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FILE:



EAC 03 182 50383

Office: VERMONT SERVICE CENTER

Date: AUG 22 2005

IN RE:

Petitioner:



Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims it is a limited liability company organized in the State of New Jersey in November 1994. It imports and exports fishing boats and fishing boat motors and imports rattan furniture and teak. It seeks to employ the beneficiary as its director and operations manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity for the United States entity.

On appeal, counsel for the petitioner asserts that Citizenship and Immigration Services (CIS): improperly applied pre-IMMACT 90 law; failed to consider the petitioner's reasonable needs; and failed to consider that the beneficiary had served as a manager and executive for the foreign entity and was serving and continued to serve as a director for the petitioner.

Section 203(b) of the Act states in pertinent part:

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

- (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive

capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

The issue in this proceeding is whether the beneficiary will be employed in a managerial or executive capacity for the United States entity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily

- i. manages the organization, or a department, subdivision, function, or component of the organization;
- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- iv. exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision making; and

- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In an April 17, 2003 letter appended to the petition, the petitioner claimed the beneficiary was employed in a managerial/executive position as evidenced by:

1. [T]he fact that he receives a salary commensurate with that received by those individuals who serve in managerial/executive positions; and
2. [H]e is individually responsible for the day-to-day discretionary control over other professional employees who are executive and managerial employees in their own right; and
3. [H]e has day-to-day discretionary authority over the strategic planning, financial and human resources function of the organization; and
4. [H]e reports directly to the resident Director of the Indonesian Parent Company with specific regard to managerial and financial information that is critical for the continued success of the "Latoka" organization.

The petitioner added that the beneficiary, as director, would continue to perform the following executive/managerial responsibilities including:

1. Evaluating performance of other Executives and Managers within the "Latoka" organization for compliance with established policies and objectives; and
2. Reviewing analyses of activities, costs, operations and forecast data to determine progress; and
3. Directing and coordinating activities involved with importing/exporting of U.S. fishing boats and diesel boat motors, in addition to the importing of rattan furniture and teak doors, as well as, windows and picture frames; and
4. Reviewing market analyses to determine customer needs, volume potential, price schedules, and discount rates; and
5. Overseeing and developing sales campaigns to accommodate the goals of [the petitioner]; and
6. Representing the organization at association meetings to promote [the petitioner's] services; and
7. Directing product research and development.

The petitioner also noted that the beneficiary would be involved in conducting staff meetings and would manage and directly supervise workers engaged in receiving and shipping freight, documentation, way-billing, assessing charges and collecting fees for shipments.

On June 14, 2004, the director requested further evidence to establish the beneficiary's U.S. position would be managerial or executive. The director specifically requested: (1) a breakdown of the number of hours devoted to each of the beneficiary's job duties on a weekly basis, both in the United States and abroad; (2) evidence of the staffing of the United States entity which should include the number of employees, their titles, and the

duties performed by each employee as well as the management and personnel structure of the United States firm and documentary evidence of the amount and how the workers are being paid; and (3) Internal Revenue Service (IRS) Federal Income Tax return for 2003 and 2004, IRS Quarterly Federal Tax returns for 2004, and documentary evidence to establish payment to all employees claimed on the Form I-140, Immigrant Petition for Alien Worker, including copies of IRS Forms W-2, Wage and Tax Statement, IRS Forms 1099, Miscellaneous Income, and any other documentary evidence to establish payment to employees.

In a September 19, 2004 response to the director's request for further evidence, counsel for the petitioner indicated that the beneficiary spent: approximately 30 percent of his time working with the foreign entity's president/director and the petitioner's store manager on activities involved with the importing/exporting of fishing boats and diesel boat motors in addition to the importing of rattan furniture, teak doors, windows, and picture frames; approximately 30 percent of his time directing the importing and exporting operation, maintaining contact and negotiating with suppliers, distribution centers, foreign sales distributions centers, and subsidiary counterparts of the "Latoka" organization, Indonesian manufacturers, and shipment personnel; approximately 30 percent of his time improving and creating the overall importing plan of the petitioner by providing product research and development; and 10 percent of his time on "non-executive" duties including communicating with clients, writing reports, performing marketing functions such as overseeing and developing sales campaigns and representing the organization at association meetings to promote its services.

Counsel also indicated that the beneficiary had employed "various individuals" for the petitioner and that to date there was one employee, a store manager, subordinate to the beneficiary's position. Counsel did not identify the store manager but indicated that the store manager's pay stubs had been attached to the response. Counsel also asserted that the beneficiary "is both a 'traditional' as well as a 'functional manager'" responsible for the U.S. operation. Counsel also cited sections of immigration law and decisions all relating to the issue of managerial or executive capacity and staffing of an organization.

