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U.S. Citizenship
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FILE: WAC 07 169 51487 Office: CALIFORNIA SERVICE CENTER Date: MAY 01 2009

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

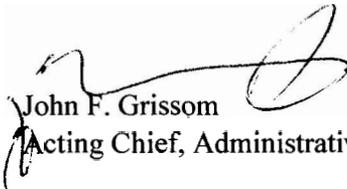
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

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, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary as a nonimmigrant trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii). The petitioner, a clothing manufacturer and distributor, seeks to employ the beneficiary as a trainee for a period of 18 months.

The director denied the petition on three independent grounds, concluding that the petitioner: (1) failed to describe with specificity the type of training and supervision to be given and the structure of the training program; (2) failed to establish that the proposed training will benefit the beneficiary in pursuing a career outside the United States; and (3) failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition. The director also found that the petitioner failed to state the number of hours that will be spent, respectively, in classroom instruction and in on-the-job instruction; and the source of any remuneration received by the trainee, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(3) and (6), respectively.

On appeal, the petitioner contends that the director erred in denying the petition, and emphasizes that USCIS has previously approved its H-3 petitions filed with similar evidence. The petitioner submits a brief, but no additional evidence, in support of the appeal.

Section 101(a)(15)(H)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part, the following:

- (ii) Evidence required for petition involving alien trainee—
 - (A) Conditions. The petitioner is required to demonstrate that:
 - (1) The proposed training is not available in the alien's own country;
 - (2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;
 - (3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and
 - (4) The training will benefit the beneficiary in pursuing a career outside the United States.

- (B) Description of training program. Each petition for a trainee must include a statement which:
 - (1) Describes the type of training and supervision to be given, and the structure of the training program;
 - (2) Sets forth the proportion of time that will be devoted to productive employment;
 - (3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;
 - (4) Describes the career abroad for which the training will prepare the alien;
 - (5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and
 - (6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

- (iii) Restrictions on training program for alien trainee. A training program may not be approved which:
 - (A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;
 - (B) Is incompatible with the nature of the petitioner's business or enterprise;
 - (C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;
 - (D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;
 - (E) Will result in productive employment beyond that which is incidental and necessary to the training;
 - (F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

- (G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or
- (H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request for evidence; (4) the director's denial letter; and (5) the petitioner's Form I-290B and supporting brief. The AAO reviewed the record in its entirety before issuing its decision.

The first issue to be addressed is whether the petitioner set forth, with specificity, the type of training and supervision to be given, and the structure of the training program, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(I). The regulations prohibit the approval of a training program that deals in generalities, with no fixed schedule, objectives or means of evaluation. 8 C.F.R. § 214.2(h)(7)(iii)(A).

The petitioner filed the nonimmigrant petition on May 11, 2007. In its letter dated April 26, 2007, the petitioner, a clothing manufacturer, described the purpose of the training program as follows:

This training was specifically designed to provide trainee with extensive direct exposure to Garment/Apparel Industry with focus on Logistics Management.

The main goal of the program is to educate trainee in all areas of [the petitioning company]. By the end of the 18-month period the trainee would have gained knowledge on Product sourcing and logistics management with emphasis on garment and apparel manufacturing. Trainee/s will be exposed to the intricacies of profit management. Trainee/s will learn daily controls on logistics for international trade, garment processing and warehousing.

Aside from the in-depth instruction and exposure on profit management, trainee will be educated on import and export logistics. We delve into purchasing and procurement, inventory management, warehousing, shipping and customer returns. It is the goal of this training for participants to have a clear understanding of the important role of logistics in garment/apparel operations. This valuable exposure will be useful to them when they perform their roles as Wholesale Products and Logistics Specialists in our branches abroad.

The petitioner indicated that the training program will entail 40 hours per week, with a total of 50 percent academic and/or classroom training, 40 percent practical and/or on-the-job training, and 10 percent "observation of day-to-day internet marketing business and operations." The petitioner indicated that its company president "is in-charge of full supervision," but stated that "each session and/or program will be facilitated by an individual expert in that field." The petitioner indicated that the trainee will be evaluated on class participation, examinations/case studies, aptitude, a final project, and a panel interview.

The petitioner also provided a daily breakdown of training, noting that the beneficiary would receive 5 hours of "direct instruction," and three hours of "supervised/practical" training daily.

