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



U.S. Citizenship  
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FILE: WAC 08 144 52400 Office: CALIFORNIA SERVICE CENTER Date: **MAY 28 2010**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:  
[Redacted]

**INSTRUCTIONS:**

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 \$585. 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 of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides healthcare staffing services. It seeks to employ the beneficiary as a physical therapist assistant 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 concluding that the petitioner failed to establish: (1) that the proffered position is a specialty occupation;<sup>1</sup> and (2) that the beneficiary is qualified for classification as a specialty occupation worker.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE and supporting documentation; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief and supporting evidence. The AAO reviewed the record in its entirety before reaching its decision.

The first issue that the AAO will consider is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

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

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

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

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<sup>1</sup> The director's finding that the petitioner failed to establish that the proffered position is a specialty occupation is implicit in her statement that the petition may not be approved because most physical therapist assistants earn an associate degree from an accredited physical therapist assistant program. Counsel addresses this issue on appeal.

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

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

In this matter, the petitioner seeks the beneficiary’s services as a physical therapist assistant. Evidence of the beneficiary’s duties includes the petitioner’s April 1, 2008, letter of support and a copy of an employment agreement dated March 10, 2008, between the petitioner and the beneficiary. The support letter indicates the proffered position would require the beneficiary to perform the following duties:

- Instruct, motivate, safeguard and assist patients as they practice exercises and functional activities.
- Confer with physical therapy staff or others to discuss and evaluate patient information for planning, modifying, and coordinating treatment.
- Administer active and passive manual therapeutic exercises, therapeutic massage, and heat, light, sound, water, and electrical modality treatments, such as ultrasound.
- Observe patients during treatments to compile and evaluate data on patients’ responses and progress, and report to physical therapist.

- Measure patients' range-of-joint motion, body parts, and vital signs to determine effects of treatments or for patient evaluations.
- Secure patients into or onto therapy equipment.
- Fit patients for orthopedic braces, prostheses, and supportive devices, such as crutches.
- Train patients in the use of orthopedic braces, prostheses, or supportive devices.
- Transport patients to and from treatment areas, lifting and transferring them according to positioning requirements.
- Monitor operation of equipment and record use of equipment and administration of treatment.

The petitioner also states that, “[a]s with any Physical Therapist Assistant, the usual minimum requirement for performance of the job duties is a Bachelor’s degree in physical therapy (PT) or related field and a state license to practice physical therapy.”

Along with the petition, the petitioner submitted a copy of an employment agreement that is signed both by the petitioner and the beneficiary. The employment agreement gives the beneficiary the title of “Physiotherapy Assistant/Physiotherapist.” The agreement states in pertinent part the following:

[W]hereas:

- A. Employer is a healthcare staffing company engaged in the business of providing services of qualified and licensed staff to healthcare establishments.
- B. Employee will primarily perform the job duties at the location and times listed in Exhibit A, or as may be permanently or temporarily changed from time to time by employer. . . .

Exhibit A of the agreement indicates that the primary worksite location will be at the petitioner’s offices in Albion, IN. Then, the compensation section in Exhibit A of the agreement states, “[a]s per prevailing wage rate in the State of Indiana for Physiotherapy Assistants/Physiotherapists *or in the state where the candidate is eventually deployed. . . .*” (Emphasis added.)

The petitioner also submitted a subcontracting agreement, effective March 4, 2008, between the petitioner and a Georgia corporation, which is a nationwide provider of staffing for healthcare services. The subcontract provides that the petitioner will provide physiotherapists and other related staff to the Georgia corporation, which will then place them at healthcare establishment(s), the identities and locations of which are not provided in the subcontract.

Based on this signed agreement, it is therefore apparent that the petitioner is a contractor or agent for physical therapists to work at different third party locations in the United States, as yet to be identified, as the need arises.

Interestingly, the Form I-129 and Labor Condition Application (LCA) submitted by the petitioner indicate that the beneficiary will be employed both at the petitioner’s offices in Albion, IN as well as Los Angeles, CA from September 25, 2008 to September 24, 2011. However, none of the supporting documentation provided by the petitioner indicates at which facility the beneficiary will be assigned in Los Angeles, CA, and there is no letter or agreement provided from any facility in Los Angeles, CA, or any other location where the beneficiary might be assigned. For that matter, there is no supporting documentation provided that

illuminates which facility or facilities the beneficiary will be assigned to by the petitioner, the exact time period the beneficiary will work at any given location, and what the beneficiary will actually be doing day-to-day at the third party location. Without such supporting evidence, the location of the worksite and time period written on the Form I-129 and LCA that are signed by the petitioner appear to be in direct contradiction with the terms of the contract between the petitioner and the Georgia corporation.

The petitioner also submitted documentation indicating that the beneficiary's foreign education is equivalent to a U.S. bachelor's degree in physiotherapy. However, although the documentation also indicates that the beneficiary has applied for a physical therapy license in the State of California, no evidence was submitted to demonstrate that the beneficiary has received a license either as a physical therapist or a physical therapist assistant, even though this is the petitioner's stated requirement. The application further indicates the petitioner's intention that the beneficiary work in California, but no information was provided about the facility at which the beneficiary would be employed in California or the terms and duration of the beneficiary's employment there.

