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



U.S. Citizenship
and Immigration
Services

DATE: FEB 19 2015 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, 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 Virginia limited liability company established in [REDACTED] states that it operates a gas station that includes a convenience store and automotive repair shop. The petitioner indicates that it is a wholly owned subsidiary of the beneficiary's foreign employer, [REDACTED] located in Yemen. The beneficiary was previously granted one year as an L-1A intracompany transferee in order to open a "new office" in the United States as the petitioner's executive director. The petitioner now seeks to extend the beneficiary's status for three additional years.¹

The director denied the petition, concluding that the petitioner did not establish that the beneficiary will be employed in an executive capacity in the United States.

The petitioner filed the instant appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the director failed to consider the reasonable needs of the company and erred in determining that the petitioning organization cannot support an executive-level position. The petitioner contends that the evidence is sufficient to establish that the beneficiary is employed in an executive capacity.

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 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.

¹ Consistent with 8 C.F.R. § 214.2(l)(15)(ii), an extension of stay may only be authorized in increments of up to two years.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

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.

II. Executive Capacity in the United States

The sole issue addressed by the director is whether the petitioner established that it will employ the beneficiary in a qualifying executive capacity under the extended petition. The petitioner does not contend that the beneficiary will be employed in a managerial capacity.

A. Facts

The petitioner filed the Form I-129 on April 12, 2014. The petitioner indicated that it has ten employees in the United States and a gross income of \$325,652.

The Form I-129 indicates that the beneficiary is responsible for establishing the business in the United States. The petitioner indicates that he coordinates and directs the policies of the company; controls merchandising policies; determines pricing necessary to ensure the desired profit; determines the budget; directs the purchasing of inventory and marketing strategies; directs marketing, shipment, quality control, and record keeping policies; and oversees the hiring and coordination of employees. The petitioner further states that the beneficiary sets the company's goals and policies and directs subordinates to implement them.

In a letter submitted in support of the petition, the petitioner indicated that, as executive director, the beneficiary allocates his time as follows:

- 20% of duties to direct and coordinate the organization's financial and budget activities to fund operations, maximize investments, and increase efficiency.
- 10% of duties to confer with board members, organization officials, and staff members to discuss issues, coordinate activities, and resolve problems.
- 10% of duties to analyze operations to evaluate performance of the company and its staff in meeting objectives, and to determine areas of potential cost reduction, program improvement, or policy change.
- 10% of duties to direct, plan, and implement policies, objectives, and activities of the organization to ensure continuing operations, to maximize returns on investments, and to increase productivity.
- 10% of duties will be to prepare budgets for approval, including those for funding and implementation of programs.
- 10% of duties to direct and coordinate activities of departments concerned with production, pricing, sales, or distribution of products.
- 10% of duties to negotiate and/or approve contracts and agreements with suppliers, distributors, federal and state agencies, and other organizational entities.
- 10% of duties to review reports submitted by staff members to recommend approval or to suggest changes.
- 5% of duties to appoint department heads or managers and assign or delegate responsibilities to them.

- 5% of duties to direct human resources activities, including the approval of human resource plans and activities, the selection of directors and other high-level staff, and establishment and organization of major departments.

The petitioner submitted an organization chart. The chart places the beneficiary at the highest level of authority. A business manager is directly subordinate to the beneficiary. The business manager oversees a bookkeeper, safety and emissions employee, inspector, mechanics, a cashier, and office assistant. The petitioner provided position descriptions for the positions of business manager, bookkeeper, office assistant, safety inspector, two automobile mechanics, and four cashiers. The petitioner did not identify any employees by name on the employee list or organizational chart.

The petitioner provided the following position description for the position directly subordinate to the beneficiary:

Business Manager

- 20% of [sic] to formulate, direct, and coordinate business activities and policies to promote products and services, working with advertising and promotion managers.
- 10% of be [sic] to identify, develop and evaluate business strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors.
- 5% of be [sic] to direct the hiring, training, and performance evaluations of marketing and sales staff and oversee their daily activities.
- 10% of duties to evaluate the financial aspects of product development, such as budgets, expenditures, research and development appropriations, and return-on-investment and profit-loss projections.
- 10% of duties to develop pricing strategies, balancing firm objectives and customer satisfaction.
- 5% of duties to compile lists describing product or service offerings.
- 10% of duties will be to initiate market research studies and analyze their findings.
- 10% of duties to use sales forecasting and strategic planning to ensure the sale and profitability of products, lines, and services, analyzing business developments and monitoring market trends.
- 10% of duties to coordinate and participate in promotional activities and trade shows, working with developers, advertisers, and production managers, to market products and services.
- 10% of duties to consult with buying personnel to gain advice regarding the types of products or services expected to be in demand.
- Salary: \$5,000 per month

The petitioner also provided: payroll documents for the period January 2014 through April 2014 indicating that the petitioner paid wages to seven employees as of April 2014; Internal Revenue Service (“IRS”) Forms W-2, Wage and Tax Statement indicating that the petitioner paid the beneficiary plus nine additional employees in 2013; and a sublease agreement for a convenience store/gas station/automobile repair operation stating that the business shall be open for 18 hours per day.

