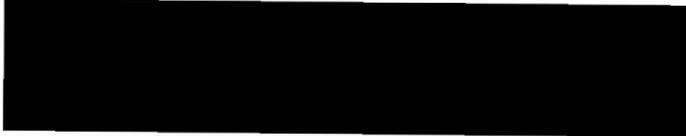




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy**



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File: SRC 05 157 51261 Office: TEXAS SERVICE CENTER Date:

**MAY 17 2007**

IN RE: Petitioner:  
Beneficiary:



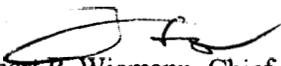
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF BENEFICIARY:



INSTRUCTIONS:

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

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of systems software engineer as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is engaged in the business of providing computer technology solutions and claims a qualifying relationship as the parent of [REDACTED] of Chennai, India. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the position offered requires an employee with specialized knowledge or that the beneficiary has such knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Specifically, counsel asserts that the beneficiary has specialized knowledge of the petitioner's proprietary software products, which is only attainable through prior experience with these products and through specialized training.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the

same work which the alien performed abroad.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a capacity which involves specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In a letter dated May 2, 2005 appended to the initial petition, the petitioner described the beneficiary's job duties with the foreign entity and purported specialized knowledge as follows:

As a System Software Engineer, [the beneficiary] is directly responsible for design, development and testing of the company's proprietary software products [as explained in attachments]. Specifically, he has experience in the development of projects on AMI Core8 and AMI Aptio, both proprietary products of [the petitioner]. His duties include providing porting and support for iSCSI option rom (S/W Initiator) in McCarren BIOS. He has received extensive training on AMI BIOS, AMI Core8 and AMI Aptio structure, porting and chipset coding.

[The petitioner wishes] to transfer [the beneficiary] temporarily to the Atlanta Office as a System Software Engineer. [The beneficiary's] proposed position of System Software Engineer in the United States will entail performing the same basic job duties he has been performing for the company in India. He will be responsible [for] complex product design and systems analysis based upon his detailed knowledge of [the petitioner's] proprietary software and internal procedures. As permitted for L-1 visa holders, he will continue to be paid by the subsidiary abroad.

The petitioner also provided a copy of the beneficiary's resume, which reveals that he has been employed by the petitioner for about 13 months; that he worked as a "trainee" from April 19, 2004 until November 1, 2004; and that his initial position as "trainee" ended about 6.5 months prior to the filing of the petition. His resume also lists experience consistent with the knowledge described in the May 2, 2005 letter.

The organizational chart provided by the petitioner identifies "system software engineer – trainee" as the lowest ranking position in the foreign entity's organization and shows "system software engineer" to be one step up from this trainee position.

On May 23, 2005, the director requested additional evidence establishing that the beneficiary's knowledge is indeed specialized. The director requested evidence demonstrating that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by practitioners in the beneficiary's field of endeavor, and requested information about the product of which the beneficiary has specialized knowledge and information regarding the beneficiary's training. Finally, the director requested information regarding other L-1B employees transferred to the United States within the last 12 months.

In response, counsel to the petitioner provided a letter dated June 6, 2005. In that letter, counsel provided an uncorroborated description of the beneficiary's training. While counsel lists many of the technical areas of which the beneficiary allegedly has knowledge and experience, counsel offers no opinion as to how long it takes to train an employee like the beneficiary. The petitioner also provided a list of 17 L-1B visa holders currently employed in the United States working in positions concerning some of the same proprietary software products of which the beneficiary allegedly has specialized knowledge.

On June 21, 2005, the director denied the petition concluding that the petitioner failed to establish that beneficiary has been or would be employed in a specialized knowledge capacity.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Specifically, counsel asserts that the beneficiary has specialized knowledge of the petitioner's proprietary software products, which he claims is only attainable through prior experience with these products and through specialized training. Counsel also presents, for the first time, a training schedule for the beneficiary.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary has been, or will be, employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8.C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. In this case, while the beneficiary's job description adequately describes his duties as a system software engineer, the petitioner fails to establish that these positions, both in the United States and abroad, require an employee with specialized knowledge or, even if they do, that the beneficiary had been employed in a specialized knowledge capacity for the requisite one year abroad.

