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U.S. Citizenship and Immigration Services

[redacted]

MAR 26 2004

FILE: SRC 02 089 50215 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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 nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, Canarin Imagineering, Inc., endeavors to classify the beneficiary as a manager or executive pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a wholly-owned subsidiary of Carlo Andreatta Motors, Inc. located in South Africa and is engaged in the motor vehicle engineering and repair business. In order to open the new office, the initial petition was approved and was valid from January 20, 2001 until January 20, 2002. It seeks to extend the petition's validity and the beneficiary's stay for three years as the U.S. entity's managing director. The petitioner was incorporated in the State of Florida on September 8, 2000 and claims to have one employee.

On June 29, 2002, the director determined that there was insufficient evidence to establish that: (1) the U.S. and foreign entities have a qualifying relationship; (2) the U.S. entity has been doing business for the previous year; (3) the foreign entity is still operating; and, (4) the beneficiary has been or will be employed in a primarily managerial or executive capacity.

On appeal, counsel, on behalf of the petitioner, asserts that the U.S. and foreign entities are viable and operating businesses and that the beneficiary will be in a position to manage and develop the company.

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

Pursuant to 8 C.F.R. § 214.2(l)(3), an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
>
> (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

> (iv) Evidence that the alien's prior year of employment abroad in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Further, since the petitioner is filing a petition to extend the beneficiary's stay for L-1 classification after opening a new office, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) requires:

> (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
>
> (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
>
> (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
>
> (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
>
> (E) Evidence of the financial status of the United States operation.

The first issue is whether a qualifying relationship exists between the U.S. and foreign entities.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides that a qualifying organization must satisfy "exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary. . . ." The regulation defines these terms to mean:

> (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
>
> (J) *Branch* means an operation division or office of the same organization housed in a different location.
>
> (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

Further, the regulation and case law confirm that ownership and control are factors that must be examined in determining whether a qualifying relationship exists between the petitioner and foreign entity. *See Matter of Church of Scientology International*, 19 I &N Dec. 593 (BIA 1988); *See also Matter of Siemans Medical Systems*, Inc., 19 I&N Dec. 362 (BIA 1986)(in nonimmigrant visa proceedings); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982) (in nonimmigrant visa proceedings). In the context of this visa proceeding, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control. *Matter of Church of Scientology International* at 595. Control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Id.*

In a January 16, 2001 letter, the petitioner submitted the U.S. entity's articles of incorporation and stock certificate indicating that the petitioner issued 500 shares of common stock to the foreign entity at a par value of one dollar per share.

On March 4, 2002, the director requested that the petitioner submit evidence regarding the ownership of Carspray Auto Body and Repair Shop, Motor Repair Mechanical Workshop, and C.A.R.T. Welding Machine Shop.

In response, the petitioner stated that the foreign partnership, Carlo Andreatta Motors, owns Carspray Auto Body and Repair Shop and Cart Welding Machine Shop. The petitioner also stated that the Motor Repair and Mechanical Workshop does not exist.

On June 29, 2002, the director denied the petition. The director stated that the evidence regarding the qualifying relationship was not clear because there was no concrete evidence of ownership and control. The director also found that the agreement did not indicate that the partnership was able to legally operate as a separate corporate entity.

On appeal, counsel asserts that "[i]n terms of South African law a partnership is entitled to operate as many businesses as it wishes. The subsidiary businesses are not corporate entities, but merely businesses being operated by the partnership."

The AAO notes that the director scrutinized the relationship between the foreign entity and the Carspray Auto Body and Repair Shop, Motor Repair Mechanical Workshop, and C.A.R.T. Welding Machine Shop. The director found that no concrete evidence was submitted of ownership and control. However, the evidence necessary to establish whether a qualifying relationship still exists between the petitioner and the foreign entity is not determinate upon whether the foreign entity owns and controls other businesses. The proper analysis should be

based on the relationship between the U.S. petitioner and the entity that employed the beneficiary overseas, not the subsidiaries of that entity.

