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

(b)(6)

DATE: MAR 18 2014 OFFICE: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 classify the beneficiary as an L-1B 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 is a multinational corporate entity that provides consulting actuarial services and various other business consulting services to corporate clients. The petitioner is the parent entity of [redacted]. The petitioner seeks to employ the beneficiary as its actuarial analyst for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the following: (1) the beneficiary was employed abroad in a managerial, executive, or specialized knowledge capacity; (2) the beneficiary would be employed in the United States in a specialized knowledge capacity; and (3) the beneficiary possess specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner contends that the beneficiary possesses specialized knowledge of proprietary tools which she used during her employment abroad and would use in her proposed position with the petitioning entity to assist the entities' respective clients prepare bids to be submitted to the U.S. Department of Health and Human Service's Center for Medicare and Medicaid Services (CMS).

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 the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

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

> 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.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, 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.
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> (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.
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> (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.

II. The Issues on Appeal

The primary issues to be addressed are whether the petitioner established that the beneficiary possesses specialized knowledge and if so, whether the beneficiary's position abroad and her proposed position with the U.S. entity are positions that are within a specialized knowledge capacity.

The petitioner is a corporation that provides actuarial and business consulting services to its clients both in the United States and through its subsidiary entities worldwide. The petitioner has 2,229 employees and claims a gross annual income of $723 million.

The petitioner stated that the beneficiary will be working in the United States as an actuarial analyst and provided evidence showing the beneficiary's educational credentials, which include a bachelor of science degree in applied mathematics as well as a master of science degree also in applied mathematics. The petitioner provided a supporting statement dated February 25, 2013, which described the beneficiary's foreign and proposed positions and listed the proprietary tools the beneficiary used and would continue to use in order to render actuarial services to the respective entities' corporate clients.

In discussing the beneficiary's position with the foreign entity, the petitioner stated that the beneficiary is "a key member of the team" that is involved in using and improving the employer's proprietary healthcare-related actuarial products and tools. The petitioner stated that the beneficiary's current position with the foreign entity is comprised of the following job duties:

- Providing actuarial advice and strategy support to clients with respect to their medical insurance product and benefit plan offerings . . . .

* * *

- Prepare and utilize proprietary actual models and projections to forecast and analyze the annual costs and revenues for clients' existing medical insurance plans/systems and products;

- Analyze risk scores of insurer's membership populations and estimate projected risk scores based on demographic and healthcare factors using membership population metrics;

- Develop premium rates for health insurance products through:
  - Extraction, cleaning and preparation of data for analysis;
  - Initial analysis to establish trends and levels;
  - detailed analysis to develop pricing assumptions; and
  - development of pricing alternatives, comparisons and forecasts;

- Complete bid submissions to various government social insurance entities in their approved electronic format and in compliance with all applicable bidding guidelines;

- Develop, analyze and verify necessary supporting documentation for submitted medical insurance contract bids, including actuarial certification and bid substantiation . . . .

- Prepare final management reports documenting the submitted bid information, including conclusions and the major assumptions used in developing the bids;

- Develop benchmarks adjusted to clients' medical insurance plan coverage, benefit plan design and consumer/insured profiles to make them comparable to actual benefit claims and payment data and then carry out detailed actuarial analysis to identify opportunity areas where significant savings in plan costs could be achieved . . . ;

- Asses [sic], monitor and audit data quality submitted and analyzed for medical insurance contract bidding and business analysis purposes by clients, including clients' medical cost and administrative cost experience data. Assessment and analysis includes running rigorous checks through the data to validate/assess credibility of the data, highlight any trends or random fluctuations and identify anomalies and develop manual rates based on statistical variance when necessary to supplement clients' experienced data to improve credibility of data reported;

- Audit Monthly Membership Reports of inpatient, outpatient and prescription drug payments from various government medical and social insurance reimbursement entities . . . ;

- Develop and improve actual algorithms and assumptions to be utilized in the above-described actuarial consulting and bid development activities;

- Develop activity codes for reporting measures to report plan claim experiences in compliance with applicable reimbursement technical instructions; and

- Model the impact of emerging healthcare technologies and drugs due to regulatory approval in terms of utilization and cost by assumptions for incidence and prevalence rates, costs of new drug or technology, treatment modalities and required grade-in periods.

