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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: MAY 18 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

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:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner filed the petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L). The petitioner operates an Indian restaurant in Washington, D.C., and claims that it had a qualifying relationship with the beneficiary's foreign employer, Shamiana SRO, during the beneficiary's period of employment abroad. The petitioner states that the beneficiary was first admitted to the United States in L-1B status on February 28, 2003. After a subsequent extension of status, the beneficiary's L-1B status expired on January 18, 2008. At that time, the beneficiary applied for and received a change of status from L-1B to B-2, and an extension of stay through July 16, 2008. The petitioner filed the instant petition seeking to change the beneficiary's status from B-2 to L-1A on July 16, 2008, and requested that he be granted an extension of stay through July 16, 2010. The petitioner seeks to employ the beneficiary in the position of restaurant manager.

The director denied the petition concluding that the beneficiary is not entitled to a period of L-1 status beyond the five-year limit imposed on L-1B nonimmigrant intracompany transferees by the regulation at 8 C.F.R. § 214.2(l)(12). In denying the petition, director found that, because the petitioner did not file a new or amended L-1 petition at least six months prior to the expiration of the beneficiary's five-year stay as an L-1B nonimmigrant, the beneficiary is ineligible for the requested sixth and seventh years in L-1A status. The director determined that the extension was prohibited by the regulation at 8 C.F.R. § 214.2(l)(15)(ii).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the director's assessment of the petitioner's evidence was incorrect. Counsel contends that the regulation at 8 C.F.R. § 214.2(l)(15)(ii) does not apply because the instant petition is a new petition for L-1A classification, and not a request for an amendment and extension of the beneficiary's prior L-1B petition. Therefore, counsel claims that the regulation at 8 C.F.R. § 214.2(l)(15)(ii) was inapplicable to the facts of this petition.

Counsel further asserts that this "new petition" is based on the beneficiary's employment in a managerial capacity in the Czech Republic from July 1997 to January 2003, and his proffered managerial position of restaurant manager with the U.S. entity. Counsel maintains that the petitioner was not required to file an amended, new or extended L-1 petition at the time of the beneficiary's promotion to this position in July 2007, because "the six month rule in the regulation only applies to requests for an extension of status and further is not applicable where the alien has always been qualified as a managerial-level employee."

1. The Law

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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate in a managerial, executive or specialized knowledge capacity.

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

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

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

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

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

The regulation at 8 C.F.R. § 214.2(l)(15)(ii) states the following, in pertinent part:

> The total period of stay may not exceed five years for aliens employed in a specialized knowledge capacity. The total period of stay for an alien employed in a managerial or executive capacity may not exceed seven years. No further extensions may be granted. When an alien was initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by [Citizenship and Immigration Services] in an amended, new, or extended petition at the time that the change occurred.

The regulation at 8 C.F.R. § 214.2(l)(7)(i)(C) states:

> The petitioner shall file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e., from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

The regulation at 8 C.F.R. § 214.2(l)(12)(i) states in pertinent part:

> [A] new individual petition may not be approved for an alien who has spent the maximum time period in the United States under section 101(a)(15)(L) and/or (H) of the Act, unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year.

Pursuant to section 214(c)(2)(D)(ii) of the Act, 8 U.S.C. § 1184(c)(2)(D)(ii), a nonimmigrant admitted to render services in a capacity that involves specialized knowledge under section 1101(a)(15)(L) of this title shall not exceed 5 years.

II. Discussion

In denying the petition, the director determined that the beneficiary is not eligible for the total period of stay of seven years because the petitioner did not file, and USCIS did not approve, an amended, new, or extended petition changing the beneficiary's classification to L-1A status within six months of the expiration of the beneficiary's total permissible period of stay of five years in L-1B status. The director therefore concluded that the petitioner failed to establish that the beneficiary meets the regulatory requirements for an extension of L-1 status, pursuant to 8 C.F.R. § 214.2(l)(15)(ii).