The petitioner submitted a 62-page "Profit and Logistics Management Training Program," which indicates that the program will be proposed training will be divided into four modules as follows:

Module I: Corporate Orientation

- Course 1: Company Orientation
- Course 2: Management-level Exposure
- Course 3: Industry familiarization

Module II: Profit Management

- Course 1: Margin Improvement
- Course 2: Asset Optimization
- Course 3: Cost Reduction
- Course 4: Procurement

Module III: Logistics

- Course 1: Inventory
- Course 2: Packing Methods and Specifications

Module IV: Evaluation

The director issued a request for additional evidence on July 19, 2007, instructing the petitioner to provide, *inter alia*, a more detailed description of the type of training, the structure of the training, and the supervision to be given. The director also requested information regarding exactly who on the petitioner's staff will provide the classroom and on-the-job training. The petitioner was also requested to describe the kinds of materials to be used in classroom training, and to provide evidence related to any previous training courses offered by the company, including, in part, copies of past training materials, including lesson plans, and course materials.

In response to the director's request for a more detailed description of its training program, counsel for the petitioner submitted a 10-page summary excerpted from the previously submitted training program manual. With respect to the beneficiary's supervision, counsel stated:

Petitioner respectfully reiterates that the training program will be primarily headed and supervised by its Vice President, since he is the over-all in charge of the company's general manufacturing operations and training division. The Vice-President along with his training staff are concurrently performing their job duties and conduct the training program for the company's new employees and foreign trainees.

Similarly, since the goal of the herein Petitioner is to achieve ultimate product sourcing and logistics management specialization, Petitioner will definitely seek the assistance and training support of its division or department heads.

Counsel indicated that it has not previously offered the training program in Product Sourcing and Logistics Management. However, he stated that USCIS has approved the petitioner's training programs in "New Market Acquisition" and "Business Operations and Development," and that such programs are currently being carried out by the petitioner.

The petitioner provided an employee list dated July 2007, which lists 31 current employees, including 27 regular staff members and four H-3 trainees. The employees include a president, two vice presidents, managers (financial, sales, production, and store managers and a head of design), a programmer, a systems analyst, pattern and sample makers, sales staff, a designer, and production staff. The list also includes 17 employees who are designated as "resigned." The petitioner submitted a second list with 34 employees. The AAO notes that, at the time of filing, the petitioner had submitted an organizational chart listing a total of approximately 50 positions and seven divisions, with no trainees among the listed positions.

The petitioner provided copies of its claimed ongoing training programs in "New Market Acquisition and Business Operations and Development," and in "Business Development and Operations." According to these documents, the petitioner's vice president is responsible for the overall supervision of both programs, both of which were to commence in the spring of 2007.

Finally, counsel indicated that the petitioner was submitting a resume for its head trainer. The petitioner attached the resume of _____ who indicates that he has served as the petitioner's accountant since April 2004. _____ is listed as the company's financial manager on the employee list.

The director denied the petition on December 20, 2007, concluding that the petitioner failed to describe with specificity the type of training and supervision to be given, and the structure of the training program as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(1). In denying the petitioner, the director observed that the petitioner had not adequately explained who would be providing instruction and supervision to the beneficiary on a day-to-day basis, or how many hours of training would be devoted to each course/module outlined in the training program. The director also noted that the record contains no evidence of formal training materials, books, testing instruments or other evaluation methods.

On appeal, the petitioner asserts that it described with specificity the breakdown of the classroom and on-the job training. The petitioner further asserts that the training program submitted "has been tendered for other Trainees and has been approved by [USCIS]."

Upon review, the petitioner's assertions are not persuasive. The AAO concurs with the director's determination that the petitioner has failed to describe with specificity the type of training and supervision to be given and the structure of the training program, and has therefore not satisfied the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(1). Despite the petitioner's assertions to the contrary, the information contained in the

record of proceeding remains vague in nature, and leaves the AAO with very little idea of what the beneficiary would actually be doing on a day-to-day basis.

As noted by the director, the petitioner has divided the training program into four "modules," but does not identify how many days, weeks or months will be devoted to instruction and training within each module. The documentation provided is not indicative of a training program with a fixed schedule. Furthermore, although specifically requested by the director, the petitioner has not provided copies of any training materials or testing instruments to be used in carrying out the training.

The training manual consists of reading material, but the petitioner does not relate this material to the course outline in any meaningful way. It is unclear how the petitioner would be able to stretch this reading material, which is approximately 50 pages in length, across 18 months. Objectives are provided, but lists of objectives are not substitutes for descriptions of how those objectives are to be accomplished; the petitioner has not explained what the beneficiary will actually be doing during this time. The petitioner's description of how the beneficiary would spend his time consists of summary outlines without specific descriptions of the daily training program.

The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute, or even every single day, of the training program. However, the petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiary would actually be doing on a daily basis while participating in the proposed training program. 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)).