The petitioner also provided a list of proprietary tools and database systems the beneficiary uses in the course of performing the above listed job duties. The petitioner referred to the beneficiary as "a distinguished member" of its international team of actuaries who are responsible for healthcare portfolio analysis and product pricing. The petitioner further noted that the beneficiary has a deep knowledge of "the highly complex medical insurance plan bidding process" which is required to carry out her assigned job duties in her current and proposed positions with the foreign and U.S. entities, respectively.

The petitioner expressed a need to employ the beneficiary in the United States due to an insufficient number of U.S. employees with the beneficiary's skill set, which includes knowledge of complex rules, regulations, and requirements involved in providing healthcare insurance coverage and receiving reimbursement payments managed by federal and state insurance programs. Lastly, the petitioner noted the beneficiary's educational credentials and pointed out that the beneficiary is an and is currently employed in the position of an associate actuary with the foreign entity.

On April 18, 2013 the California Service Center issued a request for evidence (RFE), which instructed the petitioner to provide, *inter alia,* evidence that the beneficiary has specialized knowledge and evidence establishing the beneficiary's specialized knowledge pertaining to her current employment abroad as well as the specialized knowledge of the proposed position in the United States. Among the relevant points of interest, the petitioner was asked to draw a distinction between the beneficiary in her claimed specialized knowledge capacity and other similarly-employed workers within the organization. The RFE notes that the petitioner failed to provide corroborating evidence comparing and contrasting the beneficiary's job duties and those of other individuals who perform similar type of work. More importantly, the petitioner was asked to explain how the beneficiary's knowledge is different from other actuarial analysts employed by the foreign entity and to provide corroborating evidence of the beneficiary's education, training, and employment that qualify her as possessing knowledge that is special or advanced. The petitioner was asked to specify the total number of employees within the foreign or U.S. entity who possess similar knowledge and who work in similar positions as the beneficiary. The petitioner was also asked to provide organizational charts specifically showing the beneficiary's placements within the respective organizations.

The RFE also addressed the subject of training, instructing the petitioner to provide documentation that shows any specialized knowledge the beneficiary may have gained through training courses presented by her

employer. The petitioner was asked to list the content of the course(s) and to state how long the course(s) lasted, the course completion dates, and the number of employees enrolled in the course(s). With regard to the issue of proprietary knowledge, the RFE instructed the petitioner to provide an account of the equipment, system, product, technique, research, service or processes or procedures that are deemed to be proprietary and to indicate whether the beneficiary took part in the design or development of the tools, services, processes or procedures and, if so, to provide evidence of such involvement. Lastly, the petitioner was asked whether the beneficiary would provide training in her claimed area of specialized knowledge, a detailed description of the training the beneficiary would give others in the United States, a list of the products, tools, processes, or procedures in which the beneficiary will provide training, a training itinerary, and an explanation of how long it takes to train other employees in the use of specific tools, products, or methodologies utilized within the petitioning entity.

The petitioner's response to the RFE included a statement from counsel dated July 2, 2013. In his statement counsel sought to establish that the beneficiary was employed abroad in a specialized knowledge capacity; the beneficiary's proposed employment in the United States would be within a specialized knowledge capacity; and the beneficiary's proposed position would not involve off-site work with an unaffiliated employer. Counsel emphasized that the director is to apply the preponderance of the evidence standard of proof in determining eligibility and asserted that the beneficiary possesses specialized knowledge of proprietary tools, processes, and procedures that she will use to assist company clients to prepare plans for bid submissions. Counsel provided a list of the petitioner's bidding tools and databases and claimed that the beneficiary is "part of a limited team" of employees who use these tools and databases "to perform the required complex actuarial analysis and documentation" within the bidding process in which the petitioner's clients participate. Counsel further claimed that the beneficiary received "internally developed training specific to these proprietary tools, processes and procedures" and pointed out that only "a select few within [the] Petitioner's operations receives" such training.

