

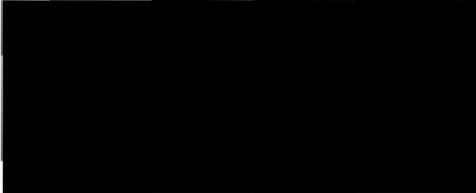


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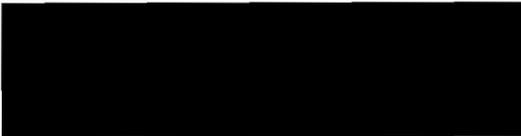
NOV 25 2009

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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 or reopen, 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 visa petition and the matter is now and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in athletics. The petitioner operates a tennis club and seeks to employ the beneficiary as a head tennis pro/facility manager for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has achieved sustained national or international acclaim as a tennis player or coach with extraordinary ability in athletics. The director observed that the evidence submitted does not demonstrate that the beneficiary has risen to the very top of his field, as required by the regulatory definition of "extraordinary ability."

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director's decision is in error as the beneficiary is a "Certified Professional Tennis Coach" and not an amateur in the field as suggested by the director. Counsel argues that such certification "is very rare," and asserts that there is no requirement that the beneficiary be a coach of nationally ranked players. In support of the appeal, the petitioner submits documentation related to the beneficiary's membership in the Professional Tennis Registry (PTR) and a copy of his PTR Professional certification and test results.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:

- (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - (2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized or international experts in their disciplines or fields;
 - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - (4) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
 - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
 - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence;
 - (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The regulation at 8 C.F.R. § 214.2(o)(2)(ii) requires the petitioner to submit copies of any written contracts between the petitioner and the beneficiary; an explanation of the nature of the events or activities, along with an itinerary; and a consultation with an appropriate peer group or labor union.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

It is noted that the decision of U.S. Citizenship and Immigration Services (USCIS) in a given case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien satisfies the criteria and is eligible for O-1 classification. The evidence submitted must establish that the beneficiary qualifies as an alien of extraordinary ability. *See* 59 Fed. Reg. 41818-01, 41820.

The record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, an appeal and brief, and additional evidence supporting the appeal. The beneficiary in this case is a native and citizen of Australia who last entered the United States on January 22, 2004 as an F-1 nonimmigrant student. According to the beneficiary's resume, he was a competitive tennis player in Australia from 1992 until 2003, and a member of the Barton College men's tennis team in the United States from 2003 until 2007. The beneficiary acted as assistant coach of his college team for three seasons, and he coached for two other organizations in 2007. He graduated from Barton College with a Bachelor of Science degree in Fitness Management in May 2007.

The petitioner seeks to classify the beneficiary as an alien with extraordinary ability in athletics so that he may serve as head tennis pro/facility manager. The petitioner indicates that the beneficiary's responsibilities will include providing private lessons, organizing clinics, performing minor racquet repairs, working in the petitioner's Pro Shop, and coaching during summer camp programs.

In denying the petition, the director found that petitioner failed to establish that the beneficiary has reached the very top of his sport or that he has won any major prizes or recognition in the field of tennis or tennis coaching. The director observed that, as a recent college graduate, the beneficiary is just beginning a career in tennis coaching, while the O-1 classification is available only to those who have already become recognized as among the finest in the field.

On appeal, counsel for the petitioner asserts that the beneficiary is not a mere amateur coach, but has been certified as a professional by the Professional Tennis Registry. Counsel disagrees with the director's observation that an O-1 tennis athlete or coach would normally be ranked nationally or be personally involved with coaching players of such caliber, noting that "there is no place under statutory law of the O-1 Visa category stating that the talent of the players determines the professionalism of the coach." Counsel contends that the beneficiary's attainment of the professional coaching certification "classifies him as an O-1 Visa Talent." In support of the appeal, the petitioner submits:

- A copy of the beneficiary's PTR Certified Professional card.
- A copy of the beneficiary's PTR Professional Certification, indicating that he is a member in good standing from October 2008 until August 2009.
- A letter from PTR dated December 2, 2008, addressed to the beneficiary, congratulating him on completion of the PTR certification.
- The beneficiary's PTR certification testing results for a test completed in November 2008, which included a written, skills, teaching, error detection and drill test components.
- A certificate of attendance indicating that the beneficiary attended the PTR International Certification Workshop on October 18, 2008.