The director issued a request for additional evidence (“RFE”) informing the petitioner that the position description provided for the beneficiary was vague and insufficient to demonstrate that he is employed in a qualifying managerial or executive capacity. The director requested a more detailed explanation of the beneficiary’s day-to-day activities.

In response to the RFE, the petitioner provided a list of the beneficiary’s duties in the last year, and a list of duties that the beneficiary will perform in the upcoming year.

The petitioner submitted a statement describing the beneficiary’s duties for the past year as follows:

- a) Created and developed business relationships with other businesses and suppliers;
- b) Created business accounts with numerous banks and suppliers to facilitate the receipt of capital from Yemen and to streamline expenditure payments;
- c) Selected and leased [the petitioner's] headquarters location and outfitted these offices with capable and cost effective electronics, telecommunication systems, work areas, and inventory to enable [the petitioner's] headquarters to effortlessly and seamlessly generate business;
- d) Negotiated the purchase of [REDACTED];
- e) Negotiated purchase agreements with numerous vendors for supplies, equipment, and goods for the Business Entity;
- f) Interviewed, hired, and terminated staff, and set wage rates for staff members;
- g) Created and implemented a company culture of responsibility, best practices, and accountability;
- h) Developed, implemented, and oversaw procedures on the treatment of customers, aesthetics, and placement of display racks and items, and other day to day duties;
- i) Formally, executed agreements on behalf of [the petitioner].

The petitioner states that the beneficiary’s duties in the upcoming year will include the following:

- a) Direct [the petitioner's] financial and budget activities to ensure profitability;
- b) Create and approve [the petitioner's] budget proposals;
- c) Review staff reports on financial health of [the petitioner] in order to make appropriate revisions to budget and financial plans;
- d) Continue to develop, implement, and oversee business strategies of [the petitioner];
- e) Focus on the expansion of real estate renovation, development, and construction as any cash flow into [the petitioner];
- f) Continue to evaluate the staffing needs of [the petitioner] at its headquarters and its Business Entity;
- g) Negotiate pricing contracts for the delivery of goods and supplies to [the petitioner's] headquarters and Business Entity;
- h) Continue to read and review market reports in order to identify potentially lucrative business ventures, including prime areas for real estate renovation, development, and construction;

- i) Continue to reevaluate and develop the core values of [the petitioner].
- j) The goal is to invest 2 million dollars over next two years in the US Market and make sure that the entity develops as a profiting business entity in the US.
- k) Extend and develop the business of real estate development, which is going to be a big project.

The director ultimately denied the petition. The director found that the evidence fails to establish that the purpose, nature, and organizational structure of the U.S. organization support an executive position. The director also found that the evidence does not establish the beneficiary's employment in an executive capacity. The director noted that retail gas stations, convenience stores, and auto repair shops do not generally require an executive-level position. The director acknowledged the petitioner's contention that it intends to engage in real estate development, but found insufficient evidence to support that claim or to show any existing business activities beyond the gas station and convenience store operations. The director also determined that the position description was overly vague and did not establish that the beneficiary primarily performs executive level duties. The director also questioned the type of business strategies the beneficiary actually needs to develop and implement, observing that several major aspects of the operations, such as the hours of operations, fuel supplier, pricing, equipment, and inventory are largely determined and controlled by a franchise agreement. The director concluded that, based on the overly general position description, the small size of the company and the organization structure at the time of filing, the beneficiary will be performing non-executive duties, rather than primarily directing departments and functions.

On appeal, the petitioner asserts that the director erred in finding that the business operation does not require an executive director. The petitioner states that it needs an executive due to the amount of investment and continual development of the business. The petitioner also asserts that the director erred in determining that the beneficiary is not employed in an executive capacity. The petitioner states that the position descriptions demonstrate that the beneficiary mainly performs executive duties, that the subordinate business manager handles the managerial functions for different departments and that the beneficiary is ultimately overseeing and directing these activities. The petitioner states that the beneficiary will confer with the business manager to discuss organizational issues. The petitioner explains that the franchise agreement does not control all portions of the business operations and does not limit the beneficiary's ability to develop business strategies to enhance and grow business opportunities.

B. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a primarily executive capacity under the extended petition.

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). The definition of executive capacity has two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definition. 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 and 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").

The petitioner's description of the beneficiary's duties fails to explain the actual tasks he will undertake on a day-to-day basis. For example, the petitioner states that the beneficiary directs and coordinates the organization's financial and budget activities; directs, plans, and implements policies, objectives, and activities of the organization; directs and coordinates activities of departments concerned with production, pricing, sales, and distribution; and directs human resource activities. While these duties suggest the beneficiary's level of authority within the company, the broad terms do not provide insight into the beneficiary's daily activities. The petitioner must provide a detailed description of the activities the beneficiary performs to direct the organization or major component or function. Conclusory assertions are insufficient. 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.). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Additionally, some of the duties in the initial description suggest the beneficiary's performance of the company's financial operations. The petitioner states that the beneficiary allocates a portion of his time to negotiating contracts and agreements and preparing budgets for approval; however, the petitioner has not explained how the beneficiary's performance of the company's financial function rises to the level of executive capacity. The broad descriptions provided in response to the RFE also potentially encompass non-qualifying duties. For example, the petitioner states that the beneficiary will continue to implement and oversee business strategies; focus on the expansion of real estate renovation, development, and construction; reevaluate and develop the core values; and extend and develop the business of real estate development. Absent a more detailed description of the activities the beneficiary performs to expand and develop the business and implement business strategies, the petitioner has failed to establish the nature of the beneficiary's duties. 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). While performing non-qualifying tasks will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act; *see also Brazil Quality Stones, Inc. v. Chertoff*, 531, F.3d 1063, 1069-70 (9th Cir. 2008).

