

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

17

[REDACTED]

File: EAC 07 067 50187 Office: VERMONT SERVICE CENTER Date: FEB 28 2008

IN RE: Petitioner:  
Beneficiary:

[REDACTED]

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:

[REDACTED]

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont 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 chief executive officer to open 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 corporation organized under the laws of the State of California, is allegedly a garment importer and wholesaler.

The director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval.

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 (1)(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.

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 primary issue in this matter is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

The petitioner described the purpose of the United States operation in a letter dated November 27, 2006 as follows:

The central business purpose of the U.S. subsidiary is to market and sell the products of [the foreign entity] in the United States. [The foreign entity] was established on July 23, 2002. It manufactures and sells knitting, tating, & leather garments, beddings, cotton textiles, silk and polyester fabrics and related products. The company employs approximately 700 people.

[The beneficiary] is charged with the mission to develop and expend the company business in the United States.

The foreign employer described the beneficiary's proposed duties in the United States in a translated letter dated April 25, 2006 as follows:

1. To register the U.S. subsidiary, seek [sic] for business office property, purchase equipments [sic], interview and training new employees during the subsidiary establishment.
2. To develop sales and distributing networks in North America and Latin America for the parent company.
3. To get staffs [sic] well trained gradually; set up departments and management policy; seek for proper human resources for the subsidiary's development.
4. To research exactly market and make up next annual new products development strategy according to own products characteristics during the subsidiary's opening process.
5. To supervise the subsidiary's finance, expenses to get the company in good running conditions.

6. To report business sales process to the parent company in every season and confirm next season sales plans.
7. [The beneficiary's] annual salary will be \$60,000 as his post in the U.S. the company supports his living and transportation. Other bonus will be decided by the Board of Directors according to the subsidiary's sales achievements.

The petitioner does not explain what, exactly, the beneficiary will do after the United States operation is established. The petitioner also does not explain how many staff members it plans to hire during its first year in operation or list the duties of these proposed workers.

On January 12, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of both the beneficiary's proposed duties and the duties of all proposed subordinate workers.

In response, the petitioner submitted a proposed organizational chart for the United States operation. The chart shows the beneficiary supervising an "import/export department," a "sales department," and a "business development department." The "sales department" appears to consist of five sales representatives and one bookkeeper. The organizational chart does not specifically explain how many people will work in each "department."

The petitioner further described the beneficiary's proposed duties as follows:

1. Identify, develop and direct the implementation of business strategy established [b]y parent company.
2. Plan and direct the organization's activities to achieve stated/agreed targets and standards for financial and trading performance, quality, culture and legislative adherence[.]
3. Recruit, select and develop executive team members[.]
4. Direct functions and performance via the executive team[.]
5. Maintain and develop organizational culture, values and reputation in its markets and with all staff, customers, suppliers, partners and regulatory/official bodies[.]
6. Report to parent board on organizational plans and performance[.]
7. Execute the responsibilities of a company director according to lawful and ethical standards[.]

The petitioner also described the duties of the beneficiary's proposed subordinates and provided breakdowns of the amount of time these subordinates will devote to each duty. As these job descriptions are in the record, they will not be repeated here verbatim. Generally, the "imports and exports manager" is described as administering the import and export processes as these relate to the United States operation, the "business development manager" is described as performing marketing tasks, and the "sales and marketing manager" is described as administering the sales activities. The job descriptions do not clearly delineate whether the "sales representatives" and the "bookkeeper" will be supervised and controlled by the "sales and marketing manager" or whether the "warehouse worker" will be supervised and controlled by the "imports and exports manager."

On April 12, 2007, the director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval. In support of this assertion, the petitioner submitted a brief and a copy of a document titled "Business Plan 2007." The business plan describes the petitioner's staffing strategy as follows:

[The petitioner] will start with three qualified and experienced employees. An increase to eight employees will likely be needed in one year. [The petitioner] will hire independent sales reps around the country who will be paid on a commission basis.

