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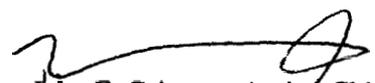
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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.


John F. Grissom, Acting 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 is a catering company. It seeks to temporarily employ the beneficiary in the United States as its banquet manager, and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge. The director denied the petition, finding that the petitioner had not established that the beneficiary possesses specialized knowledge.

On appeal, the petitioner submits a brief and asserts that the director's decision was erroneous. Specifically, the petitioner contends that the director made a subjective assessment in reviewing the beneficiary's eligibility and thus his decision constituted an abuse of discretion. The petitioner submits a four-page brief in support of these assertions.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Additionally, the regulation at 8 C.F.R. § 214.2(l)(3)(vi) provides that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity 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 business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and
- (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

The issue in this matter is whether the beneficiary possesses specialized knowledge as contended by the petitioner, and whether he will be employed in a capacity requiring specialized knowledge.

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

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

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

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

As stated above, the petitioner seeks to employ the beneficiary temporarily in the United States as its banquet manager. In a letter of support dated March 27, 2007, the petitioner provided a lengthy description of the beneficiary's claimed specialized knowledge as implemented in his position abroad, as well as a description of his proposed position in the United States and the manner in which it required specialized knowledge. Regarding the beneficiary's foreign position and experience, the petitioner claimed that the beneficiary was the managing partner of the foreign entity, and that he coordinated business functions, such as sales and marketing, in addition to coordinating parties and functions. Specifically, the petitioner stated:

[The beneficiary] operates the business of [the foreign entity] as the Managing Partner in a managerial capacity. [The beneficiary] interacts with the customers for planning the party/function. He suggests and with the special skills acquired by him with years of experience; implements decors suitable to the occasion He manages this part of his function with the knowledge and understanding of likes, dislikes, habits [] of the visiting guests. . . .

[The beneficiary] recommends the menu suitable to the main course and with due consideration of the number of guests, their varying choices, and other. In the kitchen are prepared unique items to be served to the guests. The menu card . . . enlists over 100 items of appetizers, starters, over 50 items of chats, about 200 items of sweets, different main course, side dishes, [desserts] and other to choose from. [The beneficiary] guides the chefs with his special knowledge of the recipes developed by him over the years, directs them for the use of the ingredients – spices, quantities, cooking techniques – boiling, frying, refrigerating, use of the toppings, garnishing and other so as to make the items in their ultimate form presentable & suitable to the varying tastes of the guests from different quarters and in particular from Hii-Fi and group attending/participating [at] the function. With the skills and specialized knowledge acquired by [the beneficiary] with his long years of experiences, he attains successful operations leading to the ultimate goal of satisfaction of the clients & their guests. It is on this success depends the success and growth of the company.

The petitioner also listed other duties performed by the beneficiary in his foreign position, such as hiring and firing staff, contract administration, and business development. It concluded by stating that the beneficiary was essentially in charge of all day-to-day operations of the foreign entity.

With regard to the beneficiary's proposed role in the United States in a specialized knowledge capacity, the petitioner claimed that the overall structure of the U.S. entity was identical to that of the foreign entity abroad. It claimed that the beneficiary would coordinate with the petitioner's president in matters related to administration and finance, and that he would remain in charge of coordinating functions and parties as well as services related to business development. The petitioner restated the exact duties acknowledged above with regard to the beneficiary's role in the United States company, but claimed that the beneficiary's proposed job duties are more complex. For example, the petitioner claimed that:

[The beneficiary] is required to understand the requirements of his clients vis à vis the guests he proposes to serve and offer appropriate décor for the function. This involves skills to implement overall décor, an atmosphere of celebration, presentation of items[,] sitting arrangements, services [etc.]. In the area of food preparation, he is required to oversee the operations of the chefs, provide them special recipes developed by him over the years as his proprietary skill, guide them in the use of the ingredients including the quantum thereof, and also direct the actual cooking techniques and suitable garnishing to ensure that the items are presented as unique preparations from his kitchen. He is also required to estimate the food consumption of each item depending on the number of guests, different items offered and the specific likes and choices of the guests, among other managerial duties.

Additionally, a letter from the foreign entity dated December 25, 2006 restates the claimed duties of the beneficiary as set forth by the petitioner.

The petitioner's business plan submitted in support of the petition indicates that in addition to the claimed specialized knowledge position of the beneficiary, the beneficiary will also be responsible for commencing and conduct the business of the U.S. entity. The petitioner states that the beneficiary will

also be responsible for “sales, marketing and business development” and that he “will concentrate his energies to market the services and the products of the company.”