It is noted that 8 C.F.R. § 214.1(c)(5) states that there is no appeal from the denial of an application for extension of stay, whether filed on a Form I-129 or Form I-539. However, the AAO will review the matter as it pertains to the underlying L-1A petition and change of status request that were not addressed by the director, which do provide proper bases for the appeal.[1]

As noted above, the petitioner states that the beneficiary was initially admitted to the United States in L-1B status on February 28, 2003. The beneficiary's L-1B status was subsequently extended through January 18, 2008. Due to his initial admission to the United States on February 28, 2003, the petitioner could have potentially extended the beneficiary's stay until February 28, 2008, or 41 additional days, before the beneficiary would have reached the five-year period of stay limitation applicable to L-1B nonimmigrants. If the petitioner establishes that the beneficiary meets all requirements for L-1A classification, then the petition may be approved for this period of time. As discussed further below, the petitioner has not established the beneficiary's eligibility for L-1A status.

A. The beneficiary's eligibility for a sixth and seventh year in L-1 status

The first issue to be addressed is whether the beneficiary is eligible for two additional years in L-1 status.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, indicating that it was requesting "new employment" in the L-1A classification so that the beneficiary could serve in the position of restaurant manager for a period of two years commencing on July 16, 2008. The petitioner provided evidence that the beneficiary was in the United States from February 28, 2003 until January 18, 2008, at which time the beneficiary requested and was granted a change of status from L-1B to B-2, and an extension of stay through

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[1] Although those seeking L-1A status or an extension of this status are currently permitted to file one form to request this new or extended classification, to request an extension of stay, and to request a change of status to this classification, these requests are still separate determinations. *See* 56 Fed. Reg. 61201, 61204 (Dec. 2, 1991). In addition, 8 C.F.R. § 214.2(*l*)(15)(i) specifically states that, "[e]ven though the requests to extend the visa petition and the alien's stay are combined on the petition, the director shall make a separate determination on each."

July 16, 2008. The petitioner requested that USCIS change the beneficiary's status from B-2 to L-1A and extend his stay through July 16, 2010.

In a letter dated July 15, 2008, the petitioner stated that it employed the beneficiary in L-1B status from 2003 to 2008. The petitioner further stated:

> From 1997 to 2003, [the beneficiary] worked for Jewel of India as an Indian Chef in the Czech Republic. Jewel of India was 100% owned by Sanjeev Tuli. From 2003 to 2007, [the beneficiary] worked for the petitioner in the specialized knowledge position of Tandori [sic] Chef. [The beneficiary] was promoted to Restaurant Manager on July 1, 2007, having worked for [the petitioner] for more than nine (9) years in Frankfurt, Germany; Prague, Czech Republic, and Maryland, United States.

The petitioner submitted a letter from its managing director dated July 1, 2007 in which the petitioner notified the beneficiary of his promotion to the position of restaurant manager on that date.

The director issued a request for evidence on August 13, 2008. The director cited to the regulation at 8 C.F.R. § 214.2(l)(15)(ii), noting:

> Thus, to be eligible for a total period of stay of seven years, an alien who was initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, must:
>
> 1) have been in the managerial position for at least six months prior to reaching five years in L-1B status; and
> 2) have an amended, new, or extended L-1 petition filed at the time the promotion took place.
>
> The record shows the beneficiary has been employed in the United States since February 28, 2003 in an L-1B specialized knowledge capacity. You have submitted evidence to establish that the beneficiary was promoted to restaurant manager on July 1, 2007. Submit evidence to establish that an amended, new or extended L-1 was filed for the beneficiary at the time of the promotion.

In a response dated September 15, 2008, counsel for the petitioner stated:

> [The beneficiary] worked in a managerial position for [the petitioner's] subsidiary company, Jewel of India, for one of the three years immediately preceding his entry into the United States in L-1B status. [The beneficiary] was a Head Cook at the Jewel of India restaurant in Prague, Czech Republic from 1997 to 2003. Prior to that position, he was an Assistant Chef and Head Cook in Jewel of India's Frankfurt location.

The petitioner provided a letter dated November 3, 2002 from [redacted] manager of [redacted] which, at the time, owned and operated the Jewel of India Restaurant in Prague. [redacted] states that the beneficiary "is presently employed as a Head Cook in our restaurant." He notes that the beneficiary "has

always worked hard to maintain the high quality and standards of the food production," and "is an expert in both Indian Tandoori and Curry Cuisine."

