

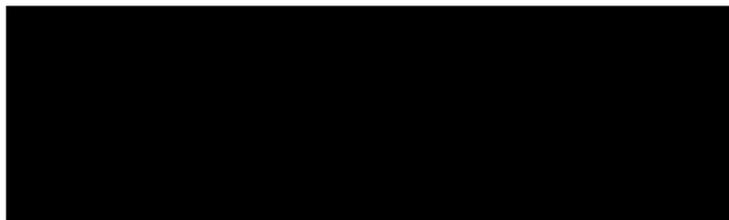
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



D9

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

NOV 16 2010

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

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner states that it is a theatrical agency, producer and artist manager. It seeks to classify the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), as a circus performer. The beneficiary was previously granted P-1 status and the petitioner seeks to extend his status for one additional year.

The director denied the petition, citing two independent and alternative grounds for the decision. The director determined that the petitioner: (1) failed to provide a description of the nature of the beneficiary's proposed events and a complete itinerary of performances; and (2) failed to establish that the beneficiary is a member of an internationally recognized entertainment group that has performed together for more than one year, or that the beneficiary will be performing in a circus that has been recognized nationally as outstanding for a sustained and substantial period of time.

On appeal, the petitioner submits a brief, a favorable consultation from the American Guild of Musical Artists, and additional evidence. Upon review and for the reasons discussed herein, the petitioner has not overcome the grounds for denial of the petition.

## **I. The Law**

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(B)(i) of the Act, 8 U.S.C. § 1184(c)(4)(B)(i), provides that section 101(a)(15)(P)(i)(b) of the Act applies to an alien who:

- (I) performs with or is an integral and essential part of the performance of an entertainment group that has, except as provided in clause (ii), been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time,
- (II) in the case of a performer or entertainer, except as provided in clause (iii), has had a sustained and substantial relationship with that group (ordinarily for at least one year) and provides functions integral to the performance of the group, and
- (III) seeks to enter the United States temporarily and solely for the purpose of performing as such a performer or entertainer or as an integral and essential part of a performance.

Section 214(c)(4)(B)(iv) of the Act, 8 U.S.C. § 1184(c)(4)(B)(iv), provides:

The subclauses (I) and (II) of clause (i) shall not apply to alien circus personnel who perform as part of a circus or circus group or who constitute an integral and essential part of the

performances of such circus or circus group, but only if such personnel are entering the United States to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time, or as part of such a circus.

The criteria and documentary requirements for members of internationally recognized entertainment groups are set forth at 8 C.F.R. § 214.2(p)(4)(iii)(A) and (B). The regulation at 8 C.F.R. § 214.2(p)(4)(iii)(C) sets forth special provisions for certain entertainment groups, including the following:

- (1) *Alien circus personnel.* The 1-year group membership requirement and the international recognition requirement are not applicable to alien circus personnel who perform as part of a circus or circus group, or who constitute an integral and essential part of the performance of such circus or circus group, provided that the alien or aliens are coming to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

- (A) The evidence specified in the specific section of this part for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written consultation from a labor organization.

Finally, 8 C.F.R. § 214.2(p)(2)(iv)(E) addresses situations in which agents serve as petitioners:

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions:

- (1) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

- (2) A person or company in the business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

The regulation at 8 C.F.R. § 214.2(p)(2)(iv)(A) provides that a petition which requires an alien to work in more than one location (e.g. a tour) must include an itinerary with the dates and locations of the performances.

## II. Discussion

The first issue in this matter is whether the petitioner complied with the requirement to describe the nature of the intended events and to provide a complete itinerary of services and engagements. *See* 8 C.F.R. § 214.2(p)(2)(ii)(C); 8 C.F.R. § 214.2(p)(2)(iv)(A); 8 C.F.R. § 214.2(p)(2)(iv)(E).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 4, 2008. The petitioner stated that the beneficiary will serve as an "entertainer" and "performer." Where asked to indicate the address where the beneficiary will work, the petitioner stated "Various – per circus itineraries." The petitioner indicated that the beneficiary will receive a weekly wage of \$1,575.

In a letter dated December 2, 2008, the petitioner stated that the beneficiary "is a world prominent performer of outstanding achievement and extraordinary ability." The petitioner submitted a copy of its artist management contract with the beneficiary, which has a term of two years commencing on December 6, 2007. Pursuant to the terms of the contract the petitioner has the authority to negotiate and secure employment and contracts for the beneficiary's services in the fields of "motion pictures, legitimate stage, radio broadcasting, television and all other fields of entertainment."

The petitioner also submitted a "standard performer's engagement contract" between the beneficiary and Circus America, Inc. to perform at "Circus America and others as required" in "Los Angeles, California and others as required (t/b/a)" from December 6, 2008 through December 5, 2009, at a rate of \$250 per working day.

