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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 14 2006

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been
returned to the office that originally decided your case. Any further inquiry must be made to that
office.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner, Burglar Stop U.S.A., 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 claims to be an affiliate of B&E Burglar Stop, located in Canada and is engaged in the security alarm monitoring sales business. The initial petition was approved to allow the petitioner to open a new office. It seeks to extend the petition's validity and the beneficiary's stay for two years as the U.S. entity's general manager. The petitioner was incorporated in the State of Oregon on December 7, 1998 and claims to have one employee.

On March 12, 2003, the director denied the petition because the petitioner failed to establish that (1) a qualifying relationship existed between the petitioner and foreign entity; (2) the petitioner had been doing business; and, (3) the beneficiary had been and will be employed in a primarily executive or managerial capacity.

On appeal, the petitioner claims that: 1) "The company is viable, and doing business as per the regulations;" 2) "[The beneficiary] has been working in an L1A capacity for the last two years;" and, 3) "The business is of sufficient complexity to support an executive level position." The petitioner submits additional evidence in support of the appeal.

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.

In relevant part, the regulations at 8 C.F.R. § 214.2(l)(3) state 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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) requires that a visa petition under section 101(a)(15)(L) of the Act 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 (I)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (I)(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 in this proceeding is whether the petitioner has established a qualifying relationship with the foreign entity as required by 8 C.F.R. § 214.2(l)(3)(i).

The regulation at 8 C.F.R. § 214.2(l)(ii) defines the term “qualifying organization” and related terms as:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (I)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

* * *

- (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.

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

The Form I-129 petition was submitted on October 31, 2002 without a completed L Classification Supplement or documentary evidence to establish a qualifying relationship between the two entities.

On December 21, 2002, the director requested evidence to show that the petitioner and the foreign entity have a qualifying relationship. In particular, the director requested evidence that shows the common ownership and control between the foreign entity and the U.S. entity.

In response, the petitioner submitted a completed L Classification Supplement to Form I-129, and stating that the beneficiary owns the foreign entity and that the beneficiary and his wife own the U.S. entity. The petitioner submitted a copy of the certificates of incorporation for each company and recent bank statements.

On March 12, 2003, the director denied the petition because the petitioner failed to establish that a qualifying relationship existed between the petitioner and foreign entity. The director found that the documents submitted did not establish the ownership of the U.S. entity.

On appeal, the petitioner submits a copy of the U.S. company's minutes of the first meeting of the board of directors dated January 3, 1999, which indicates that the company's shares would be issued in equal shares to the beneficiary and his spouse.

On review, there is insufficient evidence to establish that a qualifying relationship exists between the petitioner and the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G)(1). On the Form I-129, the petitioner claims that the U.S. organization is an affiliate of the foreign company. The petitioner claimed that the beneficiary and his wife equally own the U.S. entity and beneficiary owns 100 percent of the foreign entity. The petitioner submitted its articles of incorporation, the minutes of the first meeting, and bank statements. However, the petitioner submitted insufficient documentation to establish the ownership and control of the U.S. business and foreign entity. Although the minutes of the first meeting states that the U.S. corporation is "authorized to issue and deliver a certificate in the amount of 750 shares each" to the beneficiary and his wife, there is no evidence that the shares were actually transferred and the beneficiary and his wife actually paid for these shares. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, there is insufficient evidence to establish the current ownership of the foreign entity. A company resolution for the foreign entity confirms that the beneficiary received one class "A" common share of the company's stock on February 18, 1994, which, at the time was the only issued share. However, the foreign entity is authorized to issue 140,000 common and preferred shares. Without additional documentation, such as copies of all current and canceled share certificates and a share transfer ledger, the AAO cannot determine the total number of shares issued as of the date of filing or the company's current ownership. The petitioner has not substantiated its claim that the beneficiary owns the foreign entity.

After careful consideration of the evidence, the AAO concludes that the petitioner has not established that a qualifying relationship exists between the United States and foreign entities. For this reason, the petition may not be approved.

The second issue in this proceeding is whether the petitioning organization has been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as:

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.

On the Form I-129, the petitioner indicated that it had one employee at the time of filing and in 2001 achieved gross annual income of \$46,975.09.

On March 12, 2003, the director denied the petition because the petitioner failed to establish that it had been doing business. The director found that the petitioner's two bank statements showed minimal business activity and that one of the bank statements, dated December 9, 2002, indicated that the petitioner had closed its account. The director also found that based upon the petitioner's own statements it was unclear whether it had been or will be doing business.