On review, the petitioner claims to be a wholly-owned subsidiary of the foreign entity. A subsidiary means "a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity. . . ." 8 C.F.R. § 214.2(l)(1)(ii)(K). The articles of incorporation indicate that the U.S. entity is authorized to issue 500 shares of common stock outstanding with a par value of $1.00 each. The stock certificate submitted indicates that 500 common shares were issued to the foreign entity on September 5, 2000. However, the articles of incorporation and stock certificates are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. Therefore, the AAO concludes that there is insufficient evidence to establish whether there is a qualifying relationship between the petitioner and foreign entity pursuant to 8 C.F.R. § 214.2(l)(14)(ii)(A). For this reason, the petition may not be approved.

The AAO now turns to the second issue in this proceeding of whether the U.S. entity has been doing business for the previous year in Florida.

On March 4, 2002, the director requested that the petitioner submit evidence of the business conducted by the petitioner during the past year such as sales contracts, invoices, bills of lading, shipping receipts, orders, US custom forms 301, 7501, 7525-V.

In response, the petitioner stated that the beneficiary was not present in the U.S. to continue the U.S. entity's development and matters are in the process of taking off. The petitioner also stated that the "business only became truly operational during August 2001." In addition, the petitioner submitted the invoices for April and May 2002.

On June 29, 2003, the director denied the petition because the petitioner did not establish that the U.S. entity had been doing business for one full year. The director stated that the initial petition for the new office was approved from January 20, 2001 until January 20, 2002. However, the petitioner submitted invoices for April and May 2002 and did not become operational until August 2001.

On appeal, counsel claims that the petitioning entity is not required to show that it has been doing business for a full year. Counsel asserts that the U.S. entity needs to show that it has set up operation and has commenced business during the year. Counsel states that the invoices, checking account statements, and a business lease are proof of the petitioner's operation during the year.

On review, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. Doing business means the "regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(i)(H) There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. The petitioner applied for an extension on January 23, 2002. The petitioner stated that it commenced business in August 2001. The petitioner submitted a copy of the commercial lease commencing on July 1, 2001, invoices dated July 13, 2001, September 28, 2001, October 23, 2001, December 3, 2001, December 28, 2001, April and May 2002, and commercial checking account statements from September 2001 to December 2001. However, there is insufficient documentation to establish that the U.S. entity is actively engaged in the regular, systematic, and continuous provision of goods or services pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H). In sum, the sporadic activity of the U.S. entity is not sufficient evidence to establish that the petitioning entity has been doing business for the previous year. For this reason, the petition may not be approved.

The AAO notes that there is a discrepancy in the record as to when the U.S. entity commenced business. In a January 16, 2001 letter, the petitioner stated, "the company did not commence operations until the middle of July 2001." This same letter stated, "the operation commenced business in it's new premises . . . during August 2001." However, the lease commenced July 2001. Therefore, as previously stated, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence and failure to provide such proof may cast doubt on the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Beyond the decision of the director, the AAO notes that the petitioner had not secured sufficient physical premises as required by 8 C.F.R. § 214.2(l)(3)(v)(A) at the time of filing the initial petition. The initial petition was approved and was valid from January 20, 2001 until January 20, 2002. However, the petitioner submitted a copy of the petitioner's lease for a term of one year from July 1, 2001 until June 30, 2002, six months subsequent to the initial petition approval. Therefore, at the time of filing the initial petition, the petitioner had not secured sufficient physical presence to house the new office. The petitioner failed to meet its burden under 8 C.F.R. § 214.2(l)(3)(v)(A). This fact raises serious questions as to whether the petitioning entity has been doing business for the previous year, as required at 8 C.F.R. § 214.2(l)(14)(ii)(B).

The AAO also notes that the director raised a third issue of whether the foreign partnership is doing business. The director found that the foreign business did not appear to still be operating. The petitioner has not submitted sufficient evidence to establish that the foreign entity continues to do business, as required at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2).

The director requested evidence of who is currently running the foreign business including payroll for 2002, and quarterly payroll tax for 2001 and 2002.

In response, the petitioner claims that Emille Andreatta, one of the partners, was running the foreign business and that a representative from the consular office in South Africa visited the office of the foreign business. The petitioner also submitted VAT receipts for March and April 2002 to prove the existence of the foreign operation. However, the director, in his decision to deny, found that: 1) the invoices submitted were in the name of the partnership and another company; 2) the management responsibilities for the partnership had not been shifted to the other partner; and, 3) there was no evidence that the partnership was currently operating as it had when the agreement was made between the beneficiary and his brother in June 1998.

