

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

17

**PUBLIC COPY**



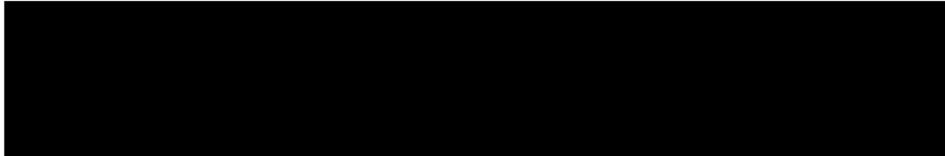
File: EAC 07 007 52988    Office: VERMONT SERVICE CENTER    Date: **FEB 28 2008**

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. 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 employ the beneficiary in the position of manager to open a new office in the United States 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, a corporation organized under the laws of the State of Florida, is allegedly in the tourism business.<sup>1</sup>

The director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval.

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.
- (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.

---

<sup>1</sup>According to Florida state corporate records, the petitioner's corporate status in Florida was "administratively dissolved" on September 14, 2007. Therefore, since the corporation may not carry on any business except that necessary to wind up and liquidate its affairs, the company can no longer be considered a legal entity in the United States. *See* § 607.1405, Fla. Stat. (2006). Therefore, if this appeal were not being dismissed for the reasons set forth herein, this would call into question the petitioner's continued eligibility for the benefit sought.

- (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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

The primary issue in this matter is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

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 support of the petition, counsel describes the proposed United States operation in a letter dated October 6, 2006 as follows:

The Petitioner plans to have extensive operations in the tourism industry. In this industry, the Petitioner's objective is to promote Ecuador's magnificent and exotic destinations, offering individual or group packages that will show the versatility of climate and scenery this country can offer, such as: the top of the highest volcano in the world, the Amazon jungle, the calm beaches of the Pacific [O]cean or the Galapagos Islands, and many other historical sites.

The first step, which will be developed in the first operational year, is to establish its subsidiary in the United States and start operations. To accomplish its plan, the Petitioner expects to hire a professional staff to help them with their new quest in the United States.

Counsel also describes the proposed organizational structure of the United States operation in the October 6, 2006 letter. Counsel claims that the beneficiary will lead the organization and will directly or indirectly supervise marketing, sales, and clerical employees. While counsel further claims that the sales and marketing

positions will require bachelor's degrees, he did not describe the duties of these proposed subordinate employees.

Finally, counsel describes the beneficiary's proposed duties in the United States in the October 6, 2006 letter as follows:

- Review financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement.
- Manage staff, prepare work schedules and assign specific duties[.]
- Establish and implement departmental policies, goals, objectives, and procedures, conferring with board members, as necessary.
- Determine staffing requirements, and interview, hire and train new employees, or oversee those personnel processes.
- Oversee activities directly related to providing services[.]
- Direct and coordinate organization's financial and budget activities to fund operations, maximize investments, and increase efficiency.
- Engage in long-range planning and identify business opportunities in the US[.]
- Acquisition of new clients and business relationships.
- Formulate and implement administrative and financial policies and [p]rocedures.
- Cash management[, ] etc.

Counsel does not clarify whether these duties apply during the United States operation's first year in operation, after its first year in operation, or both.

On November 29, 2006, the director requested additional evidence. The director requested, *inter alia*, evidence establishing that, within one year of commencing operations, the beneficiary will be relieved from performing non-qualifying tasks and a detailed explanation outlining how the duties of the proposed subordinate employees will be managerial or professional.

In response, counsel submitted a letter dated February 16, 2007 which includes a chart indicating that, during the beneficiary's first year of employment, she will gradually cede non-qualifying operational tasks to newly hired employees. Counsel also submits an organizational chart purportedly applicable to the United States organization after its first year in operation. This new chart shows a complex organization headed by an operational manager who will supervise a marketing manager, an administrative manager, a financial manager, and a sales manager who, in turn, will all supervise subordinate employees. It appears that counsel is claiming that the petitioner will employ, after the first year in operation, at least 16 employees and independent contractors. Moreover, counsel describes the proposed duties of these various proposed employees and independent contractors. As these descriptions are in the record, they will not be repeated here. Generally, counsel describes several of the proposed "manager" positions to require bachelor's degrees and claims that the beneficiary will supervise and control a subordinate tier of managers or supervisors who, in turn, will supervise subordinate workers.

