U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 08 155 51699 Office: VERMONT SERVICE CENTER Date: DEC 04 2009

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew for
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a computer consulting and software development company. The petitioner seeks to employ the beneficiary as a programmer analyst. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On January 21, 2009, the director denied the petition, determining that the proffered position was not a specialty occupation. Specifically, the director found that the petitioner would not be the beneficiary's ultimate employer and, as a result, the description of duties provided by the petitioner was not sufficient to establish that the proffered position was a specialty occupation. The director also found that the petitioner had failed to submit a valid Labor Condition Application (LCA) and an itinerary for all of the beneficiary's work locations in the United States.

On appeal, counsel for the petitioner submits Form I-290B accompanied by a brief and additional evidence.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires:

> (A) theoretical and practical application of a body of highly specialized knowledge, and
>
> (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

> *Specialty occupation* means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The record includes: (1) the Form I-129 and supporting documents; (2) the director's request for further evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial

decision; and (5) the Form I-290B, brief and accompanying evidence in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

USCIS interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

In a March 30, 2008 letter appended to the petition, the petitioner claimed that it provides systems and business solutions to business clients in the United States. It further claimed that its range of clientele is "vast," and that it caters to many fortune 1000 companies, including Cingular, Bell South, JP MorganChase, AT&T, Verizon, Bank of America, and Cendant. Regarding the beneficiary, the petitioner stated that it would employ him as a programmer analyst, and described his proposed duties as follows:

> The Programmer Analyst shall design, develop, test and implement software products and applications using a variety of programming languages, operating systems, databases and graphical user interfaces. The Programmer Analyst shall research, analyze, and design computer based solutions for our clients for specific business problems. The Programmer Analyst formulates and outlines steps required to develop programs, using structured analysis and design. The Programmer Analyst submits plans to the user for approval. The products and applications will be designed with issues and considerations pertaining to scalability, security, transaction ease, speed and user efficiency in mind. The Programmer Analyst shall be responsible for analyzing, reviewing, and altering programs to increase operating efficiency or adapt to new requirements.

On September 23, 2008, the director issued a request for additional evidence. The director requested, among other items: clarification of the petitioner's employer/employee relationship with the beneficiary; an itinerary of services or engagements that specifies the date of each service or engagement and the names and addresses of each of the employers; and copies of signed contracts, statements of work, work orders, service agreements, and letters between the petitioner and authorized officials of the ultimate end-user of the beneficiary's services that list the beneficiary's name and a detailed description of the duties the beneficiary will perform.

In its October 10, 2008 response, counsel for the petitioner explained that the petitioner was engaged by U.S. businesses to provide solutions for specific projects. Counsel further explained that the petitioner's contracts with its clients do not designate a specific employee to work on a particular project; rather, the petitioner uses its discretion when selecting personnel to work on a particular project. Counsel concluded by stating that each beneficiary remains a full-time employee of the petitioner. Counsel further claimed that the petitioner would be the beneficiary's actual employer based on the fact that it will hire, pay, fire, supervise and control the work of the beneficiary. Counsel also claimed that "although some assignments to clients' sites would be required," the beneficiary would be working at the petitioner's office during the entire course of his employment. In support of these contentions, counsel submitted copies of consulting services agreements

evidencing contracts for computer programmer services to outside clients as well as a list of its active projects.

Regarding the beneficiary's duties as a programmer analyst, a more detailed description of the position was submitted. Specifically, counsel stated that as a programmer analyst, the beneficiary would be responsible for the following:

- The Programmer Analyst shall design, develop, test and implement software products and applications using a variety of programming languages, operating systems, databases and graphical user interfaces.

- The Programmer Analyst shall research, analyze and design computer based solutions for our clients for specific business problems. The products and applications will be designed with issues and considerations pertaining to scalability, security, transaction ease, speed and user efficiency in mind.

- The Programmer Analyst formulates and outlines steps required to develop programs, using structured analysis and design.

- The Programmer Analyst submits plans to the user for approval.

- The Programmer Analyst shall be responsible for analyzing, reviewing, and altering programs to increase operating efficiency or adapt to new requirements.

As observed above, the director denied the petition, determining that the petitioner had not established that the proffered position is a specialty occupation. Specifically, the director concluded that while the petitioner would actually pay the beneficiary's wages, the duties to be performed would be outlined by outside clients. The director noted that absent additional evidence pertaining to the projects on which the beneficiary would work, the record did not contain a comprehensive description of the beneficiary's proposed duties. The director found that the petitioner's failure to submit evidence of an employment itinerary specific to the beneficiary, as requested in the RFE, precluded a finding in favor of the petitioner.

On appeal, counsel for the petitioner contends that the petitioner is the beneficiary's employer, noting that it would pay the beneficiary's wages, provide medical insurance, and otherwise comply with all aspects of the regulatory definition of employer. Counsel further submits that a sufficient description of the beneficiary's job duties for the petitioner's clients was provided.

