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File: EAC 02 275 53735 Office: VERMONT SERVICE CENTER Date: SEP 05 2006

IN RE: Petitioner:
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)

IN 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. Counsel for the petitioner filed a motion to reopen and reconsider the matter, which was denied by the director. A second motion to reopen was then filed by counsel. The director granted the motion and affirmed her initial decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its executive/manager as an L-1A nonimmigrant intracompany transferee 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 corporation organized under the laws of the State of New Jersey and operates a convenience store in the Commonwealth of Virginia.¹ The petitioner claims that it is the subsidiary of President Engineering, a machine parts business, located in Ahmedabad, India. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director upheld the denial of the petition concluding that the petitioner did not establish that the beneficiary was employed abroad or will be employed in the United States in a primarily managerial or executive capacity. The director reasoned that the petitioner was not sufficiently staffed such that the beneficiary would be relieved of having to perform the routine duties associated with providing a service or product and that the beneficiary would be performing listed functions as opposed to managing them.

The petitioner subsequently filed an appeal of the director's decision on motion. The director declined to treat the appeal as a third motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director's conclusion was in error. In support of this assertion, the petitioner submits a brief but no additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. In addition, 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.

The regulation at 8 C.F.R. § 214.2(l)(3) states that 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.

¹ Although the petitioner registered itself in the Commonwealth of Virginia on February 22, 2002, state records indicate that it has no registered fictitious names. As such, the petitioner's use of the business name Family Convenience may not be sanctioned or authorized.

- (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 was 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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (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.

On November 20, 2001, the beneficiary was granted a one-year period of stay to open a new office. If a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.* After one year, CIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing

business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B).

The first issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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 the initial petition, the petitioner described the beneficiary's job duties as follows:

- He is the individual responsible for the overall functioning of the entity;

- He determines the company's operational policies, and implements them accordingly;
- He exercises discretion over the day-to-day functioning of the business, supervising staff, and responsible for their hiring, firing, and training.
- Review and direct the financial position of the company: 10 hours per week.
- Develop business contacts, establish professional relationships: 10 – 15 hours per week.
- Plan and supervise marketing, sales and promotional activities: 5 – 10 hours per week.
- Supervise import/export activities, monitor inventory: 10 hours per week.

On January 3, 2003, the director sent the petitioner a request for additional evidence (RFE). The director specifically requested details about the petitioner's employees, their duties, an hourly breakdown of the beneficiary's typical day and examples of some of the types of managerial or executive decisions the beneficiary would be making.

In response, the petitioner submitted the following description:

- He is the individual responsible for the overall functioning of the entity;
- He determines the company's operational policies, and implements them accordingly;
- He exercises discretion over the day-to-day functioning of the business.
- Review and direct the financial position of [the] company: 5 hours per week.
- Research and contract accounts and merchandise: 10 hours per week.
- Develop business contacts, establish professional relationships: 10 hours per week.
- Plan and supervise marketing activities: 5-10 hours per week.
- Supervise import/export activities, monitor inventory: 10 hours per week.

In addition, counsel provided the following additional list of responsibilities:

- He was the individual who researched and determined the course of business the corporation would pursue, and will investigate other areas of expansion;
- He conducted all negotiations in the purchase, closing, and final legal and financial arrangements of the business;
- He is the senior-level personnel administrator;
- He maintains and represents the business to government agencies and financial institutions;
- He is the individual who has established credit and buying relationships with other businesses.

On November 10, 2004, the director denied the petition. The director determined that the petitioner had not established the beneficiary would be employed primarily in a managerial or executive capacity.

On appeal, counsel for the petitioner asserts that the director failed to consider evidence and that the decision was reached in error.

Upon review, counsel's assertions are not persuasive. 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. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The definitions of executive and managerial capacity have two main 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).

The initial description provided by the beneficiary is vague. The regulations require a detailed description of the services to be performed. 8 C.F.R. § 214.2(l)(3)(ii). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Assertions such as "responsible for the overall functioning of the entity" are not probative, and merely paraphrase the statute. Without a clear articulation of what the beneficiary's duties are Citizenship and Immigration Services (CIS) cannot determine that the beneficiary is operating primarily in a managerial or executive capacity.

Subsequently, the director issued a request for evidence and specifically requested an hourly breakdown of the beneficiary's typical day. In response the petitioner resubmitted the same vague description from the original filing, making minor changes to the duties and hours spent performing some of the listed duties. When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to and slightly changed the wording on the generic duties given in the initial job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

In addition, the regulations state 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). Here, instead of providing

additional details and expounding upon the vague job duties provided initially, the petitioner primarily uses the same job description, changing and adding some duties as well as the hours spent on those duties. In addition, in making these changes and additions, the petitioner once again fails to allocate any time spent on a large portion of the duties. As such, the petitioner has effectively failed to respond to the director's RFE, preventing a material line of inquiry, and the petition must be denied for this reason. *Id.*

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *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). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.* In this case that is exactly what the petitioner has done, but merely paraphrasing the statute is not enough to establish eligibility.

