained from creating and writing the various editions of the MagicDraw program over the years, particularly because the source code is a closely guarded, proprietary secret.

The petitioner also asserts in the April 13, 2005 letter that, because MagicDraw has such a small market share when compared with other unified modeling language product offerings, those employees with extensive knowledge of the source code and technical features of MagicDraw possess "specialized knowledge." The petitioner claims that such knowledge is therefore quite uncommon in the industry, and a typical systems integration company cannot provide integration services for MagicDraw. As explained by the petitioner, this is primarily because the integration occurs before delivery to an end-user by creating a combined product, and it contends that the beneficiary will be one of the employees using "specialized knowledge" of secret, proprietary information to accomplish these integrations. The petitioner further explained the technical features of MagicDraw, e.g., application program interface, proprietary file formats, templates, and diagrams, and why knowledge of these features is allegedly essential to integrating MagicDraw with other applications and providing the necessary support to end-users. According to the petitioner, if a software professional does not have knowledge of MagicDraw's technical features and source code by accumulating years of experience working with the various editions of the program, the software professional would not be able to perform integrations or work with end-uses of combined applications.

Finally, the petitioner provides in its letter dated April 13, 2005 a summary of the beneficiary's duties both in the United States and abroad. The beneficiary's duties in Lithuania consist primarily of working on changes and additions to MagicDraw, while the beneficiary's proposed duties in the United States will focus on product integration with the petitioner's customers.

On April 30, 2005, the director denied the petition concluding that the petitioner failed to establish that beneficiary has been or would be employed in a specialized knowledge capacity.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Counsel asserts that the beneficiary has specialized knowledge of the proprietary software product, MagicDraw, including the program's technical features and source code which permits its integration with other software applications.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary has been, or will be, employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8.C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. In this case, while the beneficiary's job description adequately describes his duties as a software professional, the petitioner fails to establish that these positions, both in the United States and abroad, require an employee with specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary's proposed position in the United States requires "specialized knowledge," the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other experienced software professionals employed by the petitioner or in the industry at large. Going on record without 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)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner asserts that the beneficiary possesses specialized knowledge of the petitioner's product, service, research and techniques, as well as of the petitioner's processes and procedures, which are unique and proprietary to the company. The petitioner also asserts that the beneficiary's knowledge is advanced, uncommon, noteworthy and distinguished. In support of these arguments, the petitioner relies heavily on its position that the beneficiary's knowledge of the source code and technical features of its MagicDraw software is sufficiently specialized to support the L-1B classification. The petitioner further asserts that the position in the United States, which focuses on the integration of MagicDraw with other software for its customers, requires the beneficiary to possess this specialized knowledge of MagicDraw's technical features and source code.

However, despite these assertions, the record does not reveal the *material difference* between the technical features and source code of the petitioner's MagicDraw product, a unified modeling language (UML) product offering, and the technical features and source codes of similar products on the market. While the petitioner asserts repeatedly that the beneficiary gained his knowledge of MagicDraw's technical aspects from years of working with and creating the product, the record does not establish that the beneficiary's knowledge is different from the knowledge of the technical features of UML software products possessed by software professionals generally throughout the industry, in the petitioner's workforce, or in the foreign entity's

workforce.

While the petitioner argues that the secret, proprietary nature of the technical features renders it either impractical or impossible for software integrations companies to integrate MagicDraw with other applications, thereby making it specialized, this does not establish that the beneficiary's knowledge is specialized for purposes of this visa classification. The petitioner cannot artificially manufacture specialized knowledge by refusing to share information. Rather, the petitioner must establish that the beneficiary's knowledge is specialized, because he gained the knowledge through extensive training or experience which could not easily be transferred to another employee. In this matter, the petitioner has not proven that the beneficiary's knowledge of the technical features and source code is materially different from that possessed by similarly employed software professionals with experience integrating UML products. The fact that these other software professionals may not have very specific, proprietary knowledge regarding MagicDraw which would hinder their integration of the product is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to newly hired professionals with UML product integration experience.

Moreover, even assuming that the beneficiary's knowledge of the technical features and source code of MagicDraw constitutes specialized knowledge, the petitioner has not proven that the beneficiary has been employed in a specialized knowledge capacity in Lithuania. As explained in the record, the petitioner's argument that the beneficiary's knowledge is specialized is based entirely on the beneficiary's proposed use of this specialized knowledge to integrate MagicDraw with other applications. However, as explained in the job descriptions provided in the April 13, 2005 letter, the beneficiary has not be working on product integration in Lithuania. To the contrary, the beneficiary's duties are almost exclusively related to working on changes and additions to MagicDraw. Since the record is devoid of any evidence that these duties require specialized knowledge of MagicDraw's technical features or source code, the petitioner has not proven that the beneficiary has been employed abroad in a specialized knowledge capacity.

The AAO does not dispute the likelihood that the beneficiary is a skilled and experienced software professional who has been, and would be, a valuable asset to the petitioner. However, it is appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618(R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)). As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. 49, 52 (Comm. 1982). Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

> A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation.

Id. at 53.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. REP. NO. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between the employee and the remainder of the petitioner's workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. REP. NO. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner, id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. at 119. According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; *see also, 1756, Inc. v. Attorney General,* 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees

with specialized knowledge, but rather to "key personnel" and "executives.")