The petitioner provided a document titled "Circus America Celebrates 30<sup>th</sup> Anniversary" which provides a list of "Circus America Non-Shrine Productions" dated 2004. A total of 19 circus events are listed for the United States, Canada, Hong Kong and Japan. No specific dates or addresses are provided for any events.

The director issued a request for additional evidence ("RFE") on February 2, 2009. The director requested that

the petitioner submit the following: (1) an explanation of the nature of the events or activities, the beginning and ending dates for the activities, and a copy of any itinerary for the events or activities; and an itinerary with the dates and locations of all performances, if the beneficiary will be providing services in more than one location. The director also requested, among other items, a written consultation from a labor organization.

In response to the director's request, the petitioner submitted a letter dated February 6, 2009, in which it stated: "All evidence now requested which is customarily required for the approval of P-1 visa extensions was already submitted with our Petition, Except the union consultation, which is not required!" The petitioner stated that other P-1 petitions, including a previous petition filed on behalf of the instant beneficiary, have been approved by USCIS based on the same evidence that was submitted with the initial petition. The petitioner submitted copies of approval notices for other P-1 petitions that it has filed.

The director denied the petition on March 5, 2009, noting that the petitioner failed to submit any of the requested additional documentation or an itinerary with specific dates for the beneficiary's proposed events or activities.<sup>1</sup>

On appeal, the petitioner asserts that it submitted with the initial petition two contracts and an itinerary which set forth all terms and conditions of employment as required by the regulations. The petitioner notes that although Circus America will offer the beneficiary engagements, the petitioner also arranges for its performers to appear at "various other entertainment venues" including state fairs, amusement parks, night clubs and casinos.

The petitioner emphasizes that the instant petition is a request for an extension of the beneficiary's existing P-1 status to continue previously-approved employment without change. The petitioner further states that when it submitted its response to the RFE, it received an electronic response from USCIS indicating that USCIS would advise if any additional information was needed. The petitioner notes that no additional request was made before the notice of denial was issued.

The petitioner submits in support of the appeal what it claims is a copy of previously-submitted evidence. This evidence includes a list of 40 dates and cities which was not in fact submitted at the time of filing. The list appears to have taken the place of the above-referenced "itinerary" dated 2004 which lists "non-shrine productions" to be held by Circus America in the United States, Canada, Japan and Hong Kong. On the new list, the dates are listed as "January 20<sup>th</sup> thru 23<sup>rd</sup> – Columbia, South Carolina," "January 26<sup>th</sup> thru 30<sup>th</sup> – Nashville, Tennessee" and so on, through November 20. No descriptive information is provided, no year is provided, and no venues or addresses are listed.

Upon review, the petitioner has not overcome the grounds for denial. The petitioner filed the instant petition as an agent. A person or company in the business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of

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<sup>1</sup> The record shows that the director re-issued the decision on June 30, 2009.

the establishment, venues or locations where the services will be performed. See 8 C.F.R. § 214.2(p)(2)(iv)(E)(2). As noted above, the regulations further provide that if the beneficiary will work in more than one location, the petitioner must include an itinerary with the dates and locations of the performances. 8 C.F.R. § 214.2(p)(2)(iv)(A).

Here, the petitioner has submitted, without explanation, two vague "itineraries" which, in addition to providing completely different information regarding the locations of proposed activities, fall significantly short of meeting the regulatory requirements with respect to the level of detail included in the itinerary. Furthermore, the only itinerary submitted prior to the adjudication of the petition was dated 2004 and clearly did not provide the beneficiary's event schedule for 2009. While the petitioner claims that Circus America will not be the beneficiary's only employer, it has opted not to provide information regarding the identity of the beneficiary's other employers for the requested period of employment. This information is critical as a P-1 circus performer is only eligible for employment with a nationally-recognized circus. The petitioner's indication that he also arranges for his represented artists to perform at nightclubs, casinos and other non-circus events raises questions as to whether all of the beneficiary's performances would be on behalf of a nationally-recognized circus.

Finally, the director specifically advised the petitioner, after reviewing the initial evidence, that a complete itinerary and an explanation of the nature of the proposed events and activities would be required to adjudicate the petition. The petitioner failed to submit a response to this specific inquiry and instead relied on prior P-1 petition approvals, claiming that the information submitted with this petition was previously deemed to be sufficient to warrant approval of a P-1 extension.