Finally, counsel submits various job postings and other materials acquired from the Internet in support of his claim that the proposed subordinate positions are professional or supervisory jobs.

On May 7, 2007, the director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval.

Upon review, the petitioner's assertions are not persuasive.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

*Id.*

For several reasons, the petitioner in this matter has failed to establish that the United States operation will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. The petitioner has failed to specifically describe the beneficiary's proposed duties after the petitioner's first year in operation; has failed to establish that the beneficiary will be relieved of the need to perform the non-qualifying tasks inherent to the operation of the business by a subordinate staff within the petitioner's first year in operation; has failed to establish that a sufficient investment has been made in the United States operation; and has failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C).

As a threshold issue, it is noted that the record in this matter is devoid of evidence addressing the proposed business of the United States operation, the beneficiary's present and future duties, the petitioner's proposed organizational structure, and the duties of the claimed subordinate employees. The only materials addressing these matters are two letters written and signed by the petitioner's attorney. The petitioner did not even sign the Form I-129. The record does not contain any evidence supporting counsel's claims pertaining to the petitioner's proposed business, staffing, or organization. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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). For this reason alone, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year, and the petition will be denied for this reason.

Regardless, even considering counsel's unsupported claims, the record is not persuasive in establishing that the United States operation will support an executive or managerial position within one year. First, as correctly noted by the director, the job descriptions for both the beneficiary and her subordinate workers fail to credibly establish that the beneficiary will be performing primarily "managerial" or "executive" duties after the petitioner's first year in operation. When examining the proposed executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the proposed 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 that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.*

In this matter, counsel has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, counsel states that the beneficiary will establish and implement policies, goals, objectives, and procedures; will oversee "activities directly related to providing services," and will acquire "new clients and business relationships." However, counsel did not specifically define these policies, goals, objectives, and procedures. Counsel also failed to describe with any specificity its "services" or "activities" or to identify any proposed business relationships or clients. The fact that counsel has given the beneficiary a managerial title and has prepared a vague job description which includes inflated duties does not establish that the beneficiary will actually perform managerial duties after the first year in operation. Specifics are clearly an important indication of whether a

beneficiary's duties will be 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). Once 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*, 14 I&N Dec. 190.

Likewise, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to "primarily" perform the non-qualifying tasks inherent to her duties and to the operation of the business in general or that she will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. See 101(a)(44) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.

In this matter, the petitioner failed to submit any evidence addressing this issue even though the director specifically requested such evidence in the November 29, 2006 Request for Evidence. 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). While counsel claims that the petitioner will hire at least 16 employees and contractors, including four subordinate managers, during its first year in business, these claims are entirely unsubstantiated by evidence. The record does not include a business plan, marketing strategy, or projected financial data, and fails to specifically identify a single product, service, or business relationship related to its proposed Ecuadorian tourism business. Counsel's unsubstantiated claims that the newly formed business entity will adopt a complex organizational structure and hire 16 or more workers does not establish that the United States operation will truly grow and mature into an active business organization which will reasonably require the services of an employee who will primarily perform managerial or executive duties. Rather, the petitioner must clearly define the scope and nature of a United States operation and establish that it has, and will continue to have, the financial ability to support the establishment and growth of the business. As noted above, the record is devoid of any such evidence. Furthermore, the petitioner has failed to establish that the United States operation, vaguely described as an Ecuadorian tourism company, will reasonably need the services of a subordinate tier of managers, supervisors, or professionals. Again, boldly stating that the beneficiary will supervise a subordinate tier of managers, supervisors, and professionals is not sufficient in the absence of evidence that the petitioner's business will require a complex organizational structure and evidence that the petitioner is, or will be, able to employ such a workforce.<sup>2</sup>

---

<sup>2</sup>It is further noted that counsel's description of the proposed subordinate workers fails to establish that any of the workers will truly be a "professional." In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term

Accordingly, the petitioner has failed to establish that the beneficiary will be primarily employed in a managerial or executive capacity within one year, and the petition may not be approved for that reason.