On October 19, 2004, the director determined that: (1) the petitioner's claim that the beneficiary managed an essential function had not been established; (2) although the petitioner's operations were established in 1995, the petitioner still employed only one individual in addition to the beneficiary; (3) the beneficiary did not supervise professional or managerial employees; and (4) the record suggested that the beneficiary performed more as a representative or a sales agent for the foreign entity. The director denied the petition concluding that the record did not establish that the beneficiary had been or would be employed in a qualifying managerial or executive capacity.

On appeal, counsel for the petitioner asserts that CIS recognizes the concept of "functional management" and that the beneficiary has been and continues to be responsible for directing the day-to-day operations and functions of the organization. Counsel recites his description of the beneficiary's duties provided in response to the director's request for evidence and asserts that this description demonstrates that the beneficiary has been and continues to be engaged in managerial and executive level duties. Counsel also contends that CIS failed to consider the petitioner's reasonable needs and cites two published and one unpublished decision to support his contention. Finally, counsel claims that CIS failed to consider that the beneficiary had served as a manager and executive for the foreign entity and was serving and continued to serve as a director for the petitioner.

Counsel's assertions are not persuasive. The petitioner has not submitted sufficient evidence to establish that the beneficiary's duties for the petitioner will be primarily managerial or executive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The petitioner does not clearly state whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. The AAO observes that counsel seems to suggest that the beneficiary is both a traditional and a functional manager.

However, the petitioner in this matter has fashioned the beneficiary's duties from portions of both the definition of managerial and executive capacity without providing a comprehensive description of the beneficiary's actual daily duties. *See* sections 101(a)(44)(A)(iii) and (iv) and 101(a)(44)(B)(iv) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The petitioner's note that the beneficiary received an executive or managerial salary cannot establish that the beneficiary's duties are primarily managerial or executive.

In addition, the petitioner indicates that the beneficiary reviews market analyses to determine customer needs, volume potential, and prices, and is involved in sales campaigns, promotions of the petitioner's services, and directing product research and development. These duties, as later acknowledged by counsel, are duties that are non-executive and non-managerial. The petitioner also indicates that the beneficiary reviews costs, operations, and forecast data and coordinates activities involved in importing and exporting goods. The record does not identify individuals in the petitioner's employ who carry out these duties. Even though the petitioner appears to claim that the beneficiary directs and manages these activities, the lack of employees on its staff to actually perform these duties suggests that the beneficiary himself is performing the duties. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Further, phrases such as "[d]irecting and coordinating activities involved with importing/exporting of U.S. fishing boats and diesel boat motors, in addition to the importing of rattan furniture and teak doors, as well as, windows and picture frames," are vague and do not reveal the actual tasks performed in relation to importing and exporting the petitioner's products.

Furthermore, the petitioner states that the beneficiary will evaluate the performance of other executives and managers within the "Latoka" organization and will manage and directly supervise workers engaged in receiving and shipping freight, documentation, way-billing, assessing charges and collecting fees for shipments. However, the petitioner has not provided evidence that it employs or otherwise utilizes

individuals other than the beneficiary to carry out the petitioner's operations.¹ Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, counsel's response to the director's request for evidence does not further persuade that the beneficiary is engaged primarily in performing managerial or executive duties. Counsel's description of the beneficiary's duties is vague and non-specific. The beneficiary's involvement with the foreign entity and a store manager to import and export products is not sufficiently detailed to explain how this service is managerial or executive. In addition, maintaining contact and negotiating with suppliers, distribution centers, foreign sales distributions centers, and subsidiary counterparts of the "Latoka" organization, Indonesian manufacturers, and shipment personnel suggests that the beneficiary is actively engaged in the sale and purchase of products on behalf of the foreign entity or the petitioner. Further, the beneficiary's work to improve and create an importing plan by providing product research and development suggests that the beneficiary is performing the petitioner's market research. Again, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). In this matter, the general description of the beneficiary's duties and the lack of evidence regarding the beneficiary's subordinate employees do not establish that the beneficiary primarily performs managerial or executive duties and is relieved from performing primarily the petitioner's day-to-day functions.

Counsel's claim in response to the director's request for evidence and on appeal that the beneficiary is a functional manager is not persuasive. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. However, if a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. Again, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity.

¹ Although the petitioner claims to employ a store manager and counsel references the store manager's pay stubs to confirm this individual's employment, the record does not contain information regarding the identity of this individual and counsel's reference in regard to pay stubs cannot be substantiated.

