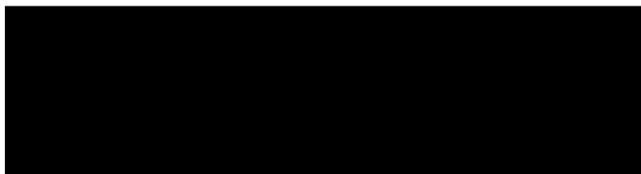


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File: SRC 06 033 51558 Office: TEXAS SERVICE CENTER Date: JUN 20 2007

IN RE: Petitioner:  
Beneficiary:



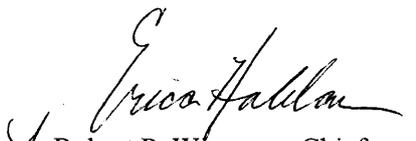
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON 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, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The petitioner seeks to extend the temporary employment of the beneficiary as its vice president and managing director in the United States 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 U.S. petitioner, a corporation organized in the State of Florida, claims to be engaged in the development of diagnostic software and tools for the automotive industry, and claims to be the subsidiary of Diagnostic Associates Ltd., located in Manchester, United Kingdom. The petitioner seeks to extend the beneficiary's stay for an additional two years. The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner asserts that the beneficiary is in fact qualified for the benefit sought. Specifically, counsel asserts that the beneficiary is employed in a primarily managerial capacity since he is managing an essential function of the petitioner.

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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (a) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

- (b) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (c) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (d) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (e) Evidence of the financial status of the United States operation.

The issue in this matter is whether the beneficiary will be employed by the United States entity in a primarily 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.

In a letter dated November 2, 2005, the petitioner explained that it currently employed the beneficiary as its vice president and managing director. In addition, the petitioner claimed that it currently employed six persons, including the beneficiary.

With regard to the beneficiary's duties, the petitioner provided the following overview:

Upon his transfer to the United States in 2004, [the beneficiary] became Managing Director and Vice-President of [the petitioner]. [The beneficiary's] responsibilities included oversight of software development and equipment maintenance for [the petitioner]. He directs the general management of the business and exercises full authority as delegated by the Board of Directors in these decisions. He has authority to hire and fire personnel and is directly and indirectly responsible for all management decisions. He also manages the marketing function of [the petitioner] and operates at a senior level within the company.

\* \* \*

[The beneficiary's] role is essential to the continued growth of [the petitioner]. We have no other expert in the management of product manufacturing, installation and design matters specific to our industry. [The beneficiary] has years of familiarity with our company. [The petitioner] currently has 6 employees. [The beneficiary's] presence is further insurance of our growth. [The beneficiary] is dedicated to its vision and future success of [the petitioner].

In addition, the petitioner submitted a document entitled "Contract of Employment," which indicated that the beneficiary's workweek would require 37.5 hours, with overtime as necessary. The petitioner's quarterly tax returns for the past four quarters further indicated that for the quarter ending September 30, 2005, the petitioner employed five persons including the beneficiary (not six as claimed in the letter of support). The quarterly returns further demonstrated that the beneficiary was the petitioner's sole employee for the first six months of operations.

Moreover, the petitioner's organizational chart showed that as vice-president, the beneficiary oversaw the following employees: [redacted] Administrative Assistant; and [redacted], Office Organization and Appearance. [redacted] in turn oversaw J [redacted], Marketing / Customer Relations; and [redacted] oversaw [redacted] Maintenance. An accompanying document entitled "Employee Roster" provide a brief overview of each employee's job duties.

On December 13, 2005, the director requested additional evidence. The director requested evidence of the educational backgrounds of the petitioner's employees, as well as an overview of their positions and whether any of these employees were subordinate managers or supervisors. In addition, evidence that the beneficiary would refrain from performing day-to-day tasks of the petitioner was requested, as well as a more detailed list of duties of the beneficiary and the percentage of time he devoted to each.

Counsel for the petitioner submitted a response dated March 8, 2006. Counsel responded to the director's requests by specifically claiming that the beneficiary is employed in a primarily managerial capacity. Counsel also provided two bases for this contention. First, he claimed that the beneficiary is primarily a manager by virtue of his supervision of a subordinate staff of managerial and professional employees. Second, he claimed that the beneficiary is a "functional manager" because his main duties involved the management of the petitioner's software development and equipment maintenance.

Counsel also submitted a letter from the foreign entity dated March 6, 2006. The petitioner provided the following updated list of duties for the beneficiary as well as a breakdown of the percentage of time he devotes to each of his duties.

