



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 25 2014**

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

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)

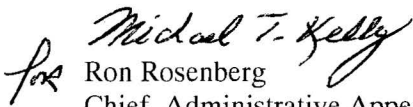
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a software development and consulting company. In order to employ the beneficiary in what it designates as a "Sr. Software Developer" position, the petitioner seeks 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).

The director denied the petition, determining that the petitioner had failed to: (1) demonstrate that the proffered position was a specialty occupation; (2) submit a Labor Condition Application (LCA) that corresponded to the petition; and (3) submit a valid itinerary for all of the beneficiary's work locations in the United States.

On appeal, the petitioner contends that the director's findings were erroneous, and submits a brief statement and additional evidence in support of this contention.

The record of proceeding before us contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

I. INTRODUCTORY OVERVIEW

The director's decision framed the three separate and independent bases for denial as follows:

There are three issues to be discussed in this order. The first issue is whether the proffered position qualifies as a specialty occupation, i.e., one that requires the theoretical and practical application of a body of highly specialized knowledge and 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. The second issue is the Department of Labor's ETA-9035 [i.e., the Labor Condition Application][.] The ETA-9035 of record is for the geographical work location of Pennsylvania. The third issue to be discussed is that of the itinerary.

A. Specialty Occupation

According to the petitioner the beneficiary would perform the duties of the proffered position at a third-party firm, pursuant to contractual agreements (1) between the petitioner and an intermediary firm and (2) between the intermediary firm's client, to which we will refer as "

The crux of the director's denial on the specialty occupation issue was his determination that the record of proceeding contains insufficient evidence to establish that whatever work the beneficiary would perform for [REDACTED] would qualify as a specialty occupation.

B. The Labor Condition Application

The record reflects that the petitioner is located in [REDACTED] Texas. According to Part 5, Item 5 of the Form I-129, the address where the beneficiary would work is "[REDACTED] PA." However, the Labor Condition Application (LCA) that the petitioner submitted to support this petition had been certified for use with two locations, neither of which is [REDACTED] Pennsylvania. As the petitioner specified at Part E and Part E Subsection A of the document, the LCA was certified for use for work locations in (1) [REDACTED] Pennsylvania and (2) [REDACTED] Texas (the petitioner's location.) We also note that the petitioner's August 8, 2008 letter of support, filed with the Form I-129, contains a copy of a "Work Order" document which identifies a "Developer-Internet" position which the petitioner proposed to fill at the work address specified only in the Form I-129, that is, this Work Order identifies the "Work Site Location" as "[REDACTED] PA" and the e-mail address of the Work Order indicates that it was issued by and for work to be performed by a firm doing business as [REDACTED]. Also, we note that the "Original Period" specified in the work order (08/11/2008 to 03/01/2009) includes an early part of the 08/11/2008 to 08/11/2009 period of H-1B employment requested in the petition.

These facts material discrepancies between the LCA submitted to support the petition and contrary information in petition as initially filed. The director's decision summarized its LCA basis for denial as follows:

The second issue is whether a valid [LCA] has been filed to cover the locations where the services are to be performed by the beneficiary, for the entire length of the requested employment period, August 11, 2008, through August 10, 2011. Because the attention of this petition appears to be employing the b beneficiary at a client site(s), it is not known where, when, or for whom the beneficiary would actually perform their [sic] duties. Therefore, you have not satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(i)(B)(1).

C. Itinerary Issue

The director's decision to also deny petition for failure to file the requisite itinerary with the petition is grounded upon the following regulatory provision at , the director's focuses upon the following regulatory provision at 8 C.F.R. § 214.2(h)(2)(i)(B):

Service or training in more than one location. A petition that 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 USCIS as provided in the form instructions. The address that the petitioner

specifies as its location on the I-129 shall be where the petitioner is located for purposes of this paragraph.

It was against this regulatory backdrop, that relevant aspects of the record of proceeding caught the director's attention.

Again, the record reflects that the petitioner is located in [REDACTED] Texas, but according to Part 5, Item 5 of the Form I-129, the address where the beneficiary would work is [REDACTED] PA." However, as we noted above, the LCA was not certified for such location. Moreover, the Form I-129 was not filed with an itinerary that included a location and dates of service that encompassed the beneficiary's working at any [REDACTED] location, let alone the [REDACTED] Pennsylvania that the petitioner first identified in its response to the director's RFE.

