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

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

B4

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 03 2008

SRC 06 127 50527

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON 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 preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Louisiana corporation that claims to be operating as a "retail investment" business. It seeks to employ the beneficiary as its vice-president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition based on four independent grounds of ineligibility: 1) the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer; 2) the petitioner failed to establish the foreign entity continues to do business; 3) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity; and 4) the petitioner failed to establish that it has the ability to pay the beneficiary's proffered wage. On appeal, counsel disputes the director's conclusions and submits a brief in support of her arguments.

Section 203(b) of the Act states in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> > (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The first issue in this proceeding is whether the petitioner has a qualifying relationship with the foreign entity that employed the beneficiary abroad.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

> *Affiliate* means:
>
> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
>
> (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;
>
> * * *
>
> *Multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.
>
> *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

In support of the Form I-140, the petitioner provided a letter dated March 14, 2006 in which it referred to the beneficiary's foreign employer as the "parent company," thereby indicating that the foreign company owns a majority of the petitioner's stock. The petitioner also provided a copy of a stock purchase agreement dated September 2, 2002 and signed by [redacted] in her capacity as the petitioner's shareholder. The document showed that 51% of the petitioner's stock would be sold to Kings and Queens Pizza Parloer, Clt., the foreign entity that employed the beneficiary abroad, for consideration in the amount of $5,000. It is noted that this document only contains the signatures of the seller. None of the signatures belong to anyone purporting to represent the purchaser to establishing that the foreign entity agreed to purchase the shares offered by the seller. The stock purchase agreement was accompanied by a Certificate of Share Ownership showing that as of September 3, 2002 [redacted] was the owner of 490 shares or 49% of the petitioning entity, while the remaining 510 shares, or 51% of the petitioner, were owned by the beneficiary's foreign employer. It is noted, however, that the petitioner did not provide documentation establishing Ms[redacted]s initial ownership interest, which would vest in her the power to sell the petitioner's stock. It is also noted that the petitioner's 2005 tax return, which is neither dated nor signed to show that it had actually been filed with the Internal Revenue Service, contains information in Schedule L, item 22(b) showing that the petitioner received only $1,000 as consideration for sale of its common stock, rather than $5,000 as indicated in the stock purchase agreement. 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).

On August 16, 2007, the director issued an adverse decision, concluding that the petitioner had failed to provide any evidence of a qualifying relationship with the foreign corporation. The director noted that the petitioner had not established who owns the foreign entity. While the AAO concurs with the director's ultimate conclusion regarding the qualifying relationship issue, the comment that no evidence was submitted in this regard is erroneous and must be withdrawn. In fact, as previously noted, the petitioner did submit some evidence in an effort to establish the existence of a qualifying relationship. However, as discussed above, the probative value of the evidence was compromised as a result of the significant inconsistency regarding the amount paid for the sale of the petitioner's stock and no documentation at all was provided to establish the ownership of the foreign entity. As such, while [redacted] signed the Certificate of Share Ownership, dated September 3, 2002, on behalf of the foreign entity, this document does not establish Ms. [redacted]s signatory power with respect to that entity. 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)).

On appeal, counsel disputes the director's conclusion, asserting that the purchase agreement discussed above establishes that a majority of the petitioner's stock is owned by the foreign company. However, in light of the deficient documentation provided to support the existence of a qualifying relationship, counsel's argument is without merit. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the present matter, the petitioner has not submitted credible and probative documentation to establish the existence of a qualifying relationship. Therefore, based on this initial adverse finding, this petition cannot be establish.

