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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B7

PUBLIC COPY

[redacted]

File: SRC 06 072 51748 Office: TEXAS SERVICE CENTER Date: AUG 06 2007

IN RE: Petitioner: [redacted]
Beneficiary:

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

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 Director, Texas Service Center, denied the petition for a nonimmigrant visa and affirmed the decision on a motion to re-open and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Texas corporation, intends to operate a wholesale and retail business. The petitioner states that it is a subsidiary of Surgical Corner, located in Pakistan. The petitioner seeks to open a new office in the United States and has requested that the beneficiary be granted a three-year period in L-1A classification to serve as the U.S. entity's president/director.[1]

The director denied the petition concluding that the petitioner did not establish: (1) that the United States company has secured sufficient physical premises to house the new office; or (2) that the foreign entity had provided funding or capitalization for the U.S. company. The petitioner filed a timely motion to re-open or reconsider in response to the director's decision. The director granted the motion and affirmed her previous decision on May 31, 2006.

On appeal, counsel for the petitioner contends that the petitioner submitted sufficient documentary evidence to establish that the foreign entity invested nearly $44,000 in the U.S. company. Nevertheless, counsel asserts that there is no requirement in the statutes or regulations requiring that the U.S. entity be funded by the foreign entity. With respect to the petitioner's physical premises, counsel emphasizes that the petitioner signed a lease agreement for its "corporate office" prior to filing the petition and subsequently signed a second lease agreement for its retail location. Counsel notes that the director did not acknowledge the earlier lease agreement in her decision on motion to re-open. Counsel submits a statement on Form I-290B, Notice of Appeal, and a copy of the petitioner's previous motion to re-open or reconsider in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

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[1] Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(*3*), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The first issue in this matter is whether the foreign entity has provided funding or capitalization for the new office in the United States. When filing a petition for a beneficiary who is to be employed in a new office in a managerial or executive capacity, the petitioner is required to submit evidence to establish the size of the United States investment and the financial ability to commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*).

The nonimmigrant petition was filed on January 4, 2006. The petitioner stated that is the subsidiary of Surgical Corner, located in Pakistan. In support of the petition, the petitioner provided a Bank of America account summary, showing a current balance of $0.00 and an available balance of $30,000, for a checking account opened on December 14, 2005. The petitioner stated that it would operate a "wholesale and retail" business, but did not submit a business plan identifying its anticipated start-up costs and the exact nature of

the business to be operated. The petitioner did not provide evidence of the financial status of the foreign company.

Accordingly, on January 17, 2006, the director requested additional evidence relevant to the requirements at 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*). Specifically, the director requested: (1) current financial records for the foreign company, tax returns, banking records from the business account, and other evidence of business conducted; (2) evidence of the funding or capitalization of the U.S. company to include copies of wire transfers showing transfer of funds from the foreign organization and evidence of financial resources committed by the foreign company to include copies of bank statements for the U.S. business accounts; and (3) a business plan demonstrating qualifications and financial goals for the U.S. company's first year of operation.

In a response dated April 3, 2006, the petitioner submitted a letter from Bank of America, dated March 4, 2006, indicating that the petitioning company had an account balance of $30,049.07. The petitioner also attached a "Transaction History" statement showing the account's activity since January 2006, which shows a $20,000 counter credit on March 27, 2006. In addition, the petitioner provided copies of the foreign entity's financial statements, tax returns and bank records from 2005.

The petitioner submitted a copy of its business plan, but the plan did not address the company's anticipated start-up costs, funding or specific financial plan. The remaining evidence provided that is relevant to this issue was the petitioner's lease agreement signed on March 1, 2006, for a grocery store/supermarket. Pursuant to the terms of the agreement, the petitioner is required to purchase the inventory of the store and pay $30,000 as business goodwill on the day of closing, March 15, 2006.

The director denied the petition on April 25, 2006, concluding that the petitioner had failed to establish that the funding for the petitioning company had originated with the foreign entity. The director acknowledged the statements from Bank of America but noted that the statements did not authenticate the origin of the specified funds.

The petitioner filed a motion to re-open and reconsider on May 17, 2006. On motion, counsel for the petitioner asserted that he was not aware of a requirement that the capitalization for the U.S. company must originate with the foreign entity. However, counsel asserted that the initial capitalization in the amount of $33,975 originated from the parent company on May 5, 2005, when a wire transfer in this amount was deposited into the account of [redacted], who is identified as the petitioner's vice president.[2] Counsel stated that the beneficiary had not established a bank account yet and that the beneficiary and [redacted]

[redacted] signed the Form I-129 petition in his capacity as the petitioner's vice president. The Articles of Incorporation for the U.S. company submitted at the time of filing, identify [redacted] as the vice president; however, the petitioner submitted a copy of its articles of incorporation in support of the motion which indicates that the company vice president is '[redacted]' Both documents were ostensibly date stamped by the Secretary of State of Texas on December 7, 2005. A search of publicly available corporate records held by the Texas Comptroller of Public Accounts shows that the beneficiary and [redacted] are the only directors of the company. *See* http://ecpa.cpa.state.tx.us/coa. 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).