The business plan also contains a proposed organizational chart for the United States operation which is materially different from the chart submitted in response to the Request for Evidence. The business plan's chart describes a far more complex organizational structure than the chart originally submitted by the petitioner. The petitioner offers no explanation for the discrepancy between the two proposed organizational charts.

Finally, counsel asserts in the brief that the petitioner has already hired a "sales manager," a "cashier" to handle bookkeeping, a "warehouse clerk," and five independent contractors to serve as sales representatives. Counsel also asserts that the petitioner has hired a part-time accountant to prepare reports and tax forms.

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

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.

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 therefor. Most importantly, the business plan must be credible.

*Id.*

The petitioner in this matter has failed to establish that the United States operation 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 petitioner's contradictory description of its proposed staffing plan fails to specifically describe both the beneficiary's and his subordinates' proposed duties after the petitioner's first year in operation or establish that the enterprise will develop an organizational complexity requiring the employment of a subordinate staff of managers or supervisors. The petitioner has also failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C).

First, as correctly noted by the director, the petitioner has failed to establish that the beneficiary will be performing primarily "managerial" or "executive" duties after the petitioner's first year in operation. When examining the proposed executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the proposed 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 that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.*

In this matter, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis after the first year in operation. The petitioner uses broad, general terms to describe the beneficiary's duties. For example, the petitioner asserts that the beneficiary will "direct functions and performance via the executive team" and "maintain and develop organizational culture, values and reputation." However, it has not been established that such duties are truly managerial or executive duties. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes inflated duties does not establish that the beneficiary will actually perform managerial duties after the first year in operation. Specifics are clearly an important indication of whether a beneficiary's duties will be 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). 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). As the petitioner fails to clearly explain what tasks the beneficiary will perform after the petitioner's first year in operation or to explain how much time the beneficiary will devote to performing non-qualifying tasks, it cannot be concluded that he will be "primarily" employed as a manager or executive. 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; see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Likewise, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to perform the non-qualifying tasks inherent to his duties, and to the operation of the business in general, by a subordinate staff. As indicated above, the petitioner has provided contradictory descriptions of its proposed staffing plan. The petitioner initially asserts that it will hire an "imports and exports manager," a "business development manager," a "sales and marketing manager," five "sales representatives," and a "bookkeeper." The petitioner does not explain whether any of these prospective employees will have direct supervisory responsibilities over any of the other employees or whether the beneficiary will directly supervise all of the workers. The petitioner indicates on appeal that the sales representatives are actually independent contractors. However, on appeal, counsel submitted a "business plan" which contains an organizational chart depicting a far more complex organizational structure than that described in the chart originally submitted by the petitioner. The petitioner offers no explanation for the discrepancy between the two proposed organizational charts. 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). Given this inconsistency, it is unclear who the petitioner intends to hire during its first year in operation or what, exactly, these proposed employees will do to relieve the beneficiary of the need to primarily perform non-qualifying tasks.<sup>1</sup>

In view of the above, the organizational structure originally proposed by the petitioner is not persuasive in establishing that the petitioner 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. Specifically, the petitioner has failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. The petitioner asserts that it plans to hire an "imports and exports manager," a "business development manager," a "sales and marketing manager," five "sales representatives," and a "bookkeeper." However, the petitioner has not established that any of these employees will truly be a managerial or supervisory employee. To the contrary, it appears that all of these proposed employees will perform the tasks necessary to provide a service or to produce a product, e.g., sales, marketing, bookkeeping, and import/export tasks. Also, while it appears that the "sales representatives" may be subordinate to the "sales and marketing manager," these workers will be independent contractors, and it has not been established

---

<sup>1</sup>Regardless, on appeal, a petitioner cannot offer a new position to the beneficiary, materially change an organization's hierarchy or complexity, or increase the beneficiary's proposed job responsibilities. See generally *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). 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. Accordingly, the AAO will only consider the proposed organizational structure submitted with the initial petition.

that the work performance of these contractors will truly be "supervised" by a subordinate supervisor or manager. The record is generally devoid of evidence establishing that the intensity and nature of the sales tasks performed by these contractors will require the employment of a subordinate tier of supervisors or managers. An employee will not be considered to be a supervisory employee simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another worker, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at \*16 (E.D. Tex. Jan. 11, 2007)). Therefore, it cannot be concluded that the beneficiary will supervise and control other supervisory, managerial, or professional employees, and it appears that the beneficiary will primarily be, at most, a first-line supervisor of non-professional employees.<sup>2</sup> A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. *See* 101(a)(44) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial or executive capacity after the petitioner's first year in operation.

