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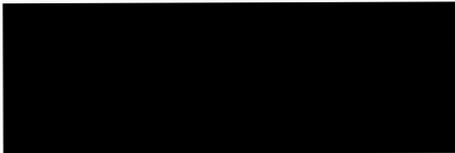
File: EAC 08 069 51635 Office: VERMONT SERVICE CENTER Date: **SEP 30 2008**

IN RE: Petitioner:
Beneficiary:



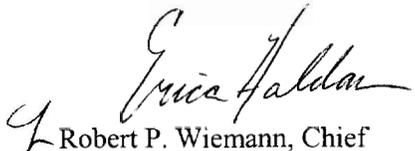
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF 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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 extend the employment of the beneficiary as its president as an L-1A nonimmigrant intracompany transferee 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, a corporation organized in the State of New York, is engaged in construction, design and consulting services, particularly for restaurants and related establishments. It claims to be the subsidiary of Machan Restaurant and Machan Group, located in Nagpur, India. The beneficiary was previously granted one year in L-1A status in order to open a new office in the United States and the petitioner seeks to extend the beneficiary's stay for two additional years.

On May 6, 2008, the director denied the petition, concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Specifically, the director noted that the beneficiary appeared to be engaged primarily in the performance of necessary functions for the petitioner, and did not appear to have subordinate employees to relieve him from performing such non-qualifying tasks. Consequently, the director concluded that the beneficiary was not acting primarily as a manager or executive as required by the regulations.

On appeal to the AAO, counsel for the petitioner contends that the director's decision in this matter erroneously focused on the size of the petitioning organization and thus unfairly prejudiced the petitioner and beneficiary. Moreover, counsel argues that the director ignored his repeated requests to treat the petitioner as a new enterprise and thus a new office under the applicable regulations.

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) 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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

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

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

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

The request for extension, filed on Form I-129 on January 8, 2008, indicated that the petitioner currently employed two persons plus an unspecified number of independent contractors. In a letter of support dated January 2, 2008, the petitioner provided a brief overview of the beneficiary's position in the United States. The petitioner stated as follows:

[The beneficiary's] responsibilities within [the petitioner] have been including the following:

- a. Coordinates, oversees, directs and administers start-up operations, investment decisions, capital expenditures, resource allocation decisions, policy formulation and coordination of the same with the Indian parent company, among other discretionary matters – essentially – provides strategic guidance and leadership;
- b. Develops and oversees corporate policy matters, including the supervision and hiring of managerial, professional supervisory level personnel; corporate policy enforcement through subordinate managers, and major business negotiations;

- c. Establishes, develops, cultivates and oversees initial and subsequent business relations, affiliations, suppliers, customers; oversee major negotiations and other relevant discretionary matters to ensure effective startup and long term growth;
- d. Develops and implements policies, marketing plans and strategies for long term growth, goals and objectives, including but not limited to financial objectives and other aspects of entity development;
- e. Establishes quality control guidelines and procedures, including R&D matters, which will have substantial impact on [the petitioner's] products/services, industry reputation and long-term growth;
- f. Develops and oversees employee and independent contractor training, hiring and discharge policies, specifically managerial level employees such as project managers, sales and marketing directors/managers and establishment and enforcement of other related corporate policies and objectives.

The petitioner also stated: "It must be emphasized that [the beneficiary] has directly performed the important sales and marketing functions of [the petitioner]."

On March 3, 2008, the director issued a request for evidence. Specifically, the director requested additional evidence to establish that the beneficiary will be employed in a managerial or executive capacity, including but not limited to a comprehensive overview of the beneficiary's duties, an organizational chart for the petitioner with position descriptions and job titles for all of the beneficiary's subordinates, and the amount of time the beneficiary allocated to managerial/executive functions in comparison to the time allocated to non-qualifying functions. The director also requested evidence of wages paid to employees and contractors.

