



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: DEC 30 2014 OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

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

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Nebraska Service Center Director denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a supplier of stage automation engineering and control systems. It claims to be a subsidiary of the beneficiary's foreign employer, [REDACTED] located in the United Kingdom. The petitioner seeks to employ the beneficiary as its Vice President of Business Development.

The director denied the petition on March 28, 2014, concluding that the petitioner failed to establish that the beneficiary had been and would be employed within a qualifying 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, the petitioner asserts that it provided sufficient evidence to establish that the beneficiary was employed abroad and would be employed in the U.S. in a qualifying managerial capacity. Counsel for the petitioner submits a brief and additional evidence in support of the appeal.¹

I. THE LAW

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

¹ We conduct appellate review on a *de novo* basis (See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)).

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. ISSUES ON APPEAL

A. Employment Abroad in a Managerial or Executive Capacity

The first issue to be addressed is whether the petitioner established that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

1. Facts

The beneficiary worked with the foreign employer from June 2006 until October 2008 as a Sales Manager. In a letter dated May 28, 2013, the petitioner described the beneficiary's duties abroad as follows:

As Sales Manager, [the beneficiary] successfully managed and coordinated all activities involving sales and marketing of [the foreign company's] products and services, as well as managed and supervised the sales support staff. Specifically, [the beneficiary] developed and managed new customers, generated new sales leads, and maintained relationships with existing customers. She reviewed sales operational records and reports to project sales and determine profitability, as well as studied the market trends to identify prospects, and secure local and international account businesses. She resolved customer complaints regarding sales and services, and monitored customer preferences to determine focus of sales efforts. She was responsible for increasing awareness of [the foreign company's] brand by investigating potential new markets and possible customers in targeted markets. She worked directly with other senior managers to develop

sales and marketing support materials to target prospective customers while also increasing the depth of penetration within the existing customer base. She developed and executed sales and marketing plans, as well as monitored and evaluated effectiveness of these strategies. Further, [the beneficiary] prepared and submitted sales proposals, conducted meetings with prospective customers, negotiated contracts, and completed other sales and marketing activities when necessary.

On September 30, 2013, the director sent a request for additional evidence (RFE). In part, the director requested a detailed job description of the beneficiary's specific tasks on a normal business day including the percentage of time spent on each task when employed by the foreign company. In addition, the director requested an organizational chart including the names of all employees, employees' titles, a clear description of their job duties, educational level, and whether they worked part-time or full-time. The director also requested a description of the foreign entity's products and services, including the exact production and administrative tasks necessary to produce the product and services, and who performs those tasks, and tasks related to goal-setting, policy-making, and discretionary decision-making.

In response to the RFE, the petitioner submitted a letter from the Managing Director, dated December 9, 2013. The letter further detailed the duties performed by the beneficiary as Sales Manager with the foreign company as follows:

- **Sales and Business Development – Permanent Installation EUROPE/Rest of the World (NON-USA).** [Approximately 25%] [The beneficiary] reviewed sales operational records and reports to project sales and determine profitability, as well as studied the market trends to identify prospects and secure local and international account businesses. She was responsible for working on requests for information and bids for new projects in Europe and Asia. These were projects with existing clients or were new clients where we had received bids via Theatre consultants or from Tender websites. [The beneficiary's] time was spent working with clients to determine the type of installation and equipment needed depending on the type of project. After working with clients to obtain their equipment requirements, [the beneficiary] would then work with our Technical department to work up costs to generate a proposal. Once [the beneficiary] developed and submitted a proposal, [the beneficiary] spent time liaising with the client to see if the proposal was within their budget. If the client could not afford our proposal, [the beneficiary] had discretionary authority to determine pricing strategies or value engineer some items into the proposal.
- **Sales and Business Development – Permanent Installation USA.** [Approximately 30%] [The beneficiary] was responsible for working on requests for information and bids for U.S. projects. She acted as the point of contact in the London office through whom U.S. employees could consult with regarding

pricing, product literature and delivery times. [The beneficiary] was also the key person who liaised with USA-based Theater consultants who were working on projects outside of the United States. Much like her duties above (Permanent Installation EUROPE/Rest of the World (NON USA)), her work on bids involved reading specifications, working with the technical department to gather pricing information, creating a pricing strategy and big proposal and then negotiating the final contract if we were successful with the bid. If the client could not afford our proposal, [the beneficiary] had discretionary authority to determine pricing strategies or value engineer some items into the proposal. During her tenure as the Sales Manager in our London office, [the beneficiary] negotiated several key projects including a \$6.5 million project for () show; \$3 million contract with () a \$3 million contract with BAS and a \$7 million contract for ()