II. FACTUAL AND PROCEDURAL BACKGROUND

In the petition signed on August 8, 2008, the petitioner indicates that it is seeking the beneficiary's services as a "Sr. Software Developer Engineer" on a full-time basis at a rate of pay varying from \$64,000 to \$87,000 per year. In its August 8, 2008 letter of support, the petitioner stated that it is "a global technology services firm with a reputation for quality, superior technical skills, and proven, bottom-line results." It further explained that it is a rapidly-growing software development company, and that it serves numerous clients, including Global 2000 companies, who have varied IT requirements.

Regarding the proffered position, the petitioner described the duties and major responsibilities associated with the position as follows:

In this position, [the beneficiary] will be responsible for numerous duties. The essential functions of the job include, but are not limited to the following (may perform other functions that may be assigned):

Establish measurable performance requirements; analyze requirements and define scope of work; conceive, design, and test logical structures for solving problems by computer; design subsystem components; identify architecture, major sub-systems and interfaces; update, repair, modify, and expand existing programs; create testing prototypes; assist in writing programs that enable various commercial and non-commercial entities to handle their tasks through use of computers; write, test, and maintain the detailed instructions, called programs that computers must follow to perform their functions; test a program by running it, to ensure that the instructions are correct and it produces the desired information. Fix errors that are detected during the debugging process.

In further support of the petition, the petitioner submitted: (1) a copy of a Sub-Vendor agreement and Work Order between the petitioner and [REDACTED] (2) a copy of the beneficiary's foreign academic credentials evaluation; (3) copies of the beneficiary's transcripts, diplomas, and

certifications; (4) copies of the beneficiary's current paystubs; and (5) a copy of the petitioner's corporate overview.

We observe that the submitted Work Order identified the beneficiary as the contractor assigned to the [REDACTED] project, and that the Work Order identified the period covered as August 11, 2008 (the date the instant petition was filed) through March 1, 2009. The Work Order further indicates its job location in [REDACTED] Pennsylvania, and the petitioner also indicated that this was the beneficiary's work location in Part 5 of the Form I-129. However, we note that the certified LCA submitted in support of the petition was certified for two different work locations, that is, one in [REDACTED] Pennsylvania and one in [REDACTED] Texas.

The director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on April 2, 2009. Specifically, the director noted the discrepancies between the work location as claimed in the petition and the work locations identified on the LCA. Noting these discrepancies as well as the nature of the petitioner's business, the director requested specific evidence, such as contracts and work orders, demonstrating the location of the claimed specialty occupation work for the beneficiary.

On April 17, 2009, counsel for the petitioner responded to the RFE. In his response letter, counsel asserted that, contrary to the petitioner's claims on the I-129 petition, the work location of the beneficiary for the period requested was not [REDACTED] Pennsylvania. Rather, counsel stated that the beneficiary would be assigned to work on a project for [REDACTED] Pennsylvania, and that this location, not [REDACTED] as originally claimed, was the correct work location for the beneficiary. Counsel further noted that the designation of [REDACTED] Pennsylvania on the LCA submitted in support of the petition covered this new work location. In support of this contention, counsel submitted an Itinerary document as well as a letter from [REDACTED] dated April 16, 2009. That letter confirmed that the beneficiary would be assigned to [REDACTED] end-client, [REDACTED], in [REDACTED] Pennsylvania, via its sub-vendor agreement with the petitioner (previously submitted).

Counsel also submitted additional documentary evidence in response to the RFE, including: (1) a copy of the employment agreement between the petitioner and the beneficiary; (2) copies of the beneficiary's current paystubs and his W-2 form for 2008; (3) an "amended" copy of page 3 of the Form I-129 petition, indicating in Part 5 that the correct work location of the beneficiary is the [REDACTED], Pennsylvania office of [REDACTED] and (4) a printout from the Foreign Labor Certification (FLC) Data Center's Online Wage Library, indicating that the prevailing wage for the proffered position in the [REDACTED] Pennsylvania area at the time of filing was \$58,198.

The director denied the petition on April 27, 2009, finding that the petitioner failed to establish eligibility for the benefit sought. As we have noted, the director cited three distinct bases for denial, namely, the petitioner's failure to: (1) establish that the proffered position qualified as a specialty occupation; (2) submit an LCA that corresponded to the petition; and (3) submit an itinerary covering all work locations for the beneficiary.

On appeal, the petitioner asserts that the director's findings were erroneous, noting that the evidence of record clearly demonstrates the beneficiary's confirmed work assignment with [REDACTED] Pennsylvania for the duration of the requested validity period. The petitioner resubmits the documentation outlining the beneficiary's assignment to this project, and contends that the petitioner warrants approval.

