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**U.S. Citizenship
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Services**

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File: SRC 05 093 51623 Office: TEXAS SERVICE CENTER Date: **SEP 29 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 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 visa petition seeking to employ the beneficiary as its general manager 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 is a limited liability company organized under the laws of the State of Georgia and operates a hotel in Decatur, Georgia. The petitioner claims a qualifying relationship as an affiliate with [REDACTED] of Ontario, Canada.

The director denied the petition concluding that the petitioner did not establish that the petitioner and the foreign entity are qualifying organizations. Specifically, the director concluded that the United States operation is controlled by a franchisor and not by the majority owner of the petitioner and the foreign entity.

The petitioner filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the franchisor does not control the petitioner and that the record establishes that both the petitioner and the foreign entity are owned and controlled by the same person, thus establishing a qualifying affiliate relationship.

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.

The first issue in the present matter is whether the petitioner established that it has a qualifying relationship with the foreign entity, [REDACTED] of Ontario, Canada.

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." An "affiliate" is defined, in part, as "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual."

In this matter, the petitioner claims that both the foreign employer, a Canadian corporation, and the petitioner, a Georgia limited liability company, are 51% owned and controlled by the same individual. In support of this assertion, the petitioner provided a schedule from a Canadian tax form indicating that Jyoti Patel owns 51% of the foreign entity's shares. No other information was provided regarding the ownership, governance, or control of the Canadian corporation.

Additionally, the petitioner provided the following organizational documents for the Georgia limited liability company: a certificate of organization; evidence of the issuance of a tax identification number; articles of organization; an assignment of interests in the company purporting to establish that Jyoti Patel owns a 51% interest effective January 1, 2002; and organizational minutes from 1999 establishing that Bipin Patel and Jayanti Patel are managers of the company. The petitioner did not provide a copy of the limited liability company's operating agreement even though it was specifically mentioned in both the 1999 organizational minutes and the 2002 assignment of interests.

Finally, in response to the request for evidence, the petitioner provided (1) a License Agreement with Ramada Franchise Systems, Inc. dated January 31, 2000, and (2) a Franchise Agreement with BAC Franchising, Inc., together with an explanation that, since filing the initial petition, the petitioner had changed franchise relationships, is now subject to the BAC agreement, and is currently doing business as a Country Hearth Inn.

On May 26, 2005, the director denied the petition. The director determined that the evidence submitted by the petitioner was insufficient to prove the existence of a qualifying relationship. Specifically, the director determined that the BAC Franchise Agreement established that the franchisor controls the petitioner, not Jyoti Patel.

On appeal, the petitioner asserts that the director's decision was made in error. Specifically, the petitioner alleges that the petitioner is owned and controlled by the majority owner and that the terms of the franchise agreement do not cede control to the franchisor.

Upon review, petitioner's assertions are not persuasive, although the director's reliance on the BAC Franchise Agreement will be withdrawn.

As a threshold issue, it must be determined which franchise agreement should be examined by Citizenship and Immigration Services (CIS) in determining its effect on control of the petitioner's business. In this matter, the petitioner indicated in its letter dated February 2, 2005 (appended to the initial petition submitted February 11, 2005) that the petitioner operates a Ramada Limited hotel under a License Agreement. The petitioner,

however, neglected to include a copy of this agreement and, on February 24, 2005, the director specifically requested a copy of the Ramada License Agreement in her request for evidence. In response to the request for evidence, the petition provided a copy of the Ramada License Agreement but also indicated in its letter dated May 12, 2005 that the petitioner is now operating a hotel at the same location under a different franchise agreement. In support, the petitioner provided a copy of a Franchise Agreement between the petitioner and BAC Franchising, Inc. permitting the petitioner to operate the hotel as a Country Hearth Inn. While signed, the BAC Franchise Agreement is undated and its effective date is unknown.

In adjudicating the petition, the director reviewed the BAC Franchise Agreement and concluded that the petitioner had ceded control over the business to the franchisor. This was done in error. The director should have reviewed the Ramada License Agreement, which the petitioner indicated was in force at the time the petition was filed. The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot materially change the basis for establishing a qualifying relationship. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

That being said, the director's reliance on the BAC Franchise Agreement was harmless error because a review of the Ramada License Agreement yields the same result, i.e., that the petitioner ceded primary control over the petitioner's enterprise to the franchisor. The petition will still be denied for that reason.

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.