Moreover, although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. Though requested by the director, the petitioner did not provide the level of education required to perform the duties of its two subordinate employee positions. Instead counsel for petitioner merely asserts “[c]urrently the [b]eneficiary supervises two individuals, both of whom hold professional degrees and one of whom holds a managerial/supervisory position.”

The necessary factual question is what is required to perform the duties of the position, in this case clerking for a convenience store, not whether the individuals may or may not have a degree (the degrees were not specified and there is no evidence to support that the degrees the employees have are specialized and are prerequisites for entry into the particular field of endeavor versus general degrees). The distinction between the employees is insignificant in terms of duties performed relative to their title.² Evidence in the record indicates that these two employees may not even be full-time employees. Thus, the petitioner failed to respond to the director's inquiry on the level of education required to perform the duties of a convenience store clerk. Again, any 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 these employees possess or require an advanced degree, such that they could be classified as professionals. Nor has the petitioner shown that either of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors.

² Counsel for petitioner asserts that one employee “supervises” the other and orders inventory while the other operates the cash register and takes inventory. If accepted as a true representation of fact this would mean there is only one person that operates as a cashier for the duration of the petitioner's business hours, and yet the cashier only works 40 hours per week. This evidence is simply not credible based on the record. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. See *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act. In this case the petitioner has not provided sufficient documentation to support the assertion that the beneficiary supervises professional, managerial or supervisory personnel and a favorable decision on this issue would not be warranted based on the record.

The petitioner indicates that it plans to hire additional managers and employees in the future. However, 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). Furthermore, 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 is operating a convenience store. At the current volume of operations the need for managerial or executive duties relative to the need for sales and clerking duties appears to be small. While the AAO is not contesting that some managerial or executive decisions might be made by the beneficiary, the petitioner has failed to demonstrate that the beneficiary will actually be employed primarily in such a capacity. As such, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

The second issue in this proceeding is whether the beneficiary was employed abroad in a primarily managerial or executive position for the requisite period.

In the initial filing, counsel for petitioner attempts to establish that the beneficiary was employed abroad in a capacity that was primarily managerial or executive. In a letter dated August 28, 2002, counsel references exhibits 1, 12 through 19, and a prior approval notice. First, the fact that a petitioner may have been approved on a prior petition bears no relevance to these proceedings. Each petition is a separate record of proceeding and the record of that petition must support eligibility. Therefore, a prior approval for a separate record of proceeding not before the AAO is of no probative value. Second, the exhibits are not clearly labeled, and their relevance is not fully explained. Other documents submitted in the initial filing include pay stubs for the petitioner, wage registers for the foreign corporation, tax documentation, documents resembling receipts or invoices, partnership documents and other business documentation. Thus, it appears from a review of the record that the only documentary evidence submitted to establish that the beneficiary was employed in a managerial or executive capacity abroad are wage registers of the foreign organization. A wage register is not sufficiently probative of what the beneficiary did on a daily basis or how the beneficiary's duties qualified as managerial or executive in capacity to make a determination of eligibility. It is not sufficient for the petitioner to submit voluminous materials without making their relevance clear and then argue that none of the exhibits have been addressed.

On appeal, counsel for the petitioner makes a conclusory assertion that the record contains evidence establishing the beneficiary worked abroad in a managerial or executive capacity. This does not adequately address the director's conclusion. The petitioner has the burden of proof in these proceedings; this burden includes clearly articulating a basis of eligibility and supporting any relevant assertions with probative documentary evidence. The AAO cannot and will not construct assertions on behalf of a petitioner, nor will it

extrapolate facts from evidentiary submissions where the relevance of those submissions has not been made clear. In this case, counsel for the petitioner simply states on appeal: “[t]here is evidence throughout the record, including the previous [A]pproval, which directly address the [b]eneficiary’s responsibilities abroad. His education, as well as a letter written regarding his background confirm his eligibility in this regard.”

Although counsel makes a vague reference to a letter, it is not clear from the record which letter he is referring to. The record contains no other corroborating documentary evidence, such as work product, organizational charts, listed duties which predate the filing of the petition, verifiable working relationships, etc. Thus, on appeal counsel failed to address, explain or clarify the petitioner’s position with regard to the beneficiary’s employment abroad. Without a clear articulation of the beneficiary’s duties abroad, at a minimum, this record of proceeding does not support that the beneficiary was employed abroad in a managerial or executive capacity. For this additional reason the petition will be denied.

