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U.S. Citizenship  
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Services

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File: EAC 07 007 50813 Office: VERMONT SERVICE CENTER Date: **SEP 06 2007**

IN RE: Petitioner: [REDACTED]  
Beneficiary [REDACTED]

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

The petitioner filed 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, a New York corporation, intends to operate a construction, import/export and general sales business. It claims to be a subsidiary of Waheed Corporation, located in Lahore, Pakistan. The petitioner seeks to employ the beneficiary as general manager of its new office in the United States for a three-year period.<sup>1</sup>

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity within one year.

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, the petitioner asserts that the beneficiary will be employed in an executive and managerial capacity with responsibility for supervising professionals. The petitioner contends that the director "offers only a perceived notion that the nature of our organization is such that it would not require a professional." The petitioner asserts that the company will engage in commercial and non-commercial construction activities as well as importing and exporting merchandise in "large scale" and will clearly require a manager.

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.

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<sup>1</sup> Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

- (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 to 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 sole issue addressed by the director is whether, within one year, the petitioner will employ the beneficiary in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

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 one-year "new office" provision is an accommodation for newly established enterprises, provided for by CIS regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

The nonimmigrant petition was filed on October 10, 2006. In a letter dated September 15, 2006, the petitioner stated that the beneficiary would perform the following duties as director and general manager of the new office:

He will direct, manage, supervise and control other professionals and make policy decisions for this company. He will also be managing all business contracts, outside contractors and sub-contractors, and be responsible for day-to-day operations.

Specifically, his job duties will include:

1. Establish company policies in collaboration with president and parent company executives.
2. Implement the organization's policies on a day-to-day basis.
3. Oversee and monitor operations.
4. Meet with customers and contractors.
5. Negotiate and sign company contracts.
6. Attend high level meetings and set goals.
7. Coordinate and direct other professionals, manage budgets and contracts, and ensure that organization's objectives are met.
8. Implement procedures to improve productivity and customer service.
9. Planning, directing, and coordinating the operations of company.
10. Hiring and firing of employees.

The petitioner submitted a proposed organizational chart for the U.S. company showing that the beneficiary will report to the company president and will supervise a sales manager and a bookkeeper. The chart shows that the sales manager will supervise sales staff, while the bookkeeper will supervise an office secretary and office staff. The petitioner provided a brief job description for each proposed position as follows:

**President:** Assume full responsibility of overall management and development. Formulate company strategies, set guidelines, targets and makes corporate decisions. Monitor the performance of managers. Reports to the Board of Directors of overall company policies and position.

**General Manager:** Formulate and direct policy decisions regarding the management and operations of the company, negotiate deals, manage cash flows, set goals and deadlines, hiring and firing of employees, set company strategies, supervise other professionals, and manage and sign contracts.

**Sales Manager:** Direct the firm's sales program, assign sales territories and goals. Maintain contact with dealers and distributors. Determine sales potential and inventory requirements and monitor the preferences of customers. Manage all aspects of developing and executing an integrated marketing plan. Manage sales staff.

**Sales staff:** Assist Sales Manager in carrying out firm's sales activities.

**Bookkeeper:** Maintain general ledger and payroll, reconcile and prepare statements and secure complete financial records. Process invoices and prepare financial reports.

**Office Secretary:** Schedule appointments and meetings, organize and maintain files. Manage client contracts, company reports and prepare reports. Supervise clerks and other written materials related to office work and functions.

Office Staff: Answer telephone, operate office equipment including fax machine, photocopies and computers. Prepare mailings, maintain and update office records and take inventory.

The director requested additional evidence on October 19, 2006, advising the petitioner that the evidence submitted did not demonstrate that the beneficiary, within one year, would be relieved from performing the non-managerial day-to-day operations of the company. The director acknowledged the evidence submitted in support of the petition, but noted that it did not seem plausible that the U.S. company, which intends to engage in construction and import/export services, would require the services of bona fide managers or professionals. The director requested a detailed description for each proposed employee and an explanation as to how each would be managerial or professional in nature.

In a response dated November 20, 2006, the petitioner stated that the beneficiary's duties were fully outlined in its initial letter, and clearly "establish him to be in a managerial and professional position." The petitioner emphasized that the duties are "above and beyond those performed by ordinary employees of the company as they require management of subordinates, company resources, such as finance, planning, long and short term contracts, hiring and firing of employees, etc." The petitioner indicated that the beneficiary would also oversee and direct outside contractors, including professionals such as architects, engineers and construction managers.

