

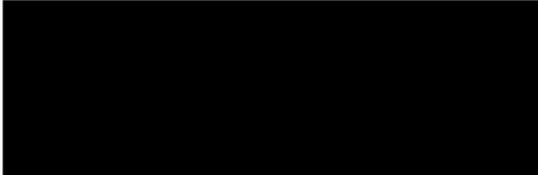


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D-7



File: EAC 08 201 50773 Office: VERMONT SERVICE CENTER Date:

**OCT 16 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant petition and 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 Florida corporation established in 2008, states that it is an affiliate of Estudio Digital Cepeda C. por A., located in Santo Domingo, Dominican Republic. The petitioner indicates that it intends to engage in the production of television advertising and other related services. The petitioner seeks to employ the beneficiary as the president of its new office in the United States for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that the U.S. and foreign entities have a qualifying relationship. Specifically, the director determined that the evidence submitted did not establish the existence or ongoing business operations of the petitioner's claimed foreign affiliate. The director further concluded that, in the absence of evidence that the foreign company exists and is doing business, the petitioner did not establish that the beneficiary has been employed in a qualifying managerial or executive capacity with the foreign entity for one year within the three years preceding the filing of the petition.

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 evidence of record, considered with new evidence submitted on appeal, will demonstrate that the foreign company exists and has a qualifying relationship with the U.S. In a statement accompanying the appeal, the beneficiary asserts that he has been the owner and manager of the foreign entity for more than three years and is therefore qualified for the benefit sought.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

The primary issue addressed by the director is whether the petitioning company and the foreign entity have a qualifying relationship. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. 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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means 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 (I)(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[.]

\* \* \*

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

\* \* \*

(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.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines the term "doing business" as:

*Doing business* means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

As a preliminary matter, the AAO notes that the director's determination that the U.S. and foreign entities do not have a qualifying relationship was based on a determination that the foreign entity is not doing business. The

director did not address whether the evidence of record establishes that the two companies otherwise have a qualifying relationship based on common ownership and control. The AAO will address all evidence relevant to this issue, including evidence of the ownership and control of the U.S. and foreign entity. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petitioner stated on Form I-129, Petition for a Nonimmigrant Worker, that it has an affiliate relationship with the beneficiary's foreign employer, Estudio Digital Cepeda C por A. The petitioner indicated that the beneficiary owns 70 percent of the foreign entity and 100 percent of the U.S. company.

In support of the petition, the petitioner submitted: (1) a copy of the foreign entity's incorporation document indicating that the company was formed in the Dominican Republic in December 1998; (2) a "List of Stockholders and Payments" identifying the beneficiary as the holder of 3,000 of the foreign entity's 5,000 issued shares; (3) an application for a company tax identification number filed with Dominican authorities in January 1999; (4) a tax identification card issued in January 1999; (4) a receipt for payment of taxes for the month of January 2008; and (5) a commercial name registration indicating that the beneficiary registered the fictitious name [REDACTED] in September 1995.

The petitioner also submitted a copy of the U.S. entity's articles of incorporation filed with the Florida Secretary of State in March 2008. The articles indicate that the petitioning company is authorized to issue 100 shares of stock. The petitioner did not submit copies of its stock certificates or other evidence indicating the ownership of any issued shares.

The director issued a request for additional evidence (RFE) on July 25, 2008, in which he instructed the petitioner to submit: (1) evidence to establish the size of the U.S. investment and the financial ability of the foreign company to remunerate the beneficiary and commence doing business in the United States; and (2) additional documentary evidence that the foreign entity has the ability to invest in the United States entity, including copies of the foreign entity's bank statements for June and July of 2008. The director also requested evidence to establish that the beneficiary has been in contact with the foreign entity while in the United States forming the U.S. company, including evidence such as phone statements and fax transmissions.

In response to the RFE, the petitioner submitted an affidavit dated October 8, 2008 from the beneficiary, who indicated that he is the owner of the petitioner and the foreign entity. The beneficiary further stated:

In the last months, all my efforts have been directed to the opening of [the petitioning company], looking for a solid establishment, promoting the company, getting to know the local market, and contacting potential clients that we could service in the area. We decided to invest our time and resources in this new project in Florida because we knew that the 2008 electoral year in Dominican Republic would most definitely slow our business there, as traditionally happens in electoral years. Evidence of this are the agreements signed to the moment between [the

petitioner] and three solid companies from Florida that will provide work and an income of more than US\$16,000.00.