III. LAW AND ANALYSIS

A. Eligibility at the Time of Filing

Although the director cited the three bases for denial set forth above, we must first address the critical issue of whether the petitioner established eligibility at the time of filing. Specifically, as a preliminary matter, we must determine whether the petitioner established filing eligibility at the time the Form I-129 was received by U.S. Citizenship and Immigration Services (USCIS).

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. § 103.2(a)(1) in pertinent part as follows:

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.

Further discussion of the filing requirements for applications and petitions is found at 8 C.F.R. § 103.2(b)(1):

Demonstrating eligibility. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request.

In the instant matter, the petitioner filed the Form I-129 with USCIS on August 11, 2008. As noted above, the LCA provided at the time of filing indicated the beneficiary's work locations would be in [REDACTED] Pennsylvania and [REDACTED] Texas. The Form I-129 petition and the work order submitted in support of the petition, however, indicated that the beneficiary would be assigned to work on a project located at [REDACTED] Pennsylvania from August 11, 2008 through March 1, 2009. Further, at the petition's filing neither the Form I-129 nor any accompanying documentation specified [REDACTED] as an itinerary location.

In response to the RFE's queries regarding the petition/LCA discrepancies, counsel for the petitioner claimed that "we have erroneously mentioned a [REDACTED] address on our initial I-129 form filed" and that the "correct address is the one being provided at this time in [REDACTED] PA." In support of the contention, counsel submitted an "amended" page 3 of the Form I-129 petition to reflect this

new work address for the beneficiary, and contends that, as a result of this change, the petitioner has satisfied the regulatory requirements. Counsel's assertions are misplaced.

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. If a petitioner's intent changes with regard to a material term and condition of employment or the beneficiary's eligibility, an amended or new petition must be filed. To allow a petition to be amended in any other way would be contrary to the regulations. Taken to the extreme, a petitioner could then simply claim to offer what is essentially speculative employment when filing the petition only to "change its intent" after the fact, either before or after the H-1B petition has been adjudicated. The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

Contrary to the petitioner's expectation, the submission of an "amended" page 3 of the Form I-129 petition in response to the RFE does not remedy the issue before us. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(1). 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'r 1978). Most importantly, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Counsel's attempt to change the claimed work location set forth in the petition as filed in order to correspond to the work location set forth in the LCA submitted with the petition is improper and ineffective, as it is an attempt to change material elements of the petition as filed. Not only would counsel have us substitute the claimed supplier of specialty-occupation work and its location as stated in the petition, but counsel also attempts to have us disregard the Work Order and its content that the petition as filed specified as the source of the work upon which the petition was filed. An RFE response is not a vehicle for such material changes to a petition. The regulation at 8 C.F.R. § 214.2(h)(2)(i)(E) states in pertinent part:

The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition.

Therefore, the proper remedy in this instance is for the petitioner to file a new petition, with fee and an appropriate LCA, to reflect what the petitioner claims to be true employment-grounds for the petition.

As the petition as filed premised its specialty occupation claim upon a Work Order for a different entity and at a different address than first claimed in the RFE-response – and as the petitioner now and since the time of the RFE - renounces its own initial basis of filing as erroneous, the petition must be dismissed. Once again, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). 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.

In light of this determination, detailed examination of the specific bases upon which the director denied the petition is not required, as the only remedy available to the petitioner is the filing of a new petition, with fee. However, in order to provide a comprehensive review of this matter, we will briefly address each issue below.

B. Specialty Occupation

As recognized in *Defensor v. Meissner*, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s) in order to properly ascertain the minimum educational requirements necessary to perform those duties. *See Defensor v. Meissner*, 201 F.3d at 387-388. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. *See id.*

Based on the assertions of counsel and the petitioner, it appears that the petition as filed and as certified, under penalty of perjury, as "true and correct," was neither true nor correct in material parts, including the entity to whom the beneficiary would be assigned and the specific work, work

requirements, and agreed-upon duration of work that actual end-client entity would generate for the beneficiary. Consequently, the petitioner premised this petition's specialty occupation claim upon attested work for which there for was actually no substantive basis. The petition's apparent filing on the basis of non-existent work for the beneficiary, therefore, precludes a finding that the petition was filed for a position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) can be satisfied on the basis of the petition as filed. Accordingly, it cannot be found that the position for which the petition was filed constitutes a specialty occupation. For this additional reason, the appeal will be dismissed and the petition denied.

C. LCA Issue

The regulations require that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner obtain a certified LCA from DOL in the occupational specialty in which the H-1B worker will be employed. *See* 8 C.F.R. § 214.2(h)(4)(i)(B). The instructions that accompany the Form I-129 also specify that an H-1B petitioner must submit evidence that an LCA has been certified by DOL when submitting the Form I-129.

