**U.S. Department of Homeland Security**
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

D7

DATE: DEC 0 5 2012 Office: VERMONT SERVICE CENTER [redacted]

IN RE: [redacted]

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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. 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 beneficiary's status 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 Connecticut limited liability company established in 2009, states it is engaged in the trucking business. It claims to be an affiliate of and both located in Trinidad and Tobago. The beneficiary was previously granted one year in L-1A status in order to open a new office in the United States as the petitioner's president and manager.

The director denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary in a primarily executive or managerial capacity within one year.[1] The director reasoned that the petitioner had not shown that the beneficiary would supervise subordinate managers, professionals or supervisors and therefore that he did not qualify as a personnel manager under the regulations. Further, the director concluded that the record failed to establish that the beneficiary would be functioning at a senior level within a complex organizational hierarchy in order to qualify as an executive. The director determined that, based on the lack of personnel presented on the record, it was likely the beneficiary would primarily perform non-managerial duties required for the provision of goods and services.

On appeal, counsel asserts that the record does indeed establish that the beneficiary functions as a manager and executive, with a subordinate staff to relieve him from performing the sales and services of the company. Counsel further contends that the director inappropriately considered the small size of the company in making his decision.

## I. The Law

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

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[1] The record and USCIS records confirm that the petitioner was previously granted L-1A status as a new office under the regulations on December 10, 2009 and is now applying for a three year extension of this visa. While the petitioner indicated on the instant petition that the beneficiary is coming to the United States in order to open a new office, the director erred in applying the new office regulations at 8 C.F.R. § 214.2(l)(3)(v)(C) to the petitioner in this matter.

The petitioner may not be granted a second "new office" L-1A visa approval. The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. Therefore, the AAO will adjudicate using those regulations applicable to a petitioner applying for an extension of a new office. *See* 8 C.F.R. 214.2(l)(14)(ii).

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.

Further, the regulation at 8 C.F.R. 214.2(l)(14)(ii) states that a petitioner seeking an extension of a one year "new office" petition accompany their Form I-129 petition with 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 managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

## II. The Issues on Appeal:

### A. Employment in the United States in a managerial or executive capacity

As stated, the director denied the petition finding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily executive or managerial 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.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the petitioner performs primarily executive or managerial duties with the U.S. employer as required by the Act.

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(l)(3)(ii). In response to the director's request for a more comprehensive description of the beneficiary's job duties, the petitioner provided the following:

> Make any and all executive decisions regarding operations and direction of the company. Supervise all operations and ensure regulatory compliance in all activities. Bid and accept jobs. Create schedules and route plans. Make driver assignments and corresponding driver reward packages. Calculate profitability of various assignments. Engage in negotiations with clients and vendors. Supervise and instruct administrative assistant. Perform financial review and create/adjust budget. Review all invoices and expenses and make arrangements for payment. Meet with accountant and ensure filing of necessary documents. Perform work to carry out plan to open pre-owned automobile sales lot, including scouting locations for sales lot and negotiating lease terms for lot. Make all personnel decisions, including take corrective/disciplinary actions when necessary.

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).

Therefore, whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial or executive functions and what proportion would be non-managerial and non-executive. The petitioner lists the beneficiary's duties as including both managerial and executive duties; and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because a majority of the beneficiary's listed tasks, such as bidding and accepting jobs, creating schedules and route plans, making driver assignments, reviewing all invoices and expenses, and filing all necessary accounting documentation, do not fall directly under traditional managerial or executive duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner also suggests that the beneficiary will engage in the supervision of subordinate employees. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the

statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*). 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'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Here, the petitioner has not established that the beneficiary will direct subordinate managers, supervisors, or professionals. *See* § 101(a)(44)(A)(ii) and Section 101(a)(44)(B) of the Act. The petitioner has documented only three employees working for the petitioner, two truck drivers and a part-time administrative assistant. However, nothing has been presented on the record to establish that any of these employees are supervisors, professionals. The petitioner indicates that these positions require a high school education, and has not claimed that any of the beneficiary's subordinates hold any managerial or supervisory responsibilities. Accordingly, the petitioner has not established that the beneficiary will be employed in a managerial capacity based on his supervision of subordinate professional, supervisory or managerial staff.

Counsel also suggests on appeal 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 in managing the essential function, 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. *See* 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 "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also* (citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

In the present matter, the petitioner has not shown the beneficiary to be a function manager. The petitioner has not identified any essential function managed by the beneficiary, as required by law, nor provided the percentage of time he spends on managing a specific function. The petitioner's description of the beneficiary's duties is dominated by duties directly related to the provision of services and other non-managerial duties. The fact that the beneficiary is the only manager in the company and responsible for its overall operation does not elevate him to the level of a function manager. The petitioner must still establish that the beneficiary performs primarily managerial duties, and it has not met this burden.

