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U.S. Citizenship
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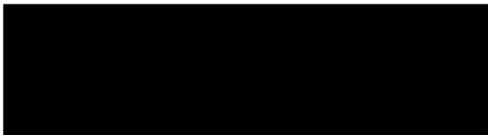


File: EAC 04 103 51175 Office: VERMONT SERVICE CENTER Date: **SEP 07 2007**

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)

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

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary in the position of president to open a new office 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 petitioner, a corporation organized under the laws of the State of New Jersey, claims to be in the garment business, and alleges that it has a qualifying relationship with Sooin Trading of South Korea.

The director denied the petition concluding that the petitioner failed to establish (1) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position; or (2) that sufficient physical premises to house the new office have been secured.

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 to the petitioner asserts that the petitioner had submitted adequate evidence that both the United States operation and the foreign entity are financially able to commence doing business in the United States and that the petitioner has secured adequate physical premises to house the new office. In support of the appeal, counsel submits a brief and additional evidence.¹

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.

¹Counsel for the petitioner requests oral argument. Oral argument is limited to cases where cause is shown. 8 C.F.R. § 103.3(b). It must be shown that a case involves unique facts or issues of law which cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Therefore, the request is denied.

- (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)(3)(v) states 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, 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 involved 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 this proceeding is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

The foreign entity described the purpose of the intended United States operation in a letter dated February 2, 2004 as follows:

[T]he board of directors of [the foreign entity] had tasked the company through [the beneficiary] to establish an affiliate or subsidiary corporation in the United States of America

to act as the corporation's distribution entity to develop new customers in the North American market. The board authorized [the foreign entity] and [the beneficiary] to set up the American affiliate or subsidiary, hire employees and organize it in such a way to promote, sell and distribute its products.

In support of its petition, the petitioner submitted, *inter alia*, a translated Korean tax payment certificate, which shows that the foreign entity's last recorded tax payment was December 31, 2002, and the foreign entity's balance sheets from 1998 through 2002. The balance sheets do not indicate whether they were reviewed or audited by a third party. The instant petition was filed on February 23, 2004.

On April 1, 2004, the director requested additional evidence. The director requested, *inter alia*, "externally audited or reviewed financial statements, copies of representative purchase contracts and/or purchase orders and/or invoices for the past six months;" a copy of the petitioner's business plan; copies of bank statements; and evidence establishing the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and commence doing business in the United States.

In response, the petitioner submitted the identical balance sheets which were submitted with the initial petition; a series of invoices pertaining to the foreign entity, the most recent of which is dated May 22, 2003; a bank statement pertaining to the petitioner dated April 30, 2004 showing a current balance of \$8,272.09 and showing a previous balance of zero; and a letter from counsel dated June 3, 2004 which states as follows:

[The foreign entity] has authorized [the petitioner] to spend up to \$100,000 in the first year for start-up expenses. Since the U.S. subsidiary is completely funded by the parent overseas entity, the vast majority of its funds in the first year will come directly from the parent. The U.S. subsidiary approximates its total start up costs at \$65,000, which primarily consists of office equipment, rent and expenses, and expenses associated with establishing a marketing program and hiring adequate staff by the end of the first year.

Since the fur apparel industry is seasonal, with most sales in the fall and winter months, coupled with the South Korean government's restrictions and regulations on transferring funds out of South Korea, [the foreign entity] is currently providing working capital as needed and requested by the [the petitioner].

The petitioner also submitted a business plan which states that the petitioner plans to hire four additional staff members during its first year in operation. The plan also projects payroll expenses for the first year to be approximately \$50,000. While the Form I-129 states that the beneficiary will be paid \$75,000 per year, the business plan does not indicate whether the beneficiary will be paid by the petitioner or by the foreign entity.