On appeal, the petitioner states that CIS has chosen to ignore the following documents submitted in proof of the on-going operation of the South African partnership:

- A copy of the corporate check showing the account in the name of Carlo Andreatta Motors.
- VAT receipts for March and April 2002 issued in the name of Carlo Andreatta Motors.
- Invoices addressed to Carlo Andreatta Motors.
- Statements made by the CPA.

Unlike a corporation, a partnership does not exist as an entity apart from the individual owners. *Matter of United Investment Group*, 19 I&N Dec. 248 (Comm. 1984). As the beneficiary claims to be the partner of the foreign business, the presence of the beneficiary in the United States raises the question of whether the foreign business continues to do business abroad. The partnership agreement stated that, "[The beneficiary] will be the sole signatory to the signing of any cheques or withdraws." Since the beneficiary is not at hand to sign the checks as the partnership agreement stated, the director reasonably questioned the petitioner about who has the authority. In response, counsel asserts that "[o]bviously the partners made the necessary arrangements with the bank prior to the departure of the self-petitioner." Although counsel has made this assertion, the petitioner submitted no evidence such as a letter from the bank or a partnership amendment to establish that the remaining partner has authority to sign the checks. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra.*

Moreover, there are discrepancies in the record concerning the partnership agreement. First, the partnership agreement provides that if certain events occur, the partnership would be terminated. One event, noted by the director, was that the partnership shall terminate if either of the partners operates a similar business, as a sole proprietor, without the other knowing. The beneficiary owns two similar businesses as a sole proprietor. However, there are discrepancies in the record concerning the Carspray Auto Body Repairs and C.A.R.T. Machine Welding businesses. The beneficiary's resume indicates that he was the sole proprietor of Carspray Auto Body Repairs and

C.A.R.T. Machine Welding from 1985 until 1998. However, the foreign entity's organizational chart indicates that the foreign entity's production departments include the following:

- Carspray Auto Body Repair Shop 100% owned by Carlo
- Motor Repair Mechanical 50% owned by Carlo
50% owned by Emille
- C.A.R.T. Welding Machine Shop 100% owned by Carlo

The record is not clear as to whether the beneficiary terminated Carspray Auto Body Repairs and C.A.R.T. Machine Welding in 1998 or whether the beneficiary continues to operate these businesses as a sole proprietor. The beneficiary's resume indicates that he was the sole proprietor of Carspray Auto Body Repairs and C.A.R.T. Machine Welding from 1985 to 1998. However, the foreign entity's organizational chart and a May 28, 2002 letter signed by the partnership's accountant and partner, Emille Andreatta, indicated that the beneficiary continues to operate these businesses as a sole proprietor. In addition, counsel, in a May 28, 2002 letter responding to the director's request for evidence, states that Motor Repair and Mechanical Workshop do not exist. However, this business is listed in the foreign entity's organizational chart. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence and failure to provide such proof may cast doubt on the reliability and sufficiency of the remaining evidence. *Matter of Ho, supra.*

In sum, the lack of current evidence and the discrepancies in the record lead the AAO to conclude that the partnership is no longer doing business. Accordingly, if the partnership is no longer doing business then there is no qualifying relationship and the petition may not be approved.

The fourth issue in this proceeding is whether the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity. 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.

On January 16, 2002, the petitioner described the beneficiary's U.S. duties on Form I-129 as:

Manage all aspects of the business including negotiation of all set-up contracts, purchasing of stock and equipment necessary to operate the business, hiring, firing and training of staff, promoting the company in the region, attending meetings and marketing presentations to potential larger clients, promoting the services offered by the company, setting monthly and annual budgets, conducting feasibility studies to expand and diversify the services offered by the company, negotiating contracts with the customers, supervising the work product of the employees of the company, reporting to head office.

On March 4, 2002, the director requested that the petitioner submit the following additional information:

- Description of the beneficiary's daily business activities and percentage of time spent on each.

- Evidence of the current staffing levels in the U.S. including position titles and duties and educational background of the professionals that are employed.