Counsel also states on appeal that the beneficiary is employed in an executive capacity and directly recites the statutory definition of an executive in support of her claim. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Here, the petitioner's description of the beneficiary's duties fails to establish that the beneficiary will primarily direct the management of an organization. In fact, as discussed above, the record clearly shows that the beneficiary will be performing primarily operational and first-line supervisory tasks and will be focused on the day-to-day activities of the organization. Additionally, the petitioner has not established that he dictates to subordinate managerial employees within a complex organizational hierarchy. In fact, as stated, the petitioner has not established a single other managerial employee working for the petitioner. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). While the AAO does not doubt that the beneficiary exercises authority over the company as its owner and senior employee, the petitioner has not established that he performs primarily executive duties.

Counsel also asserts on appeal that the director unfairly based her decision on the small size of the U.S. employer's organization. Counsel cites *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.5 (5th Cir. 1989), and *Mars Jewelers, Inc. v. INS*, 702 F.Supp. 1570, 1573 (N.D. Ga. 1988), to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. First, the AAO notes that counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *National Hand Tool Corp.*, where the Fifth Circuit Court of Appeals decided in favor of the legacy Immigration and Naturalization Service (INS), or *Mars Jewelers, Inc.*, where the district court found in favor of the plaintiff. With respect to [redacted], the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS 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. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Further, in the present matter, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS 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. There is no provision in USCIS 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.

The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium-size businesses. However, consistent with both the statute and the holding of *National Hand Tool Corp.*, the AAO has required the petitioner to establish that the beneficiary's position consists of primarily managerial or executive duties and that the petitioner will have sufficient personnel to relieve the beneficiary from performing operational and/or administrative tasks.

In the present matter, the director did not make a determination based on the size of the business alone, but based on various relevant factors. The director observed that the beneficiary's position description included a number of non-qualifying duties and further based her decision on the petitioner's failure to establish that the beneficiary would supervise a subordinate staff comprised of managers, supervisors or professionals. Therefore, although size may have been part of the consideration of the director, it was certainly not the only, or even primary, consideration.

Due to the predominance of non-qualifying first-line supervisory duties provided in the beneficiary's job description, his lack of professional, managerial, or supervisory subordinates, and the petitioner's failure to establish that the beneficiary functions at a senior level in a complex organizational hierarchy, the petitioner has not established that it would employ the beneficiary in a qualifying managerial or executive capacity under the extended petition. For this reason, the appeal will be dismissed.

**B. Qualifying Relationship**

Beyond the decision of the director, the petitioner supported its claim that it has an affiliate relationship with the beneficiary's foreign employer, as required by 8 C.F.R. § 214.2(l)(3)(i) and 8 C.F.R. § 214.2(l)(14)(ii)(A).

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

In the present matter, the petitioner claims to have two foreign affiliates, [redacted] and [redacted] If one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. The petitioner states in a letter dated April 4, 2010, sent in response to the director's request for evidence, that both foreign entities are jointly owned by the beneficiary and his wife, [redacted]. However, the petitioner failed to submit any documentation showing the actual ownership interests in the foreign entities in order to confirm that the petitioner and the foreign entities are under common ownership. Although the petitioner has presented Articles of Incorporation for both foreign entities and various resolutions confirming the issuance of stock, no evidence is presented on the record to show the claimed interest in the foreign affiliates beyond the appointment and replacement of various directors. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Further, the petitioner has not provided sufficient evidence to establish that the claimed foreign affiliates are "doing business" as defined in the regulations. 8 C.F.R. § 214.2(l)(14)(ii)(B). The director noted this lack of evidence on the record and requested additional evidence that the foreign affiliates were doing business in a regular, systematic, and continuous fashion. 8 C.F.R. § 214.2(l)(1)(ii). However, the petitioner provided little evidence in response to confirm the continuous provision of goods and services abroad, such as purchase contracts, financial statements, documents showing income or expenses, rental agreements, purchase orders, invoices, bills of lading, or proof of any premises abroad to conduct business. Instead the petitioner has provided largely indiscernible bank account statements for the foreign entities, and a license to rent cars in Trinidad and Tobago, both lacking in probative value. In fact, the petitioner has only shown that the foreign entities have one employee who is claimed to manage both businesses. It has not documented any other employees for the foreign entity, who would undoubtedly be necessary to provide goods and services in a regular, systematic, and continuous fashion. 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). 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Further, there are material discrepancies on the record that also call into question the status of the petitioner as a qualifying organization. As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the

distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986).

Here, the petitioner presented an operating agreement showing that the beneficiary is the sole owner of the petitioner and that he made an initial capital contribution of $10,000. In direct contradiction, IRS Form 1065 partnership income returns for 2010 reflect that an ownership interest between the beneficiary (99%) and [redacted] (1%). However, no supporting documentation is presented to show any such change in ownership. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control in the petitioner.

Therefore, the petitioner has failed to establish that the petitioner and the foreign entities are qualifying organizations as defined in the regulations. Accordingly, the petition cannot be approved for these additional reasons.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

## III. Conclusion

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.