On August 3, 2004, the director denied the petition. The director stated in pertinent part the following:

The record does not establish the new United States entity has sufficient funds available to commence operating. The record includes the United States entity's deposit account statement for April 30, 2004, showing available funds of \$8,272. The business plan proposal

indicates anticipated expenses for the first year will total \$65,000 and indicates the foreign entity authorizes expenditures of up to \$100,000, to be completely funded by the foreign entity. The Service notes, however, the record fails to provide documentary evidence of the foreign entity's ability to meet the anticipated expenses. Although requested, the record does not show sufficient funds available to commence operation of the new office. Further, the Service notes the proposal indicates total payroll for the year of \$50,000; however, the beneficiary's salary stated on the petition totals \$75,000. It appears the proposal does not provide for sufficient funds to pay the proposed salary of the beneficiary, without consideration of the additional four employees to be hired within the first year. It is noteworthy that although the record includes copies of the foreign entity's balance sheet, the corresponding profit and loss statements have not been submitted.

On appeal, counsel asserts that a sufficient investment had been made in the United States operation. Counsel argues that, because the petitioner's business is seasonal, the petitioner had established that funds in excess of what had already been invested would not be needed until winter 2004. Counsel further submitted on appeal an August 2004 bank statement which allegedly establishes additional investment in the United States operation. Counsel also asserts that the petitioner had established that the foreign entity has sufficient assets to commence doing business in the United States and to support the United States operation as needed. Counsel argues that, because the director only requested "financial statements" in the Request for Evidence, the director's observation that the record does not contain profit and loss statements was in error and the record sufficiently establishes the financial ability of the foreign entity to support the United States operation and to remunerate the beneficiary. Finally, counsel asserts that, because the beneficiary's salary will be paid by the foreign entity, the \$50,000 first year payroll projection in the business plan is not inconsistent with the beneficiary's proposed first year salary of \$75,000.

Upon review, the petitioner's assertions are not persuasive.

As a threshold matter, it must be noted that the bank statements and other evidence submitted on appeal by the petitioner to establish that an investment in the United States operation has been made will not be considered by the AAO in adjudicating this appeal. The petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated and now attempts to supplement this response on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Moreover, because the August 2004 bank statement submitted on appeal, as well as the April 2004 bank statement submitted in response to the Request for Evidence, concern purported monetary investments made by the foreign entity after the filing of the petition on February 23, 2004, these documents would be of no evidentiary value in this matter even if considered. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

When a new business is 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 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 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). 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.

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 therefor. Most importantly, the business plan must be credible.

Id.

The petitioner has failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. In this matter, the petitioner has not established that a sufficient investment has been made in the United States operation or that the foreign entity has the financial ability to remunerate the beneficiary and to commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2). First, the petitioner has not established that any investment was made in the United States operation as of the date the petition was filed on February 23, 2004. The bank statements submitted by the petitioner only concern purported monetary investments made after the filing of the petition which, as explained above, are irrelevant. Furthermore, the April 2004 bank statement submitted in response to the Request for Evidence indicates that, prior to the deposits made in April 2004, the petitioner's bank account had a zero balance. Therefore, as it appears that no investment had been made in the United States entity as of the date of the filing of

the petition, the petitioner has not established that there is a realistic expectation that the United States operation will succeed and rapidly expand as it moves away from the developmental stage to full operations.

Moreover, the petitioner's assertion that, because the United States operation will be "seasonal" and, thus, will not need all of its initial investment, is without merit and is not consistent with the evidence in the record. As indicated in the business plan and the letter dated June 3, 2004, the petitioner will have \$65,000 in start up costs "which primarily [consist] of office equipment, rent and expenses, and expenses associated with establishing a marketing program and hiring adequate staff by the end of the first year." As the record fails to establish that any of this "start up" money had been transferred to the petitioner as of the date the petition was filed, it is simply not credible that the petitioner will be able to commence doing business in the United States in a regular, systematic, and continuous fashion. If the petitioner is indeed asserting that it will not even commence setting up the business until winter 2004 when these funds become available, then it would be ineligible for the benefit sought for this reason as well.