Consequently, at this moment it's not possible to evidence the financial ability of our company in Santo Domingo as we would want to, but we can evidence solid results with the information provided from Bank of America, like deposits in the company's bank account for almost US\$20,000 in 5 months (good for a starting company), invoices to clients, statements, and other.

Presently, all jobs contracted in Miami, Florida are produced in the Dominican Republic, sent to me via e-mail, presented and paid for by the customer in Miami, and funds deposited in our account here.

The petitioner's response to the RFE included: copies of agreements to provide services for three prospective U.S. clients; copies of the petitioner's Bank of America account statements for the months of April through August 2008; copies of invoices issued by the petitioning company for graphic design work, which include notations that the work was "transferred from Santo Domingo via mail"; and the beneficiary's telephone bill for the period August 22 to September 21, 2008, showing dozens of calls he made to the Dominican Republic. The petitioner highlighted six calls and handwrote the notation, "calls made to the DOR." The petitioner did not submit any evidence of the foreign entity's telephone number.

The director denied the petition on October 24, 2008, concluding that the petitioner did not establish that the petitioner and the foreign entity have a qualifying relationship. The director noted that the petitioner failed to submit any evidence of the financial status of the foreign entity and no evidence that would suggest the foreign company is currently doing business. The director further emphasized that the beneficiary stated that "business in the Dominican Republic is slow" and "evidence of its financial stability is not available." The director concluded that such statement "implies that the business is not in operation at all," and that "the evidence submitted does not establish that a foreign affiliate exists."

On appeal, the petitioner submits copies of canceled checks dated November 6, 2007 and July 29, 2008, issued by the Banco BHD account of "[REDACTED]." The beneficiary states in a letter dated November 13, 2008 that he made the initial wire transfer to the U.S. company from the same account, and notes that the same account number appears on the Banco BHD checks and on the petitioner's bank statements.

The beneficiary also provides the address for the foreign entity and states: "you can verify the address of the company and inspect personally if it is working or not."

Upon review, the petitioner has not established that the foreign entity, Estudio Digital Cepeda C por A., is a qualifying organization doing business abroad.

While the AAO does not concur with the director's conclusion that the foreign entity "does not exist," the evidence of record falls significantly short of establishing that the foreign company is and will continue to be doing business in a regular, systematic and continuous manner. The foreign entity's receipt for payment of taxes in 2008 suggests that the company exists as a legal entity. However, the record does not contain documentation of

its ongoing business activities. This lack of evidence, considered in light of the beneficiary's statements that he is investing his time and resources in the U.S. company and that it is "not possible to evidence the financial ability of the company in Santo Domingo," raises questions regarding the viability of the foreign entity as a going concern.

If the foreign entity is in fact doing business as defined in the regulations, it is reasonable to expect that the petitioner would have submitted the foreign company's bank statements for the months of June and July 2008, as specifically requested by the director. Other persuasive evidence would have included documentation such as invoices issued to clients, a copy of a valid lease agreement, evidence of payments made to employees, advertising materials, and copies of annual reports. The petitioner suggests that the foreign entity's employees are currently performing work for U.S. customers, yet offers no evidence in support of this claim, such as correspondence between the two companies referencing the work and the transfer of the completed projects. 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The evidence submitted on appeal, which consists of two cancelled checks issued nine months apart, is not sufficient to overcome the director's determination that the foreign entity is not doing business as required by the regulations.

In addition, although not addressed by the director, the AAO emphasizes that the record as presently constituted contains no documentary evidence of the ownership of the U.S. company. The petitioner indicates that the beneficiary is the sole owner of the company, but has not submitted copies of its stock certificates, stock transfer ledger or any other evidence in support of this claim. 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).

As general evidence of a petitioner's claimed qualifying relationship, 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, corporate bylaws, 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, USCIS is unable to determine the elements of ownership and control.

