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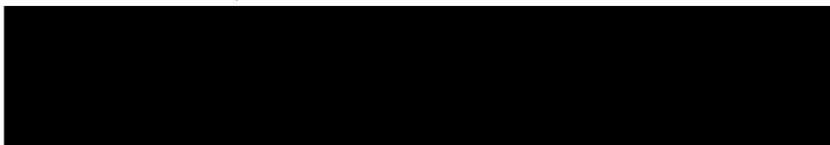
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
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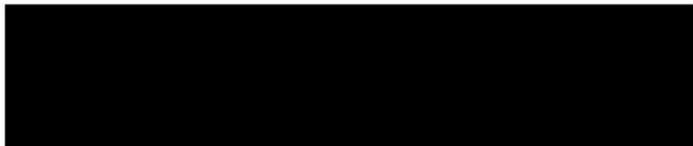
File: WAC 07 245 50125 Office: CALIFORNIA SERVICE CENTER Date: JUL 07 2008

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 PETITIONER:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 a new office in the United States as an L-1A nonimmigrant intracompany transferee 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, a limited liability company organized under the laws of the State of Nevada, states that it is in the motion picture business.

The director denied the petition on September 7, 2007, concluding that the petitioner did not establish the following three requirements: (1) that a qualifying relationship exists between the foreign company and the United States entity; (2) that sufficient physical premises to house the new office have been secured; and, (3) that the petitioner failed to demonstrate that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

The petitioner subsequently filed an appeal on October 1, 2007. On appeal, counsel asserts that the director did not give the petitioner the opportunity to satisfy its concerns by sending a Request for Evidence or a Notice of Intent to Deny. In addition, counsel for the petitioner asserts that the foreign company and the United States company are affiliates since the same two individuals have the same form of ownership of the U.S. company and the foreign company. Counsel for the petitioner further states that sufficient physical premises have been secured as the petitioner maintains an office within a separate company's office space, and the office space is not a private residence. Counsel for the petitioner also asserts that the petitioner submitted sufficient evidence to establish that the beneficiary will be employed in a managerial or executive capacity within one year of the approval of the petition.

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) 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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

As a preliminary matter, counsel for the petitioner contends that the director did not provide the petitioner with an opportunity to address the director's concerns through a Request for Evidence or a Notice of Intent to Deny. The regulation at 8 C.F.R. § 103.2(b)(8) clearly states that a petition shall be denied "[i]f there is evidence of ineligibility in the record." The regulation does not state that the evidence of ineligibility must be irrefutable. Where evidence of record indicates that a basic element of eligibility has not been met, it is appropriate for the director to deny the petition without a request for evidence. If the petitioner has rebuttal evidence, the administrative process provides for a motion to reopen, motion to reconsider, or an appeal as a

forum for that new evidence. In the present case, the evidence indicated that the petitioner did not establish that a qualifying relationship exists between the foreign company and the United States entity. Accordingly, the denial was appropriate, even though the petitioner might have had evidence or argument to rebut the finding.

The first issue in this proceeding is whether a qualifying relationship exists between the foreign company and the United States entity. 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 is the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- (1) 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;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In this matter, the petitioner claims to be an affiliate of the foreign employer. The petitioner claims that both it and the foreign employer are owned and controlled by the same two individuals, [REDACTED] and [REDACTED]. However, as evidence that the [REDACTED]'s purchased their interests in the petitioner, counsel submits documents which indicate that both members paid \$100.00 for their respective interests. The record also indicates that the petitioner's primary funding source was not the foreign employer or its stockholders. Instead, most of the petitioner's funding originated with third parties such as a Hong Kong company called Audience Alliance Motion Picture Studios Limited and two Wyoming limited liability companies. The record is devoid of evidence establishing that either the Hong Kong company or the Wyoming limited

liability companies are qualifying organizations. 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. at 591-92.

While the funding of the petitioner and its enterprise by third parties is not alone disqualifying, it calls into question whether the petitioner is truly controlled by the two members of the limited liability company or, whether, control has been ceded to the various entities providing funds. It must be emphasized that the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Absent full disclosure of the conditions related to the funding of the petitioner by third parties, it is impossible for CIS to discern the exact control of the petitioner, and the petition will not be approved.

In addition, the petitioner submitted an operating agreement for the U.S. company. The operating agreement lists [REDACTED] as the only member of the limited liability company and as the member who owns 100 percent interest in the company. On appeal, the petitioner submitted a one-page document entitled, "Admission of New Member," signed by [REDACTED] and [REDACTED] on July 15, 2007, stating that [REDACTED] contributed \$100.00 and is admitted as a full member of the company. In reviewing the operating agreement for the U.S. company, under section VII. General Provisions, the agreement states that, "a list of the names and addresses of the current membership of the LLC also shall be maintained at this address, with notations on any transfers of members' interests to nonmember or persons being admitted into membership in the LLC." However, the petitioner did not provide this documentation with the petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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. The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue. Accordingly, the appeal will be dismissed.

Furthermore, because [REDACTED] owns half of the parent company, the record does not establish that the parent company is still doing business abroad and still maintains a qualifying relationship with the U.S. entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner did not provide evidence that the parent company is still operating since [REDACTED], the part owner, is currently in the United States.

The second issue in this proceeding is whether the petitioner has secured sufficient physical premises to house the new office in the United States as required under the regulations 8 C.F.R. § 214.2(l)(3)(v).

At the time of filing the petition, the petitioner submitted a lease agreement for office space, dated August 8, 2007. The lease agreement states that the office space is part of a larger office building. Under Section 1 of the agreement, the use of the premise leased by the petitioner “shall consist of office space number(s) Suite 200 having a maximum occupancy capacity of one (1) person(s).” Section 2 of the lease agreement states that the premise shall be used for “film production, marketing, distribution and such other use as is normally incident thereto and for no other purpose....”