The second related issue is whether the petitioner has established that the foreign entity continues to do business. The regulation at 8 C.F.R. § 204.5(j)(2) states that doing business means "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

Counsel also asserts that the petitioner has provided sufficient documentation to establish that the foreign entity meets the above definition. Specifically, counsel states that the petitioner provided documentation that establishes that the foreign company was doing business in 2004 and 2005. However, the record shows that the Form I-140 that is the subject of the present proceeding was filed on March 16, 2006. As such, the petitioner must establish that its alleged parent entity continued to do business as of the date of the filing of the present petition. Documents pertaining to business conducted in 2004 and 2005, i.e., prior to the filing of the instant petition, are not relevant for the purpose of establishing whether the foreign entity was doing business on March 16, 2006 and beyond. The lack of this documentation is particularly noteworthy in light of the director's observation that [redacted] and three other employees that previously worked for the foreign entity are now in the United States. In order to determine that the petitioner is a multinational entity, it must establish that it conducts business in at least two countries, one of which is the United States. *See* 8 C.F.R. § 204.5(j)(2). By failing to submit documentation showing that the foreign entity was doing business at the time the Form I-140 was filed, the petitioner has failed to establish that it meets the criteria of a multinational entity.

The third issue in this proceeding is whether the U.S. petitioner would employ the beneficiary in a capacity that is primarily managerial or executive.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means an assignment within an organization in which the employee primarily--
>
> (i) manages the organization, or a department, subdivision, function, or component of the organization;
>
> (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
>
> (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
>
> (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

> The term "executive capacity" means an assignment within an organization in which the employee primarily--
>
> (i) directs the management of the organization or a major component or function of the organization;
>
> (ii) establishes the goals and policies of the organization, component, or function;
>
> (iii) exercises wide latitude in discretionary decision-making; and
>
> (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In the petitioner's March 14, 2006 letter, the petitioner stated that the beneficiary's proposed employment requires that the beneficiary assume responsibility for "the overall direction and operation of the company." The petitioner also stated that the beneficiary would be "involved in all facets of the business, including new

hires of the management staff strategy." The petitioner stated that the beneficiary reports directly to the company's president and is in charge of the company's expansion plans. The petitioner provided another job description in a document dated March 6, 2006. The beneficiary's position was described as follows:

> Reviews sales to determine customer needs, volume potential, price schedules, and discounts; [d]irects product simplification and standardization to eliminate unprofitable items from [the] sales line. [The beneficiary p]repares [the] periodic sales report showing sales volume and potential sales; [d]irects and coordinates activities of sales; [c]oordinates sales and promotional activities of [the] store managers;; [sic] [a]nalyzes marketing potential of new and existing store locations and recommends additional sites or deletion of existing area stores; [p]articipates in formulating and administering company policies and developing long range goals and objectives; [r]eports directly to [the p]resident.

The record also contains an organizational chart, which depicts the petitioner as a multi-tiered organization, where the beneficiary assumes the second to the highest position within the hierarchy, second only to the company's president. The beneficiary's direct subordinate is an operations manager whose position is supervisory to two store managers.

The petitioner's organizational chart is supported by W-2 statements issued to the employees that are listed in the chart as well as a photocopied Form W-3, which shows the total amount of salaries the petitioner purportedly paid in 2005. It is noted, however, that while the amount shown in the Form W-3 matches the issued Form W-2s when totaled, i.e., $185,257.57, these documents do not match the total amounts shown in Nos. 12 and 13 of the petitioner's 2005 tax return, where the petitioner indicated that it paid $32,000 in compensation to officers and $109,971 in salaries and wages for a total of $141,971. As previously noted, the petitioner must resolve such inconsistencies with 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. The fact that the petitioner has submitted inconsistent documents suggests that some or all of the documents may be invalid.

On June 5, 2006, the director issued the first of two requests for additional evidence (RFE) instructing the petitioner to provide the following documentation to assist Citizenship and Immigration Services (CIS) in determining the beneficiary's employment capacity in the proposed position in the United States: 1) a list of the beneficiary's job duties accompanied by a percentage of time assigned to each job duty; 2) a discussion of the employees, if any, who will report directly to the beneficiary, including their respective job titles, job descriptions, and educational levels; 3) in the event that the beneficiary's proposed employment does not require overseeing other employees, the petitioner was instructed to essential function the beneficiary would be expected to manage; 4) the beneficiary's specific position in the scheme of the petitioner's organizational hierarchy; and 5) a discussion of who provides the petitioner's products and/or services.

