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FILE: EAC 08 148 52255 Office: VERMONT SERVICE CENTER Date:

NOV 19 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:

SELF-REPRESENTED

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 before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this 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 the arts. The petitioner, which is self-described as a high-end consumer electronics retailer, seeks to hire the beneficiary as its Audio and Video Equipment Manager for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary satisfied the standards for nonimmigrant classification as an alien with extraordinary ability in the arts. The director determined that the record lacked evidence that the beneficiary satisfied any of the regulatory criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv), and noted that the petitioner failed to submit much of the required evidence, despite the director's issuance of a request for evidence on November 19, 2008.

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 submits additional evidence and indicates that it was unable to obtain such evidence in the timeframe allowed for the RFE response. The petitioner indicates that the newly submitted documents demonstrate that the beneficiary "has extraordinary abilities in the motion picture or television industry." The petitioner also indicates that it has increased the proffered salary for the proposed position from \$25,418 to \$45,000.

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, or, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, and 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 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 regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides the following pertinent definitions:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinary encountered to the extent that the person is recognized as outstanding, notable or leading in the motion picture or television field.

As a preliminary matter, the AAO will address whether the director properly applied the criteria for an O-1 alien with extraordinary ability in the arts, as opposed to the criteria applicable to aliens with extraordinary achievement in the motion picture and television industry. It is noted that the petitioner did not submit an O classification supplement with its Form I-129, on which it would have been required to clearly indicate which O-1 classification was sought. However, the petitioner did indicate in its initial letter that it was filing for the beneficiary as "a temporary worker of extraordinary achievement in the motion picture or television industry."

While the beneficiary has been employed in the television production industry during the four to five years preceding the filing of the petition, the petitioner also highlights his relevant experience with a prior employer not in the industry, and the petitioner itself is a retailer of electronics and audio and video equipment with no documented involvement in the television or motion production field. Therefore, the AAO concurs with the director's classification of the beneficiary in the more general "arts" field as a lighting and/or sound designer.

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

Evidentiary criteria for an O-1 alien of extraordinary ability in the arts. To qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

- (A) Evidence that the alien has been nominated for, or the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or
- (B) At least three of the following forms of documentation:
 - (1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;
 - (2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
 - (3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished

reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

- (4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
 - (5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or
 - (6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or
- (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. Here, the petitioner indicates that the beneficiary is qualified for O-1 classification, but it does not specify how the beneficiary meets the evidentiary criteria.

In addition, the regulation at 8 C.F.R. 214.2(o)(2)(ii) provides that the petitioner must also 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 written advisory opinion(s) from the appropriate consulting entity or entities.

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 additional evidence submitted in support of the appeal. The beneficiary in this case is a native and citizen of Venezuela who last entered the United States in May 2004 in O-2 status. The beneficiary indicates in his resume that he worked as an electrical technician and stage designer for a furniture manufacturer and wholesaler in Venezuela from 1998 to 2004, and as an audio/video technician and set designer for a Miami-based television production company from 2004 until 2008. The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as an audio and video equipment manager. The petitioner indicates that the beneficiary will be responsible for "setting up audio and video equipment including microphones, sound speakers, video screens, projectors, video monitors, recording equipment, connecting wires and cables, sound and mixing boards and related electronic equipment strategically in stores and warehouses." The petitioner also indicated that the beneficiary would be responsible to set up and operate equipment rented to businesses or individuals for concerts, sports events, meetings, conventions or news conferences.

In denying the petition, the director found that the petitioner had failed to satisfy any of the eligibility requirements set forth at 8 C.F.R. §§ 214.2(o)(3)(iv)(A) or (B). The director noted that "there is no evidence on record that the beneficiary has received any kind of recognition through advertisements, publications, newspapers, magazines," or through testimonials or awards. The petitioner further noted that there was no evidence that the beneficiary would command a high salary.

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 the arts.

On appeal, the petitioner asserts that it did not have sufficient time to gather the required evidence prior to the deadline for responding to the director's request for evidence. The petitioner now submits additional documentary evidence in support of the appeal. The AAO notes that the director specifically referenced the evidentiary criteria for the requested classification in the RFE and requested evidence to establish that the beneficiary meets at least three of the six criteria set forth at 8 C.F.R. 214.2(o)(3)(iv)(B). The petitioner was given six weeks to prepare its response. The petitioner's response to this request included a letter from the petitioner and a letter from the beneficiary's prior employer confirming his job title, dates of employment and assignments. The petitioner now seeks to submit additional evidence in support of the appeal.