The AAO notes that the instant petition was filed on April 24, 2008, approximately six months before the beneficiary sought and received certification from PTR as a tennis professional. 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). Accordingly, the AAO will not consider the new evidence submitted on appeal, and the AAO's review of the record will be limited to the entirety of the evidence relating to the beneficiary's career achievements as a tennis player and a tennis coach prior to April 24, 2008.

Upon review and for the reasons discussed herein, the petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary ability in athletics.

As a preliminary matter, the AAO notes that the petitioner has submitted evidence related to the beneficiary's achievements as both a competitive tennis player, and as a tennis coach.

While a competitive tennis player and a tennis coach share knowledge of tennis, the two rely on different sets of basic skills. Thus, competitive tennis and tennis coaching/instruction are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918.

The statute requires that the beneficiary seek entry into the United States "to continue work in the area of extraordinary ability." Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) (2007). U.S. Citizenship and Immigration Services (USCIS) will not assume that an alien with extraordinary ability as an athlete has the same level of expertise as a coach or instructor of his or her sport. However, given the nexus between athletic competition and coaching or sports instruction, in a case where an alien has clearly achieved

national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national or international level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that it can be concluded that coaching is within the beneficiary's area of expertise. Specifically, in such a case, USCIS will consider the level at which the alien acts as a coach. An instructor who has an established successful history of instructing players who compete regularly at the national level has a credible claim; an instructor of novices does not. Accordingly, we will address the evidence regarding the beneficiary's accomplishments as both a tennis player and coach.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The petitioner does not claim that the beneficiary has received a major, internationally recognized award comparable to the Nobel prize, or that he has trained students who have received major, internationally recognized awards or prizes.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

In order to meet criterion number one, the petitioner must submit documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

The beneficiary's resume does not indicate that he has received any nationally or internationally recognized awards, or that he has coached any students competing at the national level, and there is no documentary evidence of receipt of such awards. The beneficiary indicates that, while residing in Australia, he "competed in singles and doubles tournament championships," but he does not indicate that he won any championships or mention any specific tournaments or the significance of his results. He further states that he was "selected to participate in the State training squad for 4 years," and played tennis at the highest club level. While the petitioner submitted several letters from persons familiar with the beneficiary's tennis career in Australia, none of the persons providing testimonials indicated that the beneficiary received any major or international awards. For example, [REDACTED] a retired professional tennis coach, found the beneficiary to be "well mannered, well dressed" and responsible and stated that he played tennis for the South Parkholme Tennis Club where he was "an excellent team member." [REDACTED] club coach of the Modbury Tennis Club in Greenwith, Australia, indicates that the beneficiary "played top grade club tennis competition in both juniors and seniors in Adelaide, being a strong representative for the North East Tennis Association," and achieved "state squad selection" with "strong tournament successes."

With respect to the beneficiary's United States tennis career, the beneficiary indicates that he has "competed in singles tournament championships" sponsored by the United States Tennis Association. Again, there is no documentary evidence of his results, and the beneficiary does not indicate that he has won any championships that would be equivalent to a major nationally or internationally recognized award. He indicates that his best performance was defeating a player ranked number 49 in the nation in the "ITA Tournament." The beneficiary

states that he was the 2005-2006 Doubles Final Consolation Winner at the ITA Tournament and "made Carolina and Virginia Athletic Conference (CVAC) Final in 2006 and 2007."

The beneficiary's former coach at Barton College, [REDACTED], now head tennis coach, at West Virginia University, indicates that the beneficiary's accomplishments included being Team Captain, ITA National and Regional Rankings, and CVAC Conference team member; however, the record contains no corroborating evidence to establish that the beneficiary achieved a national ranking in the sport. Based on the evidence submitted, it is reasonable to conclude that the beneficiary was a very successful competitor at the collegiate level, but not the recipient of any nationally or internationally recognized awards.