Although a franchise may be an asset of an independently owned and operated company, and pursuit of a franchise business model alone does not automatically disqualify a petitioner from establishing that it has a qualifying relationship with a foreign entity, the petitioner must prove that it has retained the necessary latitude to control, direct, and develop the enterprise. See *Matter of Kung*, 17 I&N Dec. 260 (BIA 1978). In this case, the petitioner has ceded control over the enterprise to the franchisor, Ramada Franchise Systems, Inc. As explained in the License Agreement, the franchisor controls the name of the business; the manner in which the hotel is equipped, supplied, and operated through a set of System Standards; the training of its managers; the making of reservations; and the marketing of the business. The petitioner has agreed to permit the audit of its financial books and records, and the inspection of its premises, by the franchisor at any time, and has agreed not to make any physical modifications to its premises without the permission of the franchisor. Finally, the petitioner has agreed not to transfer the premises, or an ownership interest in its business, without the permission and involvement of the franchisor. Given these terms, the petitioner has lost any realistic ability to control, direct, or develop the enterprise. Therefore, there is no qualifying relationship

between the foreign entity and the petitioner as control over the petitioner's business has been ceded to the franchisor.

Accordingly, the petitioner has not proven that the petitioner and the foreign entity have a qualifying relationship as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G), and the petition will be denied for that reason.

Beyond the decision of the director, the petitioner has failed to establish that it has a qualifying relationship with the foreign entity for reasons other than those related to its franchise agreement(s).

First, as explained above, as evidence of ownership and control of the foreign company, the petitioner provided a schedule from a Canadian tax form indicating that ██████ owns 51% of the foreign entity's shares. The petitioner provided no other evidence of ownership or control. As general evidence of a petitioner's claimed qualifying relationship, evidence of stock ownership alone is not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. 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.* Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. In this case, as the petitioner failed to supply this evidence, the petitioner has failed to establish the existence of a qualifying relationship.¹

Second, as evidence of ownership and control of the petitioner, the petitioner relies on an assignment of interests in the limited liability company purporting to establish that ██████ owns a 51% interest effective January 1, 2002. The petitioner did not provide a copy of the operating agreement of the petitioner, even though the assignment of interests specifically imposes its terms on ██████ as an assignee. The petitioner also did not provide any further evidence of the management of the LLC other than the initial organizational documents, which appoint ██████ and ██████ as managers. As explained above, evidence of ownership of a majority interest in a company alone is not sufficient to establish that the owner maintains both ownership and control over the entity. In this case, full disclosure of the terms of the operating agreement is essential, especially since there is no evidence that Jyoti Patel is a manager or managing member of the LLC.

Moreover, given other gaps in the record, ██████ true ownership and control over the LLC is highly questionable. For example, while the Ramada License Agreement appears to regulate the transfer of interests

¹Moreover, as indicated in the petitioner's letter dated May 12, 2005, ██████ is a "floor manager" for the foreign entity who "reports to [the beneficiary] in all matters of her work." It is not credible that one who truly owns and controls a business would report to an employee like the beneficiary, who is not identified as having any ownership interest in the foreign entity. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

in the LLC, such as the transfer purportedly made to ██████████ in 2002, the petitioner did not provide any evidence that the franchisor acquiesced to this transaction. Additionally, the commitment letter from Oconee State Bank regarding the financing of the petitioner's acquisition of the hotel in 1999 calls for a personal guaranty from ██████████ the majority owner of the LLC at that time. While ██████████ supposedly surrendered both ownership and control over the LLC to ██████████ in 2002, there is no evidence that ██████████ paid anything for this interest. There is also no evidence that ██████████ personal guaranty was replaced with ██████████ or that Oconee State Bank released ██████████ from his obligation and/or agreed to a refinance of the original mortgage. Without further evidence regarding ██████████ purported acquisition of, or her interest in, the LLC, the petitioner's claim that it is owned and controlled by ██████████ is not credible. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, the petitioner has not established that the petitioner and the foreign entity are qualifying organizations as required by 8 C.F.R. § 214.2(I)(3).

Beyond the decision of the director, the petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial, executive, or specialized knowledge capacity for at least one continuous year within the three years preceding the filing of the petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. While the petitioner's letter dated February 2, 2005 identifies the beneficiary as an "executive," his title is "general manager." A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

In a letter dated May 12, 2005, the petitioner described the beneficiary's job duties abroad as follows²:

[The beneficiary] is the General Manager at [the foreign entity]. He is responsible for overall supervision of the company including the acquisition and purchase of clothing, sale and marketing to various retailers, supervision of managers, and quality control of the received products. He is also responsible for advising the owners of [the petitioner] about the various investment opportunities in the import-export business; supervise the preparation of the annual reports and financial statements; presentation of various growth ideas and business plans; and implementation if the new policies and procedures. The owners of [the foreign entity] expanded into the U.S. business market upon advice and consultation of [the beneficiary].

