



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **FEB 10 2015**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [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:

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, Vermont Service Center ("the director"), denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

This nonimmigrant petition was filed 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, on the Form I-129 (Petition for a Nonimmigrant Worker) Supplement L, identifies itself as a parent of [REDACTED], a Malaysian company organized in [REDACTED].¹ On the Form I-129, the petitioner lists its business as "Computer Resell, Mobile Phones, and Network Product and Services." The petitioner seeks to employ the beneficiary in L-1A classification as its president and chief executive officer for one year.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in either a managerial or executive capacity.

the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to this office. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to establish that the beneficiary's duties are "Executive or Managerial."

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 parent, subsidiary, or affiliate of the foreign employer.

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,

¹ The petitioner also indicates on the Form I-129, Supplement L, that Umer Enterprises owns 100 percent of the petitioner, which would reflect that it is a subsidiary of the foreign entity.

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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) 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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in a managerial or executive capacity under the extended petition.

A. Facts

The petitioner was incorporated on March 10, 2012 and filed the initial new office petition in May 2012. The new office petition was approved for a validity period from August 1, 2012 to July 31, 2013. The petitioner filed the instant petition on July 30, 2013 and indicated on the Form I-129 that it had six to eight employees at the time of filing. In a letter, dated July 25, 2013, the petitioner noted that the beneficiary, as president and CEO of the petitioner, had been and would continue to be responsible for:

- Serving as the key U.S. contact for the shareholders and directors of the parent company;
- Planning and developing the U.S. investment;
- Developing, organizing and establishing operations pertaining to the purchase, sale and marketing of merchandise for sale in the U.S. market;
- Identifying, recruiting and building a management team and staff with background and experience in the U.S. retail market;
- Overseeing managers who in turn supervise subordinate employees in running day-to-day operations;
- Executing or recommending personnel actions and establishing a management team to run daily operations;
- Negotiating and supervising the drafting of purchase agreements;
- Ensuring the marketing of products to consumers according to the parent company's guidelines;
- Overseeing legal and financial due diligence processes and resolving any related issues;
- Supervising all financial aspects of the company;
- Developing organizational policies and objectives;
- Developing trade and consumer market strategies based on guidelines formulated by the parent company;
- Negotiating prices and sales terms and formulating pricing policies and advertising techniques; and
- Developing and implementing plans to ensure the company's profitable operation.

The petitioner also provided a chart, which indicated that the beneficiary would allocate his time to four general areas of responsibility as follows:

Management/Operational Decisions and Conducting Due Diligence for Acquisitions of outlets - 25 percent of the time;

Combined Company Representation and Business Negotiations [Contract Negotiations and Developing Trade and Marketing Strategies] – 30 percent of the time;

Combined Financial Decisions and Business Negotiations [Decision on Expansion, Incurring Expenses, resolving financial related issues, etc.] – 30 percent of the time;

Organizational Development of Company: Putting Management Team into place – 15 percent of the time.²

The initial record also included the petitioner's Internal Revenue Service (IRS) Form 941, Employer's Quarterly Federal Tax Return for 2012, which showed it had employed five individuals for that quarter and the petitioner's 2012 IRS Form W-2s, Wage and Tax Statement, issued to five employees. The record further included the petitioner's Texas Employer's Quarterly Report, for the second quarter of 2013, listing five individuals, paid between \$1,000 to \$3,500, for the second quarter and showing that the beneficiary was paid \$9,000. The petitioner also submitted its corporate documents, the foreign entity's corporate documents, a copy of its lease, its IRS Form 1065, U.S. Return of Partnership Income, and a copy of the approval notice for the previous petition

In response to the director's request for evidence (RFE), the petitioner provided the same description of the beneficiary's duties for the petitioner. The petitioner submitted its organizational chart which depicted the beneficiary directly over the vice president/general manager, [REDACTED]. The vice president/general manager is depicted as supervising an admin & HR officer, [REDACTED] a sales manager, [REDACTED] and a procurement officer, [REDACTED]. Two other individuals, [REDACTED] and [REDACTED] are identified as sales representatives reporting to the sales manager and one individual, [REDACTED] is identified as an office manager reporting to the admin & HR officer. The petitioner also included brief job descriptions for the positions listed on the organizational chart, and evidence that Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] have degrees in electronic engineering, civil engineering, and business administration, respectively

