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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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SEP 24 2010

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference 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 petitioner¹ is a residential care home for the elderly. It seeks to employ the beneficiary permanently in the United States as a caregiver.² As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (the DOL).³ The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position, and that the petitioner had not established its continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

¹ The petitioner is incorporated as [REDACTED] according to evidence in the record and the [REDACTED] Secretary of State's website [REDACTED] as accessed on September 1, 2010.

² The beneficiary is also known as [REDACTED]. On June 26, 2008, the director issued a request for evidence (RFE) asking the petitioner to submit information regarding the beneficiary's permanent residency stamp in her passport. According to a statement in the record dated July 20, 2008, the beneficiary stated some "other person" had her passport stamped. Thereafter, according to the beneficiary, she obtained a social security number and social security card.

³ The labor certification states that the "Name of the Employer" is [REDACTED] with no mention of any other employer or amendment to the labor certification pertaining to [REDACTED]. If a successorship has occurred, a valid successor relationship may be established if the job opportunity is the same as originally offered on the labor certification; if the purported successor establishes eligibility in all respects, including the provision of evidence from the predecessor entity, such as evidence of the predecessor's ability to pay the proffered wage as of the priority date; and if the petition fully describes and documents the transfer and assumption of the ownership of the predecessor by the claimed successor. Evidence of transfer of ownership must show that the successor not only purchased the predecessor's assets but also that the successor acquired the essential rights and obligations of the predecessor necessary to carry on the business in the same manner as the predecessor. The successor must continue to operate the same type of business as the predecessor, and the manner in which the business is controlled must remain substantially the same as it was before the ownership transfer. The successor must also establish its continuing ability to pay the proffered wage from the date of the business transfer until the beneficiary adjusts status to lawful permanent resident. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). The AAO notes the petitioner has failed to submit requested evidence or to establish that a successorship has occurred from [REDACTED] to [REDACTED] but according to the evidence in the record, [REDACTED] is the petitioner. Proof of a successorship from [REDACTED] would be required to establish that the petition is accompanied by a labor certification pertaining to the proffered position. 8 C.F.R. § 204.5(i)(3). For this additional reason, the appeal is dismissed.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's denial, an issue is whether the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position, and whether the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

Beyond the decision of the director, as a further reason for ineligibility for the immigration benefit requested, the petitioner has filed two other immigrant petitions (Forms I-140) according to the electronic records of USCIS. The petitioner must show that it had sufficient income to pay all the wages for all sponsored beneficiaries on the priority date. 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 *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature for which qualified workers are unavailable.

As already stated, an issue is whether or not the petitioner demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The Form ETA 750 states that the position requires, *inter alia*, three months experience in the offered job.

The Form ETA 750, Part A, Line 13, describes the offered job duties as follows:

Clean house (9) rms; assist (6) frail elderly, ages 60-100 with Alzheimer's disease, diabetic, hypertension, cancer, stroke victims, Kidney disease, incontinent, Wheelchair bound, disabled, blind, deaf. Assist with shower, bed bath, sponge bath, tub bath, ambulating, exercising, shaving; assist with medication; provide hair care, mouth care, bowel care, skin care, personal hygiene; vacuum; wash dishes; wash-iron-dry clothes and linen; handwash soft clothes; straighten rooms; change diapers; empty urine bags if necessary; clean up mess and make beds; Prepare and serve meals, snacks. Heavy lifting required for wheelchair bound and those with walkers and canes. Inspect all health hazards, furniture and equipments. Watch signs of physical, emotional health, depression, fear, anger, cuts, bruises, and/or sores. May

wake up at night for toilet needs, empty commodes. Reposition residents on their sides to avoid sores and skin irritations. Report and log any unusual, or uncommon behavior to licensee, social worker, and psychologists.

On the Form ETA 750B, the beneficiary under penalty of perjury set forth her present and prior employment experience.

According to the beneficiary, she was employed by the petitioner as a caregiver at [REDACTED] located in [REDACTED] in a residential care home, from December 1997 to present (i.e. April 20, 2001). Her duties there were similar to those stated in the above job description.