In response, the petitioner provided a letter dated August 22, 2006, essentially reiterating the deficient job description previously provided in the March 6, 2006 letter. The only additional information that was provided in the more recent job description was that the operational manager and store managers report directly to the beneficiary and that 100% of his time is spent on these supervisory duties as well as all of the

job duties and responsibilities previously listed. It is noted that this information appears to be in conflict with the organizational chart previously submitted, where the only individual shown as the beneficiary's direct subordinate was the operations manager. Contrary to the new information provided, the organizational chart showed the two store managers as being directly subordinate to the operations manager. Furthermore, although specifically instructed to do so, the petitioner failed to provide a specific list of job duties and a percentage of time the beneficiary would spend performing each duty on the list.

On September 20, 2006, the director issued the second RFE, informing the petitioner that the job description provided in response to the first RFE referred to a Javed Iqbal, which is different from the beneficiary's name. In response, counsel provided a letter dated November 10, 2006, explaining that the beneficiary Javed Iqbal and Javed Islam are both the names of the beneficiary. However, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503. The petitioner provided no actual documentation to corroborate counsel's explanation.

Accordingly, the director addressed this discrepancy again in the denial, stating that the petitioner failed to provide clarification. Nevertheless, the director made a determination stating that, aside from the name discrepancy, the job descriptions provided were inadequate. The director noted that the petitioner failed to elaborate on the beneficiary's broad job description or to explain how the beneficiary would carry out his job responsibilities. The director also noted that most of the U.S. employees are convenience store clerks and questioned whether they are professionals. See section 101(a)(32) of the Act and 8 C.F.R. § 204.5(k)(2).

On appeal, counsel asserts that the beneficiary controls the work of other supervisory, professional, or managerial employees and manages an essential function. It is noted, however, that counsel's statement is confusing and suggests an overall lack of her understanding of the difference between a personnel and function manager. 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, 8 U.S.C. § 1101(a)(44)(A)(ii). While the term "essential function" is not defined by statute or regulation, any petitioner claiming that its beneficiary is managing an essential function must furnish a written job offer that clearly describes the duties to be performed by that beneficiary, 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. 8 C.F.R. § 204.5(j)(5). In the present matter, counsel lumps together two distinct concepts, i.e., the concept of a personnel manager and that of a function manager, without providing an adequate description of the beneficiary's proposed job duties and without specifying the essential function the beneficiary would purportedly manage.

That being said, regardless of which type of manager the petitioner claims the beneficiary would be, the primary step in establishing that the beneficiary qualifies for classification as a multinational manager or executive is to provide a detailed description of the beneficiary's proposed job duties where the primary

portion of time is attributed to tasks within the managerial capacity.[1] It is noted that 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. 593, 604 (Comm. 1988).

In the present matter, the petitioner has provided an overly broad job description without properly delineating specific job duties and assigning an approximate percentage of time to any of the tasks. Without further explanation, a number of job responsibilities are suggestive of non-qualifying tasks, particularly in the context of the petitioner's retail operations. For example, it is unclear why, in the presence of an adequate support staff, the beneficiary would be called upon to determine customer needs, volume potential, price schedules, and discounts. The petitioner has indicated in the organizational chart provided that it has two store managers who have direct contact with the retail operation as well as an operations manager who has direct contact with the store managers. It is also unclear why the beneficiary would have to prepare sales reports when its organization is purportedly equipped with two tiers of managerial employees, all of whom are shown as being subordinate to the beneficiary, either directly or indirectly, and who are purportedly present on the sales floor while the store products are being sold.

Additionally, the petitioner claims that the beneficiary would direct and coordinate sales activities, analyze marketing potential of new store locations, participate in formulating and administering company policies, and develop goals and objectives. However, the petitioner has failed to attribute specific daily job duties to these generalized responsibilities. 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 actual duties themselves reveal the true nature of the employment. *Id.*

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Thus, in an overview of the beneficiary's job description, the AAO cannot determine what specific job duties the beneficiary would perform on a daily basis and what portion of his time would be attributed to qualifying tasks as opposed to the non-qualifying ones.

