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Services

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File: WAC 04 171 50406 Office: CALIFORNIA SERVICE CENTER Date: **MAY 11 2006**

IN RE: Petitioner:
Beneficiary:



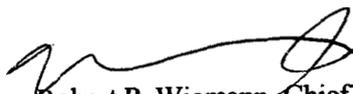
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a California sole proprietorship established by the beneficiary in 2004 that intends to engage in the purchase and export of raw materials and welding equipment for ironworks manufacturing. The petitioner claims that it is the affiliate of Taller Industrial Guerrero, located in Mexicali, Mexico. The petitioner seeks to employ the beneficiary as the chief executive officer of its new office in the United States for a one-year period.

The director denied the petition concluding that the petitioner did not establish that: (1) the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity; or (2) that the petitioner has secured sufficient physical premises to house its new office. The director also noted that the petitioner had not established that the intended operation, within one year of the approval of the petition, will support an executive or managerial position, although he did not further discuss this issue.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner disputes the director's decision and attempts to explain certain discrepancies observed by the director with respect to the beneficiary's foreign employment and the petitioner's physical premises in the United States. Counsel submits a brief and additional evidence in support of the appeal.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

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

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

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The first issue in the present matter is whether the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The nonimmigrant petition was filed on May 27, 2004. On the L classification supplement to Form I-129, the petitioner indicated that the beneficiary's current duties for the foreign entity include: "purchase raw material and welding equipment for manufacturing ironworks fences and sale [sic] ironworks fences, negotiating contracts with banks, suppliers, clients and [independent] contractors."

In a May 22, 2004 letter appended to the initial petition, the foreign entity's general manager stated that the beneficiary has served as chief executive officer of the foreign entity for nine years and has been responsible for the "overall operation" of the petitioner's Mexican affiliate.

Counsel stated in his May 24, 2004 cover letter that the beneficiary has performed the following duties for the foreign entity:

[The beneficiary] has developed and directed a Mexican ironwork business dedicated to the design and installation of artistic iron fences, the purchase, sale and installment of electric doors. Among his responsibilities are those of reviewing the performance and activities of other professionals and skill[ed] workers and, implementing corporate policies and professional standards. [The beneficiary] also negotiates contracts with American enterprises

to acquire raw material and Mexican businesses that seek to both purchase or sale [sic] ironwork fences and electric doors.

During these nine years, [the beneficiary] has directed and developed the Mexican business. During the past nine years, the Mexican business has employed the services of many independent contractors. The Mexican business employs on a permanent basis the services of two permanent employees, which includes the services of a full time accountant. [The beneficiary] is responsible for negotiating contracts with banks, suppliers, clients and independent contractors.

The director issued a request for evidence on June 2, 2004, but did not specifically request additional evidence regarding the beneficiary's employment capacity with the foreign entity. The director did request photographs, financial documentation and other evidence to establish that the foreign entity exists and is doing business. Nevertheless, the petitioner's August 23, 2004 response to the request for evidence included an organizational chart for the foreign entity. The organizational chart depicts the beneficiary as the "general manager" supervising a sales agent, a turner, a welder and an "employee." The chart shows the beneficiary reporting to a "general director" who also supervises a secretary and an accounting services firm.

The director denied the petition on September 2, 2004, concluding that the petitioner had not established that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity. The director referenced the petitioner's organizational chart and determined that the beneficiary is employed as a first-line supervisor of non-professional employees performing the day-to-day operations of the foreign entity's metalworking shop. The director also observed that the photographs of the foreign entity's business premises showed what appears to be an outdoor machine shop with no office space, and showed the name of the business as [REDACTED]. The director further noted that the evidence submitted regarding the foreign entity showed two distinct names for the business, [REDACTED] and [REDACTED]. The director concluded that he was "unable to determine which business is actually the beneficiary's business and which business is the viable business."

On appeal, counsel for the petitioner asserts that the beneficiary supervises the work of a public accountant and "many independent contractors" and provides evidence of the foreign entity's external accountant's professional credentials. Counsel cites *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.5 (5th Cir. 1989) and *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570, 1573 (N.D. Ga 1988) in support of his assertion that the statute is not indeed to limit managerial or executive classification to persons who supervise a large number of persons or a large enterprise. With respect to the foreign entity's name, counsel states: [REDACTED] and [REDACTED] are the same business," and attaches a 1998 invoice for [REDACTED] and a December 2003 invoice for [REDACTED] both of which show the same business address and identify the beneficiary as the proprietor. Finally, the petitioner submits new photographs claimed to represent the foreign entity's office.

Upon review of the petition and evidence, the petitioner has not established that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of

the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In addition, the definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Preliminarily, the AAO notes that the record contains inconsistent information regarding the beneficiary's job title with the foreign entity. Counsel and the petitioner have referred to the beneficiary as the chief executive officer of the foreign entity; however, the petitioner's organizational chart identifies the beneficiary as the foreign entity's "general manager" with another employee, a "general director," above him in the business's organizational hierarchy. 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).