Prior to the above, the beneficiary stated she was a caregiver performing duties similar to those stated in the labor certification job description with [REDACTED] (a residential care home) of [REDACTED], from August 1997, to December 1997.

Finally, the beneficiary stated she was employed as a caregiver/domestic helper with [REDACTED] (private home) located in [REDACTED] from April 1995, to July 1997 performing duties similar as to those stated in the labor certification job description.

No prior job references were submitted from [REDACTED], [REDACTED], or [REDACTED]. There is no documentary evidence in the record that [REDACTED] trained the beneficiary in the above duties, or that the beneficiary through prior employment, training or education, is qualified to perform the job duties stated in the labor certification.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) Other documentation—

(A) General. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(D) Other workers. If the petition is for an unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification.

There are no prior job references in the record or evidence such as W-2 or 1099-MISC statements, cancelled checks, or cash deposits evidencing the beneficiary's statements of prior employment with [REDACTED] or [REDACTED]. There is insufficient evidence in the record to demonstrate that the beneficiary has the job experience to satisfy the offered job requirements as stated above. The AAO notes that [REDACTED] answered "To be sent later if requested" to the three requests for documentation in the Form ETA 750 B, Sections 12, 13, 14, particularly documentation that "'Alien possesses the education, Training, Experience, and Abilities Represented.'"

The director noted in his decision that the petitioner failed to submit documentation, according to Form ETA 750B, Section 15, that “at a minimum, a prospective employee (i.e. the beneficiary) would have a high school diploma, three (3) months of experience in the job offered, the ability to speak, read and write English, and have obtained a First Aid Health Screening Report issued by the State of [REDACTED] Health and Welfare Agency.” As of this date, none of the aforementioned evidence has been submitted by the petitioner.

Therefore, there is insufficient evidence in the record concerning the beneficiary’s qualifications under the regulation at 8 C.F.R. § 204.5(l)(3) to demonstrate that the beneficiary is qualified to perform the duties of the proffered position.

An additional issue is whether the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d).

Here, the Form ETA 750 was accepted on April 27, 2001. The proffered wage as stated on the Form ETA 750 is \$2,132.00 per month (\$25,584.00 per year).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.⁴

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established in 1997 and to currently employ four workers. According to page one of the single tax return in the record, the petitioner’s fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on April 20, 2001, the

⁴ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

beneficiary claimed to have worked for the petitioner since December 1997, to “present” (i.e. April 20, 2001). According to a letter dated August 30, 2008, from the petitioner, the beneficiary has been employed by the petitioner for eleven years.

The director issued to the petitioner an RFE dated June 26, 2008, and, *inter alia*, requested Forms W-2, Wage and Tax Statements, issued by the petitioner to the beneficiary’s for 2001 through 2007, and documentary evidence to establish that the petitioner had the ability to pay the difference between wages paid to the beneficiary and the proffered wage.

In determining the petitioner’s ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner’s ability to pay the proffered wage.

The beneficiary’s W-2 statements were submitted by the petitioner in response to the director’s RFE: for 2001-\$21,510.00; 2002-\$20,570.00; 2003-\$19,150.00; 2005-\$17,700.00; 2006-\$5,255.00 and \$13,310.00; and 2007-\$16,817.50, and \$860.00. For 2004, the petitioner submitted two pages of data utilized in the preparation of the beneficiary’s personal federal income tax return for 2004. It states “federal wages” of \$13,170.00 received from the petitioner by the beneficiary.

Since the proffered wage is \$25,584.00, and only the first page of the petitioner’s 2003 federal tax return was submitted stating a net income loss, in the instant case the petitioner has not established that it employed and paid the beneficiary the full proffered wage during any relevant timeframe including the period from the priority date in 2001 or subsequently.

The director also requested, *inter alia*, the petitioner’s federal tax returns and independently audited financial statements for 2001 through 2007.