The director found this evidence insufficient to establish the beneficiary’s eligibility, and issued a request for additional evidence on July 30, 2007. Specifically, the director noted that it did not appear that the beneficiary’s knowledge was any different from that ordinarily encountered in the catering field. Consequently, the director requested additional evidence establishing the beneficiary’s specialized knowledge, such as evidence that the beneficiary’s knowledge is uncommon, noteworthy, or distinguished, and not generally known by practitioners in the field or that his advanced knowledge of the company’s processes and procedures is apart from the basic knowledge possessed by others. The director also requested evidence pertaining to the petitioner’s size and current status, as well as documentation pertaining to the qualifying relationship between the petitioner and the foreign entity.

The petitioner addressed these requests in a response dated March 27, 2007.¹ The petitioner addressed the issue of the beneficiary’s specialized knowledge by stating as follows:

The beneficiary’s knowledge of the company’s processes and procedures is advanced in relation to other employees. A review of the organization chart of the company . . . reveals that [the beneficiary] controls the operations of all the sections. He controls the party management. He instructs, guides and supervise[s] the operations of the Party Manager and Ground Manager. The record of successful operations with this chart evidences the fact of the advanced knowledge of the [beneficiary] vis-à-vis other employees in the party management sector. [The beneficiary] also controls the operations of the Kitchen. He instructs, guides and supervise[s] the operations of the Kitchen Manager and all the chefs – Chef (Sweets), Cooke (special), Chef (Punjabi cuisine) and chat cook. [The beneficiary] effectively supervise[s] these operations of the kitchen and all the different specialist chef/cook because of his advanced knowledge of the processes & procedures of the company’s operations in this area as well.

The petitioner again addressed the issue of the beneficiary’s duties, and stated that they had been outlined in detail in the “discussion” attachment to the initial petition. The petitioner briefly addresses the beneficiary’s “uncommon” and “distinctive” knowledge by addressing the menu card of the petitioner and noting that the beneficiary has specialized knowledge of the petitioner’s processes and procedures including recipes, use of ingredients, and cooking techniques. Finally, the petitioner stated that the U.S. entity was postponing its commencement of commercial operations pending the beneficiary’s arrival, noting that the beneficiary is the “key person” to establish and control the business.

On January 10, 2008, the director denied the petition. Specifically, the director found that the petitioner failed to establish that the beneficiary’s knowledge of the processes and procedures of the petitioner’s organization is substantially different from, or advanced in relation to, any individual similarly employed

¹ It is noted that while the request for evidence was issued on July 30, 2007 and the petitioner’s response was received on October 24, 2007, the letter included with the response is dated March 27, 2007.

in the field. On appeal, the petitioner claims that the director's assessment of the beneficiary's qualifications was subjective and failed to specifically state the basis for the denial. The petitioner contends that through its initial submission and its response to the request for evidence, it provided substantive evidence to establish the beneficiary's specialized knowledge.

Upon review, the AAO concurs with the director's decision. While the AAO acknowledges the petitioner's assertion that the director's decision is brief and fails to discuss specific deficiencies in the evidence, the director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

As enacted by the Immigration Act of 1990, section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

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

Looking to the plain language of the statutory definition, Congress has provided USCIS with an ambiguous definition of specialized knowledge. Although *1756, Inc. v. Attorney General* was decided prior to enactment of the Immigration Act of 1990, the court's discussion of the ambiguity in the former INS definition is equally illuminating when applied to the definition created by Congress:

This ambiguity is not merely the result of an unfortunate choice of dictionaries. It reflects the relativistic nature of the concept special. An item is special only in the sense that it is not ordinary; to define special one must first define what is ordinary. . . . There is no logical or principled way to determine which baseline of ordinary knowledge is a more appropriate reading of the statute, and there are countless other baselines which are equally plausible. Simply put, specialized knowledge is a relative and empty idea which cannot have a plain meaning. *Cf. Westen, The Empty Idea of Equality*, 95 Harv.L.Rev. 537 (1982).

745 F.Supp. 9, 14-15 (D.D.C., 1990).

In effect, Congress has charged the agency with making a comparison based on a relative idea that has no plain meaning. To determine what is special, USCIS must first determine the baseline of ordinary.