Furthermore, the petitioner has not been willing to identify with specificity who would be responsible for the beneficiary's day-to-day supervision and instruction during classroom and on-the-job instruction, although the director specifically requested such evidence. 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 initially indicated that the president would be in charge of overall supervision, and later indicated that this responsibility would fall to its vice president. At the same time, the petitioner indicated that its financial manager is the petitioner's "head trainer," and submitted a copy of his resume. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has alluded to its practice of having "individual experts" such as department or division heads provide certain aspects of their training program, but has opted not to elaborate by identifying the specific instructors for each specific course or module. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Although all of these deficiencies were specifically addressed in the director's decision, the petitioner has not submitted additional evidence on appeal or attempted to clarify the structure of its program and the supervision to be provided. Accordingly, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(1).

The director also found that the petitioner had failed to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(3). The AAO disagrees. The petitioner stated that the beneficiary would spend 50% of his time in classroom instruction, 40% of his time in on-the job training, and 10% of his time in observation. Except for the deficiencies in describing the training program, the AAO finds no reason to doubt these figures and, accordingly, withdraws that portion of the director's decision finding otherwise.

The director also found that the petitioner had failed to indicate the source of remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training. The AAO disagrees. The petitioner indicates that the beneficiary will receive an allowance of \$350 per week. The petitioner has also described its plans for the beneficiary after he returns to the Philippines. While those plans may not have satisfied other regulatory criteria at issue in this case, they do satisfy the requirement at 8 C.F.R. § 214.2(h)(7)(ii)(B)(6), and the AAO withdraws that portion of the director's decision finding otherwise.

The next issue to be addressed is whether the petitioner established that the proposed training will benefit the beneficiary in pursuing a career outside the United States, as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(4). The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) requires the petitioner to describe the career abroad for which the training will prepare the alien.

In its initial letter dated April 26, 2007, the petitioner stated that it would like to employ the beneficiary "in one of our affiliates abroad," and stated that the training is designed "to prepare and equip trainee for the future key position at our affiliate company in the Philippines." The petitioner indicated that "through research and planning," the company has decided to expand its business to numerous countries including the Philippines, and intends to "set up an affiliate agency or partnership" in Manila. The petitioner stated that the beneficiary would be prepared to serve as a Product Sourcing and Logistics Manager upon completion of the training.

In the request for evidence issued on July 19, 2007, the director requested additional evidence to show that there is a career abroad for which the training will prepare the beneficiary.

In response, counsel for the petitioner stated:

The Beneficiary was offered an employment from _____ of Stitch Lane Tailoring and _____ in Jaro, Iloilo City, and whose main business is similar or allied to the herein Petitioner's business. However, as of this writing, the copy of offer of employment failed to reach the Petitioner on time before the submission of this response. Hence, Petitioner respectfully request for the waiver of this requirement.

The director denied the petition, concluding that the petitioner failed to describe the career abroad for which the training will prepare the beneficiary. In denying the petition, the director stated:

USCIS notes that the record initially indicates that the primary objective of the training was to prepare and equip the trainee(s) for the future key position at [its] affiliate company in the Philippines. However, in response to the issued request for evidence the petitioner now states the beneficiary was offered employment from a similar type business in the Philippines. . . .

The director further noted that there is no evidence in the record to establish that the petitioner has an affiliate company in the Philippines, has offered future employment to the beneficiary, or has at least established a business plan for the opening of an office in the Philippines. The director found that, due to the inconsistency noted, the petitioner failed to establish that the knowledge and skill gained through the training could be used outside the United States.

On appeal, the petitioner asserts that its expansion into the Philippines market will begin with training the beneficiary and that its business plans are dependent upon his completing the training. The petitioner further states:

Upon the completion of the training [the beneficiary] will create a study/business plan, which we will utilize to carry on our international business plans. The business plan could not have been submitted initially since it is our belief that the core of our business plan is contingent on how successful our training program is.

The petitioner emphasizes that the beneficiary "is a native of the Philippines and has a network of organizations and individuals who we need to engage in business transactions with."

Upon review, the AAO concurs with the director's conclusion. The petitioner has failed to establish that there is in fact a career abroad in which the beneficiary can utilize the training to be imparted via the proposed training program. If the training is truly specific and unique to the U.S. company, as claimed by the petitioner, then it is unclear how that training could be utilized by another employer. As the purpose of the proposed training program is to train the beneficiary on the petitioner's unique business practices, the only setting in which the beneficiary would be able to utilize his newfound knowledge would be for the petitioner. As the petitioner has not yet commenced operations in the Philippines, there exists no setting in which he would be able to utilize his newfound knowledge. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or 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).

