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AUG 04 2009

FILE: WAC 07 149 53037 Office: CALIFORNIA SERVICE CENTER Date:

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

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom,
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

To employ the beneficiary in what it designates a computer programmer analyst position, the petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an H-1B nonimmigrant in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). In the Form I-129, the petitioner describes its type of business as “software consulting & product development.”

The director denied the petition on two independent grounds, namely, her findings that the petitioner failed to establish (1) that it is qualified to file an H-1B petition, that is, as either (a) a U.S. employer as defined at 8 C.F.R. § 214.2(h)(4)(ii), or (b) a U.S. agent, in accordance with the regulation at 8 C.F.R. § 214.2(h)(2)(i)(F); and (2) that the proffered position is a specialty occupation.

As will be discussed below, the AAO finds that the director’s determination to deny the petition for failure to establish a specialty occupation is correct. As this finding is dispositive of the appeal regardless of whether or not the petitioner is qualified to file the petition, the AAO will not further address the issue of the petitioner’s status as a U.S. employer or agent.

On appeal, counsel submits the Form I-290B, a brief, and copies of the following: (1) a previously submitted document, signed by the petitioner and its client Diversified Financial Group (DFG), entitled “Software Development and Services Agreement, Extension of Prior Contract No. [REDACTED] [REDACTED] (hereinafter referred to as the DFG SDS Agreement), which now includes a portion not previously submitted, namely “Exhibit – A: Work Statement in Accordance with Contract No. [REDACTED]” (hereinafter referred to as Exhibit A); (2) a single-page document, on the petitioner’s letterhead, with the heading “Itinerary and Contributions of [the Beneficiary]”; and (3) three tables, with separate columns under each of the following topics regarding work counsel claims that the beneficiary will perform under the petition: Organization/Location; Project/Product(s) and Responsibilities; Role/Competency; and Supervisor/Coordinator.

In deciding whether a proffered position qualifies as a specialty occupation, the AAO analyzes the evidence of record according to the statutory and regulatory framework below.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.”

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R.

§ 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The Form I-129 identifies the petitioner’s type of business as software consulting and product development, and it identifies the beneficiary’s job title as Programmer Analyst. The petition seeks to classify the beneficiary as an H-1B employee for the period October 1, 2007 to September 16, 2010. According to the Form I-129, the beneficiary will work at the petitioner’s address in Elk Grove Village, Illinois.

The AAO recognizes the Department of Labor’s *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The Programmer Analyst occupational category is discussed in the *Handbook* chapters entitled “Computer Programmers” and “Computer Systems Analysts.”

The *Handbook’s* information on educational requirements in the programmer-analyst occupation indicates that a bachelor’s or higher degree, or the equivalent, in a specific specialty is not a normal minimum entry requirement for this occupational category. Rather, the occupation accommodates a wide spectrum of educational credentials, as indicated in the following excerpt from the “Educational and training” subsection of the *Handbook’s* “Computer Systems Analysts” chapter:

When hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor’s degree. For more technically complex jobs, people with graduate degrees are preferred.

The level and type of education that employers require reflects changes in technology. Employers often scramble to find workers capable of implementing the newest technologies. Workers with formal education or experience in information

security, for example, are currently in demand because of the growing use of computer networks, which must be protected from threats.

For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.

Despite the preference for technical degrees, however, people who have degrees in other majors may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation.

Employers generally look for people with expertise relevant to the job. For example, systems analysts who wish to work for a bank should have some expertise in finance, and systems analysts who wish to work for a hospital should have some knowledge of health management.

As evident above, the information in the *Handbook* does not indicate that programmer-analyst positions normally require at least a bachelor's degree in a specific specialty. The *Handbook* only indicates that employers often seek or prefer at least a bachelor's degree level of education in a technical field for this type of position and, more importantly, the evidence of record regarding the particular position proffered here does not demonstrate requirements for the theoretical and practical application of such a level of highly specialized computer-related knowledge. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish not only that the beneficiary would perform the services of a programmer analyst, but that she would do so at a level that requires the theoretical and practical application of at least a bachelor's degree level of knowledge in a computer-related specialty. This the petitioner has failed to do.