While Congress did not provide explicit guidance for what should be considered ordinary knowledge, the canons of statutory interpretation provide some clue as to the intended scope of the L-1B specialized knowledge category. *NLRB v. United Food & Commercial Workers Union, Local 23*, 484 U.S. 112, 123 (1987) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987)).

First, it is instructive to look at the common dictionary definitions of the terms "special" and "advanced." According to Webster's New World College Dictionary, the word "special" is commonly found to mean "of a kind different from others; distinctive, peculiar, or unique." *Webster's New World College Dictionary*, 1376 (4th Ed. 2008). The dictionary defines the word "advanced" as "ahead or beyond others in progress, complexity, etc." *Id.* at 20.

Second, looking at the term's placement within the text of section 101(a)(15)(L), the AAO notes that specialized knowledge is used to describe the nature of a person's employment and that the term is listed among the higher levels of the employment hierarchy with "managerial" and "executive" employees. Based on the context of the term within the statute, the AAO would expect a specialized knowledge employee to be an elevated class of workers within a company and not an ordinary or average employee. *See 1756, Inc. v. Attorney General*, 745 F.Supp. 9, 14 (D.D.C., 1990).

Third, the legislative history indicates that the original drafters intended the class of aliens eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* This legislative history has been widely viewed as supporting a narrow reading of the definition of specialized knowledge and the L-1 visa classification in general. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 15-16; *Boi Na Braza Atlanta, LLC v. Upchurch*, Not Reported in F.Supp.2d, 2005 WL 2372846 at *4 (N.D.Tex., 2005), *aff'd* 194 Fed.Appx. 248 (5th Cir. 2006); *American Auto. Ass'n v. Attorney General*, Not Reported in F.Supp., 1991 WL 222420 (D.D.C. 1991); *Fibermaster, Ltd. v. I.N.S.*, Not Reported in F.Supp., 1990 WL 99327 (D.D.C., 1990); *Delta Airlines, Inc. v. Dept. of Justice*, Civ. Action 00-2977-LFO (D.D.C. April 6, 2001)(on file with AAO).

Although the Immigration Act of 1990 provided a statutory definition of the term "specialized knowledge," the definition did not expand the class of persons eligible for L-1B specialized knowledge visas. Pub.L. No. 101-649, § 206(b)(2), 104 Stat. 4978, 5023 (1990). Instead, the legislative history indicates that that Congress created the statutory definition of specialized knowledge for the express purpose of clarifying a previously undefined term from the Immigration Act of 1970. H.R. Rep. 101-723(I) (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418 ("One area within the L visa that requires more specificity relates to the term 'specialized knowledge.' Varying interpretations by INS have exacerbated the problem."). While the 1990 Act declined to extend the "proprietary knowledge" and "United States labor market" references that had existed in the existing agency definition, there is no indication that Congress intended to liberalize the L-1B visa classification.

If any conclusion can be drawn from the ultimate statutory definition of specialized knowledge and the changes made to the legacy INS regulatory definition, the point would be based on the nature of the

Congressional clarification itself. Prior to the 1990 Act, legacy INS pursued a bright-line test of specialized knowledge by including a "proprietary knowledge" element in the regulatory definition. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988). By deleting this element in the ultimate statutory definition and further emphasizing the relativistic aspect of "special knowledge," Congress created a standard that requires USCIS to make a factual determination that can only be determined on a case-by-case basis, based on the agency's expertise and discretion. Rather than a bright-line standard that would support a more rigid application of the law, Congress gave legacy INS a more flexible standard that requires an adjudication based on the facts and circumstances of each individual case. *Cf. Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 377 (3d Cir. 2003) (quoting *Baires v. INS*, 856 F.2d 89, 91 (9th Cir.1988)).

Accordingly, as a baseline, the terms "special" or "advanced" must mean more than simply skilled or experienced. By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." *Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). Specialized knowledge requires more than a short period of experience, otherwise "special" or "advanced" knowledge would include every employee in an organization with the exception of trainees and entry-level staff. If everyone in an organization is specialized, then no one can be considered truly specialized.