Second, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because the petitioner has failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(1). As explained above, the petitioner's "business plan" provided a description of the petitioner's proposed organizational structure which contradicts the organizational chart submitted with the initial petition. Therefore, the organizational structure of the United States operation has not been clearly defined. Furthermore, the "business plan" submitted on appeal does not credibly describe the scope, goals, or nature of the United States operation. The plan fails to specifically describe the petitioner's proposed customers or competitors. The plan also fails to corroborate its projections regarding revenue, income, expenses, or financial goals. The record does not contain any independent analysis. Absent a detailed, credible description of the petitioner's proposed United States business operation addressing the petitioner's proposed product, marketing plan, customers, and staffing, it is impossible to determine whether the proposed 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. Accordingly, the petitioner has failed to

---

<sup>2</sup>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). As the petitioner failed to identify the skills or education required to perform the duties of the subordinate employees, it cannot be concluded that these employees will be "professionals" as that term is defined above.

establish that the United States operation will support an executive or managerial position within one year for this additional reason.

Accordingly, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and the petition may not be approved for the above reasons.

Beyond the decision of the director, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

In support of the petition, the petitioner submitted a document titled "Shopping Center Lease" governing the lease of space in the American Garment Center in Los Angeles, California. However, the petitioner is not the tenant. To the contrary, the beneficiary, as an individual, is the tenant, and the record is devoid of evidence that the lease has been properly assigned or subleased to the petitioner. Therefore, the petitioner has not established that it has secured sufficient physical premises to house the new office, and the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary has been employed in a primarily managerial or executive capacity with the foreign entity for one year within the preceding three years. 8 C.F.R. § 214.2(l)(3)(v)(B).

The petitioner asserts that the beneficiary was employed abroad as the foreign entity's "sales manager." Counsel asserts in the letter dated April 5, 2007 that the beneficiary supervised "five subordinate supervisors." The petitioner also described the beneficiary's job duties abroad in a document attached as Exhibit Q to the response to the Request for Evidence as follows:

- A. to recruit and dismiss regional sales manager and office clerks in the sales department;
- B. to formulate sales expenditure plan for the current year based on the company sales plan, report to the general manager for examination and approval before implementation;
- C. to assign sales managers to different sales regions, and formulate annual sales plan based on the sales performance and business development of previous years;
- D. to assess the performance of sales personnel pursuant to the sales plan on a seasonal basis, and decide the amount of bonus, the issuance of commission and the relocation of positions based on the results of assessment;
- E. to report market feedback and sales conditions to the general manager on a weekly basis in accordance with the market information fed back by the sales manager and agent; and
- F. to convene coordination council with other departments such as production and designing on a weekly basis in accordance with the market feedback information, in order to adjust the orientation of production and development in a timely manner.

Finally, the petitioner listed the beneficiary's seven subordinate employees in Exhibit Q. The petitioner does not explain how many subordinate employees, if any, these subordinate workers supervise and control.

Upon review, the petitioner has failed to establish that the beneficiary was employed in a primarily managerial or executive capacity with the foreign entity. First, the petitioner failed to specifically describe the beneficiary's job duties abroad. Specifics are clearly an important indication of whether a beneficiary's duties were 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, *aff'd*, 905 F.2d 41. Broad, managerial-sounding duties which reiterate the regulations are not probative of the beneficiary actually having performed qualifying duties abroad. Second, the petitioner failed to specifically describe the duties of the beneficiary's purported subordinates abroad or to establish that any of these workers was truly a managerial, supervisory, or professional employee. Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad or whether the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary has been employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(3)(v)(B), and the petition may not be approved for this 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.