In this particular case, since the proposed training is specific to the petitioner, and the setting in which the beneficiary would utilize his skills would be for the petitioner in the Philippines, the petitioner must document that, at the time the petition was filed, it actually had plans to commence operations in the Philippines upon completion of the training. The record, as presently constituted, contains no documentary evidence of the petitioner's expansion plans, beyond training the beneficiary. Nor has the petitioner submitted any

documentary evidence, beyond its own assertions, to demonstrate that it is in the process of setting up operations in the Philippines. 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.

The claim that the beneficiary himself is key to the opening of the Philippines office is insufficient. There is nothing in the record to suggest that the beneficiary has any experience or the claimed "network" of contacts in the apparel industry in the Philippines, so the petitioner's claim that he will be solely responsible for the business plan at the end of his training is not credible. Furthermore, the petitioner specifically stated that it had completed some initial research and planning for the opening of the Philippines office, therefore, it is reasonable to expect the petitioner to document such efforts.

Finally, on appeal, the petitioner has not addressed, much less attempted to resolve, the inconsistency in the record with respect to the alleged employment offer from an unrelated employer. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. The petitioner has not submitted evidence on appeal to overcome the grounds for denial. Accordingly, the appeal will be dismissed.

The director also found that the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition, as required by 8 C.F.R. § 214.2(h)(7)(iii)(G). The AAO agrees.

In her denial, the director stated the following:

The petition states that the petitioner has thirty-four employees. The petitioner indicates that the Vice-President along with his training staff will concurrently perform their job duties and conduct the training program for the company's new employees and foreign trainees. The petitioner has not provided the names of the training staff, only the name of the Vice President Neither has the petitioner provided the number of employees utilized as training staff. The petitioner has provided only a list of the company's full-time employees, along with their job titles. However, none of the employees listed show concurrent duties as trainers or instructors. It would seem to USCIS that if these (unknown number) employees will be providing full-time training and performing their usual duties concurrently, it would be difficult to maintain the petitioner's business without disruption and/or produce substantial productive employment for the duration of the 18-month training program.

The director also acknowledged photographs the petitioner submitted of its "training facility," but found that it did not show an area that would be utilized for classroom instruction.

On appeal, the petitioner states that the "entire business location" and any of the employee workstations may be used as a classroom. With respect to the issue of whether the petitioner has sufficiently trained manpower

to provide the training, the petitioner states "the tendered list of names of the employees were submitted for the services' reference that the company has adequate staffing and the regular business operation will not be disrupted by the training of the alien." The petitioner states that it "provided a Resume for the Instructor who happens to be the Vice President of the company who is well suited to provide the training and who has been the instructor for other trainees."

Again, the AAO concurs with the director's decision. The petitioner has failed to establish that it has the personnel to provide the training specified in the petition. The petitioner has not consistently identified the person or persons who will be responsible for providing the training, as the petitioner has identified both the president and the vice president as being responsible for the "overall supervision" of the training, and has identified both the vice president and the financial manager as the primary instructor. Although the petitioner initially indicated that "individual experts" would provide training during different courses according to their areas of expertise, the petitioner has never identified who would teach or supervise which course. Nor has it explained how, if it does not employ full-time trainers, the individuals who will provide the training will perform their normal duties, particularly in light of the fact that the beneficiary would be one of five trainees, undergoing one of at least three different training programs. Furthermore, although the petitioner indicates that the beneficiary will primarily be receiving training in product sourcing and logistics management, the petitioner does not even claim to have employees working in these types of positions so it is unclear who has the experience to provide the proposed training. Again, the petitioner's vague and inconsistent assertions are insufficient to satisfy its burden of proof. 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.

The AAO does find, however, that the petitioner has the physical plant to provide the claimed training. The photographs submitted show work stations, a conference room, and other facilities that appear to be sufficient for the purposes of the training specified.

However, the petitioner has failed to establish that it has sufficiently trained manpower to provide the training outlined in the petition. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(G). For this additional reason, the appeal will be dismissed.

Finally, the AAO notes the petitioner's claim that USCIS has approved two previous H-3 programs based on documentation that was similar to what was submitted with the instant petition. However, each nonimmigrant petition is a separate proceeding with a separate record. 8 C.F.R. § 103.2(b)(16)(ii). If the previous petitions were approved based upon the same inconsistent and unsupported assertions contained in this record, the approval of such petitions was erroneous. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's 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 did approve a nonimmigrant petition similar

to the one at issue here, the AAO 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).

For all of these reasons, the AAO agrees with the director's decision that the proposed training program does not meet the regulatory requirements for approval of the nonimmigrant visa.

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.