The petitioner did not submit federal tax returns, or independently audited financial statements in response to the director’s RFE. *See* 8 C.F.R. § 204.5(g)(2). 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)). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner claimed that the tax returns were “off site” and to retrieve them would be a “financial burden.”

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an Form ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the Form ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner’s ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg.

Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, --- F. Supp. 2d. ---, 2010 WL 956001, at *6 (E.D. Mich. 2010). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, --- F. Supp. 2d. at *6 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

With respect to depreciation, the court in *River Street Donuts* noted:

The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.

We find that the AAO has a rational explanation for its policy of not adding

depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

River Street Donuts at 118. “[USCIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner’s ability to pay. Plaintiffs’ argument that these figures should be revised by the court by adding back depreciation is without support.” *Chi-Feng Chang* at 537 (emphasis added).

The record before the director closed on July 29, 2008, with the receipt by the director of the petitioner’s submissions in response to the director’s request for evidence. The petitioner failed, when requested by the director to submit complete federal income tax returns for 2001 through 2007.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets.

On appeal, the petitioner asserts, “[The director] made a mistake in denying my case. [The] employer has proof that I can get paid.”

Accompanying the appeal statement, the petitioner submitted a letter dated August 30, 2008; the first page of the petitioner’s federal income tax return (Form 1120S) for 2003;⁵ and the petitioner’s banking checking statements for the following facilities and approximate time periods:

- [REDACTED] September 30, 2008; January 31, 2007, to June 29, 2007; January 31, 2006, to December 29, 2006; May 31, 2005, to December 30, 2005.
- [REDACTED] February 29, 2008, to July 31, 2008; January 31, 2007; May 31, 2007 to September 28, 2007; January 31, 2006, to December 29, 2006; January 31, 2005, to April 29, 2005; August 31, 2004, to December 31, 2004; January 31, 2004, to August 31, 2004.
- [REDACTED] January 1, 2004 to January 30, 2004; January 1, 2003, to December 31, 2003; March 4, 2002, to December 31, 2002; December 30, 2000, to March 1, 2001.

The approximate 270 copies of bank checking statements, mentioned above, representing bank checking accounts maintained for three of the petitioner’s facilities, some with reduction copies of cancelled checks, some without, were submitted without explanation of the documents’ relevance to the

⁵ The regulation at 8 C.F.R. § 204.5(g)(2) requires the submission of the petitioner’s federal tax returns. It is clear that the petitioner did not only file with the IRS, page one of Form 1120S, but a complete tax return. The rest of the tax return with its Schedules was not submitted. The first page of the petitioner’s tax return for 2003 will be reviewed generally. According to the tax return, the petitioner stated a net income loss of -\$21,566.00 in 2003.

petitioner's ability to pay the proffered wage. Further, the petitioner's reliance on the balances in the petitioner's bank accounts is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage.

The petitioner's assertion on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 750 was accepted for processing by the DOL.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612. The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonogawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, there is a paucity of evidence in the record to evaluate the petitioner's gross receipts, officer compensation, longevity of business, reputation evidence of business, total wages paid to all employees, or the reason(s) the petitioner submitted 270 copies of its bank statements for three facilities without explanation. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

Because the petitioner failed to submit evidence responsive to the RFE according to the regulation at 8 C.F.R. § 204.5(g)(2), the AAO cannot determine whether the petitioner had the ability to pay the

proffered wage from the priority date. On appeal, the petitioner attempted to excuse its failure to submit its tax returns by asserting "I am not able to do so [submit tax returns] as the records are keep [sic] off site and it would be a financial burden to retrieve them." Clearly this is no excuse for withholding financial evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

Furthermore, USCIS electronic records indicate that the petitioner has filed two other I-140 petitions.⁶ If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750, now ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2).

The record in the instant case contains no information about the proffered wages for the beneficiaries of the other I-140 petitions submitted by the petitioner, nor about the current immigration status of those beneficiaries for which the petitions that are pending, were approved, or were denied. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Although the subject petition must be dismissed for the reasons given above, the petition must also be denied for this reason.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

⁶ USCIS identification numbers: [REDACTED] and [REDACTED]