Second, the petitioner has not established that the foreign entity has the financial ability to remunerate the beneficiary and to commence doing business in the United States. See 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In this matter, the record is devoid of any evidence regarding the foreign entity's current financial status. In support of its petition, the petitioner has submitted balance sheets and Korean tax documents dating from 2002 or earlier. The instant petition was filed on February 23, 2004. Therefore, this evidence is not probative of the current financial abilities of the foreign entity. Moreover, the director specifically requested that the petitioner provide the foreign entity's externally audited or reviewed financial statements and other business records for the past six months. In response, the petitioner failed to provide any current financial data for the foreign entity and did not provide evidence that the outdated balance sheets were externally audited or reviewed. All of the business records pertaining to the foreign entity concern purported business activity in 2002 or earlier. 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). 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)).

Finally, the director's observation that the petitioner failed to submit profit and loss statements along with the balance sheets was entirely appropriate and may be used as a basis to deny the instant petition. The director clearly requested that the petitioner submit the foreign entity's externally audited or reviewed financial statements. "Financial statements" include both balance sheets and profit and loss statements. See generally *In re Baxter*, 294 B.R. 800, 802 (M.D. Ga. 2003). Therefore, as the petitioner was obligated to submit both balance sheets and profit and loss statements in order to fully respond to the Request for Evidence and given that the petitioner provided neither a profit and loss statement nor documents pertaining to the current financial ability of the foreign entity, the director properly denied the petition. See 8 C.F.R. § 103.2(b)(14).

Beyond the decision of the director, the petitioner also failed to establish the proposed nature of the office by describing the scope of the United States entity, its organizational structure, and its financial goals. See 8 C.F.R. § 214.2(l)(3)(v)(C)(1). In support of its petition, the petitioner has submitted a business plan which predicts the hiring of four staff members during its first year in operation as well as the setting up of its United States operation. However, the only financial goals described in the business plan pertain to 2005.

The petitioner appears to have no financial goals for 2004, and to have not received any foreign investment at the time the petition was filed, and it implies on appeal that the petitioner has no intention of commencing operations until winter 2004. Moreover, the business plan fails to identify with any specificity the petitioner's potential customers, its competitors, or its products and pricing structures. Overall, the business plan is not credible and the record as a whole fails to sufficiently describe the scope of the United States entity. The evidence does not demonstrate any 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.²

Accordingly, the petitioner has failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and for this reason the petition may not be approved.

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

In support of its assertion that sufficient physical premises have been secured, the petitioner submitted a document titled "Commercial Sublease Agreement" dated April 19, 2004 in response to the director's Request for Evidence. The Agreement pertains to 375 square feet in New Brunswick, New Jersey, in which it intends to employ five people. The petitioner did not submit a copy of the lease agreement between the lessor and the lessee/sublessor and did not provide the telephone number of the lessor even though this evidence was requested by the director in the Request for Evidence.

On August 3, 2004, the director denied the petition concluding that the space described in the lease would not be sufficient to house the new office.

On appeal, counsel argues that the 375 square feet of space would be sufficient because the petitioner would not be storing goods at this location.

Upon review, the petitioner's assertions are not persuasive.

²It is noted that it appears that the director based her denial of the petition partly on an inconsistency in the record regarding the remuneration of the beneficiary. While the Form I-129 indicates that the beneficiary will be paid \$75,000 per year, the business plan predicts \$50,000 in salary costs for 2004. However, on appeal, counsel asserts that the beneficiary will be paid by the overseas entity and that the salary costs in the business plan were not meant to include the beneficiary. Upon review, the AAO agrees that the business plan does not expressly, or even implicitly, state that the beneficiary will be paid by the petitioner during its start-up phase. Therefore, to the extent the director denied the petition due to this perceived unresolved inconsistency, that reasoning is hereby withdrawn. However, the fact remains that the petitioner has failed to establish that the foreign entity has the financial ability to remunerate the beneficiary as described, and the petition may not be approved for this reason and for the other reasons set forth above.