On review, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include "implementing corporate policies and professional standards," "negotiating contracts with banks, suppliers, clients and [independent] contractors," and "reviewing the performance and activities of other professionals." The petitioner did not, however, define the beneficiary's policies and standards, specify the types of contracts he negotiates, or identify any professional employees who would work under the beneficiary's supervision. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Case law dictates that a petitioner's blanket claim of employing the beneficiary as a manager or executive without a description of how, when, where and with whom the beneficiary's job duties occurred is insufficient for establishing employment in a primarily managerial or executive capacity. The actual duties themselves reveal the true nature of the employment. *Id.*

In addition, the petitioner indicated that the beneficiary is responsible for "purchas[ing] raw material and welding equipment for manufacturing ironworks fences" and "sale [of] ironworks fences." Since the beneficiary actually purchases raw materials and sells the petitioner's products, he is performing tasks necessary to provide a service or produce a product and these duties will not be considered managerial or executive in nature. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm. 1988). The brief job description provided by the petitioner is not persuasive in establishing that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

On appeal, counsel asserts that the beneficiary qualifies as a manager pursuant to section 101(a)(44)(A)(ii) of the Act because he supervises a professional accountant. Counsel's argument is not persuasive. The petitioner submitted an organizational chart for the foreign entity indicating that the claimed professional accountant reports to the foreign entity's "general director," not to the beneficiary. In addition, while there is evidence that the foreign entity utilizes the services of the accountant to prepare financial statements and tax documentation, the petitioner has not described the type or extent of services provided by this individual, such that he could be considered an "employee" of the foreign organization.

Although the petitioner asserts that the beneficiary is managing a subordinate staff, the record does not establish that the subordinate staff is composed of supervisory, professional, or managerial employees. See section 101(a)(44)(A)(ii) of the Act. According to the foreign entity's organizational chart, the beneficiary's subordinates include a sales agent, a turner, a welder and an "employee." The petitioner stated that the foreign entity has only two permanent employees, so it is assumed that the beneficiary's subordinates are independent contractors. The petitioner does not claim that any of these employees are serving in a managerial, supervisory or professional capacity. Further, the petitioner has neither presented evidence to document the existence of these employees nor identified the type or extent of the services these individuals provide. 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)). Even assuming that the foreign entity employs the claimed subordinates under the beneficiary, he would be performing, at most, as a first-line supervisor of non-professional employees. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). While the petitioner states that the beneficiary is responsible for the "overall operation" of the foreign entity, the organizational chart indicates that he is not at the top of the business' organizational hierarchy, further supporting a conclusion that he is primarily a first-line supervisor.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Counsel cites *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.2 (5th Cir. 1989), and *Mars Jewelers, Inc. v. INS*, 702 F.Supp. 1570, 1573 (N.D. Ga. 1988), to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *National Hand Tool Corp. v. Pasquarell* or *Mars Jewelers, Inc. v. INS*. Additionally, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same

district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. As counsel has not discussed the facts of any of the cited matters, they will not be considered in this proceeding.

Counsel further refers to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial or executive capacity even though he was the sole employee. Counsel has not established that the facts of the instant petition are analogous to those in the unpublished matter. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium size businesses. However, the AAO has also long required the petitioner to establish that the beneficiary's position consists of primarily managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational, administrative and other non-qualifying tasks. While the AAO recognizes that the beneficiary may exercise some discretion over the day-to-day affairs of the business, the fact that the beneficiary owns and manages a small business is insufficient to establish that the beneficiary is employed in a managerial or executive capacity. Again, the actual duties themselves reveal the true nature of the employment. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). As discussed above, the record suggests that the beneficiary performs a number of non-qualifying tasks, including first-line supervisory duties and operational duties, that prohibit him from performing primarily managerial or executive duties.

Based on the foregoing discussion, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

The second issue in this matter is whether the petitioner has secured sufficient physical premises to house the new office in the United States, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

In support of the initial petition filing, the petitioner provided a copy of its lease agreement with O & G Business Services for the premises at [REDACTED]. The petitioner's address on Form I-129 is stated as [REDACTED]. The lease is for "office space" for a one year period commencing on April 1, 2004, with a monthly rent of \$200.00. The petitioner submitted black and white copies of photographs that show the exterior of an unidentified building, and interior shots showing a rudimentary sign for the petitioner's business placed on a door and on the wall.

On June 2, 2004 the director issued a request for evidence instructing the petitioner to submit, among other things, evidence that the petitioner's landlord had authorization to sub-lease the premises, evidence of insurance, and original photographs of the outside of the building, the outside of the particular office, and photographs of the interior of the office.