Upon review, the AAO concurs with the director's findings. The record prior to adjudication was vague with regard to the exact nature and scope of the beneficiary's employment. Specifically, the petitioner provided a brief list of generic duties which the beneficiary would allegedly perform as a programmer analyst. For example, one of the stated duties includes "submits plans to the user for

approval." Presumably, the term "user" refers to clients, and therefore such plans would be unique to each client and vary accordingly, thereby rendering it impossible to ascertain the exact nature of the beneficiary's duties. Moreover, the requirements that the beneficiary "research, analyze and design computer based solutions for our clients for specific business problems" further indicates that most, if not all, of the beneficiary's proffered duties will be client-specific. Without more details with regard to the ultimate client needs and requirements, it is impossible to determine the exact nature of the beneficiary's duties, and therefore impossible to find that the proffered position is a specialty occupation.

Although the petitioner did in fact submit copies of its Form 1120, U.S. Corporation Income Tax Return for 2007, as well as copies of its Forms 941, Employer's Quarterly Federal Tax Returns for previous quarters which demonstrated respectable gross revenues and salaries paid to employees, this evidence alone did nothing to clarify the exact nature of the beneficiary's employment, and/or whether the petitioner or an outside client would control the beneficiary's work. Despite the director's request for clarification with regard to the exact nature and ultimate employer of the beneficiary, the petitioner failed to submit sufficient evidence to simplify this issue.

Moreover, the record contains several contracts between the petitioner and end clients including Teksystems, Inc., Hyatt Leader Ltd., Blue Wolf Group, and Charter Global, Inc. However, these documents shed little light on the beneficiary's proposed position, since they (1) provide no information regarding the nature of the work to be performed; and (2) refer specifically to other subcontractors, not the beneficiary. Specifically, while only two of the four clients listed above submit work orders, it is noted that Blue Wolf Group includes a staffing order, which indicates its request for an Oracle DBA named Sanjay Lall, and Charter Global, Inc. provides a Statement of **Work for an individual identified as** [redacted] Moreover, the agreement with Hyatt Leader Ltd. indicates that Hyatt has contracted with a third party, IntraSphere Technologies, for data processing services, yet the agreement provides no details regarding the nature of the requirements of their agreement. Without evidence of contracts, work orders, or statements of work describing the duties the beneficiary would perform and for whom, the petitioner fails to establish that the duties that the beneficiary would perform are those of a specialty occupation. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

USCIS routinely looks to *Defensor v. Meissner,* 201 F.3d 384, for guidance, which requires an examination of the ultimate employment of the beneficiary to determine whether the position constitutes a specialty occupation. The petitioner in *Defensor*, Vintage Health Resources (Vintage), is a medical contract service agency that brought foreign nurses into the United States and located jobs for them at hospitals as registered nurses. The court in *Defensor* found that Vintage had "token degree requirements," to "mask the fact that nursing in general is not a specialty occupation." *Id.* at 387.

The court in *Defensor* held that for the purpose of determining whether a proffered position is a specialty occupation, the petitioner acting as an employment contractor is merely a "token employer," while the entity for which the services are to be performed is the "more relevant employer." *Id.* at 388. The *Defensor* court recognized that evidence of the client companies' job requirements is critical where the work is to be performed for entities other than the petitioner. The *Defensor* court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* In *Defensor,* the court found that evidence of the client companies' job requirements is critical if the work is to be performed for entities other than the petitioner. *Id.*

In this matter, the failure of the petitioner to specifically identify the nature and scope of the beneficiary's employment makes it impossible to positively identify the duties of the proffered position, precluding a specialty occupation analysis. It appears that the beneficiary will provide services as mandated and requested by the clients, and ultimately be placed at client sites to perform services established by a contractual agreement between the petitioner and the client. Therefore, it appears that the true employer of the beneficiary would be the petitioner's clients.

As discussed above, the petitioner failed to submit evidence of the client companies' job requirements in response to the request for evidence. This omission is critical, since it appears that the work to be performed will be for entities other than the petitioner. The petitioner failed to submit evidence that the proposed position qualifies as a specialty occupation on the basis of the job requirements imposed by the clients for whom the beneficiary will provide consulting services. While it provided a brief list of duties the beneficiary would be required to perform, the petitioner also indicated that the beneficiary would analyze specific client needs and requests and formulate applications to satisfy client requirements. It is noted that counsel submits additional contracts and work orders on appeal, in an attempt to demonstrate the core requirements for the position of a programmer analyst and in an attempt to demonstrate that the proposed duties of the beneficiary are complex in nature and are similar among various clients. Once again, however, these documents do not specifically pertain to the beneficiary.

As the record does not contain any documentation of the specific duties the beneficiary would perform for the petitioner's clients, the AAO cannot analyze whether his duties would require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation. Accordingly, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii).

The second issue in this matter is whether the petitioner submitted a valid LCA for all work locations, as required by 8 C.F.R. § 214.2(h)(2)(i)(B). The LCA submitted in support of the petition lists the beneficiary's work location as South Plainfield, New Jersey. In reviewing the petitioner's

supporting documentation, however, the AAO finds that the actual work location(s) for the beneficiary cannot be determined. The petitioner has failed to provide a concise itinerary evidencing that the beneficiary will work only at the petitioner's site in New Jersey and not in multiple locations.