In the denial decision, the director stated that the petitioner did not provide evidence that it secured sufficient physical premises since “it appears that the premises will be used as a home-based office.” The AAO disagrees with the director on this point as the lease submitted by the petitioner stated that the leased office space shall be used for “film production, marketing, distribution and such other use as is normally incident thereto and for no other purpose. . . .” The AAO withdraws the director’s statement that the secured physical premises is a home-based office.

However, the appeal will not be approved since the petitioner did not establish that it secured sufficient physical premises because the agreement stated that the leased office space has a maximum occupancy capacity of one individual. The petitioner did not submit documentation of the space it requires to start the new office, however, the petitioner stated that it filed four L-1A visa petitions, thus, the petitioner wishes to employ at least four individuals. An office space for one individual is not sufficient physical premises for the business if the petitioner wishes to employ at least four individuals. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner had secured sufficient space to house the new office. For this additional reason, the appeal is dismissed.

The third issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary would be employed in a primarily managerial or executive capacity within one year of the approval of the petition, as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

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.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

The nonimmigrant petition was filed on August 16, 2007. The Form I-129 indicates that the beneficiary will be employed in the position of director of marketing and communications. The petitioner submitted a position description that described the duties to be performed by the beneficiary as the following:

The role is responsible for the development and implementation of the global Marketing and Communications strategy, which includes Global Brand Management; design and creation of Premium Entertainment Properties for Web/TV/Film; Marketing Support and Merchandising for each of the featured films released by Audience Alliance; Strategic Alliances with other major global and US brands; Public Relations and Advertising functions; active Web Community of several millions of unique individuals.

In addition, on appeal, the petitioner explained that the organizational structure of the U.S. company will be the President and CEO, the director of marketing and communications and the Chief Creative Officer, "all of whom report independently to the petitioner's Board."

The director denied the petition on October 6, 2007, concluding that the submitted evidence is not persuasive in establishing that the beneficiary's proposed position is in a capacity that is managerial or executive in nature. The director noted that the petitioner did not establish the employer's business activities in order to provide a clear understanding of the products and services that are provided by the employer and how the beneficiary's position fits into its organizational hierarchy.

On appeal, counsel for the petitioner asserts that the beneficiary's proposed position will be an "essential role in the management and ongoing operations of the petitioner." Counsel further states that the beneficiary's position will not be managerial but rather an executive level position. Counsel also states that the beneficiary's only supervisor will be the petitioner's Board and thus he will have "almost complete discretion in establishing the goals and policies of the marketing and communications department and will have nearly exclusive discretionary decision-making in relation to its operations."

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial, administrative, or operational duties.

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states vague duties such as the beneficiary will be responsible for the "development and implementation of the global Marketing and Communications strategy." The petitioner did not, however, define the petitioner's goals and policies, or clarify the role of the marketing and communications department and the subordinates in the department that the beneficiary will supervise. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The petitioner's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature.

The job description also includes several non-qualifying duties such as the beneficiary will be responsible for the "design and creation of Premium Entertainment Properties for Web/TV/Firm," the "marketing support and merchandising," and "public relations and advertising functions." It appears that the beneficiary will be developing and marketing the services of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Intn'l.*, 19 I&N Dec. at 604.

According to the proposed U.S. organizational structure explained on appeal, it does not appear that the U.S. company plans to hire a marketing and communications manager or marketing associates to develop and manage the marketing and communications operations for a company that plans to produce several movies. Thus, it appears that the beneficiary will be developing and implementing the marketing and communication functions and, rather than supervising the work prepared by subordinate employees. The lack of employees for the beneficiary to direct and coordinate raises questions as to whether the beneficiary will be managing these activities or actually performing the petitioner's marketing and communication duties. Thus, it appears the beneficiary will spend a majority of his time performing non-managerial duties associated with marketing and communication functions.

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary would do on a day-to-day basis. Therefore, the petitioner has not established that the beneficiary would be employed primarily in an executive capacity.

Furthermore, as contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

Id.

In the petitioner's support letter, dated August 13, 2007, the petitioner states that the first three films it will produce will start production in 2007 and "at least five film products commencements are expected in 2008." The petitioner also stated that the petitioner holds the intellectual property right for approximately \$15 million of film projects and "new projects (film concepts, popular books, treatments, and screenplays) are being added regularly." The petitioner did not submit a business plan that outlines how the U.S. entity will reach the listed goals and plans and if it is financially feasible to do so. Moreover, the petitioner did not submit any documentation of agreements or contracts indicating that the petitioner will start production of movies or the projects planned for the first year of operation. 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.

Beyond the decision of the director, the record as presently constituted is not persuasive in demonstrating that the beneficiary was employed abroad in a primarily managerial or executive position. The petitioner did not submit a description of the job duties performed by the beneficiary when employed abroad. The petitioner also did not describe the supervisory structure of the beneficiary's subordinate workers, or specifically describe the day-to-day duties of the subordinate workers, or submit a breakdown of the beneficiary's duties, which describes how much time the beneficiary devoted to each of his ascribed duties. For this additional reason, the petition will not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.*, 229 F. Supp. 2d at 1043.

Finally, on appeal, counsel for the petitioner indicated that the petitioner filed four L-1A visa applications and “all four petitions were initially supported by identical evidence.” Counsel explains that the only difference between the four petitions is the beneficiaries and their proposed positions. Counsel further states that two of the petitions were approved by the California Service Center. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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).

Under CIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.