- Establishes goals and policies of the U.S. entity as it evolves. (10%)
- Develops the marketing and advertising strategy. (15%)
- Negotiates contracts with vendors and distributors to manage product distribution, establish distribution networks and develop distribution strategies. (15%)
- Develops pricing strategies, balancing firm objectives and customer satisfaction. (10%)
- Identifies, develops, and evaluates marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors. (10%)
- Hires and fires suitable employees and sub-contractors. (10%)
- Coordinates and directs the financial planning, budgeting, procurement, or investment activities of all or part of a sub-organization. (5%)
- Develops internal control policies, guidelines, and procedures for activities such as budget administration, cash and credit management, and accounting. (5%)
- Prepares or direct preparation of financial statements, business activity reports, financial position forecasts, annual budgets, and/or reports required by regulatory agencies. (10%)
- Analyzes the financial details of past, present, and expected operations in order to identify development opportunities and areas where improvement is needed. (5%)
- Delegates authority for the receipt, disbursement, banking, protection, and custody of funds, securities, and financial instruments. (5%)

The petitioner further stated that:

[The beneficiary] does not engage in the day-to-day operations of [the petitioner]. Rather, in his managerial role, he exercises discretion and control over how different essential functions are carried out. Furthermore, [the beneficiary] supervises the general managerial staff of [the

petitioner]. For example, [the beneficiary] supervises Ms. Yvette Blair, a manager who reports directly to [the beneficiary]. . . .

In addition to his supervisory role, [the beneficiary] engages as a functional manager as authorized by our Board of Directors. [The beneficiary] is the only member of [the petitioner] that possesses expertise in the management of product manufacturing, installation and design matters specific to our industry. As Managing Director, he handles client meetings and contracts, as well as all financial aspects of the company. As such, [the beneficiary] is the only officer in the U.S. entity who is authorized to issue checks and enter contracts with clients and prospective clients.

On June 13, 2006, the director denied the petition. The director found that the evidence in the record was insufficient to establish that the beneficiary would primarily be employed in a managerial or executive capacity. The director concluded that the documentary evidence submitted did not establish that the beneficiary would function at a senior level within the organization or that the beneficiary had sufficient subordinate staff to relieve him from performing non-qualifying duties. More specifically, the director concluded that the beneficiary's subordinates were not managerial, professional, or supervisory employees.

On appeal, counsel for the petitioner attempts to refute the director's basis for the denial by contending that the beneficiary is alternatively a function manager, and is therefore not required to supervise a staff of subordinate professionals. In support of his position, counsel relies upon two unpublished AAO decisions. A final assertion in his argument claims that the initial petition was approved based upon the same facts and description of duties repeated in the instant petition and, therefore, the director erred by denying the petition on the same set of facts that had previously been found acceptable. The AAO, however, disagrees with counsel's assertions.

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 definitions of executive and managerial capacity have two specific requirements. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove 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). The AAO notes that while counsel specifically alleges that the beneficiary is employed primarily in a managerial capacity, consideration will be given under both regulatory definitions.

The description of duties provided, both in the initial letter of support and in response to the request for evidence, simply adopt many of the key phrases used in the regulatory definitions of managerial and executive capacity. General statements such as "establishes goals and policies" and "hires and fires suitable employees" do little to clarify the exact nature of the beneficiary's duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Reciting the beneficiary's vague job responsibilities or broadly-cast business

objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Counsel for the petitioner, however, attempted to answer this question by providing two alternative descriptions of the beneficiary's role in the company in his response to the request for evidence. First, counsel claims that the beneficiary is primarily a manager by virtue of his supervision of a subordinate staff of managers and professionals. Simultaneously, however, counsel claims that the beneficiary is a function manager and that he is not required to supervise a subordinate staff since he is in charge of a function, namely, software development and equipment maintenance, which constitutes an essential component of the petitioner's business. The AAO will address each of these contentions separately.

Although the beneficiary is not required to supervise personnel, if it is claimed that his managerial duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

Though requested by the director, the petitioner did not provide the level of education required to perform the duties of its four other employees. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Thus, the petitioner has not established that these employees possess or require a bachelor's degree, such that they could be classified as professionals. Despite counsel specific claim that the beneficiary's subordinates are professional *and* managerial employees, no independent evidence to corroborate these claims has been submitted. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The only documentation addressing the subordinate employees is the organizational chart and accompanying employee roster. These documents, however, indicate that the beneficiary directly oversees an administrative assistant and a housekeeper. By virtue of these titles alone, it cannot be deemed that these employees are professional, supervisory, or managerial in nature. More importantly, the record contains no evidence to demonstrate that these positions require a bachelor's degree as a prerequisite to perform the stated duties. Although the organizational structure suggests that each of these employees oversees another employee, there is no definitive evidence in the record that these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Furthermore, the suggestion that an administrative assistant would oversee a marketing and client services employees is questionable. The petitioner indicated that this employee's duties include answering phones, handling client appointments, issuing invoices, creating files, purchasing office supplies and scheduling travel. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. *See e.g. Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F.

Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Nor has the petitioner shown, as counsel claims in the alternative, that the beneficiary is acting as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)).

In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The first problem is that the petitioner claims the beneficiary is primarily a function manager while simultaneously claiming that he supervises a staff of subordinate employees. It appears that the claim of function manager was claimed as an alternative in the event that the beneficiary's subordinate staff was found to be non-managerial. In an attempt to overcome the director's findings in this matter, counsel repeatedly alleges that the beneficiary is managing the essential function of the petitioner, which is software development and equipment maintenance. However, the description of duties and organizational structure of the petitioner's enterprise demonstrate the beneficiary himself is primarily performing the essential functions of the business.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial.

In the present matter, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. Although the petitioner submitted a detailed breakdown of the beneficiary's duties with the percentage of time he devoted to each, the description itself identifies tasks that do not fall directly under traditional managerial duties as defined in the statute. For example, the description of duties claims that the beneficiary negotiates contracts with vendors, prepares financial statements, and develops the marketing strategy. In addition, the petitioner claims that the beneficiary is the only person with the authority to issue checks and enter into contracts. Based on this statement, it is uncertain, absent a clear and credible breakdown of the time spent by the beneficiary

performing his duties, whether the beneficiary is primarily engaged in the performance of these critical tasks, or whether he is primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In the instant matter, it is unclear how the beneficiary can engage only in managerial or executive tasks, particularly when the positions of three of the four subordinate employees are employed in maintenance, housekeeping, and administrative positions. Although there is one employee whose position is identified as marketing and customer service, his role is unclear since the petitioner specifically claims that the beneficiary is the only person authorized to enter contracts and thus deal with new clients and customers. 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). The petitioner claims that the beneficiary oversees a subordinate staff of managerial and/or professional employees, and is thus qualified for an extension of the petition. The ultimate fact, however, is that the employment situation presented before the AAO is not credible.

Furthermore, a document entitled Financial Projections for Profit and Loss in 2005 discussed anticipated monthly revenue of \$12,000 from "the vacation home side of the business." Although no additional information regarding this venture is provided, the financial statement anticipates an increase in this revenue as "the number of homes grows." The petitioner, however, has provided no information regarding this endeavor, nor has it indicated which employees are dedicated to performing the duties associated with this aspect of the petitioner's business. Since the petitioner has failed to demonstrate that the beneficiary will be relieved from performing non-qualifying duties related to the software side of the business, the addition of a second business venture in an unrelated field further abates the petitioner's claim. The record, as discussed above, indicates that three of the beneficiary's four subordinates are engaged in maintenance, housekeeping, and administrative positions. This fact, coupled with the simultaneous existence of a new and unrelated vacation home business, further insinuates that the petitioner's employment situation is less than credible. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Based on the record of proceeding, and absent evidence to the contrary, the beneficiary's job duties appear to be principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. The record as presently constituted, therefore, is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner indicates that it "has not yet been able to realize its full potential because of delays in hardware and software development," and claims that the beneficiary's presence in the United States is critical, because it is he who "must continue to develop contracts" for the petitioner. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C), however, allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension.

Based on the evidence presented, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. For this reason, the appeal will be dismissed.

Beyond the decision of the director, a question to be further examined is whether the petitioner and the foreign organization are qualified organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation defines the term "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Additionally, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

- (I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.
- (J) "Branch" means an operating division or office of the same organization housed in a different location.
- (K) "Subsidiary" means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) "Affiliate" means
  - (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
  - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or

- (3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

The record clearly indicates that the petitioning enterprise does not maintain a qualifying "affiliate" relationship with the overseas company. The evidence indicates that four individuals own the foreign company. The record further indicates that five individuals own the petitioning entity in the United States. Accordingly, the two entities are not "owned and controlled by the *same group of individuals*, each individual owning controlling approximately the same share or proportion of each entity . . . ." 8 C.F.R. § 214.2(l)(1)(ii)(L)(2)(emphasis added). In addition, there is no parent entity with ownership and control of both companies that would qualify the two as affiliates, nor does any one individual own a majority interest in both companies. 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). When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See id.*

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.