Counsel asserted that the petitioner is not required to establish that the beneficiary participated in the development of the product or technology in which she is claimed to have specialized knowledge and further stated that there is no statutory or regulatory provision that requires the petitioner to establish: (1) that the beneficiary received a lengthy period of training; (2) that training others to possess similar knowledge would disrupt the company's business; or (3) that the beneficiary's current and proposed job duties are unlike those which are typical for the occupational category under which the beneficiary's respective positions would fall. Lastly, counsel contended that the length of the beneficiary's training cannot be deemed as "sufficiently probative to determine whether or not the training imputed specialized knowledge ... to the beneficiary." Counsel asked the director to refer to the beneficiary's listed job duties for her current and proposed position, asserting that the beneficiary's job duties are "significantly more complex and specialized than the basic job duties listed in the OOH for actuaries."

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad and would be employed in the United States in a specialized knowledge position or that the beneficiary possesses specialized knowledge. In denying the petition, the director found that the petitioner failed to properly explain and provide evidence to establish that the beneficiary's use of tools, processes, and procedures in her execution of daily tasks involved specialized knowledge. The director

pointed out that the petitioner failed to compare and contrast the beneficiary's duties with those of others who assume similar positions in the field.

Next, in addressing the beneficiary's proposed position of actuarial analyst, the director found that the beneficiary's job duties are similar to other actuarial analysts or related occupations in the mathematics field. The director also pointed out that it is typical for individual companies to develop methodologies, products, processes, and procedures to suit their own individual needs and therefore determined that the record lacked evidence to establish that the beneficiary's knowledge of the petitioner's tools, processes, and procedures was specialized. The director determined that if the knowledge required to carry out the beneficiary's duties in her proposed position can be "readily transferred" to other employees in similar occupations, then doubt would arise as to whether the position is one requiring specialized knowledge.

Lastly, with regard to the issue of the beneficiary possessing specialized knowledge, the director observed that while the beneficiary gained experience and job-related training of the foreign entity's tools, processes, and procedures, the petitioner has failed to establish that such knowledge reaches a level of what would be deemed as specialized knowledge. In support of this determination, the director pointed out that the petitioner failed to provide evidence to show that the beneficiary acquired specialized knowledge through specific training courses presented by her employer or that the beneficiary received training that gave her a level of knowledge that was special or advanced as compared to other employees within the same company. Finally, the director determined that the petitioner failed to show that the type of knowledge gained by the beneficiary is not easily transferable to others working in the her field.

On appeal, counsel asserts that the beneficiary has an "intimate knowledge of the petitioner's proprietary tools, processes, and procedures" and further claims that the beneficiary is a member of a "limited team" of employees who perform complex actuarial analysis. Counsel points out that the beneficiary has over four years of experience with the petitioner's proprietary tools, processes, and procedures and that not everyone within the petitioner's operation was privy to similar training. Counsel reasserts statements he previously made in his RFE response letter where he objected to the director's perceived expectation that the beneficiary must be directly involved in developing particular proprietary technology or process. Counsel also questions the probative value of knowing the length of training the beneficiary underwent to acquire certain knowledge and further asserts that the beneficiary's current and proposed duties are entirely unrelated to the job duties listed in the OOH for the occupational category under which the beneficiary's respective positions fall. In light of the above, counsel asserts that the director's decision is arbitrary and capricious and asks the AAO to overturn such decision and sustain the appeal.

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that she has been employed abroad and would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating

the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

In order to establish eligibility, the petitioner must show that the individual was employed abroad and will be employed in the United States in a specialized knowledge capacity. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is advanced or special, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner's claims are based on the beneficiary's special knowledge of the petitioner's proprietary tools and databases as well as the company's processes and procedures. The petitioner further asserts that such knowledge is required in order for the beneficiary to fulfill the assigned responsibilities of her respective positions overseas and at the petitioning U.S. entity.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position, that she is to perform a job requiring specialized knowledge in the proffered position, or that the beneficiary possesses specialized knowledge. Although the petitioner asserts that the beneficiary's positions abroad and in the United States require specialized knowledge, the record lacks evidence to show that the knowledge and expertise required for the beneficiary's position would differentiate her employment from the position of actuarial analysts or actuarial associates at other employers within the industry or within the beneficiary's foreign and U.S. employer organizations. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).

In examining the beneficiary's specialized knowledge and whether the offered position requires specialized knowledge, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *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. *Id.*

In the present matter, the petitioner provided a list of the various proprietary tools and databases the beneficiary has and would continue to use to provide actuarial services to each entity's clients. While counsel also referred to proprietary processes and procedures, neither was specifically identified, thus precluding the AAO from being able to ascertain whether there are any proprietary processes or procedures that are relevant to the beneficiary's current and proposed positions and, if so, whether such processes or procedures can be deemed as advanced.