In response, in a March 8, 2002 letter, the petitioner described the beneficiary's daily activities as:

- General management, including promoting the business, marketing, negotiating of contracts, setting budgets, banking – 60%

- Specialized mechanical work and consulting with customers – 40%

The petitioner further stated:

- The beneficiary's managerial duties will increase as the business develops.

- He will then have added responsibilities of supervising staff, including hiring, firing and training them.

- Up until this time the business has not been in a position to hire additional staff.

- The business only became truly operational during August 2001.

- The business will be in a position to hire an additional 2 mechanics together with a bookkeeper-secretary in the near future.

On June 29, 2002, the director determined that the beneficiary has not been and will not be employed in a primarily managerial or executive capacity. The director concluded that the beneficiary was performing non-qualifying labor as an auto-mechanic. The director found that the invoices submitted billed the customer for manual labor such as replacing transmissions, cylinders, and brakes.

On appeal, counsel asserts that:

> [T]he U.S. entity will be building engines for a US company that the manufacturers custom 4x4. This will result in the Corporation having to employ at least 2 mechanics and a bookkeeper. [The beneficiary] will then be in a position to allocate the majority of time to the management and development of the company.

In examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). On review, the AAO is not persuaded that the beneficiary has been and will be acting in a primarily executive or managerial capacity. The beneficiary has provided a broad description of the beneficiary's duties. For instance, the petitioner describes the beneficiary as supervising the work product of the employees of the company and conducting studies. This description is broad and fails to specifically identify exactly how the beneficiary will supervise the work product of the non-existing employees or exactly what studies the beneficiary will conduct. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In addition, the petitioner indicated that only 40 percent of the beneficiary's time is spent in specialized mechanical work and consulting with customers. However, the beneficiary's duties

indicate that this percentage is not accurate. For example, the invoices that the petitioner submitted indicate that the beneficiary primarily provides repair services. Therefore, the beneficiary is performing the non-managerial day-to-day operations of the business more than 40 percent of his time.

Further, the petitioner describes 60 percent of the beneficiary's duties as general management including promoting the business, marketing, negotiating of contracts, setting budgets, and banking. The described duties indicate that the beneficiary spends the majority of his time performing the tasks of the business. 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).

Moreover, the petitioner states that once the beneficiary builds custom engines for a U.S. company, the petitioner will hire additional employees and the beneficiary will then be in a position to allocate the majority of his time to the management and development of the company. The petitioner also asserts that the business will be in a position to hire an additional two mechanics together with a bookkeeper-secretary in the near future. The petitioner also states that the beneficiary "will then sometime at a future date serve in a managerial or executive capacity." Based upon the petitioner's own admission, the beneficiary has not yet served in a managerial or executive capacity. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

After careful consideration of the evidence, the AAO must conclude that the beneficiary will not be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved. Therefore, the appeal must be dismissed.

The AAO notes that the director raised a fifth issue concerning the beneficiary's duties with the foreign entity. As previously stated, within three years preceding the beneficiary's application for admission into the United States, the foreign entity must have employed the beneficiary in a qualifying managerial or executive capacity for one continuous year. *See* 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Therefore, at the time the initial petition is filed, the director must consider what duties the beneficiary performed at the foreign entity to determine whether the beneficiary primarily served in an executive or managerial capacity.

On March 4, 2003, the director requested additional evidence concerning the beneficiary's duties with the foreign entity. Specifically, the director requested:

> A definitive statement describing the foreign employment each of the self-petitioner at the foreign company including position titles, lists of all duties, percentage of time spent on each duty, number of subordinate managers/supervisors and their job titles, duties, and educational backgrounds, if no employees are supervised then what essential function is managed, level of authority held, organizational hierarchy, and shipping and handling services.

The petitioner did not submit any additional evidence and stated that that the "beneficiary does not have any existing responsibilities with the foreign entity other than his obligations as a partner." The director determined that the beneficiary had not been employed in a managerial or executive capacity. However, since the AAO has only a resume indicating that the beneficiary was the manager of the foreign entity, the petitioner has presented insufficient evidence to establish whether the beneficiary was employed by the foreign entity in a managerial or executive capacity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra.* Although this petition is to extend the stay of the beneficiary, the initial provisions still apply especially where the record indicates that there is a discrepancy or significant evidence to the contrary. For this additional reason, the petition may not be approved.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.