The AAO acknowledges the petitioner's claim that it has filed a "multitude" of P-1 visa extensions and regularly submits the same evidence that was provided in support of the instant petition. The AAO finds, however, that it was appropriate for the director to request an itinerary and an explanation of the nature of events or activities in this matter. The regulation at 8 C.F.R. § 214.2(p)(13) provides that supporting documents are not required in support of the extension *unless requested by the director*. The director's request for additional evidence was well within her authority. Based on the petitioner's statements made in the current petition, the AAO finds ample reason to question whether an adequate itinerary was submitted in support of any prior petition filed on the beneficiary's behalf. Furthermore, it is worth emphasizing that each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). If a director requests additional evidence that a petitioner may have submitted in conjunction with a separate nonimmigrant petition filing, the petitioner is, nevertheless, obligated to submit the requested evidence, as the records of separate nonimmigrant proceedings are not combined. If the petitioner would like the director to consider previously submitted materials, the petitioner should submit copies of those documents. USCIS does not consolidate previously filed petitions and does not have access to them at the time of adjudication. See *Hakimuddin v. DHS*, Slip Opinion, 2009 WL 497141 (S.D. Tex. Feb. 26, 2009).

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that

clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the new itinerary to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* In addition, as discussed above, the itinerary submitted on appeal, in addition to its lack of specificity, bears no resemblance to the 2004 "itinerary" submitted at the time of filing. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Based on the foregoing, the petitioner has not overcome the stated grounds for denial and the appeal will be dismissed.

The remaining issue addressed in the director's decision was whether the petitioner established that the beneficiary is a member of an internationally recognized entertainment group that has performed together for more than one year, or that the beneficiary will be performing in a circus that has been recognized nationally as outstanding for a sustained and substantial period of time.

The evidence of record is sufficient to establish that the beneficiary has a contract with a circus, Circus America, and that this circus that has been nationally recognized for a sustained period of time. As the beneficiary is a circus performer, the one-year group membership requirement and the international recognition requirement applicable to other P-1 entertainers are inapplicable as it applies to his employment with Circus America. *See* 8 C.F.R. § 214.2(p)(4)(iii)(C).

Pursuant to the terms of the petitioner's artist management contract with the beneficiary, however, it appears that the beneficiary may also secure employment, through the petitioner as agent, "in the fields of motion pictures, legitimate stage, radio broadcasting, television and all other fields of entertainment." The petitioner indicates that the performers it manages "frequently appear at various other entertainment venues, including State Fairs, Amusement Parks, Night Clubs, Casinos, etc." As discussed above, the petitioner has not provided a complete itinerary definitively outlining the beneficiary's proposed activities for the period of time requested. Frequent appearances at non-circus venues and outside of his contract with Circus America or other nationally-recognized circuses would not fall within the scope of an approved P-1 petition for a circus performer. Given the paucity of evidence in the record, it cannot be determined that the beneficiary would solely be a circus performer with a nationally-recognized circus. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the remaining issue in this case is whether the petitioner has provided a written consultation from an appropriate labor organization. Section 214(c)(4)(D) of the Act provides that P-1 petitions shall be approved only after consultation in accordance with section 214(c)(6)(A)(iii) of the Act,

which requires the petitioner to submit an advisory opinion from a labor organization with expertise in the specific field of athletics or entertainment.

Title 8, Code of Federal Regulations § 214.2(p)(2)(ii)(D) also provides that all P nonimmigrant petitions must be accompanied by a written consultation from a labor organization.

The regulation at 8 C.F.R. § 214.2(p)(7) details the requirements for the consultation:

(i) *General*

- (A) Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved.
- (B) . . . evidence of consultation shall be a written advisory opinion from an appropriate labor organization.
- (C) . . . the petitioner shall obtain a written advisory opinion from an appropriate labor organization. The advisory opinion shall be submitted along with the petition when the petition is filed. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which support the conclusion reached in the opinion. Advisory opinions must be submitted in writing and signed by an authorized official of the organization.
- (D) . . . written evidence of consultation shall be included in the record of every approved petition. Consultations are advisory and are not binding on the Service.

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- (F) In those cases where it is established by the petitioner that an appropriate labor organization does not exist, the Service shall render a decision on the evidence of record.

\* \* \*

- (iii) *Consultation requirements for P-1 circus personnel.* The advisory opinion provided by the labor organization should comment on whether the circus which will employ the alien has national recognition as well as any other aspect of the beneficiary's or beneficiaries' qualifications which the labor organization deems appropriate. If the advisory opinion is not favorable to the petitioner, it must set forth a specific statement of facts which support the conclusion reached in the opinion. In lieu of the above, a labor organization may submit a letter of no objection if it has no objection

to the approval of the petition.

As noted above, the director specifically requested in the RFE issued on February 2, 2009, that the petitioner submit a consultation from a labor organization. In response, the petitioner stated:

NO labor union has had any ANY collective bargainin[g] agreement with ANY circus – and no labor union has represented ANY circus performers in America for MORE THAN TWENTY YEARS!

(Emphasis in original.)

The petitioner emphasized that the regulation at 8 C.F.R. § 214.2(p)(7)(i)(F) states that in those cases where it is established by the petitioner that an appropriate labor organization does not exist, USCIS shall render a decision on the evidence of record.