The petitioner's April 1, 2007 letter filed with the Form I-129 provides more detailed information about the products and services that it offers its clients. The letter describes the duties of the proffered position as follows:

JOB DUTIES OF PROGRAMMER ANALYST

The Programmer Analyst analyzes the client company's data processing requirements to determine the computer software which will best serve those needs, then designs a computer system using that software which will process the client's data in the most timely and inexpensive manner, and implements that design by overseeing the installation of the necessary system software and its customization through the

client's unique requirements. The actual computer programming may be performed by the assistance of programmers.

Throughout this process, the Programmer Analyst must constantly interact with the client's management, explaining to it each phase of system development process, responding to its questions, comments and criticisms, and modifying the system so that concerns raised by the clients are adequately addressed. Consequently, the Programmer Analyst must constantly revise and revamp the system as it is being created, not only to meet client concerns, but also to respond to unanticipated software anomalies heretofore undiscovered, to the extent that occasionally the system finally created bears seemingly little resemblance to that which was initially proposed.

[The beneficiary] will be involved in Software design, development and testing for specific applications and develop GUI [this term not defined] to meet user requirements. Develop detailed program specifications, coding and testing. Plan data conversion activities and implement systems to meet user needs.

This April 1, 2007 letter also presents the following table as capturing the essential duties of the proffered position:

% OF TIME	DAY TO DAY DUTIES
25%	Analyses software requirements/user problems to determine feasibility of design within time and cost constraints. Formulate and define scope and objective through research and fact-finding to develop or modify complex software programming applications or informational systems.
5%	Consult with hardware engineers and other engineering staff to evaluate interface between hardware and software, and operational and performance requirements of overall system.
35%	Formulates and designs software system, using scientific analysis and mathematical models to predict and measure outcome and consequences of design. Includes preparation of functional specifications and designing of software programs. Builds detailed design specifications for

	scientific, engineering, and business application. Design data conversion software programs.
35%	Develops and directs software systems testing procedures, programming and documentation. Also includes testing units and computer software systems.

The letter does not link the beneficiary with a specific project or client. Read as whole, the letter suggests that specific work for the petitioner had not yet been designated for her as of the date of the letter.

The RFE provided the petitioner the opportunity to identify whatever particular work assignment awaited the beneficiary, and the RFE indicated the importance of providing copies of whatever contractual documents generated and specified work for the beneficiary. The letter of reply to the RFE, signed by counsel for the petitioner, attests that there is and will be ample H-1B work for the beneficiary. Counsel includes copies of numerous contract documents - none of which names the beneficiary - and states that even if there are no projects available for the beneficiary, there is plenty of in-house work to keep her occupied. The AAO finds, however, that the reply to the RFE fails to establish definite work for the beneficiary.

In pertinent part, counsel’s letter in reply to the RFE states:

The petitioner provides project management and technical services in the field of In Information Technology to medium and large size companies. To provide such services to its existing and future clients, the petitioner is in need of the beneficiary’s expertise and services. In particular, the petitioner needs the beneficiary to satisfy its existing contractual agreements with its different clients.

The petitioner is involved in projects that need to be performed in[-]house as well as at the client’s location. It continuously takes development and maintenance projects. The petitioner has developed the trust and confidence of its clients who continuously give business to it. . . . Whether or not there is a project does not make a difference as the petitioner does have in[-]house work to keep those employees occupied who are providing services at client locations. The petitioner’s annual gross revenue for the proceeding year has been growing steadily. For this reason there is sufficient foundation for a conclusion that this petitioner is capable of paying the wages of this beneficiary and keeping him [sic] occupied with specialty level work with or without placing him [sic] at a third party location.

It must be noted that counsel fails to provide documentary support for the proposition that the flow of H-1B caliber work for the petitioner is so continuous as to establish that the beneficiary would be engaged in such work for the period of employment specified in the Form I-129. In this regard, the AAO notes that counsel does not provide documentary evidence establishing the extent to which its client contracts and in-house projects generate H-1B caliber work. Further, the RFE response neither specifies nor documents any H-1B caliber projects or client contracts as pertaining to the beneficiary. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The only contract document that identifies the beneficiary for specific work is Appendix A to the DFG SDS Agreement. Significantly, Appendix A was not included in the copy of the DFG SDS Agreement submitted in response to the RFE. Further, as reflected in the enclosure list in counsel's RFE reply letter, the DFI SDS Agreement was not submitted as evidence of work reserved for the beneficiary, but only as one of "numerous contracts" demonstrating the strength of the petitioner's IT (Information Technology) business.