In response to the director's request for evidence that the petitioner filed a new or amended petition when the beneficiary received his promotion, counsel stated:

> While [the beneficiary] was promoted to the position of Restaurant Manager on July 1, 2007 (confirming that he maintained L-1B status during his stay in the U.S.) it is not relevant to this L-1A application. [The beneficiary's] management experience as Head Cook at Jewel of India qualifies him for an L-1A position as a Restaurant Manager at [the petitioning company]. [The petitioner] did not have to file an amended, new or extended L-1 at the time of the promotion, the six-month rule in the regulation is not applicable where the alien has always been qualified as a managerial employee. *See* 8 C.F.R. § 214.2(l)(15)(ii). As detailed above, [the beneficiary] has managerial experience at [the petitioner's] foreign subsidiary for one of the three years immediately preceding his entry into the United States in L-1B status and is eligible for L-1A classification now.

Counsel stated that the beneficiary "has been in the United States in L-1B status for five (5) years and is eligible for an additional two (2) years in L-1A status for a total of seven (7) years in L-1 status."

The director denied the petition on April 8, 2009. Citing to 8 C.F.R. § 214.2(l)(12) and 8 C.F.R. § 214.2(l)(15)(ii), the director stated that to be eligible for a total period of stay of seven years, an alien who was initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position must: (1) have been in the managerial position for a least six months prior to reaching five years in L-1B status; and (2) have an amended, new, or extended L-1 petition filed at the time the promotion took place. The director noted that "the record shows that the beneficiary was promoted to a managerial or executive capacity on July 1, 2007; however, you did not file a request for change to managerial or executive capacity until July 16, 2008." The director further found that the change to managerial or executive capacity was not approved by USCIS at the time the change occurred and that less than six months remain before the beneficiary reaches five years in L-1B status. Consequently, the director concluded that the beneficiary did not meet the regulatory requirements for an extension of L-1 status, and denied the petition on that basis.

On appeal, counsel acknowledges that "while the Service is correct that in order to take advantage of an extension of the five-year limit and change from L-1B to L-1A, the Beneficiary must have been promoted to a managerial or extension position and filed an extension of the L-1B petition six months prior to the expiration – this limitation does not apply to the Petitioner's case." Counsel emphasizes that the petitioner "filed a new petition for L-1A classification," and asserts that "it is irrelevant to this new L-1A application that [the beneficiary] was promoted to the position of Restaurant Manager on July 1, 2007, as the petitioner "has not requested an extension."

Counsel reiterates that the beneficiary was employed in a managerial capacity for Jewel of India from July 1997 until January 2003, and it is based on this experience that he is qualified for the proffered managerial position in the United States. Counsel states that the beneficiary's position for the foreign entity was "head

chef." Counsel contends that "the six month rule in the regulation only applies for an extension of status and further is not applicable where the alien has always been qualified as a managerial level employee."

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary is eligible for the requested period of L-1A classification.

The fact that the beneficiary changed to another nonimmigrant status upon expiration of his period of authorized admission in L-1B status does not exempt him from the five-year limit imposed by the statute and regulations for those who are initially admitted to the United States as specialized knowledge workers, or the regulatory provision governing the promotion of a specialized knowledge worker to a managerial or executive position. Therefore, it was appropriate for the director to consider whether the petitioner established that the beneficiary is eligible for the requested two-year period in L-1A classification under 8 C.F.R. § 214.2(*l*)(15)(ii).

Accordingly, the director properly considered: (1) whether the beneficiary had been employed in a managerial or executive position for at least six months prior to the expiration of his L-1B status; and (2) whether the change to a managerial or executive position was approved by USCIS at the time the change occurred.

While the beneficiary's claimed promotion did occur more than six months prior to the expiration of the beneficiary's L-1B status, the petitioner failed to file a new or amended petition to obtain approval of the change from a specialized knowledge to a managerial or executive position. The regulation at 8 C.F.R. § 214.2(l)(7)(i)(C) mandates that the petitioner file an amended petition to reflect a change in capacity of employment. The petitioner did not comply with this requirement to amend the beneficiary's status at the time of the claimed promotion, or at any time prior to the expiration of the beneficiary's period of L-1B status.

