U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

D7

[redacted]

File: SRC 05 092 51562 Office: TEXAS SERVICE CENTER Date: NOV 13 2006

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 extend the employment of its president 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 in the State of Florida, operates a restaurant. The petitioner claims that it is the subsidiary of [redacted] located in Caracas, Venezuela. The beneficiary was initially granted a one-year period in L-1A status to open a new office in the United States, from August 29, 2003 until August 29, 2004. The director, Texas Service Center denied the petitioner's request for an extension of the "new office" petition on January 3, 2005 (SRC 04 226 50370). The petitioner now seeks to continue to employ the beneficiary as its president until August 29, 2006.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in a managerial or executive capacity.

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 for the petitioner asserts that the director erred in finding that the beneficiary would not serve in a managerial or executive capacity, and contends that the director placed undue emphasis on the number of employees supervised by the beneficiary. Counsel also submits "newly available evidence" that the petitioner purchased a business on November 30, 2004. Counsel asserts that professionals and managers of the purchased business report directly to the beneficiary in his capacity as president. Counsel submits a brief and evidence in support of the appeal.

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.

(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.

The primary 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.

The nonimmigrant petition was filed on February 10, 2005. In an attachment to the Form I-129, the petitioner described the beneficiary's duties as follows:

- Authority to supervise and control the development of the projects to be performed by the corporation.
- Present and create new markets projects and its achievements [sic] within the corporation standards.
- Set the guidelines, vision, goals and focus of the corporation.
- Power to make decisions affecting commercial economic and legal operations of the company.

The petitioner further indicated that the beneficiary would be responsible for "control, coordination, supervision of managers," and "planning and setting organizational goals." The petitioner submitted an organizational chart for the U.S. company which identifies a board of directors, a president (the beneficiary), an operational manager ([redacted]), accountants, and unidentified "employees." In an attachment to the organizational chart, the petitioner reiterated essentially the same duties for the beneficiary, and indicated that the operations manager would: direct and supervise the work of employees; verify that procedures of the company are complied with; select personnel; plan operational goals and sales strategies; hold authority to make decisions related to development of the company; and participate in the preparation and control of "operational proposals." The petitioner did not identify the duties performed by the unidentified employees.

The petitioner also submitted a copy of its Florida Form UCT-6, Employer's Quarterly Report, for the fourth quarter of 2004, which confirmed the full-time employment of the beneficiary and the operations manager. Two other employees received wages of $276.70 and $591.20 during the quarter and thus appear to have been employed on a part-time basis. The employees were identified as [redacted] and [redacted]

The director issued a request for evidence on February 23, 2005, and instructed the petitioner to submit "evidence of how this position of President qualifies and functions as a manager as defined in 8 CFR 214.2(l)(1)(ii)(B)." The director also requested a list of other employees who report to the beneficiary and evidence of their educational background.

In response, counsel for the petitioner submitted an April 4, 2005 letter, in which he addressed the beneficiary's claimed managerial capacity as follows:

> [The beneficiary] is the President and as such manages the entire organization. Below him is the previously mentioned Ms. [redacted] as the Operations Manager of [the petitioner]. Directly below her is Ms. [redacted], Kitchen Manager. Ms. [redacted] refers to Ms. [redacted] as her right hand since Ms. [redacted] handles all of the duties of a first line supervisor. Ms. [redacted] reports directly to Ms. [redacted] Under Ms. [redacted] is [redacted], Kitchen Assistant and [redacted] Waitress. Ms. [redacted] has full supervisory authority over both Ms. [redacted] and Ms. [redacted] Also reporting to Ms. [redacted] are the accountants and bookkeepers. As President, [the beneficiary] has complete authority over all personnel and operations at [the petitioning company.]
>
> Ms. [redacted] holds a degree . . . in Banking and Finance. . . .Under her authority are a supervisor in Ms. [redacted] and professional in the accountants and bookkeepers. Ms. [redacted] is in charge of the hiring and firing of personnel. In fact, the company is looking to hire additional staff. Your office has qualified Ms. [redacted] as Operations Manager since she qualifies as a position employed in a managerial capacity as defined by regulations.

The petitioner submitted evidence that Ms. [redacted] is the beneficiary of an approved Form I-129 petition granting her L-1A status, along with copies of her educational documents. The petitioner submitted copies of applications for employment for the three claimed employees, as well as an employment application for [redacted].

The director denied the petition on April 19, 2005, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director noted that according to the petitioner's organizational chart and the quarterly federal tax returns submitted, the beneficiary and the operations manager are the only two full-time employees of the company, while the two employees supervised by the operations manager serve as part-time kitchen help in the company's restaurant. The director further noted that the petitioner had not substantiated its claim that the company employs accountants and bookkeepers. The director concluded that the beneficiary would not be performing duties which primarily require him "to plan, organize, direct and control the organization's major functions by working through other managerial or professional employees in the United States."