The petitioner also submitted an excerpt from Matthew Bender & Co., Inc.'s *Immigration and Nationality Law*, published in June 1995, with the following section highlighted:

The appropriate labor organization for circus-related consultations is the American Guild of Variety Artists. This is a somewhat controversial issue inasmuch as AGVA has not represented any circus personnel as collective bargaining agent in a decade, so there is little reason to suppose that AGVA has expertise in the field.

The director did not comment on this issue in the notice of denial. On appeal, the petitioner acknowledges that the consultation letter was requested in the RFE, and submits a letter dated June 8, 2009 from the American Guild of Musical Artists ("AGMA"), stating that this organization has no objection to the petition being granted.

Upon review, the petitioner has not satisfied the regulatory requirement to provide a written consultation from an appropriate labor organization, nor, in the alternative, has it met its burden to establish that no appropriate labor organization exists.

First, the AAO will address the petitioner's submission of the written consultation for the first time on appeal. Generally, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). However, here, the petitioner clearly sought to establish that no appropriate labor organization exists and to seek a waiver of the consultation requirement, pursuant to 8 C.F.R. § 214.2(p)(7)(i)(F). It appears that the director may have inappropriately granted that waiver.

Next, we turn to the question of whether the AGMA represents an "appropriate labor organization." Section 214(c)(6)(A)(iii) of the Act states that a petitioner filing a P-1 petition "shall submit with the petition an advisory opinion from a labor organization with expertise in the specific field of athletics or entertainment

involved." Thus, although the statute does not define "appropriate labor organization," the AAO considers an appropriate labor organization to be one with expertise in the specific field, in this case, circus performance.

The AGMA is affiliated with the AFL-CIO and is a branch of the Associated Actors and Artists of America. It is a labor organization representing opera performers, dance performers such as ballet artists, and classical concert musicians. *See* <http://www.musicalartists.org>. The AAO cannot conclude that this organization has expertise in the specific field of circus entertainment, and therefore, must find that the AGMA consultation is not from an "appropriate labor organization." The beneficiary appears to have a motorcycle stunt act and is not an opera performer, dancer or musician.

The AAO notes, however, that there is an AFL-CIO affiliate, also a branch of the Associated Actors and Artists of America, which does have jurisdiction over circus performers – the American Guild of Variety Artists. The AGVA's website states:

The American Guild of Variety Artists (AGVA) is an AFL-CIO-affiliated labor union founded in 1939 to represent performing artists and stage managers for live performances in the variety field. The variety area of performance includes singers & dancers in touring shows and in theatrical revues (non-book shows...book revues may be under Actors' Equity jurisdiction), theme park performers, skaters, circus performers, comedians & stand-up comics, cabaret & club artists, lecturers/poets/monologists/spokespersons, and variety performers working at private parties & special events.<sup>2</sup>

The AGVA website also indicates that, for purposes of providing union consultations for nonimmigrant workers, "AGVA's jurisdiction covers musical and variety performers in live performances in nonbook revues, comedians, skaters, circus acts, certain lecture and speaking artists, certain cabaret and night club performers, and sports-people appearing in non-competitive entertainment shows."<sup>3</sup>

Clearly, AGVA does provide labor consultations in support of P-1 nonimmigrant petitions for circus personnel. However, counsel claims that AGVA is not an "appropriate labor organization" because it does not have a collective bargaining agreement with any circus performers in the United States and has not had one for many years.

There is nothing in the statute or regulations, however, to suggest that Congress intended an "appropriate labor organization" to be one which has a collective bargaining relationship in place with workers in the petitioner's industry. As noted above, we interpret an "appropriate labor organization" to be one "with specific expertise in the specific field of athletics or entertainment involved." Section 214(c)(6)(A)(iii) of the Act.

Section 214(c)(6)(B) of the Act states that "if there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being

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<sup>2</sup> *See* <http://www.agvausa.com/about.html>

<sup>3</sup> *See* <http://www.agvausa.com/immigration.html>

sought, that representative shall be the appropriate labor organization." (Emphasis added). For those employers whose employees do not have a collective bargaining relationship with a labor union, a consultation must be sought with a labor organization "with specific expertise" in the petitioner's field.

Based on the foregoing, the petitioner has not met its burden to establish that no labor organization exists having expertise in the circus industry, and thus USCIS may not waive this requirement. *See* section 214(c)(6)(C) of the Act; *see also* 8 C.F.R. § 214.2(p)(7)(i)(F). For this additional reason, the petition cannot be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

### III. Conclusion

In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). For example, if USCIS determines that there was material error, changed circumstances, or new material information that adversely impacts eligibility, USCIS may question the prior approval and decline to give the decision any deference. The prior approvals do not preclude USCIS from denying an extension of the original visa petition based on a reassessment of the beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. 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.