The regulations at 8 C.F.R. § 214.2(l)(12)(i) addressing the limitations on the period of stay for L-1 beneficiaries do not create a loophole for an employee who has already been in L-1B status for longer than four years and ten months to obtain the full seven years allowed for L-1A nonimmigrants simply by changing status to that of a visitor for pleasure for a few months, and subsequently filing a petition to return to his previous position with the same L-1 employer for an two additional years in a different L classification. The petitioner is not exempted from filing and obtaining approval of a new or amended petition with USCIS at the time the promotion occurred, pursuant to 8 C.F.R. § 214.2(l)(7)(i)(C). The regulations contain no other provisions that would allow a beneficiary initially admitted as an L-1B nonimmigrant to remain in the United States in L status for longer than five years.

We note that the Immigration Act of 1990 as it applied to the L-1A category included liberalizing the statutory definitions of manager and executive capacity to include management or direction of an "essential function," and extending the total period of stay for managers and executives to seven years. At the same time, the maximum period of stay for L-1B specialized knowledge intracompany transferees was maintained at five years. The legacy INS clearly saw the potential for abuse of the L-1A classification as a means to lengthen the stay of individuals initially admitted as L-1B nonimmigrants:

> The final rule will be amended to require that the alien beneficiary be employed in a managerial capacity for only six months in order to be granted an extension for a sixth and seventh year. The petitioner will be required to document this change of duties through the

> filing of a new or amended petition. The Service deems the requirement of six months previous managerial or executive employment to be an appropriate indicator of the legitimacy of the managerial position.

56 Fed. Reg. 61111, 61114 (December 2, 1991)(Final Rule).

The regulations reflected an understandable concern that the new, longer statutory limit on L-1A status may lead petitioners to file questionable or even fraudulent L-1A petitions as a means to keep specialized knowledge employees in the United States beyond the five-year limit on L-1B status established by statute. This concern for "the legitimacy of the managerial position" is no less valid if the L-1B beneficiary seeking an additional two years in the L-1A nonimmigrant classification was granted a change of status to that of a visitor before filing the L-1A petition after essentially exhausting his time in L-1B status. The regulation at 8 C.F.R. § 214.2(l)(15)(ii) applies to both petition extensions and extensions of stay. The employer is seeking to continue, without any significant interruption, its employment of the beneficiary in the position in which he recently served in L-1B capacity, and the petitioner cannot circumvent the regulations by simply requesting a change of status from B-2 rather than an amendment of status from L-1B to L-1A.

Counsel's secondary argument is that the regulation at 8 C.F.R. § 214.2(l)(15)(ii) should be construed to excuse the petitioner in this case from filing an amended, new, or extended petition documenting the beneficiary's promotion to managerial duties within six months of the expiration of the beneficiary's L-1B five-year period of stay because the petitioner can establish that the beneficiary was employed abroad in a managerial capacity and will be employed in a managerial capacity under the new petition. Counsel asserts that the petitioner is entitled to two additional years in L-1A status since the beneficiary was claimed to be employed abroad as "head cook" and has been offered a position as a restaurant manager in the United States. However, the regulation at 8 C.F.R. § 214.2(l)(15)(ii) states, in relevant part:

> The change to managerial or executive capacity must have been approved by [USCIS] in an amended, new, or extended petition at the time the change occurred.

This sentence of the regulation clearly mandates the documentation of a beneficiary's change to a managerial or executive capacity *at the time the change occurred* and not at some future time, e.g., when the petitioner decides to extend the stay of an alien initially admitted as a specialized knowledge worker beyond the fifth year. In this case, the petitioner was obligated to document the beneficiary's alleged change to a managerial capacity when the change occurred, even if this occurred on his first day of his employment. Since the petitioner claims that there was a change in the beneficiary's employment capacity in July 2007, the petitioner was obligated to document his assumption of managerial duties in an amended, new, or extended petition at least six months before the beneficiary reached the end of his L-1B five-year period of stay if it wanted to preserve its opportunity to extend the beneficiary's stay through the seventh year. In this case, as the petitioner chose not to document the beneficiary's assumption of managerial duties as required by the regulations, the regulations prohibit an extension beyond the fifth year even if the beneficiary could be established to have been performing managerial duties for at least one year prior to his transfer to the United States.