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 submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not consider the sufficiency of the evidence submitted on appeal.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or received a significant national or international award or prize in his or her field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. Here, the petitioner has not submitted evidence that the beneficiary has been nominated for or received a significant national or international award or prize comparable to an Academy, Emmy or Grammy Award.

In order to meet criterion number one, the petitioner must submit evidence that the beneficiary has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts or endorsements. 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

The evidence of record shows that from 2004 until 2008, the beneficiary worked in the position of "Set Designer Assistant" for a Miami-based company, F. V. Productions, LLC. This employer confirms that the beneficiary worked on five different *telenovelas* (soap operas), including: "[REDACTED]"; and "[REDACTED]". The petitioner submitted lists of production crew members for each programs which indicate that the beneficiary served as an *asistente iluminacion* or lighting assistant for "[REDACTED]"; and as a "*tramoya*", which appears to be a stagehand or set design position, for the other programs.

The petitioner has not submitted any evidence, such as critical reviews, advertisements, publicity releases or contracts indicating that these *telenovelas* have a distinguished reputation, nor can it be determined that the beneficiary's role as a set design or lighting assistant could be considered a leading role in the production crew for such programs. The beneficiary's prior employer, [REDACTED], is described in the beneficiary's resume as a "furniture manufacturer and wholesaler." There is no evidence to establish that this company enjoys a distinguished reputation in the beneficiary's area of expertise.

Prior to the denial of the petition, the petitioner submitted a single testimonial letter from [REDACTED] who appears to have been the producer of several of the soap operas on which the beneficiary worked. She confirms that the beneficiary "worked in the design and construction of many sets for various TV programs

and Soup [*sic*] Operas for the U.S. Hispanic Market." She states that the beneficiary was "on time, courteous and professional," but does not indicate that he was a leading participant in the production crew.

Finally, even if the AAO were to consider the evidence submitted on appeal, the petitioner has not submitted evidence that meets this criterion. The petitioner submits a letter from [REDACTED] the set constructor and scenography coordinator for the above-referenced television programs, who states that the beneficiary worked under his supervision, and notes that the beneficiary was "a very important employee for the success of each TV program." However, [REDACTED] does not explain how the beneficiary served a lead role in the production crew as an assistant working under the supervision of more senior staff. Therefore, the petitioner has not established that the beneficiary meets this criterion.

In order to establish that the beneficiary meets the second criterion, the petitioner must submit evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications. 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

Although specifically requested by the director in the RFE issued on November 19, 2008, the petitioner did not submit any critical reviews or published articles about the beneficiary. On appeal, the petitioner submits evidence described as "pictures in recognized local TV magazine with celebrities and producers." The petitioner submits an article from the August 14, 2004 issue of *TV y Novelas*. The article, which is written in Spanish and not accompanied by an English translation, appears to feature [REDACTED], an actor who appeared in the soap opera [REDACTED]. The beneficiary appears in two photographs that appear to have been taken on the set of the show, but there is no caption identifying him. The article is clearly not about the beneficiary and does not establish his national or international recognition for achievements in his field. The petitioner has not established that the beneficiary meets this criterion.

In order to establish that the beneficiary meets the third criterion, the petitioner must submit evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials. 8 C.F.R. § 214.2(o)(3)(iv)(B)(3). Again, the record contains no articles in newspapers, trade journals or publications, and, prior to the denial of the petition, contained the single testimonial letter from [REDACTED]. The record does not contain documentary evidence to establish that the petitioning company or the beneficiary's prior employers enjoy a distinguished reputation, or that the beneficiary has ever held a critical role while employed as a set designer assistant for F.V. Productions, LLC.

To establish that the beneficiary meets the fourth criterion, the petitioner must establish that the beneficiary has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications. 8 C.F.R. § 214.2(o)(3)(iv)(B)(4). The petitioner did not submit any evidence to establish that the beneficiary meets this criterion.

In order to meet the fifth regulatory criterion, the petitioner may submit evidence that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements. 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

As noted above, the petitioner initially submitted one letter from a producer of the television programs on which the beneficiary worked. She merely confirmed that he worked on set design and construction and stated that he was on time, courteous and professional. Such statements do not signify that the beneficiary has received significant recognition for his achievements. On appeal, the petitioner submits additional reference letters from a few actors and others who have worked with the beneficiary in the past. While reference letters *can* satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5), to do so the letters must reflect that the beneficiary is renowned, well-known, or leading in his field. Subjective assessments of talent cannot suffice in this regard. Furthermore, an artist whose reputation is largely confined to former supervisors and close colleagues and business associates has not achieved prominence in the arts. The petitioner has not submitted evidence that the beneficiary has gained any recognition in his field beyond his circle of co-workers and supervisors. The letters do not demonstrate significant recognition outside of that circle consistent with the prominence, distinction and sustained acclaim required of aliens with extraordinary ability in the arts.