Considering the definition of specialized knowledge, it is the petitioner's fundamental burden to articulate and prove that an alien possesses "special" or "advanced" knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

After articulating the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. A petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. Because "special" and "advanced" are comparative terms, the petitioner should provide evidence that allows USCIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's industry.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. In this case, although the petitioner submitted a lengthy description of the beneficiary's job duties abroad and his proposed duties in the United States, it fails to establish that the beneficiary's proposed position in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

In the present matter, the petitioner has provided a somewhat generic description of the beneficiary's intended employment with the U.S. entity. Specifically, the petitioner asserts that the main functions of the beneficiary's proposed position will be guiding chefs in food preparation, recommending menus, estimating

food consumption, and recommending décor for specific functions. The petitioner, however, has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner repeatedly states throughout the record that the beneficiary is a key person and possesses specialized knowledge; however, it has failed to specifically articulate what skills or training the beneficiary possesses that set him apart from other employees of the petitioner or the catering industry in general. Moreover, it is unclear how the beneficiary will allegedly function in a specialized knowledge capacity when the beneficiary is also responsible for the sales, marketing, and business development of the U.S. entity. The petitioner's business plan indicates that the beneficiary will be primarily responsible for promoting the petitioner's products and establishing the petitioner's client base, which suggest that the beneficiary will perform duties outside the realm of specialized knowledge, and which are deemed to be traditional marketing-based duties common throughout the industry.

As stated above, it is the petitioner's fundamental burden to articulate and prove that an alien possesses "special" or "advanced" knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

No details were provided regarding the type of specific training, if any, the beneficiary received during his employment with the foreign entity. The petitioner claims that the beneficiary has developed recipes over the years but does not identify such recipes or explain why the beneficiary's knowledge of these recipes sets him apart from other employees or similarly-trained personnel in the industry. Essentially, the petition is based on the petitioner's claim that the beneficiary is a key person in the company, since he will supervise both the banqueting and business functions of the petitioner. While the AAO notes that the beneficiary's position is certainly important to the petitioner's fledgling business, the fact that the beneficiary seems to be responsible for the overall management of the company does not impart him with specialized knowledge as contemplated by the regulatory definitions. 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)).

In this matter, the petitioner has omitted any discussion of the nature of the beneficiary's knowledge. For example, what truly distinguishes the beneficiary's skills from other employees of the foreign entity or proposed employees of the petitioner? Are there specific techniques or undisclosed ingredients employed in the beneficiary's recipes that are not commonly shared with other employees of the company? The petitioner provides no details regarding any aspects of the petitioner's business which would distinguish the petitioner's processes or procedures, such as its recipes and catering services, as uncommon, and thus suggest that the beneficiary's knowledge was likewise uncommon.

In the present matter, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the catering industry is more special or advanced than the knowledge possessed by others employed by the petitioner, or in the industry. It is clear that the petitioner considers the beneficiary to be an

important employee of the organization. The AAO, likewise, does not dispute the fact that the beneficiary's knowledge has allowed him to competently perform his job in the foreign entity. However, the successful completion of one's job duties does not establish possession of specialized knowledge or establish employment that requires specialized knowledge.

For this reason, the petitioner has not established that the proposed U.S. position requires specialized knowledge. While the position of banquet manager may require a comprehensive knowledge of the manner in which to prepare recipes, estimate consumption, and recommend specific décor for functions, there is no documentation, other than the petitioner's assertions, that the beneficiary must possess advanced, "specialized knowledge" as defined in the regulations and the Act.

Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge, nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has failed to establish that a qualifying relationship exists between the foreign entity and the U.S. company. The petitioner claims on Form I-129 that the petitioner in this matter is the subsidiary of the foreign entity, [REDACTED]. However, it claims on Schedule K-1 of its Form 1065, U.S. Return of Partnership Income for 2006, that it is owned by two individuals, namely, [REDACTED] and [REDACTED]. These documents indicate that [REDACTED] owns 90% of the petitioner and [REDACTED] owns 10%.

Moreover, in response to the request for evidence, the petitioner submitted additional evidence that further contradicts these claims. On page 25 of the petitioner's operating agreement, it states that the members of the petitioner are [REDACTED] and [REDACTED]. Additionally, it submits a copy of its share ledger, indicating that certificate number one was issued to [REDACTED] for 100 units.

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's assertions that a qualifying relationship exists is not supported by the numerous conflicting documents. There are three different forms of evidence that suggest three alternative owners of the petitioner. Since the petitioner cannot definitively establish that the foreign entity, Jay Caterers, owns the entity as claimed, the qualifying relationship upon which the petitioner bases this petition cannot be established. 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).²

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

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

² It should also be noted that, upon review of the records on file with the Secretary of State of Pennsylvania, the U.S. entity was not established until October 19, 2007, contrary to the petitioner's assertions. Specifically, the petitioner claims on Form I-129 and in its letter of support dated March 27, 2007 that it was established in 2003. As discussed above, 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.