On appeal, counsel attempts to use case law regarding procedure to avoid satisfying the substantive requirements for this classification. The cumulative effect of the petitioner’s characterizations would strain the bounds of what Congress intended for this classification. The L-1 visa program was intended for multinational intracompany managers, executives and specialized knowledge workers. The petitioner is operating a convenience store with two other employees. Counsel has cited numerous cases without clarifying which are relevant to the facts of these proceedings or which provide a binding precedent on the issues in this matter. Case citations are not a substitute for the evidence required to demonstrate that a petitioner is eligible to receive the benefit sought and, in any event, counsel for the petitioner has failed to make clear how the fact patterns of the cited cases are even similar to the case at bar. Each petition is adjudicated separately; the fact that an unrelated party managed to meet the burden in its petition is not relevant to this record of proceeding and does not demonstrate that the beneficiary has been and will be employed primarily in a managerial or executive capacity.

Accordingly, the petitioner has not established that the beneficiary has been or will be employed in a primarily or managerial capacity, as required by 8 C.F.R. § 214.2(l)(3)(ii) and (iv).

Beyond the decision of the director, the petitioner has failed to establish that a qualifying relationship exists between itself and the beneficiary’s claimed employer abroad. Generally, if one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. Most of the documents submitted indicate that the beneficiary owns 85% of the corporation’s stock.³ Further, the partnership agreement submitted for the foreign organization shows a man named [REDACTED] is one of the three partners and that his share of the profits or losses is limited to 20%. No evidence was submitted indicating that the beneficiary was a member of this partnership or that he was a majority owner. In addition, the petitioner failed to submit an L Supplement to the Form I-129, complicating the determination as to what, if any, qualifying relationship exists. The petitioner has failed to articulate the exact nature of any qualifying relationship. The record contains several poorly written letters by counsel for the petitioner, but they do not

³ The letter submitted from the Virginia Lottery indicates that the beneficiary owns 75% of the petitioner, not 85%.

articulate exactly how the qualifying relationship exists. In any event, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Regardless, upon review of the record, there remain unresolved and unexplained inconsistencies as to the ownership and control of both companies and, therefore, a qualifying relationship cannot be found to exist.⁴

Moreover, the petitioner asserts that the beneficiary exercised a managerial decision to buy a convenience store in Virginia after incorporating in New Jersey. However, the AAO would note that the articles of incorporation that have been submitted are undated, unsigned and incomplete. While the record contains a license to occupy a premises and to sell alcoholic beverages, it is not clear that the petitioner is even properly registered to conduct business in a state that is different from where it is alleged to have been incorporated. *See Va. Code Ann. § 13.1-757* (2006). In order for a qualifying relationship to exist the petitioner must demonstrate that the qualifying organizations are actually doing business as that term is defined by regulation.

In addition, it appears that the petitioner was not doing business for the prior year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). The term “doing business” is defined in the regulations as “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)(ii). The lease for premises submitted by the petitioner shows a commencement date of February 1, 2002. The original petition was approved on November 20, 2001. As sufficient physical premises is required for the petition to have been approved, it is unclear how or why the initial L-1A classification was ever granted when the petitioner had not acquired the business premises. Regardless, receipts submitted as evidence of conducting business indicated dates no earlier than January 2002. In addition, the required ABC license was not valid until March 11, 2002, and the general business license was not valid until January 4, 2002. Thus, there appears to be a gap of two to three months. Failing to conduct business for two to three months out of the required one year period is not a regular, systematic and continuous provision of goods or services. For the reasons stated above the petitioner has failed to establish that it has met the requirements of 8 C.F.R. § 214.2(l)(14)(ii)(B).

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).

⁴ The petitioner’s stock ledger indicates that a man named _____ owns 8% of the petitioner and that a man named _____ owns the remaining 7%. While these two individuals also appear to be partners in the foreign organization, as noted above, it cannot be determined that the third partner is the same person as the beneficiary, given how one is named _____ and the other _____. Even if they were the same person, no one individual owns a majority of both entities, and the percentage ownership and control of each entity by each person is very different. As such it cannot be determined that a qualifying relationship exists between the U.S. and the foreign entity.

Finally, based on the reasons for the denial of the instant petition, i.e., the lack of a qualifying relationship and the lack of sufficient physical premises prior to the approval of the initial new office petition, a review of the prior L-1 nonimmigrant petition approved on behalf of the beneficiary is warranted to determine if it was approved in error. Therefore, the director shall review the prior L-1 nonimmigrant petition approved on behalf of the beneficiary (EAC 02 009 53536) for possible revocation in accordance with 8 C.F.R. § 214.2(l)(9).

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 and the petition hereby denied.

FURTHER ORDERED: The director shall review the prior L-1 nonimmigrant petition approved on behalf of the beneficiary (EAC 02 009 53536) for possible revocation pursuant to 8 C.F.R. § 214.2(l)(9).