Second, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because it failed to establish that a sufficient investment was made in the enterprise. 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In this matter, the petitioner submitted bank documents indicating that \$2,553.00 was transferred by the foreign entity to the petitioner on or about October 6, 2006. However, these funds appear to be entirely inadequate to support the establishment of the United States operation. According to the "commercial lease agreement" submitted with the petition, the petitioner's yearly rent alone is \$3,000.00. It is not credible that the petitioner will be able to both establish and grow the United States operation to the point that it will employ the beneficiary in a position which is primarily executive or managerial on such a meager investment. In the absence of evidence that the petitioner's business will immediately begin generating substantial revenue, the petitioner has failed to establish that this small investment will be sufficient to establish and support the United States operation, and the petition may not be approved for this additional reason.

Third, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because the petitioner has failed to sufficiently describe the nature, scope, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(1). As explained above, counsel vaguely describes the petitioner's proposed business as an Ecuadorian tourism enterprise. However, the petitioner failed to submit a "business plan" which specifically describes the petitioner's proposed products, services, customers, or competitors. The petitioner also fails to make any projections regarding revenue, income, expenses, or financial goals. The record does not contain any independent analysis, contracts, business contacts, or purchase orders. Absent a detailed, credible description of the petitioner's proposed United States business operation addressing the petitioner's proposed product, marketing plan, customers, and income/expense projections, it is impossible to determine whether the proposed enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

Accordingly, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and the petition may not be approved for the above reasons.

---

"profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee will be employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the work of any of the proposed subordinate employees.

Beyond the decision of the director, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

In support of the petition, counsel submitted a copy of a "commercial lease agreement" between the petitioner and a business entity called [REDACTED] describing the petitioner's purported lease of [REDACTED] at [REDACTED] Pompano Beach, Florida. The initial term of the lease is from September 26, 2006 until September 26, 2007. However, the lease fails to specifically describe the size or location of [REDACTED]

[REDACTED] and the record is devoid of evidence describing the spatial needs of its proposed United States operation. Absent evidence addressing both the size and character of the leased premises and a description of the premises needs of the proposed United States operation, which predicts the employment of at least 16 people within one year, it is impossible for Citizenship and Immigration Services (CIS) to discern whether the secured premises will sufficiently permit the proposed enterprise to succeed and rapidly expand as it moves away from the developmental stage to full operations.

Furthermore, it is noted that the leased premises, "[REDACTED]" is purportedly located at [REDACTED] Pompano Beach, Florida. According to the record, [REDACTED] is also the beneficiary's "current U.S. address" listed in the Form I-129, the address of the petitioner's counsel, and the address of the petitioner's incorporator and registered agent, Tax House Corporation. In view of these connections, it is simply not credible that the petitioner is or will be truly doing business at [REDACTED] or that the "commercial lease agreement" is a bona fide business lease for space at this location. The evidence is not credible and will not be given any weight in this proceeding. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also 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).

Accordingly, as the petitioner has failed to establish that it has secured sufficient physical premises to house the new office, the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary has been employed in a primarily managerial or executive capacity with the foreign entity for one year within the preceding three years. 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner failed to specifically describe the beneficiary's job duties abroad. Specifics are clearly an important indication of whether a beneficiary's duties were 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, *aff'd*, 905 F.2d 41. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad. Absent detailed descriptions of the duties of both the beneficiary and her purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary has been employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(3)(v)(B), and the petition may not be approved for this reason.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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.