The petitioner further asserts that the beneficiary has been employed by the foreign entity since July 2001 as the "general manager," and that the foreign entity employs 10 people including the beneficiary. Finally, the petitioner explains in its May 12, 2005 letter that the beneficiary directly supervises two people, who, in turn, supervise the rest of the employees either directly or through other subordinate employees.

Upon review, the petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial, executive, or specialized knowledge capacity for at least one continuous year within the three years preceding the filing of the petition.

First, the petitioner has not provided any documentary evidence supporting its assertion that the beneficiary has been employed by the foreign entity since July 2001. While the petitioner provided a letter confirming

²It should be noted this letter is dated May 18, 2005 on all pages other than the first page and is unsigned.

Dilan Patel's employment, no payroll records or other evidence was provided corroborating the requisite one-year of employment with the foreign entity. Therefore, the petitioner has failed to establish that the beneficiary has been employed for one year as required by 8 C.F.R. § 214.2(l)(3)(iii).

Second, the petitioner has not established that the beneficiary has been employed primarily in an executive or managerial 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) and (iv). 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 petitioner has failed to prove that the beneficiary has acted in a "managerial" capacity. In support of its application, the petitioner has 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 that the beneficiary's duties include overall supervision of a company with ten employees, presenting growth ideas and business plans, and implementing new policies and procedures. The petitioner did not, however, define these policies and procedures or explain his growth ideas or business plans. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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 also failed to prove that the beneficiary supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization. The petitioner provided vague and nonspecific job descriptions for the subordinate employees along with an incredible organizational scheme consisting of three layers of management. The general manager (the beneficiary) is described as supervising two subordinates -- an administrative manager and a floor manager. The administrative manager, in turn, supervises two clerks, while the floor manager supervises two supervisors who, in turn, supervise three other clerks. However, the petitioner does not specify how much time each of these managers spends supervising subordinates and how much time is spent performing tasks necessary to produce a product or provide a service. Given the reasonable needs of a ten-employee organization, it is not credible that five of the employees would be primarily engaged in performing supervisory or managerial duties. Therefore, without more detailed job descriptions, it cannot be determined whether the subordinate employees supervised by the beneficiary are supervisory or managerial employees.

Given the above, the beneficiary would appear to be either a first-line supervisor, the provider of actual services, or a combination of both. 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 International*, 19 I&N Dec. at 604. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Since the record fails to reveal the educational or skill level of the subordinate employees, it cannot be determined if

they rise to the level of professional employees.³ Therefore, the record does not prove that the beneficiary is acting in a managerial capacity.⁴

Similarly, the petitioner has failed to prove that the beneficiary is acting 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.* As indicated above, the petitioner has failed to prove that the beneficiary, who is allegedly managing employees who are apparently engaged in providing services to

³ In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

⁴While the petitioner has not specifically argued that the beneficiary manages an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, *i.e.*, identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties have been managerial functions and what proportion have been non-managerial. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties are managerial, nor can it deduce whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

customers, is acting primarily in an executive capacity.

Accordingly, the petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity, or in a position which required specialized knowledge, as required by 8 C.F.R. § 214.2(l)(3)(iv).

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary's prior education, training, and employment qualifies him to perform the intended services in the United States as required by 8 C.F.R. § 214.2(l)(3)(iv).

The petitioner seeks to employ to the beneficiary as the general manager of its hotel in Decatur, Georgia. However, the petitioner has not provided any evidence that the beneficiary has received any training or education, or has any experience whatsoever, in being a manager or executive. While the petitioner has provided evidence that the beneficiary was educated as a geologist in India, the petitioner has not explained how this qualifies him to manage a hotel. Moreover, the petitioner has failed to establish that the beneficiary's experience as a "general manager" of a clothing merchant actually constitutes management or executive experience. Therefore, the petitioner has failed to establish that the beneficiary's prior education, training, and employment qualifies him to perform the intended services in the United States as required by 8 C.F.R. § 214.2(l)(3)(iv), and the petition will also be denied for that reason.

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.

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.