On appeal, counsel states, "When the beneficiary has completed her services at [DFG], the beneficiary is scheduled to work in-house on the petitioner's BioViewer™ and Index Manager Products." The AAO notes that the RFE response includes a variety of documents summarizing products the petitioner has developed or partially developed for marketing to its clients. The AAO observes, however, that, prior to the appeal, neither counsel nor the petitioner identified any specific product-project work as having been scheduled for the beneficiary. The AAO further notes that counsel fails to document when the scheduling took place. Based on these facts, the AAO is not persuaded that either BioViewer™ or IndexManager work had been scheduled for the beneficiary when the petition was filed. Further, the AAO also disregards counsel's assertions about the Index Manager Project for an additional reason. Namely, the fact that this project is not included among those identified in the RFE response is sufficient reason for the AAO to doubt that this project existed at the time the petition was filed.

The AAO accords no weight to the tables that counsel submits on appeal to summarize the Programmer Analyst work that counsel asserts the beneficiary will perform, sequentially, on DFG, BioViewer™, and IndexManager projects. The fact that these projects were not identified prior to the appeal as specific assignments for the beneficiary is inconsistent with their having been earlier assigned to or reserved for the beneficiary. Further, there is no evidence establishing when the tables were produced, and, more importantly, when the assignments that they summarize were made. Evidence that the petitioner creates after USCIS points out the deficiencies in the petition, as the director did in her decision, will not be considered independent and objective evidence of the propositions for which the evidence is presented; and, as noted earlier, going on record without

supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Furthermore, even if the AAO were to accept the tables' descriptions of the beneficiary's responsibilities and roles at face value, they are not in themselves sufficient to establish a requirement for the application of any particular educational level of education in any specific academic discipline. They state generic roles and responsibilities for which the record establishes no particular educational requirement. In this regard, the AAO here incorporates its earlier discussion regarding the *Handbook's* "Computer Systems Analysts" chapter, and it notes that the record contains no documentation from either DFG or any DFG client that requests or establishes the need for a person with at least a U.S. bachelor's degree, or its equivalent, in any academic specialty.

As indicated in the discussion above, at the time of the director's decision, the record of proceeding contained no documentary evidence of any project or contract that had been assigned to or reserved for the beneficiary. On appeal, counsel submits Appendix A to the DFG SDS Agreement, which names the beneficiary and two other persons as "Resources" for assignment to DFG for the following purpose: "Phase-II, Development of Insurance Management Portals." Appendix A specifies a commencement date of November 1, 2007 and an estimated duration of "12 Plus Months" – Extendable as Needed." This work statement includes a description of duties and the hourly rate payable by DFG to the petitioner.

The AAO finds that Appendix A to the DFG SDS Agreement has no evidentiary weight for two independent reasons. First, this document is not a proper subject for consideration on appeal, as it falls within the scope of contractual documents sought by the RFE but was not included in the RFE response, *infra*. Second, even if Appendix A were considered on appeal, its content does not establish that the project for which it was issued constitutes specialty occupation work.

Appendix A is a critical and necessary part of the DFG SDS Agreement, in that it constitutes the work statement providing the essential contract terms of work to be performed, persons to perform it, rate of pay, and duration. Further, as already noted, it is the only contract document that specifies work for the beneficiary. As such, it falls within the scope of the RFE's requests for "contractual agreements, statements of work, work orders, service agreements, [or] letters of agreement from authorized officials of the ultimate client companies where the work will actually be performed, that provide a comprehensive description of the beneficiary's proposed duties." Because this document was not provided in the petitioner's response to that RFE, it will not now be considered. The regulation at 8 C.F.R. § 214.2(h)(9) states that the director shall consider "all the evidence submitted and such other evidence as he or she independently require to assist his or her adjudication." The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), (8) and (12). The 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the