---

[1] Similarly, if the petitioner is attempting to establish that the beneficiary qualifies in the category of multinational executive, it must establish that the primary portion of time is allotted to executive level tasks. The AAO here refers only to the managerial capacity in light of counsel's assertion that the beneficiary would perform duties of a personnel and function manager.

Lastly, the job description, regardless of its deficiencies, is dependent upon a multi-tiered organizational structure. However, in the present matter, the petitioner has provided tax documentation with questionable validity, thereby precluding the AAO from being able to determine whether the petitioner was properly staffed at the time of filing such that the beneficiary would be relieved from having to primarily perform of non-qualifying operational tasks. As properly pointed out by the director, the petitioner's primary source of income is the two retail outfits that were operating at the time the Form I-140 was filed, where the primary portion of the work force was comprised of sales clerks. Without specifically explaining what job duties the beneficiary would perform that would fit the definition of managerial or executive, the AAO cannot determine that the petitioner was able to employ the beneficiary in a qualifying capacity.

The petitioner has not established that the beneficiary would be employed in a capacity that is primarily managerial or executive. The petition must be denied for this reason..

The last issue in this proceeding is whether the petitioner has established that it had the ability to pay the beneficiary's proffered wage at the time the Form I-140 was filed.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary.

In the present matter, the petitioner provided a 2005 tax return and the beneficiary's 2005 W-2 statement indicating that the beneficiary was being paid the proffered wage in 2005, or prior to the filing of the petition. However, as discussed above, the AAO questions the validity of these documents when the petitioner fails to resolve the considerable inconsistency between the amount of salaries and wages shown in the 2005 W-3 and the amounts of compensation of officers and salaries and wages shown in the 2005 tax return. 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. at 591. 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). Due to the inconsistencies discussed earlier, the AAO cannot determine that the photocopied W-2 statements submitted in support of this petition are accurate representations of the salaries that were in fact

paid by the petitioner in 2005. The same reasoning formulates the basis for the AAO's rejection of the petitioner's 2005 tax return as a valid document. As the petitioner has not provided a reliable document for further analysis, the AAO cannot conclude that the petitioner has established its ability to pay the beneficiary's proffered wage as required by regulation.

Furthermore, the record does not support a finding of eligibility based on additional grounds that were not previously addressed in the director's decision.

First, 8 C.F.R. § 204.5(j)(3)(i)(B) states that the petitioner must establish that the beneficiary was employed abroad in a qualifying managerial or executive position for at least one out of the three years prior to his entry to the United States as a nonimmigrant to work for the same employer. In the instant matter, the director specifically addressed this issue in the RFE by instructing the petitioner to provide a detailed analysis of the beneficiary's daily activities during his employment abroad. However, the petitioner provided a job description that was similarly lacking in the necessary degree of detail as the job description addressing the beneficiary's proposed employment. The statements of the foreign entity merely conveyed the sense that the beneficiary had discretion over employees and company policies. However, only a few actual duties were stated without any explanation as to the context in which such duties were performed or their relation to the foreign entity's overall organizational and staffing structure. As such, the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. The petition must be denied for this additional reason.

Second, 8 C.F.R. § 204.5(j)(3)(i)(D) states that the petitioner must establish that it has been doing business for at least one year prior to filing the Form I-140. As previously stated, the regulation at 8 C.F.R. § 204.5(j)(2) states that doing business means "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office." In the present matter, the petitioner has provided numerous invoices to establish that the retail operations that belong to the petitioner are doing business. However, the petitioner itself stated that the nature of its business is retail investment. Thus, in order to determine that the petitioner meets the definition of doing business, it must provide documentation to establish that it invests in retail investment on a "regular, systematic, and continuous" basis. *See id.* The record is void of such documentation. As such, the AAO cannot conclude that the petitioner has been doing business in the manner and for the time period prescribed by the above regulation. Again, the petition must be denied for this additional 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). Therefore, based on the additional grounds of ineligibility discussed above, this petition cannot be approved.

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. v. United States*, 229 F. Supp. 2d at 1043, *aff'd,* 345 F.3d 683.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.