The petitioner noted that the sales manager's proposed duties are both managerial and professional in nature, as the employee will manage sales programs for the import/export division of the business, promote the company's construction services, and work with the general manager to devise marketing plans, sales forecasts, prepare sales reports and market the company to potential buyers, in addition to supervising sales employees, who will perform the routine aspects of the sales function. The petitioner stated that the company's bookkeeper would also be a professional employee, while the remaining staff would be non-professional.

The director denied the petition on December 1, 2006, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year. The director rejected the petitioner's assertion that the company would require the services of a professional sales manager, or that the position of bookkeeper requires the services of a professional. The director also found insufficient evidence to establish that the beneficiary would manage a function of the organization, or function at a senior level within the organizational hierarchy, other than in position title. The director acknowledged that the petitioner listed a number of duties that would normally be required of a manager or executive, but determined that the evidence did not demonstrate that the company would require a manager or executive to perform the tasks listed on a full-time basis.

On appeal, the petitioner asserts that the beneficiary's proposed duties and functions meet the requirements of section 101(a)(44) of the Act, "as the beneficiary will be employed in an executive and managerial capacity within our organization performing professional duties and supervising other professionals." The petitioner claims that the director's decision is based on a "perceived notion that the nature of our organization is such that it would not require a professional." The petitioner further explains:

[The petitioning company] intends [sic] to engage in the commercial and non-commercial construction business. In addition, we will also be importing and exporting merchandise in collaboration with our parent company abroad on a large scale. Such activities clearly require services of professionals to manage the organization. We have clearly established through the preponderance of evidence that the beneficiary and our organization unequivocally qualifies for the position.

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary will be employed by the United States entity in a managerial or executive capacity within one year.

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.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner's evidence should 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

In the instant matter, the petitioner has repeatedly described the beneficiary's proposed position in broad and general terms, noting that his responsibilities would include: "establish company policies," "implement the organization's policies," "oversee and monitor operations," "implement procedures to improve productivity and customer service," attend "high level meetings" and "set goals," and "planning, directing, and coordinating the operations of the company." Many of these duties merely paraphrase portions of the statutory definitions of managerial and executive capacity at section 101(a)(44) of the Act, and overlap significantly with the duties attributed to the beneficiary's supervisor, the company president, who is described as being responsible for "overall company policies," formulating strategies, setting guidelines and targets, and making corporate decisions. 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 provide any detail or explanation of the beneficiary's proposed activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *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).

The beneficiary's responsibilities for meeting with customers and contractors, and negotiating and signing company contracts have not been described in sufficient detail to establish that the duties associated with these responsibilities would be primarily managerial or executive in nature. The petitioner did not identify the types of meetings, negotiations or contracts that would require the beneficiary's personal attention. 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. at 1108.

Further, while some duties described by the petitioner would generally fall under the definitions of managerial or executive capacity, the minimal supporting evidence submitted in support of the petition, and in response to the request for evidence, raises questions as to how long it would realistically take the U.S. company to develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature. The fact that the petitioner appears to already employ a president raises additional questions regarding the company's need for a second managerial or executive employee during the start-up phase. Overall, the beneficiary's job description alone falls significantly short of establishing that his duties will be primarily managerial or executive in nature within one year of commencing operations.

The totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. Upon review, the supporting evidence does not provide a clear depiction of the petitioner's proposed hiring plan. The petitioner claims that it intends to engage in construction services, import and export activities, and "general sales." The petitioner has never explained what types of goods it intends to import, export or sell. The petitioner claims that it intends to engage in "large scale" import and export with its parent company, yet a review of the organizational chart and position descriptions submitted for the foreign entity's employees reveals that not a single employee performs duties related to import and export activities. All of the foreign entity's claimed employees perform duties related to construction activities. According to the foreign entity's profit and loss statements, all of the company's income is derived from "transportation receipts." The AAO further notes that none of the petitioner's proposed staff are described as performing import or export-related functions. 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 also claims that it will engage in construction services, but again, did not indicate its intention to hire any employees to perform construction-related activities. The petitioner mentioned in response to the request for evidence that the beneficiary would oversee "outside subcontractors" such as architects, engineers, and construction managers, but there was no reference to any such employees at the time the petition was filed. The petitioner's proposed organizational chart, while it included employees to perform routine administrative, financial and sales duties, did not account for workers to perform such essential duties as purchasing, coordinating import and export activities, warehouse management, logistics, or construction activities. Thus, it is unclear that the beneficiary would in fact be relieved from performing the day-to-day operations of the company within one year.