In a response dated April 16, 2008, the petitioner submitted an updated overview of the beneficiary's duties. Specifically, the petitioner provided the following overview with a percentage breakdown of the time devoted to each of his tasks:

- a. Manages, coordinates, oversees, directs and administers the operations of the company as well as: investment decisions, capital expenditures, resource allocation decisions, policy formulation and coordination of the same with the Indian parent company, among other discretionary matters – essentially – provides strategic guidance and leadership; (50%)
- b. Manages and directs the overall administrative and financial operations of the company including developing and implementing marketing, sales and promotion policies, strategies, programs and [sic] (30%)

- c. Establishes, develops, cultivates and oversees initial and subsequent business relations, affiliations, suppliers, customers; oversee major negotiations and other relevant discretionary matters to ensure effective startup and long term growth; (5%)
- d. Develops and implements policies, marketing plans and strategies for long term growth, goals and objectives, including but not limited to financial objectives and other aspects of entity development; (5%)
- e. Establishes quality control guidelines and procedures, including R&D matters, which will have substantial impact on [the petitioner's] products/services, industry reputation and long-term growth; (5%)
- f. **Develops and oversees employee and independent contractor training, hiring and discharge policies, specifically managerial level employees such as project managers, sales and marketing directors/managers and establishment and enforcement of other related corporate policies and objectives. (5%)**

Counsel additionally provided information pertaining to the other employee of the petitioner, namely, [REDACTED] Vice President. Counsel contended that [REDACTED] is a professional employee by virtue of her possession of a master of arts in lighting and design from the Parsons School of Design.¹ The petitioner stated that the beneficiary also employs professional designers as consultants. The petitioner did not provide the requested position description for the vice president or describe the services performed by the claimed consultants and contractors. As evidence of wages paid to employees and contractors, the petitioner submitted a copy of the beneficiary's 2007 Form W-2 and a copy of a Form 1099 issued to [REDACTED] who received \$5,200 in non-employee compensation. The petitioner did not provide evidence of any payments made to the vice-president.

In the alternative, counsel asserted that the beneficiary qualified as a function manager in that he oversees essential functions and operations of the petitioner and is thus a key functional person within the petitioning entity.

¹ It is noted that the director erroneously believed that [REDACTED]'s diploma was submitted on behalf of the beneficiary, and rejected its evidentiary value because the names did not coordinate. Moreover, the director overlooked the petitioner's claim to employ [REDACTED] as vice president of the company. The director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On May 6, 2008, the director denied the petition, concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Specifically, the director noted that the beneficiary appeared to be engaged primarily in the performance of necessary functions for the petitioner, and did not appear to have subordinate employees to relieve him from performing such non-qualifying tasks. Consequently, the director concluded that the beneficiary was not acting primarily as a manager or executive as required by the regulations.

On appeal, counsel contends that the director's decision in this matter erroneous focused on the size of the petitioning organization and thus unfairly prejudiced the petitioner and beneficiary. Moreover, counsel argues that the director ignored his repeated requests to treat the petitioner as a new enterprise and thus a new office under the applicable regulations.

Upon review, the AAO concurs with the director's findings.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In this matter, the petitioner provided a generic description of duties for the beneficiary, which essentially paraphrases the regulatory definitions and provide minimal insight into a typical day for the beneficiary. Therefore, it is difficult for the AAO to decipher the exact nature of the beneficiary's role in the company. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990).

In this matter, the petitioner provides a broad and nonspecific overview of the beneficiary's alleged duties. For example, the petitioner states that one of the tasks the beneficiary performs is "develop[ing] and implement[ing] policies, marketing plans and strategies for long term growth, goals and objectives, including but not limited to financial objectives and other aspects of entity development." While on the surface, the task sounds professional in nature, in retrospect, it is actually an imprecise description of a general area of business. It is unclear how the beneficiary operates as a manager in light of this broad description of duties.

Consequently, the director requested a breakdown of the percentage of time the beneficiary devotes to each duty. The petitioner responded by claiming that 50% of the beneficiary's time was spent as follows:

Manages, coordinates, oversees, directs and administers the operations of the company as well as: investment decisions, capital expenditures, resource allocation decisions, policy

formulation and coordination of the same with the Indian parent company, among other discretionary matters – essentially – provides strategic guidance and leadership

An additional 30% was claimed to be spent doing as follows:

Manages and directs the overall administrative and financial operations of the company including developing and implementing marketing, sales and promotion policies, strategies, programs.