Therefore, even if the AAO were persuaded that the foreign entity is doing business, the record contains no persuasive evidence to corroborate the claimed affiliate relationship between the foreign and U.S. entities. For this reason, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity for one year within the three years preceding the filing of the petition. 8 C.F.R. § 214.2(l)(3)(v).

The director concluded that the beneficiary could not meet this requirement because the petitioner failed to establish that the foreign entity exists. As noted above, the AAO does not concur with the director's conclusion that the foreign entity simply does not exist. However, the AAO will nevertheless affirm the director's ultimate conclusion that the evidence of record does not establish that the beneficiary has been employed by the foreign 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.

The petitioner, in an attachment to Form I-129, described the beneficiary's position with the foreign entity as follows:

He determined and formulated policies and provided the overall direction of company within the guidelines set up by a board of directors. Planned [sic], directed or coordinated operational activities at the highest level of management with the help of subordinate executives and staff managers.

In addition, he directed and coordinated activities of production, pricing, services. Managed staff, prepared work schedules and assigned specific duties. Reviewed financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and determined areas needing cost reduction and program improvement. Established and implemented departmental policies, goals, objectives and procedures. He determined staffing requirements, and interviewed, hired and trained new employees, or oversaw those personnel processes. He monitored businesses and agencies to ensure that they efficiently and effectively provided the needed services while staying within budgetary limits. Oversaw activities directly related to providing services. Directed and coordinated organization's financial and budget activities to fund operations, maximize investments, and increase efficiency. Determined services to be rendered, prices and credit terms, based on forecasts of customer demand.

The record contains no further description of the beneficiary's duties, and, although required by the regulations, no evidence of the organizational structure of the foreign entity. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(3).

On appeal, counsel for the petitioner asserts that the beneficiary has been involved with the foreign entity for more than three years and has four employees working in the Dominican Republic.

Upon review, the petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26,

1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of “manager” or “executive”). While the AAO does not doubt that the beneficiary exercised discretion over the foreign entity's day-to-day operations and had the appropriate level of authority as its majority owner, the petitioner has failed to show that his duties have been primarily in a managerial or executive capacity.

The petitioner has failed to provide a description of the beneficiary's duties sufficient to establish that he was employed by the foreign entity in a primarily managerial or executive capacity. The petitioner's description of the beneficiary's duties is vague and nonspecific, and fails to offer any insight into what specific tasks the beneficiary perform on a day-to-day basis to qualify as a manager or executive. 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 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).

When examining the managerial or executive capacity of a beneficiary, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. As noted above, the petitioner did not provide the required evidence of the organizational structure of the foreign entity. The beneficiary's job description refers to "subordinate executives and staff managers," and counsel states on appeal that the foreign entity has four employees; however, there is no documentary evidence to corroborate these claims. 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 Obaighena*, 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).

In light of the excessively vague position description submitted for the beneficiary and the lack of evidence regarding the staffing structure and business activities of the foreign entity, the petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the record does not contain evidence that the petitioner has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(1)(3)(v)(A). The record contains no lease agreement, nor does it contain evidence of the petitioner's anticipated space requirements for the operation of its business. Rather, counsel stated in a letter dated June 20, 2008 that "since most of the production of commercials are conducted in different locations, the Petitioner has rented an office/apart [*sic*] for administration purposes to reduce initial operational cost." As noted above, 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 Obaighena*, 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). For this additional reason, the petition cannot be approved.

Finally, the evidence of record is insufficient to establish that the intended U.S. operation, within one year of approval of the petition, would support a managerial or executive position. The regulations require that the petitioner submit evidence of the proposed nature of the office, describing the scope of the entity, its organizational structure and its financial goals; evidence of 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 evidence of the organizational structure of the foreign entity. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). The record as presently constituted contains none of this required evidence. The petitioner indicates the type of business it will operate, but it has not submitted a business plan or otherwise provided any information regarding the intended scope or organizational structure of the company or its financial objectives. The position description submitted for the beneficiary's U.S. proposed position is identical to that submitted for his foreign position and is deficient for the reasons stated above. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plan and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner has not met the evidentiary requirements for a new office petition. For these additional reasons, 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 for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. v. United States*, 229 F. Supp. 2d at 1043.

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.