The petitioner's 2013 IRS Forms W-2 are included in the record and show that the petitioner employed seven individuals during the year. The individuals were paid \$3,000, \$3,500, \$4,000, \$12,000, \$12,200, \$13,000, and the beneficiary was paid \$36,000, for the 2013 year. None of the W-2s, for either 2012 or 2013, other than the W-2 issued to the beneficiary, are issued to the individuals listed on the petitioner's submitted organizational chart.³

The petitioner also submitted a copy of its Texas Workforce Commission Employer's Quarterly Report for the third quarter of 2013, which indicates that the petitioner had four employees as of July 2013 when the petition was filed. These employees included the beneficiary, [REDACTED]

² The chart provides additional broadly stated duties which will not be repeated here. We observe, however, that the additional narrative includes references to: "coordinating with engineers in environmental testing;" "developing trade and consumer market strategies based on guidelines formulated by [REDACTED]" and "she will also be developing and implementing plans to ensure [REDACTED] profitable operation this will be achieved by [the beneficiary] meeting with company managers and directors ...". These references suggest that the descriptions were not written for this particular beneficiary performing duties for the petitioner in this matter as the petitioner does not employ engineers, perform environmental testing, operate a business known as "[REDACTED]" or employ a female beneficiary. Accordingly, the narrative will not be given any probative weight in this proceeding.

³ We observe that [REDACTED] listed on the petitioner's organizational chart as its "Admin and HR officer," may also be known as [REDACTED] who received a 2013 Form W-2 showing he received a salary in the amount of \$12,000 for the 2013 year.

Upon review of the evidence submitted, the director determined that the petitioner had not established that the beneficiary would be employed in a qualifying executive or managerial capacity or that the petitioner could support such a position.

On appeal, the petitioner submits recent invoices, its June and August 2014 bank statements, the organizational chart previously submitted, an IRS Form 941 for the second quarter of 2014 reporting four employees, a Texas Employer Quarterly Report, reporting five employees in April and May of 2014 and four employees in June 2014, and what appear to be payroll statements for five employees in July 2014 and four in August 2014.⁴ The petitioner asserts that it has established that the beneficiary will be employed in a managerial or executive capacity.

B. Analysis

We have reviewed the petitioner's descriptions of the beneficiary's duties in order to determine if the petitioner provided a description sufficient to establish that the beneficiary would be employed in the United States in a managerial or executive capacity as defined at 101(a)(44)(A) or (B) of the Act. In that regard, we note that the definitions of executive and managerial capacity each 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 show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary owns or manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* Here the petitioner provided broad descriptions of the beneficiary's duties, relying primarily on the fact that the beneficiary is the individual depicted at the top of the organizational chart. For example, the petitioner noted the beneficiary would serve as the key U.S. contact for the parent company, would plan and develop the U.S. investment, develop, organize and establish operations pertaining to the purchase, sale and marketing of merchandise, develop organizational policies and objectives, and develop and implement plans to ensure the company's profitable operation. However, 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 provide any detail or explanation of the beneficiary's activities related to these broadly stated tasks, in the course of his

⁴ As the petition was filed on July 30, 2013, the documents relating to the petitioner's business and employees in 2014, a year later, are not probative in establishing the beneficiary's managerial or executive capacity when the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

daily routine. The actual duties themselves will reveal the true nature of the employment. *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).