- **Client Meetings.** [Approximately 20%] [The beneficiary] developed and managed new customers, generated new sales leads, and maintained relationships with existing customers. [The beneficiary] would visit clients and consultants. She was responsible for increasing awareness of [the foreign company's] brand by investigating potential new markets and potential clients in targeted markets. This responsibility included traveling, giving product demos, and conducting general meetings with clients and consultants to ensure that we were kept on their bid lists and were up to date with all the information they could share about their upcoming projects. This role also required [the beneficiary] to monitor client preferences to determine the focus of future efforts.
- **Trade Shows.** [Approximately 10%] [The beneficiary] was tasked with representing the company at various trade and industry shows. This included setting up trade shows, and attending trade shows in the United Kingdom, Europe and the United States.
- **Marketing.** [Approximately 5%] [The beneficiary] developed and executed sales and marketing plans and oversaw the Marketing team to develop sales and marketing support materials to target prospective customers while also increasing the depth of penetration within the existing customer base. She maintained and evaluated the effectiveness of these strategies. Specifically, she worked with the clients and the Marketing team to develop and publish press releases about the company's new projects and new products. She prepared technical and factual explanation in bullet points, which Marketing could then use to produce press releases, case studies and update the website.
- **Education.** [Approximately 10%] [The beneficiary] visited local London-based Theatre schools to give lectures and workshops of Automation and Stage technologies.

The petitioner also explained that the beneficiary's direct supervisor was the Commercial Director and her immediate subordinates were the Sales Account Manager and the Marketing Assistant.

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

1. Analysis

When examining the executive or managerial capacity of the beneficiary, we review the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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). We will then consider this information in light of other relevant factors, including job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the foreign company's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role within the foreign entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has the capability of maintaining its daily operations such that the beneficiary was relieved from having to primarily perform the operational tasks.

In the present matter, upon review of the totality of the record, the evidence does not support a finding that the beneficiary allocated her time primarily to the performance of tasks that are within a qualifying managerial or executive capacity.

On review, the petitioner provided a vague description of the beneficiary's duties with the foreign company that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner stated the beneficiary was responsible for "working on requests for information and bids for new projects;" and "developed and managed new customers, generated new sales leads, and maintained relationships with existing customers." This description fails to explain the specific tasks associated with these duties. 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 sufficient detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The job description also includes several non-qualifying duties such as the beneficiary "studied the market trends to identify prospects and secure local and international account businesses;"

“work on bids involved reading specifications, working with the technical department to gather pricing information, creating a pricing strategy and big proposal and then negotiating the final contract if we were successful with the bid;” “developed and executed sales and marketing plans and oversaw the Marketing team to develop sales and marketing support materials to target prospective customers while also increasing the depth of penetration within the existing customer base;” “maintained and evaluated the effectiveness of these strategies;” “worked with the clients and the Marketing team to develop and publish press releases about the company's new projects and new products;” and, “prepared technical and factual explanation in bullet points, which Marketing could then use to produce press releases, case studies and update the website.” Since the foreign organizational chart does not list any employees in the positions of Marketing Director and Assistant Sales Manager, it is not clear who handled the market research, and developed the marketing and sales programs. It appears that the beneficiary conducted the market research, marketing, sales and negotiations as it does not appear that the beneficiary oversaw other employees that performed those tasks. Thus, it appears that the beneficiary is performing the duties inherent in obtaining new sales for the company. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 International*, 19 I & N Dec. 593, 604 (Comm. 1988).

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, we 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 "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'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, we 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 is 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, for example, to perform the duties of the Sales Account Manager whom was responsible for all “cruise ship bids” and “responsible for projects that the company was working on” and the duties of the Marketing Assistant who

was responsible for “managing all marketing materials” and “assisted the Sales team with bids, organized all trade shows and provided support” to the beneficiary.

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary performed abroad.

In light of the foregoing discussion, the petitioner has not established that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

B. U.S. Employment in a Managerial or Executive Capacity

The second issue to be addressed is whether the petitioner established that the beneficiary would be employed in a qualifying managerial or executive capacity.

The petitioner offered the beneficiary the position of Vice President-Business Development. In a letter of support dated May 28, 2013, the petitioner explained the duties of the proffered position as follows:

As Vice President – Business Development, [the beneficiary] will continue to provide her managerial and executive expertise and comprehensive knowledge of our industry, as well as her critical knowledge of [the petitioner's] policies and methods of operations to devise strategies for creating value transactions that are of utmost strategic importance to [the petitioner.] As such, [the beneficiary] will continue to oversee and supervise a team of 4 employees. She will continue to report directly to the President, [the president].