Boyang, Ltd. v. I.N.S., 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. at 604. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

The AAO acknowledges that IMMACT 90 added the concept of a "function manager" eliminating the requirement that a beneficiary directly supervise subordinate employees to establish managerial capacity. However, in *Matter of Church Scientology Int'l*, the AAO observed that an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity, focusing on the statutory requirement that a beneficiary "primarily" perform in a managerial or executive capacity. Thus, IMMACT 90 and the addition of the function manager concept do not preclude the use of a preexisting precedent decision that discussed individuals that are engaged in the production of a product or service. Regardless of the changes made by IMMACT 90, the statutory definition of managerial capacity still requires that an employee "*primarily . . . manage[] an essential function.*" Section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). When an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, that individual cannot also "principally" or "chiefly" perform managerial or executive duties. Counsel submits no evidence in the form of congressional reports, case law, or other documentation to support his argument that the director improperly applied pre-IMMACT law. Accordingly, counsel's unsupported assertions are not persuasive on this point.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

To establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not explained how the reasonable needs of the petitioning enterprise justify the beneficiary's performance of primarily non-managerial and non-executive duties. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Counsel's citation to two published decisions are not persuasive. Counsel has not adequately described how these two decisions are analogous to this matter. Reciting the purported facts of a matter without further analysis does not assist in establishing that the beneficiary in the matter at hand performs primarily managerial or executive duties, rather than the day-to-day activities associated with operating the petitioner's business. Counsel also has failed to explain how the unpublished decision is analogous to this matter. Moreover counsel should note that while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are

binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

On review, the petitioner has not presented sufficient evidence to establish that the beneficiary's duties for the United States petitioner comprise primarily executive or managerial duties. For this reason, the petition will not be approved.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that the beneficiary's position for the foreign entity was primarily managerial or executive. In the April 17, 2003 letter appended to the petition, the petitioner indicated that the beneficiary, as director of import and export development for the foreign entity, had been responsible for essentially the same responsibilities he currently was performing while serving in the U.S. position of Director. The petitioner then listed those duties as including "scheduling, hiring and firing of employees; preparing shipping documents; negotiating contracts; establishing service outlets; and supervising operation procedures." In response to the director's request for evidence on this issue, the petitioner provided a different version of the beneficiary's duties by indicating that the beneficiary supervised approximately 12 employees in various positions. As noted above, however, the petitioner did not provide an adequate description of the beneficiary's duties for the petitioner. In addition, the duties as described show that the beneficiary performed routine operational and administrative duties, rather than managerial or executive duties. Further, the record does not contain sufficient detail and documentary evidence substantiating that the beneficiary actually supervised other employees. Nor does the record contain an explanation or clarification concerning this elaboration on the beneficiary's initial duties. The petitioner has not established that the beneficiary's duties for the foreign entity were primarily managerial or executive. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. For this additional reason, the petition will not be approved.

Further, the record contains inconsistent evidence regarding the petitioner's qualifying relationship with the beneficiary's foreign employer. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity. In this matter, the petitioner claims that it is a wholly-owned subsidiary of the foreign entity, Latoka EKA Prasetya (Indonesia). The petitioner provides a "Certificate of Amendment, Limited Liability Company," filed with the New Jersey Secretary of State on June 28, 1995 showing that Latoka Eka Prasetya, an Indonesian Corporation, wholly owns the petitioner. However, the record also contains the petitioner's 2000, 2001, and 2003 IRS Forms 1065, U.S. Return of Partnership Income, showing that one individual owns a 93.75 interest in the petitioner and a second individual owns a 6.25 interest in the petitioner. The record also contains untranslated documents apparently pertaining to the foreign entity.² The petitioner has not explained these inconsistent documents regarding the petitioner's ownership. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence.

² Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine the pertinence of the documentation. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). For this additional reason, the petition will not be approved.

Finally, the petitioner has not established its ability to pay the beneficiary the proffered wage. First, the AAO observes that the petitioner has indicated in its offer of employment that the proffered wage is \$78,000 annually. However, the Form I-140 shows that the proffered wage is \$1,625 per week or \$84,500 annually. The record contains evidence that the beneficiary has been paid \$45,000 annually in 2000, 2001, 2002, and 2003. The petitioner's IRS Form 1065 for 2003, the pertinent year to establish the petitioner's ability to pay, reveal the petitioner is operating at a net loss for the year. The IRS Form 1065 does not show that the petitioner had sufficient net current assets to pay the proffered wage, even when considering the \$45,000 salary already paid.³

Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In *K.C.P. Food Co., Inc. v. Sava*, the court held the Immigration and Naturalization Service (now CIS) had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than on the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. at 537; see also *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054. Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as the AAO is satisfied that the petitioner's current assets are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage. In this matter, neither the petitioner's past payments to the beneficiary, the petitioner's net income, or net current assets were shown to be sufficient to pay the beneficiary's proffered wage of \$78,000 or \$84,500. For this additional reason, the petition will not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

³ Counsel should note that the regulations require that the petitioner, not the foreign entity establish its ability to pay the proffered wage. See 8 C.F.R § 204.5(g)(2).

The AAO notes that counsel requested oral argument in this matter. However, the regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, CIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved. In fact, counsel set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.