On appeal, the petitioner claims, "The company is viable, and doing business as per the regulations. The petitioner claims that the "office is functioning but not as we first planned and this is totally due to the inability to find qualified employees." The petitioner claims that its initial work was "subcontracted to Scott Langberg of Security Alarm Services." The petitioner explains that its bank account was not closed out and that "the account went through a conversion in company status and the account number was changed for us." The petitioner submits a letter from its bank and a "sample list" of its customers.

On review, the petitioner has not established that the U.S. entity has been doing business for the previous year on a regular, systematic, and continuous basis pursuant to 8 C.F.R. § 214.2(l)(14)(ii)(3)(B). In a letter submitted with the initial petition, the petitioner claimed, "Due to unforeseen licensing requirements by Washington State Government, our launching of our new office has had a slow start." In a statement submitted in response to the director's request for evidence, the petitioner also claimed:

All work has been undertaken by sub contractors and sales have been made by independent dealers. Up to this point operations within the company have been minimal. . . .

Now that [the beneficiary] qualifies as an electrical administrator under state law, the company can proceed. Until now, without this qualification we have not been able to hire qualified journeyman electricians which are required to service our accounts, nor were we able to advertise our company's products.

The petitioner did not submit evidence of these claimed subcontractors or independent dealers. Therefore, if the company had not been able to advertise or market its products, did not have qualified journeymen electricians to service its accounts, and there is no evidence of these claimed independent dealers and subcontractors, this leads the AAO to conclude that the U.S. company was not a viable business or, at most, was in the preliminary stages of development at the time of filing. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In addition, the petitioner, on appeal, submits a sample list of its customers' names and addresses. However, this evidence is insufficient to establish that the petitioner has been doing business for the previous year. The petitioner did not submit invoices, contracts, or other evidence to establish that the petitioner had been doing regular and continuous business. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

After careful consideration, the AAO concludes that the petitioner has not demonstrated that the U.S. entity had been doing business for the previous year. For this reason, the petition may not be approved.

The third issue in this proceeding is whether the beneficiary has been and will be primarily performing executive or managerial duties for the United States entity. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term “managerial capacity” means an assignment within an organization in which the employee primarily-

- (i.) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii.) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii.) 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
- (v.) 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 the Form I-129, the petitioner described the beneficiary’s proposed U.S. duties as “Expand office, Train [and] manage employees.” In addition, the petitioner stated:

[The beneficiary] has successfully written the required examinations and holds all the required licenses (Electrical Administrator and Journeyman Low Voltage

Electrician) so that we are now able to proceed. We have set up a dealer network who are beginning to sell our services, and we require [the beneficiary] to train their local employees. We are monitoring alarm systems for many US homes and businesses and without [the beneficiary's] presence we would not be able to continue our services.

On December 21, 2002, the director requested additional evidence. Specifically, the director requested: (1) a completed Form I-129 Supplement; (2) whether the beneficiary's duties were managerial or executive and a specific description of the beneficiary's duties; (3) the time the beneficiary devoted to these duties; (4) the total number of employees supervised; and, (5) a U.S. organizational chart.

In response, the petitioner claimed that the beneficiary "will oversee total US operations" and his duties will include "Expand permanent sales and service office," "Coordinate customer expansion program," "Oversee entire company management." These include the following duties:

Hire and train sales staff

Hire and train customer service and accounting staff

Supervise staff

Trouble shoot and solve problems

Budget

The petitioner also described the beneficiary's previous and proposed U.S. duties as:

Between Oct 2000 and Oct 2002 he has organized and set up the frame work for the USA operation. He has developed a business plan that will offer low price alarm monitoring . . . to the US market. [The beneficiary] has designed and purchased the communication links that are required for our operation. He has set up and organized an office, has made contact with and has selected several dealers to market our monitoring services.

* * *

The beneficiary has developed the company by introducing an independent dealer network sales plan which he has introduced and managed by training independent dealers to sell our products. Through these dealers [the petitioner] now monitors alarm systems throughout the state of Washington. [The beneficiary] is solely in charge of [the U.S. company] to date. This year he is planning an advertising campaign to kick off our expansion. Sales and support staff and accounting staff will be hired for our US company. [The beneficiary] will manage [the U.S. company] for the next two years and it is our anticipation

that at the time he will have developed a management team within the company that will oversee the operation.

The petitioner also described its proposed company organization chart listing several positions it anticipated filling and stated that the U.S. company "advertised unsuccessfully for a whole year for hiring qualified service personnel" and that "no qualified candidates came forward." The petitioner claimed, "All work has been undertaken by sub contractors and sales have been made by independent dealers." Finally, the petitioner stated that the beneficiary "chose to study and successfully write the examinations that would give him a Journeyman's ticket as a Low Voltage Electrician and an Electrical Administrator's License."