With respect to the beneficiary's experience as a tennis coach, the beneficiary's resume indicates that he was an assistant coach at Barton College during the 2004, 2006-2007, and 2007-2008 seasons. He also indicates that he served as an academy pro at the John Newcomb Tennis Academy during the summer of 2007, and completed an internship as head tennis coach at Greenfield School in the spring of 2007. The beneficiary notes that the school produced "No.1 Singles Conference Champion and No. 1 Singles State Runner-up." At most, it appears that the beneficiary's students have been successful at the state or regional level.

While the testimonial letters submitted mention the beneficiary's coaching experience, they are devoid of any indication that the beneficiary has received nationally or internationally recognized awards for coaching or that he has coached students who have received such awards, or who compete at the national level. [REDACTED] mentions the beneficiary's "growing coaching career," notes that he is "a truly special coach and person," and states that the beneficiary's "unique ability to combine caring with motivation has made him a terrific tennis coach and superb role model for the youth and adults he works with." In a letter dated July 7, 2008, [REDACTED] former head tennis coach at Barton College, indicates that the beneficiary was his assistant coach during the spring 2007 and fall 2008 semesters. He recommends the beneficiary as a tennis teaching professional and indicates that "he is top notch as an instructor," with "the leadership skills needed for being a 'teacher of the game' which will help him in the future as his career continues to grow."

Finally, [REDACTED] who states that he is a "local tennis player, former Wilson Tennis Foundation Director and USTA member," states that he can attest to the beneficiary's "extraordinary abilities in athletics by observing his level of play as well as knowledge of the game of tennis when training top level competitive tennis players." He describes the beneficiary as "professionally sound as a tennis athlete and instructor." The record does not contain corroborating evidence regarding the beneficiary's coaching relationship with "top level competitive tennis players."

Overall, the evidence is insufficient to establish that the beneficiary's competitive tennis career at the junior or senior level in Australia, or at the collegiate level in the United States, resulted in his receipt of nationally or internationally recognized prizes or awards for tennis excellence. The record also contains no evidence that the beneficiary has instructed or coached players who have won national or international tournaments or other nationally or internationally recognized prizes or awards for tennis excellence. Accordingly, the beneficiary does not meet this criterion.

In order to establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), the

petitioner must document the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner did not submit any evidence to satisfy this criterion prior to the filing of the petition. As noted above, while it is acknowledged that the beneficiary has now been certified as a tennis professional by the Professional Tennis Registry, this certification was achieved several months after the petition was filed, and the AAO will not consider whether this evidence is sufficient to satisfy the second criterion.

To meet the third criterion, the petitioner must submit published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

The petitioner submitted photocopies of several articles that mention the beneficiary, although none of the submitted evidence includes the title, date and author of such published material. For this reason, the evidence is of limited probative value. All of the submitted articles mention the beneficiary's tournament results as a member of the Barton College men's team, however, the articles are not specifically about the beneficiary. The record does not establish that any of these unidentified publications could be classified as a professional publication, major trade publication or major media. Moreover, the criterion requires evidence that the beneficiary has *achieved national or international recognition* as evidenced by the published material. None of these materials indicate that the beneficiary has achieved national or international recognition as a tennis player or as a tennis instructor.

Similarly, the petitioner did not provide any published materials referencing the beneficiary's work as a tennis coach or instructor, or any published materials relating to tennis players who have been coached by the beneficiary. Accordingly, the petitioner has not satisfied this third criterion.

To meet the fourth criterion, the petitioner must submit evidence of the beneficiary's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4). The petitioner has not submitted evidence to establish that the beneficiary meets this criterion.

The fifth criterion requires the petitioner to submit evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field.

As noted above, the petitioner has submitted several letters from persons who are familiar with the beneficiary's work and accomplishments as a competitive tennis player and tennis coach. These individuals all praise the beneficiary's accomplishments and skills as a tennis player and abilities as a coach, but none of the testimonial letters indicate that the beneficiary has made original contributions of major significance to his field.