Based on the foregoing discussion, the director properly concluded that the beneficiary is ineligible for the requested two additional years of L-1 status.

The remaining issue is whether the beneficiary is eligible for classification as an L-1A manager for the remainder of his five-year period of eligibility. As noted above, the beneficiary held L-1B status from February 28, 2003 until January 18, 2008. Based on these dates, and if he is otherwise eligible, the beneficiary could be granted L-1A status for a period of 41 days before he reaches the maximum period of stay applicable for an alien initially admitted as an L-1B nonimmigrant.

Here, while the director determined that the beneficiary's proffered position of restaurant manager is a qualifying managerial or executive position, the petitioner has conceded that the U.S. entity's qualifying relationship with the beneficiary's prior foreign employer has been terminated. For this reason, the beneficiary is ineligible for L-1A classification.

The petitioner indicates that the beneficiary's last employer abroad was [redacted] operating as "Jewel of India Restaurant," located in Prague, Czech Republic. The beneficiary's dates of employment with this company were July 31, 1997 until January 1, 2003.

The petitioner stated on the Form I-129 petition that the U.S. company is the parent of the foreign entity, but noted that both entities are 100 percent owned by [redacted] The petitioner responded "no" where asked to indicate whether the companies currently have the same qualifying relationship as they did during the one-year period of the alien's employment with the company abroad. Specifically, the petitioner stated:

> [redacted] . . . sold [redacted] operating as Jewel of India Restaurant (where [the beneficiary] worked from 07/31/1997 to 01/01/2003).
>
> [redacted] now owns Magnolia Restaurant & Bar, which is open and doing business in India.
>
> [redacted] owns 100% of [the petitioner] . . . and 90% of Magnolia Restaurant & Bar, the Indian company. The U.S. company is the parent of the company abroad.

The petitioner submitted evidence of [redacted] ownership interest in the U.S. company and in Magnolia Restaurant & Bar. In its letter dated July 15, 2008, the petitioner stated that [redacted] was an affiliate of the petitioner during the beneficiary's period of employment with the company.

The regulations governing the L-1 classification require that the petitioning organization continue to operate outside the United States. *See* 8 C.F.R. § 214.2(l)(ii)(G)(2) (defining "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which is or will be doing business in at least one other country for the duration of the alien's stay in the United States as an intracompany transferee.) While a qualifying relationship with the beneficiary's foreign employer must exist at the time of the beneficiary's transfer to the United States in L-1 status, a subsequent sale or dissolution of the foreign entity that employed the beneficiary will not necessarily render the beneficiary ineligible to maintain L-1 status, so long as the petitioner continues to do business in at least one other country through a qualifying branch, parent, affiliate or subsidiary. In such an instance, the regulations require the petitioner to file an amended I-129 petition so that USCIS can determine whether the petitioner is still a qualifying organization. *See* 8 C.F.R. § 214.2(l)(7)(i)(C). As noted above, the petitioner never filed an amended petition during the beneficiary's prior period of stay in L-1B status, and it is thus unclear based on the current record whether the petitioner

continuously had a qualifying organization abroad between February 2003 and January 2008 when the beneficiary was in the United States in L-1B status.

Furthermore, in this case, the petitioner has filed a new petition requesting that the beneficiary's status be changed from B-2 to L-1A. As the beneficiary is not currently in L-1 status, the petitioner cannot continue to rely on or seek to amend an affiliate relationship that existed between the petitioner and the foreign entity in the past. The fact that the petitioner currently has an affiliate abroad is insufficient to establish the beneficiary's eligibility as of the date of filing this new petition. In order to establish the beneficiary's eligibility for L-1 classification under a new petition, the petitioner must establish that the foreign corporation or other legal entity that employed the beneficiary continues to exist and currently has a qualifying relationship with the petitioner at the time the nonimmigrant petition is filed. 8 C.F.R. §§ 214.2(l)(3)(i) and (iii). The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r. 1978).

As the petitioner has conceded that it had no qualifying relationship with the beneficiary's previous foreign employer as of the date the petition was filed, 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that that the AAO reviews appeals on a de novo basis).

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.