The petitioner acknowledges that it will send the beneficiary to work on client sites as needed, but fails to provide any details regarding the needs and locations of these clients. Although it submits related contractor services agreements in response to the request for evidence, these documents are not specific to the beneficiary, and cannot suffice as evidence that the petitioner, and not a third party employer, will act as the beneficiary's employer during the entire three-year period. Moreover, the locations of the clients included in the contracts are not restricted solely to South Plainfield, New Jersey, where the petitioner is based and which is claimed to be the work location of the beneficiary on his LCA. Instead, some clients for whom contracts were submitted are located in Maryland, New York, and Georgia. Additionally, the petitioner's active project list, included as Exhibit "B" in response to the RFE, lists a large number of end clients and vendors with locations throughout the United States, thereby suggesting that the beneficiary will be outsourced to any of these locations based on client demands.

On appeal, counsel argues that the beneficiary will report to the petitioner's South Plainfield, New Jersey office upon arrival in the United States. Thereafter, he contends that the beneficiary will be assigned to a particular client project, and an amended LCA will be filed with the Department of Labor. Counsel contends that the petitioner will comply with all regulatory requirements, and that the varying locations of the beneficiary's worksites do not constitute a material change to the petition.

Counsel's assertions are not persuasive. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The petitioner failed to comply with the filing requirements at 8 C.F.R. § 214.2(h)(4)(i)(B). Absent end-agreements with clients, the duration and location of work sites to which the beneficiary will be sent during the course of his employment cannot be determined. Without this evidence, the AAO cannot conclude that the LCA submitted is valid for the beneficiary's intended work locations. For this additional reason, the petition may not be approved.[1]

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[1] While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

> For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is*

The final basis for denial by the director was the petitioner's failure to submit a concise itinerary for the beneficiary's stay in the United States. The regulation at 8 C.F.R. § 214.2(h)(i)(2)(B) provides, in relevant part:

> A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located.

On appeal, counsel relies on an unpublished decision by the AAO in support of the premise that it is not possible, in a business reality, to provide a detailed itinerary for the beneficiary up to a year in advance of his entry into and employment in the United States. The AAO disagrees. First, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Moreover, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Second, the petitioner acknowledges that the beneficiary will be sent to various client sites during the course of his employment. As discussed above, absent detailed information regarding the worksites of the beneficiary and the duties he will be required to perform at each worksite for each particular client, the first criteria of eligibility, i.e., that that beneficiary will be employed in a specialty occupation position, cannot be established. Given this conclusion, counsel's assertion that it is not necessary to provide an itinerary of work locations further demonstrates the petitioner's failure to comply with the regulatory requirements for the H-1B visa classification. While counsel contends on appeal that the petitioner's past hiring of H-1B non-immigrants under similar petitions

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> *supported by an LCA which corresponds with the petition,* whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

[Italics added]. As 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary, this regulation inherently necessitates the filing of an amended H-1B petition to permit USCIS to perform its regulatory duty to ensure that the new LCA actually supports the H-1B petition filed on behalf of the beneficiary. In addition, as 8 C.F.R. § 103.2(b)(1) requires eligibility to be established at the time of filing, it is factually impossible for an LCA approved by DOL after the filing of an initial H-1B petition to establish eligibility at the time the initial petition was filed. Therefore, contrary to the assertions of counsel, in order for a petitioner to comply with 8 C.F.R. § 103.2(b)(1) and for USCIS to perform its regulatory duties under 20 C.F.R. § 655.705(b), a petitioner must file an amended H-1B petition with USCIS whenever a beneficiary's job location changes such that a new LCA is required to be filed with DOL.

establishes its ability to comply with the regulatory requirements, the director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions as alleged by the petitioner, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

As discussed above, the petitioner failed to submit an itinerary for the beneficiary's period of stay in the United States as required by 8 C.F.R. § 214.2(h)(i)(2)(B). For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that it is or will be a United States employer or agent as required by the regulations. As briefly touched upon above, the failure of the petitioner to submit sufficient evidence regarding the nature of the beneficiary's proposed employment and the entity or entities who will ultimately exercise control over the beneficiary, the petitioner has failed to establish that it meets the regulatory definition of an intending United States employer at 8 C.F.R. § 214.2(h)(4)(ii); or the definition of agent at 8 C.F.R. § 214.2(h)(2)(i)(F). Merely claiming in its letter dated March 30, 2008 that the petitioner would exercise complete control over the beneficiary, without evidence to support the claim, is insufficient to establish eligibility in this matter. The evidence of record prior to adjudication did not establish that the petitioner would act as the beneficiary's employer in that it will hire, pay, fire, or otherwise control the work of the beneficiary. Despite the director's specific request for evidence such as employment contracts or agreements, payroll records, or work orders to corroborate its claim, the petitioner failed to submit such evidence that relates specifically to the beneficiary. 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 view of this lack of evidence, the AAO finds that the petitioner failed to establish that the petitioner would act as the beneficiary's employer or the agent for the beneficiary's employers pursuant to 8 C.F.R. §§ 214.2(h)(4)(ii) and 214.2(h)(2)(i)(F).

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 it discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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. The petition is denied.