On March 12, 2003, the director denied the petition because the petitioner failed to establish that the beneficiary has been and will be employed in a primarily executive or managerial capacity. The director found that the duties described were general and did not clearly explain what the beneficiary's duties necessitated, or when he would have a subordinate staff.

On appeal, the petitioner claims that "[The beneficiary] has been working in an L1A capacity for the last two years;" and "the business is of sufficient complexity to support an executive level position." The petitioner claims that two technical representatives have been hired and further describes the beneficiary's duties as:

Designing and wording alarm sales and monitoring contracts, designing forms, designing sales literature, negotiating insurance, negotiating rental contracts, designing dealer agreements, contacting perspective [sic] dealer applicants, approving advertising layouts, purchasing equipment and planning as well as studying and achieving the required licenses.

In examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). In this matter, the petitioner, on appeal, claims that the beneficiary has been working in a "management position" for the past two years. However, the petitioner also claimed that "the business is of sufficient complexity to support an executive level position." Therefore, the petitioner does not clarify whether the beneficiary is primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing the beneficiary is both an executive and a manager.

On review, the petitioner has not established that the beneficiary has been and will be employed in a primarily executive or managerial capacity. The beneficiary's described duties are vague and fail to describe what the beneficiary will be primarily performing on a day-to-day basis. For example, the petitioner described the beneficiary's duties as "[e]xpand office, Train [and] manage employees" and "[d]esigning and wording alarm sales and monitoring contracts." However, it is unclear how the beneficiary will perform these duties and how he will train and manage employees that have not yet been hired. 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).

In addition, based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). It also appears from the record that the only individual performing any marketing-related functions is the beneficiary. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. 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 has also not established that the beneficiary will manage a subordinate staff of managerial, professional, or supervisory personnel. It has been noted in the record that the beneficiary is the only named employee working for the U.S. entity and that the beneficiary "oversee[s] the entire company management." The petitioner submitted an organizational chart listing several titles and claimed that the company will fill these prospective positions. The petitioner did not submit evidence that it employed any subordinate staff members who would perform the actual day-to-day, non-managerial operations of the company. There was no evidence in the record of any non-qualifying clerical, sales, or service positions that have been filled, such as for the sales manager and sales staff that the petitioner claimed had not yet been hired. Collectively, this brings into question how much of the beneficiary's time can actually be devoted to managerial or executive duties. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. *See sections 101(a)(44)(A) and (B) of the Act.*

The petitioner further indicated that it hired two "technical representatives" subsequent to filing the petition and plans to hire additional managers and employees in the future. However, 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. 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). Further, although the petitioner stated that "[a]ll work has been undertaken by sub contractors and sales have been made by independent dealers," the petitioner has neither presented evidence to document the existence of these employees nor specifically identified the services these individuals provide. Additionally, the petitioner has not explained how the services of these contractual employees obviate the need

for the beneficiary to primarily conduct the petitioner's business. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Additionally, the term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The petitioner stated that the beneficiary "will oversee total US operations." If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. As previously stated an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 593, 604. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

Although the director based his decision partially on the size of the enterprise and the number of staff, the director did not take into consideration the reasonable needs of the enterprise. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

At the time of filing, the business employed the beneficiary as general manager. As stated previously, the petitioner did not submit evidence that it employed any subordinate staff members who would perform the actual day-to-day, non-managerial operations of the company. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as general manager. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

After careful consideration of the evidence, the AAO concludes that the petitioner has failed to establish that the beneficiary has been and will be employed in a primarily executive or managerial capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, it remains to be determined that the beneficiary's services are for a temporary period. The petitioner indicated that the beneficiary owns 50 percent of the U.S. company and 100 percent of the foreign entity. The regulation at 8 C.F.R. § 214.2(I)(3)(vii) states that if the beneficiary is an owner of the U.S. business, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the

beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of his services in the United States. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the record reflects that the petitioner did not file the petition for an extension within the required time frame. The regulation at 8 C.F.R. § 214.2(l)(14)(i) provides, in pertinent part, that a petition extension may be filed only if the validity of the original petition has not expired. In the present case, the beneficiary's authorized period of stay expired on October 11, 2002. However, the petition for an extension of the beneficiary's L-1A status was filed on October 31, 2002 almost 20 days following the expiration of the beneficiary's status. Pursuant to 8 C.F.R. § 214.1(c)(4), an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed. As the extension petition was not timely filed, it is noted for the record that the beneficiary is ineligible for an extension of stay in the United States.

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 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).

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.

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