Overall, the support letters fail to establish that the beneficiary has received significant recognition for his achievements from recognized experts in his field that demonstrate the requisite distinction and sustained national or international acclaim.

The sixth and final criterion requires the petitioner to submit evidence that the beneficiary has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iv)(B)(6). The petitioner indicated on Form I-129 that the beneficiary will work full-time at an annual salary of \$25,414.

As noted by the director, the petitioner did not establish through the submission of objective evidence that the beneficiary's offered salary meets the criteria of a "high salary" in his field. Such evidence could include statistical comparisons of salaries in the field of endeavor.

On appeal, the petitioner indicates that it has increased the beneficiary's offered salary to \$45,000. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). 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). Regardless, the petitioner has not provided documentary evidence to establish that a salary of \$45,000 would be considered a "high salary" in the beneficiary's field. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

The AAO notes that the petitioner submits additional evidence on appeal which does not clearly relate to any of the evidentiary criteria discussed above. Such evidence includes photographs of the beneficiary posing

"with famous celebrities and crew during Soap Opera producing," copies of computer drawings made by the beneficiary for set design and construction drawings, pictures of work performed by the beneficiary for a prior employer, [REDACTED], and evidence of a "previous approved visa on same field." The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) provides that if the criteria at 8 C.F.R. 214.2(l)(3)(iv)(B) do not readily apply, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. The wording implies that there must be some showing that the criteria "do not readily apply to the beneficiary's occupation." As to who must make that showing, there is no presumption in the petitioner's favor. Section 291 of the Act, 8 U.S.C. § 1361, places the burden of proof on the party seeking benefits. It is the petitioner's burden to show that the criteria do not readily apply to the beneficiary's occupation, and it is also the petitioner's burden to establish that the alternative evidence is, indeed, comparable to the caliber of evidence described in the standard criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(A) and (B).

The petitioner has neither claimed nor demonstrated that the standard regulatory criteria do not apply to the beneficiary's occupation. Moreover, the evidence submitted for the first time on appeal could not be considered comparable to the caliber of evidence generally required. The examples of the beneficiary's work confirm that he possesses the stated background and skills, but do not evidence his distinction or high level of achievement in the arts, demonstrate his sustained national or international acclaim, or establish that he is renowned, leading or well-known in his field. Similarly, the petitioner cannot provide evidence of the beneficiary's distinction in his field by submitting photographs of the beneficiary posing with celebrities. While the beneficiary may have worked on the same productions with actors and actresses who are well known in the Spanish-language soap opera genre, it does not necessarily follow that the beneficiary himself ranks as a leading set designer or audio and video specialist, or that he is famous by association. The photographs offer no insight into how the beneficiary's achievements rank when compared to individuals who are renowned or leading in his own field. By all accounts, the beneficiary was an assistant-level employee in the production crew.

Finally, the AAO notes that the beneficiary does not in fact have a "previously approved visa in the same field." The beneficiary was granted an O-2 visa. An O-2 visa is granted to an alien who enters the United States to accompany and assist in the artistic or athletic performance by an alien who is admitted in O-1 classification. While the beneficiary may be working in the same field, the beneficiary's previous approval for an O-2 visa has no bearing on a determination as to whether he is an alien of extraordinary ability in the arts.

Overall, the record does not establish that the beneficiary has extraordinary ability in the arts which has been demonstrated by a high level of achievement in the field, or 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 significant national or international award or prize, and the documentation submitted does not satisfy three of the six evidentiary criteria specified in the regulations at 8 C.F.R. § 214.2(o)(3)(iv)(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 "renowned, leading or well-known." 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's recognition and achievements in his field have not yet risen to this level.

Beyond the decision of the director, the AAO finds that the petitioner did not submit a consultation with an appropriate U.S. peer group or labor organization with expertise in the beneficiary's field, as required by the regulation at 8 C.F.R. §§ 214.2(o)(2)(ii)(D), 214.2(o)(5), notwithstanding the director's specific request for this evidence in the RFE. 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). The petitioner has not established that an appropriate U.S. peer group does not exist pursuant to the regulation at 8 C.F.R. § 214.2(o)(5)(i)(G) or that the beneficiary is eligible for a waiver of the consultation requirement pursuant to the regulation at 8 C.F.R. § 214.2(o)(5)(ii)(B). Consequently, the petition must also be denied for lack of the required consultation.

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. at 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.