Additionally, despite the petitioner's list and description of the proprietary tools and databases of the foreign and U.S. employers, the petitioner provided little information and no evidence to establish how, other than through work experience, the beneficiary gained the alleged proprietary knowledge. Despite claiming that the beneficiary received in-house training from its current employer, the petitioner has provided no specific dates to establish that such training took place, when it took place, or the duration of any such training. Although the petitioner provided evidence of the beneficiary's educational credentials, the record does not include a copy of the beneficiary's résumé, which may also help to establish when and how the beneficiary received training in what are claimed to be positions involving specialized knowledge.

Moreover, counsel dismissed the director's questions pertaining to the beneficiary's training as lacking in relevance, despite the fact that the duration of a training course may serve as a valid indicator of a position's level of complexity or the ease with which knowledge required by the position may be transferred and learned by others. As these factors impact the AAO's ability to determine whether the beneficiary possesses specialized knowledge and whether her foreign and proposed positions are within a specialized knowledge capacity, they are highly probative and relevant in the matter at hand.

Furthermore, the record shows that the petitioner failed to respond to a number of relevant questions that were posed in the RFE, which asked the petitioner to draw a distinction between the beneficiary in her claimed specialized knowledge capacity and other skilled workers within the same organization. The petitioner neglected to respond to a question which asked for an explanation of how the beneficiary's knowledge is different from other actuarial analysts employed by the foreign entity. The petitioner provided only general statements that referred to the beneficiary as one of few employees assigned to perform highly complex actuarial analysis using the petitioner's proprietary tools, processes, and procedures. As noted above, the petitioner did not provide any information that specifically identified the claimed advanced processes or procedures, nor did the petitioner explain how the level of analysis that the beneficiary performs and would perform is different from the analysis performed by other actuaries within the foreign or petitioning entity.

Despite having been asked to specify the total number of employees within the foreign or U.S. entity who possess similar knowledge and work in similar positions as the beneficiary, the petitioner, through counsel's statements, continued to provide vague statements that indicated only that the beneficiary is one of a limited number of employees to possess specialized knowledge of this nature. While the AAO may have been able to glean some relevant information about the beneficiary's position in comparison to other employees from the

foreign and U.S. entities' respective organizational charts, the petitioner failed to provide a chart for either entity even though such evidence was expressly requested in the RFE. 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, the petitioner failed to provide sufficient evidence comparing the beneficiary's job duties and level of specialized knowledge with those other employees who occupy actuarial positions within the petitioner's organization. As such, the AAO cannot determine whether the beneficiary's knowledge rises to the level of being deemed truly specialized. 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)).

Lastly, the AAO will address counsel's assertion that the beneficiary's current and proposed duties are entirely unrelated to the job duties listed in the OOH for the occupational category under which the beneficiary's respective positions fall. The OOH indicates that "[a]ctuaries' work is essential to the insurance industry," thereby suggesting that the work performed by the beneficiary is standard within the petitioner's line of business. *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Actuaries," http://www.bls.gov/ooh/Math/Actuaries.htm#tab-2 (last visited Dec. 30, 2013). The OOH further indicates that most actuarial work is done with computers, and that actuaries typically use database software to compile information. In order to forecast the cost and probability of an event, they will use advanced statistics and modeling software. *Id.* According to the petitioner, the beneficiary's primary duties involve the utilization of its proprietary tools and databases.

Therefore, one question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary tools and methodologies, by itself, constitutes specialized knowledge. The AAO notes that the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. *Cf.* 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988). However, the petitioner might satisfy the current standard by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard. Here, the petitioner has not established how its internal tools and databases used in the Medicare Advantage bidding process differ from similar tools utilized by other individuals engaged in actuarial analysis in the insurance industry, and therefore has not established that knowledge or these tools rises to the level of specialized or advanced. The petitioner has failed to demonstrate that the beneficiary's knowledge and experience within the company rises to the level of specialized knowledge.

For the reasons discussed above, the evidence submitted fails to establish that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

IV. Conclusion

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 the petitioner has

not met that burden.

ORDER: The appeal is dismissed.