It should be noted that the AAO's review of this issue is severely restricted by the petitioner's failure to submit evidence or information regarding the proposed nature of the office, the anticipated scope of the entity, and its financial goals, as required by 8 C.F.R. § 214.2(l)(3)(v)(2). As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new

commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

*Id.*

Based on the petitioner's representations, the U.S. company intends to operate a construction, import/export and "general sales" company, intends to hire only sales and administrative employees, and intends to employ the beneficiary to perform many of the same duties attributed to the petitioner's president. The company has a lease agreement for office space, and perhaps a storage room, and has \$35,300 in the bank. No other information or evidence has been provided to establish how the petitioner will grow to a size where it will require the services of a second managerial or executive employee within one year. While a business plan is not explicitly required by the regulations, the petitioner has provided no explanation regarding the intended scope of the organization or its financial goals, no timeline for hiring additional employees, insufficient evidence of the size of the investment required for start-up operations, no financial objectives or projections for the company's start-up operations, and no indication of what the company intends to import, export and sell. 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 AAO cannot speculate as to when the proposed employees might be hired or otherwise determine how many employees the company would support at the end of the first year of operations, or who would be performing the day-to-day, non-managerial functions of the import/export and construction company. There is insufficient evidence to support the petitioner's claim that the beneficiary would supervise subordinate managers and professionals within one year, nor does the record establish that the beneficiary would be performing the duties of an executive, as the petitioner already employs a president.

The AAO does not doubt that the beneficiary would have some degree of supervisory authority over the petitioner's start-up operations. However, the definitions of executive and managerial capacity have two separate requirements. 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). Overall, the vague job description provided for the beneficiary, the lack of detail regarding the petitioner's business plan and hiring plan for the first year of operations, considered with the lack of evidence of the size of the U.S. investment as discussed further below, prohibits a determination that the petitioner could realistically support a managerial or executive position within one year. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the evidence of record does not establish that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity for at least one continuous year within the three years preceding the filing of the petition, as required by 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner stated on Form I-129 that the beneficiary has been employed by the claimed parent company, Waheed Corporation, since January 2003. At the time of filing, the beneficiary had been in the United States as a nonimmigrant visitor in B-2 status for approximately one year. The evidence submitted in support of the petition had included a brief letter from the foreign entity's president, and a copy of the beneficiary's 2005-2006 Pakistani "Wealth Tax Return" which appears to be a report of his assets, debts and expenditures, rather than his income for the year. The beneficiary identified his business address as the foreign entity's address on the tax return.

On October 19, 2006, the director requested additional evidence to establish that the beneficiary has been employed abroad in a managerial or executive capacity for one year within the three years prior to the date the petition was filed. The director noted that the petitioner should submit the beneficiary's last annual tax return and tax withholding statement reflecting the employer, copies of payroll documents reflecting the beneficiary's period of employment and salary, and "other unequivocal evidence establishing the foreign employment by the beneficiary." In response, the petitioner re-submitted the beneficiary's wealth tax return.

Upon review, the evidence submitted is insufficient to establish that the beneficiary was employed by the foreign entity for the required time period. The beneficiary's 2006 wealth tax return, most of which covered a period of time during which he was in the United States as a visitor, does not establish his full-time employment with the foreign entity for one full year within the three years preceding the filing of the petition. The director specifically requested payroll documents reflecting his period of employment and salary, and an income tax return or unequivocal evidence establishing his employment with the foreign entity. Instead of providing the requested documentation, the petitioner resubmitted a document already reviewed by the director and found to be insufficient. 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). For this additional reason, the petition cannot be approved.

An additional issue not addressed by the director is whether the petitioner provided sufficient evidence of the size of the financial investment in the new United States office, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). Although the petitioner has provided evidence that the foreign entity transferred \$35,300 to the U.S. entity in September 2006, the petitioner has not outlined its anticipated capital requirements and start-up costs, and it is thus impossible to evaluate whether this amount of money would allow the petitioner to commence operations in the United States.

Finally, the AAO notes that the lease agreement and photographs submitted do not clearly establish that the petitioner has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A). The petitioner has not described its anticipated space requirements for its proposed construction, import/export and general sales business, and the lease agreement submitted does not identify the size or intended use of the leased property. The director specifically requested photographs of the interior and exterior of the leased premises. The photographs submitted show four different desks with computers and stacks of paper, and a storage or warehouse room with piles of boxes, as well as a door with a computer-printed sign that indicates the petitioner's company name. The petitioner did not submit photographs of the exterior of the building, and it cannot be determined whether the photographs depict suite 9B located at 1609 Ocean Avenue in Brooklyn, New York. Again, 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). For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also 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 and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.