Again, while professional sounding on their face, these descriptions shed minimal light on an actual workday for the beneficiary. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner further contends that the beneficiary supervises of the vice president, who holds a masters degree in lighting and design, establishes that he is a managerial employee since he is supervising a professional. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

There are two problems with the petitioner's assertions. First, the petitioner provided minimal **information with regard to the vice-president**. Despite the director's specific request for detailed information pertaining to the wages paid to its employees, the petitioner failed to provide documentation of the vice-president's employment with the company. This, coupled with the petitioner's failure to provide a position description for the vice-president renders it nearly impossible to determine the nature of this employee's role in the company and the manner in which she works with the beneficiary. 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). As a result, the AAO cannot determine whether the vice-president was actually employed with the petitioner and/or whether she performed professional or managerial duties.

Second, the absence of additional information regarding the nature of the vice-president's claimed position with the company precludes a finding that the possession of a baccalaureate degree is required to perform the duties of her position. In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter*

of Sea, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree (or masters degree, in this case) is actually necessary, for example, to perform the services of the vice-president.

In addition, the petitioner submits evidence of payment to and contracts with Hilton Construction, and claims that Hilton Construction qualifies as personnel which the beneficiary supervises. The minimal documentation pertaining to the nature of their relationship with Hilton, and the extent of influence and contact which the beneficiary asserts over said company, is insufficient to warrant a conclusion that the beneficiary is acting in a primarily managerial capacity. For example, it appears that the petitioner has a business relationship with Hilton, but there is no information regarding the specific nature of the relationship or the nature of the labor or number of contractors. 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)). For the reasons discussed above, the AAO cannot conclude that the beneficiary will be employed in a primarily managerial or executive capacity.

In the alternative, counsel asserts that the beneficiary qualifies as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function"

manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial.

In the present matter, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as managerial, but it fails to quantify the time the beneficiary spends on them. Although the petitioner did provide a breakdown of the percentage of time the beneficiary devotes to each specific area of duties, merely claiming that 50% of his time is devoted to managing and coordinating resource allocation or policy formation is still indicative of his active participation in such tasks, and not the mere management or direction of such an area. Moreover, the AAO notes that initially, the petitioner claimed that the beneficiary actually performed the sales and marketing functions for the company, though later the petitioner claimed that he merely manages these functions without providing specific examples of the manner in which he executes this management. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties as opposed to managing or delegating such duties to others, the AAO cannot determine what proportion of his duties would be managerial or executive, nor can it deduce whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Finally, counsel contends that the director erroneously relied on the small size of the company in prejudicially denying the petition. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Moreover, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp 2d 7, 15 (D.D.C. 2001).

Furthermore, in the present matter, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

A review of the record indicates that the petitioner filed a petition on November 16, 2006, seeking to employ the beneficiary as its president to open a new office in the United States. The petition was approved, and the beneficiary was granted a one-year period of stay from January 9, 2007 to January 8,

2008. The instant petition involves an extension request for the original petition. Counsel repeatedly argues that the U.S. petitioner only commenced its business operations in July/August 2007 and thus should be considered a new office for purposes of review. This argument is flawed. The only provision that allows for the extension of a "new office" petition requires the petitioner to demonstrate that it has been staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii).

There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

The petitioner has failed to establish that the beneficiary will be employed in a predominantly managerial or executive position. For this reason, the appeal will be dismissed.

Moreover, the record does not contain sufficient evidence that the petitioner has been engaged in the regular, systematic, and continuous provision of goods and/or services in the United States for the entire year prior to filing the petition to extend the beneficiary's status. The petitioner, by its own admission, claims that its business dealings were delayed until July/August of 2007, at least six months after the initial petition's approval. While it is noted that the record contains copies of invoices from March and April of 2007, as well as quarterly profit and loss statements showing income for the first two quarters of 2007, this evidence is not sufficient to establish that the petitioner was continuously doing business during the relevant period as required. Pursuant to the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B), the petitioner is expected to submit evidence that it has been doing business since the date of the approval of the initial petition. In the instant case, there is no evidence that the petitioner engaged in the regular, systematic, and continuous provision of goods and/or services in the United States for the *entire* year prior to filing the petition to extend the beneficiary's status. For this additional reason the petition may not be approved.

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).

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.