As Vice President – Business Development, [the beneficiary] works with the Group CEO, and other Vice Presidents of [the petitioner] in promoting the company through marketing developments, communications and sales activities. She wins new business and makes significant contribution to the company's continued growth. She studies the U.S. market and provides focused well-researched leads within the theatrical and entertainment industry in the United States and worldwide, and develops a strong pipeline of future opportunities, and excellent relationship with new clients. She acts as the first point of contact for incoming sales and website enquiries in the United States. She works closely with the Group marketing team to develop new leads and new contracts, and works with the Group sales team to provide and produce high quality presentation material for potential clients. She also works with the projects and rentals teams to provide competitive tender bid documents and accurate estimated budgets. She ensures that any marketing materials that are produced are accurate and reflect the excellent work of the company. She monitors competitors and advises on how the company may use the information to its advantage. She works with the Group sales team to coordinate and manage exhibitions and events in the United States.

Furthermore, she is responsible for project management – in particular, she ensures that communication with the client is maintained throughout the project, reporting any problems to the General Manager and the project team; ensures that any new developments are handled in a timely and proactive way; upon completion of a project, responsible for the handover to the client and ensure that the service department is fully briefed and have all the correct contacts; and ensures that all marketing opportunities are fully exploited. Finally, she ensures that [the petitioner] delivers projects to a high standard in order to represent [the petitioner's] global ambition.

In an RFE, the director requested a detailed job description of the beneficiary's specific tasks on a normal business day including the percentage of time spent on each task. In addition, the director requested an organizational chart including the names of all employees, employees' titles, a clear description of their job duties, and educational levels.

In response, the petitioner provided the following breakdown of the duties performed by the beneficiary as follows:

- Business Development with existing clients and consultants [20%].
- Business development with new customers and new markets [18%].
- Sales rental market [5%].
- Sales for permanent install market [15%].
- Sales Forecasts [2%].
- Overseeing project management [10%].
- Support department management [10%].
- Education outreach [10%].
- Marketing [5%].
- Trade shows attendance and planning [5%].

The petitioner explained that the beneficiary's immediate subordinates include: Support Manager, Project Manager, Lead Automation for Tours, Automation Tech on Tour, and Support Engineer on Tour. The beneficiary is a part of the U.S. Management Team which includes: VP Rigging and Install, VP Finance and VP Controls.

2. Analysis

When examining the executive or managerial capacity of the beneficiary, we review the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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). We will then consider this information in light of other relevant factors, including job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the foreign

company's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role within the foreign entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has the capability of maintaining its daily operations such that the beneficiary was relieved from having to primarily perform the operational tasks.

In the present matter, upon review of the totality of the record, the evidence does not support a finding that the beneficiary would allocate her time primarily to the performance of tasks that are within a qualifying managerial or executive capacity.

On review, the job description includes several non-qualifying duties such as the beneficiary will be "traveling around the United States and meeting with existing clients, consultants and decision-makers to update them on [the petitioner's] new products, technology and brief them on new projects;" "work[ing] with the technical team to design theaters, opera houses, shows, movies, and work[ing] with the clients' specific budgets to cost out these systems;" "researching new markets, building new relationships with potential clients and developing new opportunities;" "writ[ing] technical documents that detail our proposal and how we are approaching the project;" "prepar[ing] reports, and submit[ing] these to the Group Directors to update sales forecast;" and, "overseeing ongoing projects." It appears that the beneficiary will handle all the business development such as finding new clients, performing market research and negotiating as it does not appear that the beneficiary would oversee other employees that performed the day-to-day tasks of negotiation, sales and market research. Upon review of the job description for the beneficiary's subordinates, none of her subordinates are involved in business development operations. Instead, her subordinates handle project management, aftersales support and technical support for the scheduled tours. Thus, it appears that the beneficiary is performing the duties inherent in business development. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 International*, 19 I & N Dec. 593, 604 (Comm. 1988).

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary will perform. While the petitioner has provided a breakdown of the percentage of time the beneficiary will spend on various duties, the petitioner has not articulated whether each duty is managerial or executive.

In light of the foregoing discussion, the petitioner has not established that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity and on the basis of this second adverse conclusion, this petition cannot be approved.

On appeal, the petitioner contends that the beneficiary has already met regulatory and evidentiary criteria with U.S. Citizenship and Immigration Services ("USCIS") previously granted L-1A classification to the beneficiary. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

If the previous nonimmigrant petitions were 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. We are 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'r 1988). It would be absurd to suggest that USCIS 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).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

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. 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. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a

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preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.