The petitioner has not established that the space described in the Commercial Sublease Agreement will sufficiently house the new office. As a threshold matter, the petitioner has not established that it had secured sufficient physical premises at the time the petition was filed on February 23, 2004. As indicated above, the Commercial Sublease Agreement is dated April 3, 2004. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. Therefore, as of the date the petition was filed, the petitioner had not secured sufficient physical premises, and the petition may not be approved for that reason.

Moreover, as indicated above, the director specifically requested that the petitioner provide copies of "original lease agreements" and the telephone numbers of the lessor. The petitioner, however, has chosen not to submit this important evidence. Without being able to review the terms of the lease agreement between the lessor and lessee/sublessor, it cannot be confirmed that the physical premises in question would be sufficient to house the new office. 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).

Finally, as correctly determined by the director, the petitioner has not established that the space in question would be sufficient to house the new office as described in the business plan. While counsel asserts that the petitioner will not store goods at this location, the petitioner nevertheless has not provided any evidence establishing that the 375 square foot space will adequately house the new office and its five employees. More importantly, the petitioner has failed to explain where its goods would be stored and to provide evidence that it also has sufficient physical premises to provide for this essential business need. 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.

Accordingly, the petitioner has failed to establish that sufficient physical premises to house the new office were secured as required by 8 C.F.R. § 214.2(l)(3)(v)(A), and the petition may not be approved for that reason.

Beyond the decision of the director, the petitioner did not establish that the petitioner and the organization which employed the alien overseas are qualifying organizations as required by 8 C.F.R. § 214(l)(3)(i).

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). The petitioner must also show that the foreign employer "is or will be doing business." 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). "Doing business" is defined in pertinent part as "the regular, systematic, and continuous provision of goods and/or services." If one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. In the current case, the petitioner alleges in the Form I-129 that the beneficiary owns a majority interest in, and controls, both the foreign employer and the petitioner. However, because the petitioner failed to establish the ownership and control of

the petitioner and has failed to establish that the overseas employer is "doing business," the petition may not be approved.

In the initial petition, the petitioner provided no evidence establishing the ownership or control of the United States entity other than a certificate of incorporation. On April 1, 2004, the director requested additional evidence establishing ownership and control of the petitioner. The director requested, *inter alia*, copies of stock certificates and stock ledgers.

In response, the petitioner submitted two stock certificates issuing 100 shares of stock to the foreign entity. The stock ledger was not produced.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, a copies of the corporation's stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra*. Without full disclosure of all relevant documents, Citizenship and Immigration Services is unable to determine the elements of ownership and control.

In this matter, the petitioner has failed to produce the stock ledger and other corporate organizational documents requested by the director. 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 reason alone, the petition may not be approved.

Moreover, as indicated above, the petitioner has asserted in the Form I-129 that the beneficiary owns all the petitioner's stock even though the stock certificates submitted in Response to the Request for Evidence indicate that stock has been issued to the foreign entity. The petitioner offers no explanation for this fundamental inconsistency in the record. 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. 582, 591 (BIA 1988).

Finally, as the record is devoid of any evidence of current business activity by the foreign employer, the petitioner has not established that the foreign entity is "doing business" as defined in the regulations and, thus, has not established that the foreign entity is a "qualifying organization." In response to the director's request, the petitioner submitted invoices and other business records related to the foreign entity. However, the most recent invoice submitted is dated May 22, 2003 and all the business records pertain to activity before December 31, 2002. The instant petition was filed on February 23, 2004.

Accordingly, the petitioner did not establish that the petitioner and the organization which employed the alien overseas are qualifying organizations as required by 8 C.F.R. § 214(I)(3)(i), and 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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.