first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* The regulation at 8 C.F.R. § 103.2(b)(11) provides the following rules on responding to an RFE. The petitioner has three options during the response period specified in the RFE: submission of a complete response containing all of the requested information; submission of a partial response with a request for a decision based on the record; or withdrawal of the petition. Submission of only some of the requested evidence will be considered a request for a decision on the record. Materials in response to the RFE must be submitted together at one time, along with the original RFE, and they must be filed within the period afforded in the RFE. Further, the regulation at 8 C.F.R. § 103.2(b)(8)(iv) states that in no case shall the maximum response period provided in an RFE exceed 12 weeks, and that additional time to respond may not be granted. Thus, the petitioner is afforded only one opportunity to file materials in response to the RFE. Operation of this provision precludes the petitioner from having considered on appeal any type of documentation requested in the RFE but not provided within the time specified in the RFE.

Even if Appendix A to the DFG SDS Agreement were a proper matter for consideration on appeal, which it is not, it would not be probative evidence that the proffered position is a specialty occupation. This conclusion is based upon the document's Description of Duties, which reads:

1. Participate in software analysis and design. Analysis and RAD sessions with end users in building JSR 18 Complaint Enterprise Portal using Custom Interfaces and Reports for Healthcare and Business Insurance. Interfacing with Application and Web hosting companies on behalf of DFI.
2. HIPPA complaint software validation plug-in development using JAVA/J2EE technologies.
3. Software Upgrade work including applying software patches, core drops, etc.
4. Software applications tuning, and ad hoc development of objects and object repositories.
5. On-Call production support to enable proper functioning of the systems.
6. Design and Develop Customized Portlets and Reportlets for data feeds including XML, Excel, etc.
7. Remote support of the Portal client calls relating to Web Servers, Application Servers, etc.

The AAO finds that the Description of Duties indicates that the nature and attendant educational requirements of any work assignments for the beneficiary within the Phase-II, Development of

Insurance Management Portals purpose of Appendix A will depend upon specific requirements generated by particular clients of DFG. However, the record of proceedings does not identify such clients, and does not include documentary evidence of the specific requirements for which they may have entered into a contractual relationship with DFG. Consequently, the AAO is unable to determine the substantive nature of the actual work that the beneficiary would perform under Appendix A.

To determine whether a particular job qualifies as a specialty occupation position, the AAO does not solely rely on the job title or the extent to which the petitioner's descriptions of the position and its underlying duties correspond to occupational descriptions, however authoritative. This is because specialty occupation status is fundamentally a function of what the evidence in the particular record of proceeding establishes about (1) the substantive nature of the work that the beneficiary would perform in the petition's particular position, (2) whether such work requires the theoretical and practical application of a body of highly specialized knowledge, and (3) if so, whether this body of highly specialized knowledge is attained by or normally associated with at least a bachelor's degree in a specific specialty. Because the focus is upon the specific proffered position and its particular performance requirements, critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform for the entity or entities ultimately determining the content of the services that he or she is to perform. In this particular petition, those entities are the clients of the petitioner's client DFG; but the record of proceedings lacks documentary evidence of the actual work that DFG clients would generate for the beneficiary.

The AAO notes that, as recognized by the court in *Defensor v. Meissner*, 201 F. 3d 384, 387-388 (5th Cir. 2000), where the beneficiary's work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. The *Defensor* court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. Such evidence must be sufficiently detailed and explained as to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. The record of proceedings lacks such substantive evidence from any end-user entities that may generate work for the beneficiary and whose business needs would ultimately determine what the beneficiary would actually do on a day-to-day basis. In short, as noted by the director, the petitioner has failed to establish the existence of H-1B caliber work for the beneficiary. Therefore, regardless of the *Handbook's* conclusions regarding the educational requirements for entry into this particular field, absent a detailed description of the actual work the beneficiary will perform, it cannot be determined that the proffered position is a specialty occupation requiring at least a U.S. bachelor's degree in a specific specialty. For this reason the appeal must be dismissed and the petition denied.

Also, at a more basic level, the record lacks credible evidence that, when the petition was filed, the petitioner had secured any H-1B caliber work for the beneficiary to perform during the requested period of employment. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(12). 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). For this reason also, the appeal will be dismissed.

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, and the petition is denied.