"are relatives and trust one another." In support of this claim, the petitioner submitted a notarized letter from [redacted] who states that he received a wire transfer dated May 13, 2005 in the amount of $33,975 "from Pakistan on behalf of [the beneficiary] to buy a business in the United States." [redacted] indicates that he kept the money in his account until the beneficiary "opened his own business bank account" in the petitioner's name. The petitioner submitted a partial copy of [redacted] May 2005 bank statement showing a wire transfer of unknown origin received on May 13, 2005. The petitioner also submitted a mostly illegible document which appears to be a wire transfer receipt dated May 13, 2005. The originator of the funds cannot be determined.

Counsel further stated that the claimed owner of the parent company, [redacted] "visited the United States recently and brought an additional $10,000 cash to fund the new office." As evidence of this transaction, the petitioner provided a copy of [redacted] B1/B2 visa, but no evidence of the alleged $10,000 investment.

The director affirmed the denial of the petition in a decision dated May 31, 2006, finding that the petitioner had not overcome the grounds for the previous denial.

On appeal, counsel asserts that "it was shown by wire transfers, bank records and by other evidence that the funding did, in fact, come from the foreign entity and its owner in the amount of $43,975.00." Counsel resubmits a copy of the brief submitted on motion with all supporting documents. Counsel notes that the director provided no discussion of the new evidence submitted on motion, nor any reason as to why the evidence was not sufficient.

Upon review, the petitioner has not established the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States, as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

However, the AAO agrees with counsel that the reasons given for denial of the petition on motion are conclusory, with no reference to the evidence entered into the record. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). As the AAO's review is conducted on a *de novo* basis the AAO will herein address the petitioner's evidence & eligibility. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations.

The record as presently constituted contains no documentary evidence of any funds provided to the U.S. entity for the purpose of establishing the subsidiary company. Although the petitioner claims an investment of $43,975 from the foreign entity, there is no probative documentary evidence to corroborate this claim. The fact that the beneficiary's relative, [redacted], received a wire transfer "from Pakistan" seven months prior to the incorporation of the U.S. company is not, in fact, adequate evidence of a commitment of funds from the

petitioner's claimed parent company for the establishment of the U.S. company. There is no evidence that the funds originated with the foreign entity, such as a copy of its bank statement showing the withdrawal of such funds. Further, there is no documentary evidence to support [redacted] claim that these funds were eventually transferred to the U.S. company's bank account. 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)).

The petitioner claims that one of the owners of the foreign entity also "brought an additional $10,000 cash to fund the new office" but offers no evidence of any transaction that would show the investment of this amount of money in the U.S. company. The only documentation offered in support of this claim was a copy of the individual's B1/B2 visa, which shows nothing other than that he was authorized to enter the United States as a visitor between December 1, 2005 and November 29, 2006. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). 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 (BIA 1980).

Another deficiency not addressed by the director is that the petitioner has not actually identified the anticipated start up costs for the U.S. entity. Although the petitioner had approximately $30,000 in its bank account at the time of filing, at a minimum, the petitioner would need to have readily available funds to cover the costs indicated in its lease agreement, which specifically requires the petitioner to make a payment of $30,000 to its lessor on March 15, 2006, and to purchase all the inventory of the leased grocery store/supermarket on that same date. At most, it appears that the petitioner was barely in a position to pay the required $30,000 goodwill payment, much less purchase the inventory of the store it intends to operate. Given these uncertainties, and based on the lack of any persuasive evidence of an investment from the foreign entity, the AAO must concur with the director's conclusion on this issue. Again, 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 at 165.

The evidence submitted does not clearly establish the size of the foreign entity's investment in the United States entity, nor does it demonstrate what the company's anticipated start-up costs are, or that the company had sufficient funds to cover such costs at the time the petition was filed. The 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 has not submitted evidence on appeal to overcome the director's determination on this issue. Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner had secured sufficient physical premises to house the new office as of the date the petition was filed, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

At the time of filing, the petitioner indicated a mailing address of "[redacted]" The petitioner indicated that it intends to operate a "wholesale and retail" business and that the beneficiary would work at this address. The petitioner did not submit a lease agreement or other evidence that it had secured physical premises sufficient to house the new office.

Accordingly, on January 17, 2006, the director requested a copy of the petitioner's lease agreement for its principal place of business, a square footage layout for the premises, and "other evidence that premises sufficient to house the new operation have been secured."

In response, the petitioner submitted a copy of a lease agreement dated March 1, 2006, executed between the U.S. company, represented by the beneficiary, and [redacted], represented by [redacted], the petitioner's claimed vice president. The lease agreement is for a "Rite Track" grocery store/supermarket located at [redacted] The lease is for a term of ten years commencing on March 15, 2006.

The director denied the petition on April 25, 2006, concluding that the petitioner had not secured sufficient physical premises to house the new office as of the date of filing. The director observed that while the petition was filed on January 4, 2006, the submitted lease agreement was executed on March 1, 2006.