Moreover, the petitioner stated that the beneficiary would be responsible for negotiating and supervising the drafting of purchase agreements, would ensure the marketing of products to consumers according to the parent company's guidelines, oversee the legal and financial due diligence as well as supervise all financial aspects of the company, develop trade and consumer market strategies, and negotiate prices and sales terms. In addition to the generality of these stated responsibilities, some of the responsibilities simply paraphrase others responsibilities and thus overlap. For example, the petitioner does not detail the difference between ensuring the marketing of products to consumers and developing trade and market strategies. Further, negotiating purchase agreements and prices and sales terms, developing marketing strategies, and performing financial due diligence, are non-qualifying operational tasks, not managerial or executive duties. In that regard, we observe that based on the petitioner's organizational chart, the petitioner does not identify any departments or positions that primarily perform marketing or financial tasks, thus relieving the beneficiary from performing the essential routine operational and administrative duties associated with these responsibilities.⁵

Furthermore, we observe that the petitioner has not submitted evidence of its organizational structure at the time of filing. The petitioner stated on the Form I-129 that it employed six to eight workers, however, the petitioner's payroll records reflect that the petitioner had only four employees as of July 2013, including the beneficiary, the individual identified as the "admin & HR officer" who earned \$1,500 per month, and two individuals whose positions have not been identified that earned \$1,000 per month. Thus, while the petitioner submitted an organizational chart depicting two tiers of managers or supervisors subordinate to the beneficiary, the record does not establish that this structure was in place at the time of filing.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers."⁶ See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). 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

⁵ The petitioner provided brief job descriptions for the positions identified on its organizational chart, submitted in response to the director's RFE. However, the job descriptions are generic and do not provide detailed information regarding the actual duties relating to the proposed positions. For example, the description of duties for the "procurement officer" includes "[o]verse[ing] operation of food store and gas sales." The petitioner in this matter claims to be a computer resale, mobile phone and network product and services provider. Thus, the reference to a food store and gas sales casts doubt on the legitimacy of the position descriptions. 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).

⁶ The petitioner does not claim and the record does not demonstrate that the beneficiary will act in a function manager capacity.

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 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.*

Although [REDACTED] the Admin and HR officer, appears to have a degree in civil engineering, the petitioner has not established that the beneficiary will primarily manage a professional employee. When evaluating whether the beneficiary manages professional employees, we 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'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's 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 established that a bachelor's degree is actually necessary to perform the administrative and human resource work of the office. Thus, the position [REDACTED] held has not been established as a professional position.

Based on the totality of the record we find that the petitioner has not established with probative evidence that it employed a management team and staff or managers with supervisory duties when the petition was filed, or that the subordinate administrative and human resources manager and two part-time employees working for the company as of the date of filing relieved him from performing non-qualifying duties. The petitioner has not provided sufficient credible and probative evidence to establish that the beneficiary primarily performs duties in a managerial or executive capacity. 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)).

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, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations 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. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Based on the limited and inconsistent documentation furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

III. BEYOND THE DIRECTOR'S DECISION

In our *de novo* review of this matter, we found an additional issue that precludes approval of the petition.⁷ The petitioner states that the beneficiary's foreign employer, [REDACTED], owns 100 percent of its shares. The record includes a copy of membership certificate 1, dated April 20, 2012, showing the petitioner issued one thousand membership units to [REDACTED] (Malaysia). The stock ledger submitted indicates that no other certificates were issued. However, the petitioner's 2012 IRS Form 1065, U.S. Partnership Income Tax Return lists two individuals, the beneficiary and [REDACTED] as each owning 50 percent of the petitioner.

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

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

⁷ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

As noted above, the petitioner provided a copy of its membership certificate showing it had issued one thousand shares to [REDACTED] (Malaysia). The record does not include evidence of any change in the alleged ownership of the petitioner. However, the petitioner reported to the IRS that it was owned in equal percentages by the beneficiary and one other individual. The record does not include any explanation regarding this inconsistency. 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. at 591-92. Thus, upon review of the totality of the record, the record does not include consistent, probative evidence establishing the petitioner's actual ownership and control. For this additional reason, the petition may not be approved.

IV. CONCLUSION

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).

In this matter, upon review of the totality of the record, the record does not demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity for the U.S. petitioner. Accordingly, we will uphold the director's determination that the petitioner failed to establish that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States. In addition, we find beyond the decision of the director, that the petitioner has not established a qualifying relationship with the beneficiary's claimed foreign employer.

When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated grounds. 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). The petition will be denied and the appeal dismissed for the above stated reasons. 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.