As a threshold issue, counsel to the petitioner provided for the first time on appeal a description of the beneficiary's training with the foreign employer. The director specifically requested training records in the request for evidence; however, the petitioner chose not to produce them. The petitioner was put on notice of this required evidence and given a reasonable opportunity to provide it for the record before the visa petition

was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Although the petitioner repeatedly asserts that the beneficiary's proposed position in the United States requires "specialized knowledge," the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other experienced system software engineers employed by the petitioner or in the industry at large. Going on record without 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)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner asserts that the beneficiary possesses specialized knowledge of the petitioner's product, service, research and techniques, as well as of the petitioner's processes and procedures, which are unique and proprietary to the company. The petitioner also asserts that the beneficiary's knowledge is advanced, uncommon, noteworthy and distinguished. In support of these arguments, the petitioner relies heavily on its position that the beneficiary's knowledge of the petitioner's proprietary software products is sufficiently specialized to support the L-1B classification.

However, despite these assertions, the record does not reveal the material difference between the skills and knowledge needed to work with the petitioner's proprietary software products and similar software products on the market, or software in general. While the petitioner asserts repeatedly that the beneficiary gained his knowledge of these products through extensive training and experience, the record does not establish that the beneficiary's knowledge is different from the knowledge of software possessed by software professionals and system software engineers generally throughout the industry and by other employees of the petitioner. The fact that the petitioner's software products are unique or proprietary does not establish that any knowledge of these products is "specialized." Rather, the petitioner must establish that qualities of the unique or proprietary products require employees to have knowledge beyond what is common in the industry.

Moreover, the record reveals that the beneficiary had only been employed by the foreign entity for 13 months prior to the filing of the petition and that about half of this time was spent in a "trainee" position. The beneficiary identifies his employment with the foreign entity in his resume as his only professional experience. Simply put, the petitioner has not established that this new graduate who has been employed for less than 13 months, and has been trained for less than 6 months, has become a key employee of crucial importance who could not easily be replaced by another new graduate after a short introductory training stint. Providing a new employee with a few months of training in any field does not establish that this employee has gained "specialized knowledge."

The petitioner argues that its software is proprietary and that certain knowledge of this software could only be

gained by working for the owner of the software. Like any well-kept secret, it is likely that there are certain aspects to this, and all, proprietary software products which are known only by certain employees. However, this does not establish that this knowledge is "specialized" for purposes of this visa classification. The petitioner cannot artificially manufacture specialized knowledge by refusing to share information with others. Rather, the petitioner must establish that the beneficiary's knowledge is specialized because he gained the knowledge through extensive training or experience which could not easily be transferred to another employee. In this matter, the petitioner has not proven that the beneficiary's knowledge of the software is materially different from that possessed by similarly employed software professionals with experience with similar software products. The fact that these other software professionals may not have very specific, proprietary knowledge regarding the petitioner's software products is not relevant to these proceedings if this knowledge gap could be closed by the petitioner simply revealing the information to a newly hired professional.

Importantly, even if the knowledge described by the petitioner could be classified as "specialized," the beneficiary has not been employed in a specialized knowledge capacity for the requisite one-year period. *See* 8 C.F.R. § 214.2(l)(3)(iv). The record indicates that the beneficiary had only been employed by the foreign entity for 13 months prior to the filing of the petition and that about half of this time was spent in a "trainee" position. As a recent graduate working in his first professional position, the petitioner has not established that the beneficiary began working as a key employee of crucial importance possessing and utilizing specialized knowledge less than one month after he began working for the foreign entity. The petitioner has not established, and has not specifically asserted, that any portion of the beneficiary's "trainee" experience required the purported specialized knowledge which he now arguably possesses. Therefore, the petitioner has not established that the beneficiary has been employed in a specialized knowledge capacity with the foreign employer for at least one year.<sup>1</sup>

The AAO does not dispute the likelihood that the beneficiary is a skilled and experienced software professional who has been, and would be, a valuable asset to the petitioner. However, it is appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N

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<sup>1</sup>Records indicate that the Nonimmigrant Petition Based on a Blanket L Petition (Form I-129S) submitted by the beneficiary in applying for an L-1B visa at the United States Consulate General in Chennai, India, pursuant to an approved blanket petition, was denied. As the beneficiary applied for the blanket-based visa prior to June 6, 2005, he only needed to establish 6 months of employment with the foreign entity at that time. Pub. L. No. 108-447, § 413(b) (Dec. 8, 2004), 2004 U.S.C.C.A.N. (118 Stat.) 2809, 3352. However, irregardless of when the instant petition was filed, because the present matter is before the AAO on appeal from the denial of an individual I-129 petition, the petitioner would need to establish that the beneficiary had been employed for no less than one year in a specialized knowledge capacity. The shortened period of employment applicable to beneficiaries of approved blanket petitions filed on or after January 16, 2002 and prior to June 6, 2005 does not apply to this individual petition. Likewise, if this beneficiary had wanted to qualify for the visa based on 6 months of employment in a specialized knowledge capacity under the approved blanket petition, he would have needed to reapply at a U.S. consulate abroad or for a change of status in the United States prior to June 6, 2005. *Id.*; *see also* 8 C.F.R. § 214.2(l)(5)(i).

Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618(R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)). As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, “the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought.” 18 I&N Dec. 49, 52 (Comm. 1982). Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation.

*Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982).

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term “specialized knowledge” is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, “[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning.” 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for “key personnel.” *See generally*, H.R. REP. NO. 91-851, 1970 U.S.C.C.A.N. 2750. The term “key personnel” denotes a position within the petitioning company that is “of crucial importance.” *Webster’s II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered “important” to a petitioner’s enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of “crucial importance” or “key personnel” must rise above the level of the petitioner’s average employee. Accordingly, based on the definition of “specialized knowledge” and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between the employee and the remainder of the petitioner’s workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of “key personnel.”

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49. The decision noted that the 1970 House Report, H.R. REP. NO. 91-851, stated that the number of admissions under the L-1 classification “will not be large” and that “[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service.” *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed “L” category. In response to the Chairman’s questions, various witnesses responded that they understood the legislation would allow “high-level people,” “experts,” individuals with “unique” skills, and that it would not include “lower categories” of workers or “skilled craft workers.” *Matter of Penner, id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91<sup>st</sup> Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for “all employees with any level of specialized knowledge.” *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, “[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees.” 18 I&N Dec. at 119. According to *Matter of Penner*, “[s]uch a conclusion would permit extremely large numbers of persons to qualify for the ‘L-1’ visa” rather than the “key personnel” that Congress specifically intended. 18 I&N Dec. at 53; *see also*, *1756, Inc. v. Attorney General*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to “key personnel” and “executives.”)

A 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum written by the Acting Associate Commissioner also instructs CIS to compare the beneficiary’s knowledge to the general United States labor market and the petitioner’s workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that “officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized.” Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). A comparison of the beneficiary’s knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary’s skills and knowledge and to ascertain whether the beneficiary’s knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary’s knowledge, CIS would not be able to “ensure that the knowledge possessed by the beneficiary is truly specialized.” *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether any workers are actually available in the United States to perform the beneficiary’s job duties.

As explained above, the record does not distinguish the beneficiary’s knowledge as more advanced than the knowledge possessed by other system software engineers employed by the petitioner or elsewhere. As the petitioner has failed to document any materially unique qualities of the software products, the petitioner’s claims are not persuasive in establishing that the beneficiary, while highly skilled, would be a “key” employee. There is no indication that the beneficiary has any knowledge that exceeds that of any software professional or that he has received special training in the company’s methodologies or processes which would separate him from any other software professional employed with the foreign entity. As one of the lowest ranking software professionals employed by the petitioner, and one of over a dozen similarly trained and experienced system software engineers already working for the petitioner in L-1B status in the United States, the petitioner has not established that he is a key employee of crucial importance to the organization.

The legislative history of the term “specialized knowledge” provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary

should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra at 16.* Based on the evidence presented, it is concluded that the beneficiary has not been employed abroad, and would not be employed in the United States, in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, a related matter is whether the petitioner has established that it has a qualifying relationship with the foreign employer, American Megatrends India Pvt. Ltd. of Chennai, India.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section." A "subsidiary" is defined, in part, as a legal entity, including a limited liability company, which "a parent owns, directly or indirectly, more than half of the entity and controls the entity."

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In the initial petition, the petitioner asserts that it is the 97.07% owner of an Indian subsidiary, [REDACTED]

[REDACTED] In support of this assertion, the petitioner provided a handful of corporate documents such as a certificate of existence and articles of incorporation for the petitioner, a certificate of incorporation for the foreign subsidiary, consolidated financial statements, and company information lifted from brochures, articles, and the internet. However, the petitioner did not provide a copy of any share certificates or any other documents specifically evidencing the petitioner's ownership or control of the foreign entity and did not offer any explanation as to why these materials could not be produced. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. at 165. Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Therefore, the petitioner has not established that it has a qualifying relationship with the foreign entity in this proceeding.

Accordingly, the petitioner has failed to establish that it has a qualifying relationship with the foreign entity, and the petition may not be approved for this additional reason.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.