As noted above, at the time of the petition's filing the petitioner submitted a certified LCA for work locations at [REDACTED] Pennsylvania, and [REDACTED] Texas. However, the claimed work location on the Form I-129 petition was Pittsburgh, Pennsylvania. A review of the FLC Data Center's Online Wage Library indicates that the work location proposed for the beneficiary on the Form I-129 petition, [REDACTED] falls within the geographic location of [REDACTED] County and area code [REDACTED].

The Form I-129 filing requirements imposed by regulation require that the petitioner submit evidence of a certified LCA at the time of filing.

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

¹ *See* <http://www.flcdatacenter.com> [REDACTED]
(Last visited August 8, 2014).

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 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.

(Emphasis added).

In this matter, the certified LCA that accompanied the petition does not correspond to the petition as filed. In order for the LCA to support the petition as filed, it should have been certified for the work location in [REDACTED] Pennsylvania, located in [REDACTED] County under area code [REDACTED]

As noted above, a petitioner cannot simply file a petition with a claimed work address in one location, then provide a new location in order to make the petition correspond to the certified LCA. Instead, as previously noted, a petitioner must file an amended petition, or in this case a new petition, to reflect this change. Although counsel contends that the work location in the petition, and not the LCA, was erroneous, the fact remains that the petition as filed required a certified LCA for [REDACTED] County, Pennsylvania. Because work location is critical to the petitioner's wage-rate obligations, a petition must be supported by an LCA that corresponds to the work location specified in the petition as filed. Here, not only did the Form I-129 specify a [REDACTED] Pennsylvania address, but the petitioner also filed the Form I-129 with a Work Order document that both (a) specifies that same [REDACTED] address and (b) indicates work for a different client than the petitioner first identified in the RFE.

Thus, the record reflects that, at the time of filing, the petitioner had not obtained a certified LCA in the occupational specialty for the requested employment period for the beneficiary's claimed work location [REDACTED] Pennsylvania). While we note the petitioner's acknowledgement that the [REDACTED] location was erroneously selected, the fact remains that the petition as filed was not accompanied by an LCA certified for the [REDACTED] work location set forth in the petition. Again, the remedy here is for the petitioner to file a new petition, with required fees and supported by a corresponding LCA, which identifies the correct work location for the beneficiary.

For this additional reason, the appeal will be dismissed and the petition will be denied.

D. Itinerary Issue

Additionally, the regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) provides as follows:

Service or training in more than one location. A petition that 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 USCIS as provided in the form instructions. The address that the petitioner specifies as its location on the I-129 shall be where the petitioner is located for purposes of this paragraph.

Moreover, the language of the regulation at 8 C.F.R. § 214.2(h)(i)(2)(B), which appears under the subheading "Filing of petitions" and uses the mandatory "must," indicates that an itinerary is a material and necessary document for a petition involving employment at multiple locations, and that such a petition may not be approved for any employment for which there is not submitted, at the time of the petition's filing, at least the employment dates and locations.

As noted by the director, the petitioner did not submit an itinerary covering the entire requested period of employment for the beneficiary. At the time of filing, the petitioner submitted a Work Order valid on its face through March 1, 2009 for the work location of [REDACTED] Pennsylvania. Not only has the petitioner renounced the dates and location of the [REDACTED] services as being mistaken or erroneous, but we note that the Work Order submitted in support of those services accounted for only a part of the requested period of employment. Further, we also find that, likewise, even counsel's attempt to amend the petition with the claim that the beneficiary would be assigned to [REDACTED], presents documentation that the duration of the beneficiary's assignment with [REDACTED] was "Open – continuous." In any event, the record of proceeding does not establish definite, non-speculative work for the beneficiary though the period of requested employment. Further, even though the evidence of record indicates that the beneficiary's assignment might run out of work, the beneficiary could not be assignable to another client without a new petition, in that there is no itinerary document in the record that specifies another client. These aspects of the record alone would preclude the approval of the petition for the employment period specified in the petition, as a petition may not be approved for any period for which the employment is only a speculative prospect, and also because a petitioner may not assign a beneficiary to perform services for a entities, locations, and dates not specified in an itinerary filed with the petition.

As both conditions were not satisfied in this proceeding, the petitioner has failed to comply with the filing requirements at 8 C.F.R. §§ 214.2(h)(4)(i)(B) and 214.2(h)(i)(2)(B).

IV. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us 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 we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied 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, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.