On appeal, counsel for the petitioner disputes the director's suggestion "that [the beneficiary] does not actually perform the work as stated on the application." Counsel emphasizes that the business license permits, invoices, bank statements, and other documents all identify the beneficiary's name and establish that "he is the person who makes the most important decisions of the business."

Counsel further asserts that the director erroneously concluded that the U.S. company has only two full-time employees, asserting that the petitioner "submitted four employment forms." Counsel contends that the "exact same evidence" was submitted in support of the beneficiary's subordinate's approved L-1A petition, and thus the instant decision was "contradictory." Counsel suggests that the director placed "too much importance on the number of employees in the business, stating: "It is the Petitioner's assertion that [the beneficiary] does indeed qualify as a manager as he primarily manages the organization, supervises Ms. [redacted], a managerial employee, has the authority over hiring decisions, and exercises discretion over the day to day operations of the business."

Counsel asserts that the director failed to consider the reasonable needs of the organization in light of its overall purpose and stage of development, and contends that if given this consideration, the beneficiary also qualifies as an executive, because he establishes goals and executes the decisions made on behalf of the business. Counsel asserts that the petitioner is successful and expanding, and cites unpublished AAO decisions to stand for the proposition that such factors as an increase in the number of employees, growth in cash flow, and the presence of significant customers and clientele should be considered in determining the need for a managerial or executive employee.

Finally, counsel asserts that there is "newly available evidence" in the form of a sales contract dated November 30, 2004 between the petitioning company and WXC Corporation for the purchase of the assets of an internet café business. Counsel asserts that the petitioner's operations manager now supervises managers and professionals "involved with the information technology aspect of the internet café," which counsel indicates will operate as "Orion Center."

In support of the appeal, the petitioner submits an "Agreement for Sale of Assets," between the petitioner and WXC Corporation for the business known as "E-Friends Telecommunications Center". The petitioner also submitted a copy of its application for registration of a fictitious name filed by the petitioner on February 6, 2005, indicating its intent to operate as "Orion Center" at a location which appears to be adjacent to its existing restaurant.

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity.

As a preliminary matter, the AAO notes that the "newly available evidence" will not be considered on appeal. Neither counsel nor the petitioner has provided any explanation as to why the evidence would not have been available in February 2005 when the petition was filed or in April 2005 when the petitioner responded to the director's request for evidence. For this reason, the AAO cannot accept counsel's claim that that there is "new evidence" that the petitioner purchased a separate business five months prior to the adjudication of the petition. Furthermore, the record does not contain evidence to establish that the petitioner was actually

operating an internet café when the instant petition was filed on February 10, 2005. 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, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The appeal will be adjudicated based on the evidence that was available to the director.

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.* A petitioner may not claim to employ a beneficiary 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. In this case, the petitioner has asserted that the beneficiary performs both executive and managerial functions.

The petitioner submitted a vague job description for the beneficiary which failed to convey any understanding of the day-to-day duties he would perform as the president of the U.S. company. For example, the petitioner indicated that he would "supervise and control the development of the projects to be performed by the corporation," and "present and create new markets projects." The petitioner did not, however, clarify what types of "projects" have been and would be undertaken, or what specific duties are involved in "presenting," "creating," or "controlling" such projects. The remainder of the beneficiary's duties include setting guidelines and goals and making decisions on behalf of the corporation, but the petitioner provided no concrete examples of the beneficiary's goals or decisions, nor identify any specific tasks associated with these broad responsibilities. 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 response to the director's request for evidence to establish how the beneficiary's position qualifies as managerial under the governing regulations, counsel for the petitioner simply stated that the beneficiary "manages the entire organization," and asserted that the beneficiary's "work in a managerial capacity is consistent with regulation." 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 provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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).

Further, the petitioner's vague description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible portrayal of the beneficiary's role within the organizational hierarchy. Counsel correctly observes that a company's size alone, without taking into account the reasonable

needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

As noted by the director, there is a discrepancy between the petitioner's organizational chart submitted in response to the director's request for evidence, and the company's most recent Florida Form UCT-6, Employer's Quarterly Report, submitted at the time of filing. The petitioner initially claimed to employ four workers and submitted its Form UCT-6 for the fourth quarter of 2004 confirming the full-time employment of the beneficiary and the operations manager, and the part-time employment of two additional workers, [redacted] and [redacted] The petitioner did not identify the duties or job titles of the part-time employees. In response to the director's request for evidence, the petitioner claimed to employ a kitchen manager, [redacted], a kitchen assistant, [redacted] and a waitress, [redacted] The only evidence submitted in support of these assertions were the applications for employment submitted by each worker. The petitioner has not submitted evidence that the U.S. company employed [redacted] or [redacted] at the time the petition was filed. In fact, both of these individuals were identified on the company's quarterly reports earlier in 2004, but were not employed in the fourth quarter of 2004. Absent evidence in the form of payroll records or pay stubs showing that these employees were re-hired between December 2004 and February 2005, the petitioner has not established that they were employed when the petition was filed. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Therefore, at the time of filing, the petitioner, which operates a restaurant, employed the beneficiary as president, an operations manager, and two part-time workers, who were compensated at a rate of approximately $100 to $200 per month in the quarter preceding the filing of the petition and clearly worked a limited number of hours. Although the petitioner indicates that both the beneficiary and the operations manager perform primarily managerial or executive duties as defined at section 101(a)(44) of the Act, the petitioner has not demonstrated that the reasonable needs of a restaurant could be met by two managers and two part-time workers. The petitioner reasonably requires workers to order food, equipment and supplies, monitor inventory, receive deliveries, prepare menus, prepare food, greet and serve customers, clear tables, wash dishes, maintain the cleanliness of the kitchen, dining area and restrooms, ring up customer purchases on a cash register, and perform other routine administrative and operational duties inherent in operating any business, such as marketing, advertising, routine bookkeeping and banking tasks and paying bills. It is reasonable to assume, and has not been shown otherwise, that both the beneficiary and the operations manager would be required to participate extensively in these non-managerial duties in order for the restaurant to remain operational. 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 (requiring that one "primarily" perform the

enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

In addition, the AAO notes that counsel's assertion that the beneficiary will manage a staff of supervisory, professional or managerial employees is not supported by the record. Specifically, counsel emphasizes that the beneficiary's claimed subordinate is currently employed by the petitioner as an L-1A intracompany transferee, and thus the beneficiary can be deemed a managerial employee pursuant to section 101(a)(44)(A)(ii) of the Act. However, notwithstanding the operations manager's previously accorded L-1A status, the evidence presented with the instant petition indicates that this employee would only occasionally supervise non-professional personnel and would spend the remainder of her time participating in the non-qualifying day-to-day functions of operating a restaurant. The instant record does not establish that the petitioner's operations manager is employed as a supervisor, manager or professional.

It must be emphasized that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the nonimmigrant petition filed on behalf of the petitioner's other employee was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The petitioner's general description of the beneficiary's duties and the lack of sufficient full-time personnel in the United States to perform the many non-managerial duties associated with operating a restaurant prohibit a finding that the beneficiary would be employed in a primarily managerial or executive capacity. The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

While the beneficiary in this matter would evidently exercise discretion over the day-to-day operations of the company, the record shows that the beneficiary would be required to personally perform many non-managerial duties rather than managing or supervising the performance of these routine duties by other subordinate employees. The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium size businesses. However, the AAO has also long required the petitioner to establish that the beneficiary's position consists of primarily managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks. The petitioner has not established the basic eligibility requirement in this matter, that the beneficiary is primarily performing managerial or executive duties.

The petitioner indicates that it 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. For this reason the appeal will be dismissed.

Beyond the decision of the director, it is noted that the petitioner indicated under penalty of perjury in Part 4 of the Form I-129 petition that the beneficiary had never been denied the requested classification. This petition was filed on February 10, 2005. As noted in the recitation of the procedural history of this matter, the beneficiary's previous L-1 petition (SRC 04 226 50370) was denied by the director on or about January 3, 2005. The regulations at 8 C.F.R. § 214.2(l)(2)(i) state that "[f]ailure to make a full disclosure of previous petitions filed may result in a denial of the petition." As the petitioner indicated on the form that the beneficiary had never been denied the requested classification, and the petitioner failed to fully disclose the previously filed petitions, this petition will be denied as a matter of discretion.

Another issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists with the beneficiary's former overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner claims to be a wholly-owned subsidiary of Seguros Diversificados, S.A., located in Caracas, Venezuela, and has submitted a copy of its stock certificate number one, showing that the company issued all 1,000 of its authorized shares to the foreign entity on January 9, 2003. However, the petitioner's 2003 IRS Form 1120, U.S. Corporation Income Tax Return, indicates that the petitioner has four shareholders identified as the beneficiary, [redacted] and [redacted] thus contradicting the petitioner's claim that it is a subsidiary of the foreign entity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Based on the evidence submitted, it cannot be concluded that the petitioner has a qualifying relationship with the beneficiary's foreign employer. For this additional reason, the petition cannot be approved.

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

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