In the RFE issued on June 26, 2008, the director requested additional documentation evidencing that the proffered position qualifies as a specialty occupation, including, in part, a more detailed job description and evidence that a bachelor's degree in a specific specialty is a requirement for the proffered position. The RFE also requested a copy of the beneficiary's state license or evidence that the beneficiary can be employed without a license.

Counsel for the petitioner responded to the RFE by stating that a foreign applicant may enter the U.S. in H-1B status as a physical therapy intern in order to obtain a Social Security number and sit for the state licensing exam. Counsel further argues that the proffered position of a physical therapy assistant is the same as a physical therapy intern.

Counsel also states as follows:

[I]n order to practice as a [physical therapist assistant (PTA)] in the State of Indiana, one must hold a PTA degree and must be licensed by the State of Indiana. The only other way to work as a PTA without a license is to obtain a temporary work permit and work under the supervision of a licensed PT. Temporary permits are only issued to those who have obtained the appropriate degree and have submitted an application for licensure to the Board. At this time, the beneficiary does not possess a license within the State of Indiana, nor has he acquired the necessary temporary work permit.

Therefore, it is the petitioner's contention that the beneficiary be granted a one-year H-1B visa to practice as a PTA within the State of California. During that time the beneficiary will apply for licensure within the State of Indiana and California in order to become a full-fledged Physical Therapist.

On appeal, counsel first argues that the proffered position is a specialty occupation because "[t]he nature of the work performed by Physical therapists under the [U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*] is identical to that of the proffered position of PTA involved in this appeal." Counsel then argues that actually the proffered position is that of a physical therapy aide, which, as defined under Title 16 of the California Code of Regulations, is an unlicensed person who assists a physical therapist. So, on the

one hand, counsel argues that the proffered position is actually that of a physical therapist, which does require a license while, on the other hand, the proffered position is actually that of a physical therapy aide, which does not require a license in California. 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).

To determine whether a particular job qualifies as a specialty occupation position, the AAO does not solely rely on the job title or the extent to which the petitioner's descriptions of the position and its underlying duties correspond to occupational descriptions in the *Handbook*. Critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the beneficiary will likely perform for the entity or entities ultimately determining the work's content.

According to the *Handbook*, a physical therapist assistant is not the same occupation as either a physical therapist or a physical therapy aide. The *Handbook's* description of physical therapist assistants and physical therapy aides is as follows:

Physical therapist assistants and aides help physical therapists to provide treatment that improves patient mobility, relieves pain, and prevents or lessens physical disabilities of patients. A physical therapist might ask a physical therapist assistant to help patients exercise or learn to use crutches, for example, or an aide to gather and prepare therapy equipment. Patients include accident victims and individuals with disabling conditions such as lower-back pain, arthritis, heart disease, fractures, head injuries, and cerebral palsy.

Physical therapist assistants assist physical therapists in providing care to patients. Under the direction and supervision of physical therapists, they provide exercise, instruction; therapeutic methods like electrical stimulation, mechanical traction, and ultrasound; massage; and gait and balance training. Physical therapist assistants record the patient's responses to treatment and report the outcome of each treatment to the physical therapist.

Physical therapist aides help make therapy sessions productive, under the direct supervision of a physical therapist or physical therapist assistant. They usually are responsible for keeping the treatment area clean and organized and for preparing for each patient's therapy. When patients need assistance moving to or from a treatment area, aides assist in their transport. Because they are not licensed, aides do not perform the clinical tasks of a physical therapist assistant in States where licensure is required.

The duties of aides include some clerical tasks, such as ordering depleted supplies, answering the phone, and filling out insurance forms and other paperwork. The extent to which an aide or an assistant performs clerical tasks depends on the needs and organization of the facility.

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Most physical therapy aides are trained on the job, while almost all physical therapist assistants earn an associate degree from an accredited physical therapist assistant program. Most States require licensing for physical therapist assistants.<sup>2</sup>

Even though physical therapist assistants and physical therapy aides both assist physical therapists, the physical therapist assistant earns an associate degree from an accredited physical therapist assistant program and usually must have a state license while the physical therapy aide is trained on the job and does not require a license.

In the initial petition, the petitioner has characterized the proffered position as that of a physical therapist assistant. Because the positions of physical therapists, physical therapist assistants, and physical therapy aides are three distinct occupations, counsel's attempt to classify the proffered position as either a physical therapist or a physical therapy aide constitutes a material change. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). 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. 1998). Therefore, the AAO's examination of the proffered position will be based on the petitioner's description of it as a physical therapist assistant as provided in the initial petition and not on counsel's characterization of the proffered position as either a physical therapist or physical therapy aide.