In response, the petitioner submitted seven original color photographs and provided a copy of a lease agreement for the premises located at [REDACTED]. The lease agreement is between The Richard Ellis Trust as landlord and O & G Business Services as tenant, and is valid for a period of two years commencing in January 2003, with a monthly rent of \$500. The lease agreement contains the following clauses:

14. ASSIGNMENT AND SUBLETTING

Tenant shall not voluntarily or by operation of law, assign, transfer, sublet, mortgage or otherwise transfer or encumber any part of Tenant's interest in the Lease or in the Premises without landlord's prior written consent. . . . subletting without such consent shall be void and shall constitute a breach of this Lease. . . .

14.1 DUE TO THE NATURE OF THE BUSINESS TENANT (O & G BUSINESS SERVICES), WE (THE LANDLORD) PERMIT THE TENANT TO SUBLEASE OFFICE SPACE TO THEIR CLIENTS

Three of the submitted photographs depict the exterior of an office building from different angles with no visible street address shown. Two of the photographs show a sign with the petitioner's business name and a Mexican telephone number on a glass door, with no suite number listed. As noted by the director, the sign appears to have been created using word processing software, printed on a color laser jet printer, and temporarily attached to the door. The door itself appears to contain a residue suggesting that another, more permanent sign, was removed. The two remaining photographs show the same sign on an interior wall.

The director denied the petition, concluding that the petitioner did not submit sufficient evidence to demonstrate sufficient physical premises to house the new office. The director referred to clause 14 of the master lease agreement and concluded that the lease between the petitioner and O & G Business Services is void, due to the petitioner's failure to provide evidence of written consent from the original lessor. The director also found the photographs inadequate to establish that the premises are sufficient to house the petitioner's business, specifically noting that the photographs do not completely show the premise internally.

On appeal, counsel references sub-clause 14.1 of the master lease agreement, and asserts that O & G Business Services did not require its landlord's consent to sublease the premises to the petitioner. The petitioner re-submits the lease agreement along with five new color photographs. Two photographs provide an exterior view depicting the same sign for the petitioner's business on one side of a double glass door. The other side of the door shows the name of another business. The interior photographs depict a small office with one desk and a computer workstation.

Upon review, counsel's assertions are not persuasive. While it appears that the petitioner's landlord did not require written consent to sub-lease the premises, the photographs submitted are not persuasive to establish that the petitioner actually inhabits the claimed office space. Further, the petitioner has not described its anticipated space requirements for its business and the lease in question does not specify the amount of space secured. The master lease agreement was submitted for "Suite 103" but the petitioner appears to be leasing only a portion of the suite. No floor plan was provided for the office suite identifying the space known as "Suite 103-

B” or “Suite 103-D.” The petitioner indicated that it intends to hire a welder and a “turner,” which suggests that the petitioner’s space requirements would include a workshop, rather than merely a small office. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner has secured sufficient space to house the new office. For this additional reason, the petition may not be approved.

As noted above, the director alluded to, but did not discuss in detail, the petitioner’s failure to establish that the new office would support a managerial or executive position within one year. On appeal, counsel briefly addresses this issue, noting that the beneficiary will be the “Chief Executive Manager” of the business and that he intends to administer the business by himself “until it becomes large enough to require more employees.”

In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner indicated that the beneficiary will eventually hire a welder, a turner and a sales agent, and submitted a projected organizational chart showing the beneficiary as “general manager,” supervising these prospective employees, and reporting to a “general director.” The proposed type of business and projected organizational structure closely mirror that of the foreign entity and indicate that the beneficiary would be, at most, a first-line supervisor of non-professional personnel once the business is fully operational. Further, the petitioner has not provided a business plan, described the intended scope of the entity and its financial goals, or provided evidence of the size of the financial investment in the United States or the ability to commence doing business, as required by 8 C.F.R. § 214.2(l)(3)(v). The minimal evidence submitted does not demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. For this additional reason, the petition will be denied.

Beyond the decision of the director, the petitioner has not established that it is a qualifying organization as defined at 8 C.F.R. § 214.2(l)(1)(ii)(G). While the petitioner attempts to establish an affiliate relationship between the United States and foreign entities based on common ownership by the beneficiary, as a matter of law, the beneficiary is ineligible for the classification sought. It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. In order to meet the definition of “qualifying organization,” there must be a United States employer. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). The petitioner has submitted evidence that the beneficiary intends to do business in the United States as a sole proprietor. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. *Black’s Law Dictionary* 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual proprietor. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). As in the present matter, if the petitioner is actually the individual beneficiary doing business as a sole proprietor, with no authorized branch office of the foreign employer or separate legal entity in the United States, there is no U.S. entity to employ the beneficiary and therefore no qualifying organization. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See*

Spencer Enterprises, Inc. v. United States, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.