On motion, counsel for the petitioner asserted that the March 2006 lease agreement was submitted in response to the director's request for the lease of "the principal place of business." Counsel asserted that prior to filing the petitioning company had obtained a corporate office located at [redacted] which counsel described as "a house converted to business offices." Counsel noted that the lease for the petitioner's store was in negotiation at the time the petition was filed.

The petitioner submitted a copy of a "business lease agreement" between [redacted] and the petitioning company for a 1200 square foot building, located at [redacted] "to be used for a general office and retail operation." The lease was signed by the petitioner on December 15, 2005, for a three-year term commencing on January 1, 2006, with a monthly rent payment of $1,200.

The director affirmed the denial of the petition on May 31, 2006, but did not specifically address the lease agreement submitted on motion.

On appeal, counsel re-iterates that the petitioner had a lease agreement for its "corporate office" dated prior to the submission of the petition, and again, notes that the director failed to explain why the lease agreement submitted on motion was insufficient to establish the petitioner's eligibility under 8 C.F.R. § 214.2(l)(3)(v)(A).

Upon review, the petitioner has not established that it had secured sufficient physical premises to house its new office as of the date the petition was filed. The petitioner has not adequately explained its failure to submit the original lease agreement for its "corporate office" either in support of the original petition, as required by 8 C.F.R. § 214.2(l)(3)(v)(A), or in response to the request for evidence, particularly as counsel implies on appeal that the petitioner continues to occupy both premises.

Further, counsel described the January 2006 lease agreement as being for a "house converted to business offices," while the submitted lease agreement suggests that the petitioner leased the entire property for use as an office and retail operation. 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). Further, the AAO notes that the lease agreement stipulates a monthly rent payment of $1,200, but the petitioner's "Transaction History" for its bank account reflects no deductions in

this amount between the months of January and March 2006. 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. *Id.* at 591. Finally, the AAO observes that the petitioner appears to have been using the [redacted] address before the lease agreement was signed, for example, on its Articles of Incorporation, filed on December 7, 2005.

Given the discrepancies and the petitioner's failure to provide the required evidence at the time of filing or when requested by the director, the AAO finds the lease agreement alone insufficient to establish that the petitioner had secured sufficient premises at the time of filing. Evidence of rent payments to the lessor, copies of bills issued to the petitioner at that address, photographs, or other secondary evidence would be needed to reconcile the inconsistencies, and no such evidence has been submitted. Furthermore, the director clearly requested evidence of the layout of the premises secured, and this evidence has not been provided for the record. 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. at 165.

While the retail space secured in March 2006 may be sufficient for the petitioner's purposes, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner has not submitted evidence on appeal to overcome the director's determination with respect to this issue. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the record is not persuasive in establishing that the beneficiary would be employed by the petitioner in a primarily managerial or executive capacity within one year, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner has provided only a vague description of the beneficiary's proposed role as president/director which fails to establish what he would primarily do on a day-to-day basis. For example, the petitioner stated that the beneficiary "will be overall in charge of the expansion of our company," "will develop and implement a marketing plan," "analyze various business opportunities," and "be the key participant in the company's decision regarding various business opportunities." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner has also failed to provide a clear and consistent description of the proposed organizational structure of the U.S. entity. At the time of filing the petitioner stated on Form I-129 that the company has five employees, but did not submit supporting evidence documenting their employment, nor explain whether this represented its current or proposed staffing level. Accordingly, the director requested evidence of the employees who would report to the beneficiary in the U.S., a proposed organizational chart, and a business plan demonstrating the functions to be managed by the beneficiary at the end of the first year of operations.

In response the petitioner submitted an organizational chart identifying a total of ten proposed positions under the beneficiary's supervision, including an operation manager, account representative, sales manager, office manager, warehouse manager, inventory control personnel, sales associates, sales clerks and office personnel. While the organizational chart is impressive, it is not supported by any explanation regarding when the petitioner anticipates hiring additional staff, or what duties they will perform. The petitioner has not leased a

warehouse, so it is unclear how the warehouse manager position fits into the petitioner's stated business as a retail grocery store. Furthermore, while the petitioner's lease describes the business as a "grocery/supermarket" the petitioner indicates in its business plan that the leased premises is a gas station with convenience store, which suggests a smaller operation not requiring the organizational hierarchy suggested by the proposed organizational chart. Again, 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).

In addition, while the petitioner submitted a business plan, it is vague and contains little concrete information regarding the company and its proposed structure. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

> The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id.

The petitioner indicated that it anticipated opening at least three gas and grocery outlets in the first two years of operation; however, the petitioner failed to detail how this would be achieved and what, if any, amount of money had been invested in the petitioner. As the petitioner has not provided a sufficient business plan or evidence of investment, the AAO cannot determine whether its proposed staffing structure is feasible for the first year of operations, although counsel states on appeal that the petition "is now employing 10 people." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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).

Overall, the evidence submitted is insufficient to establish that the U.S. entity will support the beneficiary in a primarily managerial or executive position within one year, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). For this additional reason, the petition cannot be approved.

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 he or 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 and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.