A 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum written by the then Acting Associate Commissioner also directs CIS to compare the beneficiary's knowledge to the general United States labor market and the petitioner's workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." Memorandum from [redacted] Acting Associate Commissioner, Immigration and Naturalization Service, ***Interpretation of Specialized Knowledge***, CO 214L-P (March 9, 1994). A comparison of the beneficiary's knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary's skills and knowledge and to ascertain whether the beneficiary's knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary's knowledge, CIS would not be able to "ensure that the knowledge possessed by the beneficiary is truly specialized." *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

As explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other experienced software professionals with a background in UML product integration. As the petitioner has failed to document any materially unique qualities to the technical features and source code of MagicDraw, the petitioner's claims are not persuasive in establishing that the beneficiary, while highly skilled, would be a "key" employee. There is no indication that the beneficiary has knowledge that exceeds that of any software professional with UML product integration experience, or that he has received special training in the company's methodologies or processes which would separate him from any other software professional employed with the petitioner or with the foreign entity.

The legislative history of the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra at 16*. Based on the evidence presented, it is concluded that the beneficiary has not been employed abroad, and would not be employed in the United States, in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.[2]

The second issue in this matter is whether the petitioner has established that it has a qualifying relationship

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[2]Finally, counsel's reliance on the interpretation of "specialized knowledge" provided by the Department of State's Visa Office (VO) is misplaced. First, there is no evidence provided by counsel that the interpretation is still valid in view of recent amendments to the Foreign Affairs Manual (FAM). Second, even if such evidence was provided, the FAM is not binding upon CIS. *See Avena v. INS*, 989 F.Supp. 1 (D.D.C. 1997); *Matter of Bosuego*, 17 I&N 125 (BIA 1979). The FAM provides guidance to employees of the Department of State in carrying out their official duties, such as the adjudication of visa applications abroad. The FAM is not relevant to this proceeding.

with the foreign employer, UAB Blatijos Programine Iranga of Lithuania.

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

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section." A "subsidiary" is defined, in part, as a legal entity, including a limited liability company, which "a parent owns, directly or indirectly, more than half of the entity and controls the entity."

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.

In the initial petition, the petitioner asserts that it is the 100% owner of a Lithuanian subsidiary, UAB Blatijos Programine Iranga. In support of this assertion, the petitioner provided a variety of corporate and organizational documents including a translation of a document titled Incorporation Act of Joint Stock Company "No Magic' Pastatai." However, the petitioner did not provide a copy of any stock certificates or other documents specifically evidencing the petitioner's ownership of a majority of the shares of the foreign entity.

On January 20, 2005, the director requested additional evidence. The director specifically requested copies of the foreign entity's stock certificates and stock ledger evidencing the petitioner's ownership interest.

In its April 13, 2005 response letter, the petitioner alleges that its ownership interest in the Lithuanian entity is "uncertified" and that the subsidiary does not issue stock certificates. The petitioner explains that its ownership interest is instead evidenced by its stock ledger and filings with the Lithuanian government. In support of this assertion, the petitioner provided a letter from a Lithuanian lawyer indicating that the subsidiary's bylaws compel, and Lithuania law permits, the issuance of immaterial or virtual shares. The petitioner, however, did not provide a copy of the subsidiary's bylaws allegedly restricting the subsidiary to the issuance of immaterial or virtual shares or a translated copy of the cited Lithuanian law.

On April 30, 2005, the director denied the petition concluding that the petitioner had not sufficiently established the existence of the virtual or immaterial shares and had not properly explained inconsistencies in

the record.

On appeal, the petitioner again asserts that it has adequately established through the Lithuanian attorney's letter, the stock ledger, and the government filing that the petitioner is the 100% owner of the foreign entity. The petitioner further argues that CIS should be estopped from questioning the petitioner's qualifying relationship with the foreign entity because of its approval of prior petitions.

Upon review, the petitioner's assertions are not persuasive.

The petitioner has not established that it has a qualifying relationship with the foreign entity. While the petitioner has provided evidence that the Lithuanian subsidiary has not issued, may not issue, and does not need to issue stock certificates, there are fundamental evidentiary gaps and inconsistencies which undermine the credibility of this evidence.

First, while a Lithuanian attorney has stated in a letter that the subsidiary's bylaws restrict it to issuing immaterial or virtual shares, the petitioner did not provide a copy of the subsidiary's bylaws for review. 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. at 165.

Second, while the Lithuanian lawyer indicated that Lithuanian law permits companies to issue immaterial or virtual shares, the petitioner did not provide a translated copy of this law. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). Since the petitioner did not sufficiently prove the state of Lithuanian law on this matter, the petitioner has failed to establish that Lithuanian law supports the subsidiary's failure to issue stock certificates.

Third, the materials submitted by the petitioner are inconsistent with its assertion that the foreign entity is restricted to issuing immaterial shares. According to section 6 of the translation of a document titled Incorporation Act of Joint Stock Company "No Magic' Pastatai" (exhibit 13 attached to the initial petition), the shares of the foreign subsidiary will be "material" equity shares. The petitioner makes no attempt to explain this serious inconsistency. 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.* at 591.

Accordingly, the petitioner has failed to establish that it has a qualifying relationship with the foreign entity, and the petition may not be approved for this reason.[3]

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[3]It must be noted that the petitioner's claim that CIS should be estopped from questioning the petitioner's qualifying relationship with the foreign entity is without merit. First, prior petition approvals do not preclude CIS from denying a petition based on a reassessment of the petitioner's qualifications. *See Texas A&M Univ.*

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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v. Upchurch, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). 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 Engr. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Second, the AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of CIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). [redacted] is an equitable form of relief that is available only through the courts. The jurisdiction of the AAO is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the petitioner's equitable estoppel claim.