However, regardless of how the proffered position is characterized, because the petitioner does not indicate at which health center the beneficiary will work or whether there is a confirmed assignment for the beneficiary, the AAO questions how the petitioner can file an H-1B petition asserting that the proffered job is for a physical therapist assistant to work at the petitioner's offices or in Los Angeles, CA for three years. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). No independent evidence was provided to corroborate this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addressing whether the proposed position is a specialty occupation, the AAO finds that the record is devoid of documentary evidence as to where and for whom the beneficiary would be performing his services, and therefore whether his services would actually be those of a physical therapist assistant.

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<sup>2</sup> Therefore, according to the *Handbook*, a bachelor's degree in a specific specialty is not required for either the physical therapist assistant or the physical therapy aide. The *Handbook* thereby indicates that neither position constitutes a specialty occupation.

The petitioner claims that the beneficiary will be working at either the petitioner's offices or in Los Angeles, CA. However, the petitioner does not provide any information about the health center(s) where the beneficiary will work or contracts with client orders for work to be done that covers the period of employment requested in the petition. Indeed, most of the supporting documentation, including the agreement between the petitioner and the Georgia corporation, indicates that the petitioner will assign the beneficiary to work at different third-party client sites. There are no work orders, no statements of work, and no work itinerary with respect to the proposed employment of the beneficiary. Without documentary evidence to support the claim, the assertions of the petitioner will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534; *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO notes that, as recognized by the court in *Defensor v. Meissner*, 201 F.3d at 387, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. The record of proceedings lacks such substantive evidence from any end-user entities that may generate work for the beneficiary and whose business needs would ultimately determine what the beneficiary would actually do on a day-to-day basis. In short, the petitioner has failed to establish the existence of H-1B caliber work for the beneficiary.

Here, as in *Defensor*, the petitioner is not the only relevant employer for purposes of determining the normal degree required by the employer for the position offered. See *Defensor v. Meissner*, 201 F.3d 384, 387-388. Instead, the healthcare facilities to which the beneficiary will be assigned must be examined to determine whether or not they normally require a bachelor's or higher degree in a specific specialty (or its equivalent) in order to perform the duties of the position. As stated in *Defensor*:

To interpret the regulations any other way would lead to an absurd result. If only [the petitioner]'s requirements could be considered, then any alien with a bachelor's degree could be brought into the United States to perform a non-specialty occupation, so long as that person's employment was arranged through an employment agency which required all clients to have bachelor's degrees. Thus, aliens could obtain six year visas for any occupation, no matter how unskilled, through the subterfuge of an employment agency. This result is completely opposite the plain purpose of the statute and regulations, which is to limit H1-B visas to positions which require specialized experience and education to perform.

*Id.* at 388.

The petitioner is seeking the beneficiary's services as a physical therapist assistant. As the record does not contain sufficient evidence of the work the beneficiary would perform for the petitioner's client(s), the AAO cannot analyze whether his placement is related to the provision of a product or service that requires the performance of the duties of a physical therapist assistant. Applying the analysis established by the Court in

*Defensor*, USCIS has found that the record does not contain any documentation from the end user client(s) for which the beneficiary will provide services that establishes the specific duties the beneficiary would perform. Without this information, the AAO cannot analyze whether these duties would require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under 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's 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.

The AAO therefore affirms the director's finding that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation.

The AAO does not need to examine the issue of the beneficiary's qualifications because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, it cannot be determined what the actual proffered position is in this matter and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. However, the AAO notes that, even assuming that the petitioner does intend to employ the beneficiary as a physical therapist assistant, according to the California Business and Professions Code, Section 2655.10:

Every graduate of an approved physical therapist assistant school who has filed an application for approval as a physical therapist assistant may, between the date of receipt of notice that his application is on file and the date of receipt of approval, assist in the provision of physical therapy under the direct and immediate supervision of a physical therapist. During this period such an applicant shall identify himself only as a physical therapist assistant applicant.

Moreover, under Title 16 of the California Code of Regulations, Section 1399.12, "[a] physical therapist assistant license applicant whose application for license has been filed and reviewed by the board may assist in the provision of physical therapy services if he or she is under the direct and immediate supervision of a physical therapist licensed by the board. . . ."

Pursuant to 8 C.F.R. § 214.2(h)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, a beneficiary (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation. Licensure would not preclude the granting of a petition if the only bar to licensure is the fact that a beneficiary is not yet present in the United

States. No documentation was provided by the petitioner that the beneficiary either has a physical therapist assistant license or has been exempted from such a requirement for licensure as a physical therapist assistant applicant. Consequently, the petitioner failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

Beyond the decision of the director, the AAO finds that the petition must be denied for the additional reason that it was filed without an itinerary of the dates and locations where the beneficiary would work, as required by the regulation at 8 C.F.R. § 214.2(h)(2)(i)(B), which states, in pertinent part:

*Service or training in more than one location.* A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.

The language of the regulation, which appears under the subheading “Filing of petitions” and uses the mandatory “must,” indicates that an itinerary is material and required initial evidence 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. USCIS may in its discretion deny an application or petition for lack of initial evidence. 8 C.F.R. § 103.2(b)(8)(ii). The AAO hereby exercises that discretion and denies the petition for this additional reason.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The appeal will be dismissed and the petition denied 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. The petition is denied.