Furthermore, when considering a petitioner's claim that the beneficiary meets this criterion, USCIS cannot ignore the wording of the regulation. Whereas other regulatory passages refer to "extraordinary ability in the

fields of science, education, business, or athletics," 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) refers to "the alien's original scientific, scholarly, or business-related contributions." The omission of "athletic contributions" is a realistic reflection of the nature of athletic competition. Winning a competition is not an "original contribution"; it is expected that any given athletic event will have a winning athlete or team that outscores or outperforms rival competitors. Similarly, possessing a high level of the skills needed to succeed in a particular sport is generally a matter of degree, rather than an "original contribution" to the sport. Therefore, attestations regarding the beneficiary's talent, skills and success will not satisfy 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) as evidence of the beneficiary's original contributions. Competitive success is already taken into account by 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), pertaining to prizes and awards, and 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) instructs USCIS to take into account any major media attention that an athlete may earn by standing out from others in a particular sport.

The AAO would also consider any recognition the beneficiary may have received from experts in his field for an "original" contribution to the sport of tennis as an athlete or instructor. However, none of the persons who provided recommendation letters identified the beneficiary's original contribution.

Similarly, the petitioner has not attempted to establish that the beneficiary has authored scholarly articles in the field in professional or major trade publications or other major media, or otherwise claimed that the beneficiary meets the sixth criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).

In order to meet the seventh criterion, the petitioner must establish that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. As noted above, the beneficiary's coaching experience includes serving as an assistant tennis coach at Barton College, serving as "Academy Pro" at the John Newcomb Tennis Academy, and completing an internship as head tennis coach at Greenfield School. The evidence of record indicates that the Barton College tennis team was ranked as high as 23rd in 2005, although it is not clear what ranking the team achieved while the beneficiary served as its assistant coach. While it appears that Barton College may have a national reputation in the sport of tennis, the record does not establish that the beneficiary's employment in an assistant coaching role rises to the level of a critical or essential capacity with the institution. Similarly, the petitioner has not established that the beneficiary's short-term employment with the Greenfield School or John Newcomb Tennis Academy meets this criterion.

The eighth and final criterion requires the petitioner to establish that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).

The record does not document the beneficiary's previous or current salary or remuneration, nor has the petitioner submitted an employment contract agreement for the offered position. The petitioner stated at the time of filing that the beneficiary would receive an annual salary of \$30,000 plus benefits and commission, "with potential to earn much more." The petitioner specified that the beneficiary will receive a base salary of \$1,200 per month, will offer at least 15 private lessons per week at a rate of \$30.00 per hour, will receive another \$10,000 to \$20,000 annually by organizing clinics, and will earn additional money by stringing racquets and from commissions for sales in the petitioner's pro shop.

Based on the evidence in the record, it cannot be concluded that the beneficiary's salary as a tennis pro and facility manager is substantially higher than that paid to others working in similar roles for private health and tennis clubs in the petitioner's geographical region, or other similarly-employed tennis instructors working for the petitioner's facilities. The petitioner has not submitted any evidence that would allow the AAO to determine whether the beneficiary's salary is comparatively high, such as statistical comparisons of salaries in the field of endeavor.

Overall, the record does not establish that the beneficiary has extraordinary ability in athletics, which has been demonstrated by sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act. The petitioner submitted no evidence that the beneficiary has received a major, internationally recognized award and the documentation submitted does not meet three of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act and the petition must be denied.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements in the sport of tennis have not yet risen to this level. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the evidence of record does not contain the written consultation required pursuant to 8 C.F.R. § 214.2(o)(2)(ii). The regulation at 8 C.F.R. 214.2(o)(5)(ii) requires the petitioner to provide a consultation with a peer group in the area of the alien's ability, or a person or persons with expertise in the area of the beneficiary's ability. The advisory opinion is required to describe the alien's ability and achievements, describe the nature of the duties to perform, and state whether the position requires the services of an alien of extraordinary ability. A consulting organization may also submit a letter of no objection in lieu of the above if it has no objection to the approval of the petition.

The petitioner indicated on Form I-129 that it was attaching the required written consultation, but no relevant documentation was included in the initial filing. Accordingly, on May 28, 2008, the director issued an RFE in which he instructed the petitioner to provide the consultation. While the petitioner submitted several testimonial letters in response to the RFE, none of the letters met the requirements for a written advisory opinion from the appropriate consulting entity, pursuant to 8 C.F.R. § 214.2(o)(2)(ii)(D). 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). 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 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. 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 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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.