Although the position description fails to establish that the beneficiary will be employed in an executive capacity for the above-stated reasons; it is noted that the director incorrectly found that the hours of operation, fuel supply, pricing, and equipment "are largely controlled by the franchise and distribution/supply agreements" and questioned whether the franchise agreement allowed the beneficiary to develop, implement, and oversee the petitioner's business strategies. Upon review, the franchise agreement is sufficiently broad and does not, in and by itself, preclude the beneficiary from performing his described duties. Accordingly,

although the vague position description fails to establish that the beneficiary primarily performs executive duties, the director's comments with regard to the franchise agreement are withdrawn.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Pursuant to 8 C.F.R. § 214.2(l)(14)(ii), the petitioner is required to submit 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. While the petitioner provided an organizational chart, a list of positions and duty descriptions, and payroll records, the evidence of record does not contain consistent evidence demonstrating the organizational structure of the company at the time of filing.

The position descriptions indicate that there are six positions subordinate to the beneficiary, while the organization chart depicts seven positions subordinate to the beneficiary. The petitioner stated on the Form I-129 signed on April 9, 2014 that the company has 10 employees, while the payroll records indicate that the petitioner issued paychecks to only seven employees, including the beneficiary, as of April 4, 2014. 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. *Id.* Further, because the petitioner did not identify any of its employees by name, we cannot determine which positions were actually filled as of the date of filing. It remains unclear who is performing the duties of the positions that have are not actually staffed.

In addition, the levels of hierarchy represented in the organization chart do not correspond with the position descriptions provided for the beneficiary's subordinate employees. The petitioner claims that the beneficiary oversees a business manager who handles managerial functions for the subordinate departments. The petitioner also provides an organization chart indicating that the business manager oversees the work of a bookkeeper, safety and emissions employee, inspector, mechanics, cashier, and office assistant. However, the position description does not include any duties suggesting the business manager's control and authority over these subordinate positions. For example, the mechanic's duties include reviewing and discussing work with supervisors; however, the business manager has no corresponding duties. The only duty involving the business manager's control and authority over subordinates indicates that the business manager oversees the work of marketing and sales staff, though no sales and marketing positions exist on the organization chart or in the position descriptions. Rather than describing duties typical of a position handling the managerial functions for a gas station, the description states that the business manager spends at least 75% of his or her time on marketing and sales duties. The position description also includes duties such as: evaluating financial aspects of product development, attending trade shows, working with development and production managers, and working with advertising and promotion managers. No advertising, promotion, development, or

production managers have been identified in the record, and it is unclear how product development and production relate to the oversight of a gas station, convenience store, and automobile repair shop.

Furthermore, the petitioner submitted a payroll document indicating that the petitioner's subordinate staff of six employees includes two part-time employees who work approximately 27 to 32 hours per week. The franchise agreement requires that the petitioner remain open for a minimum of 18 hours per day. Considering the nature of the business and the position descriptions, the petitioner requires at least one cashier during the 126 hours per week that it is open to the public; therefore, the petitioner would need three full-time employees (or two full time employees and the two part-time employees) to perform cashier duties. That would leave only two to three additional employees available to perform all the duties assigned to the inspector, bookkeeper, office assistant, mechanics, safety and emissions and business manager positions. Therefore, it is unclear that the current employees are sufficient to fill the number of positions represented in the organization chart and position descriptions. Without a consistent and clear description of the number and type of positions subordinate to the beneficiary, it is unclear who performs the administrative and financial tasks required to operate the business. The petitioner has failed to establish an organization structure sufficient to support the beneficiary in a qualifying executive capacity.

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). 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. 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 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. Here, for the reasons discussed above, the petitioner has failed to establish a sufficient organization structure to allow the beneficiary to primarily perform executive level duties.

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).² 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

² Following the enactment of section 101(a)(44)(C) of the Act in 1990, the former Immigration and Naturalization Service (INS) recognized that that managerial capacity could not be determined based on staffing size alone and deleted reference to "size and staffing levels" at 8 C.F.R. § 214.2(l)(3)(v)(C)(3) (1990), setting out the evidentiary requirements for initial new office petitions. *See* 56 Fed. Reg. 61111, 61114 (Dec. 2, 1991). However, the INS chose to maintain the review of the new office's staffing, among other criteria, at the time that the new office seeks an extension of the visa petition. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D).

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 qualifying executive position.

The petitioner indicates that it plans to invest \$2 million over the next two years to expand into real estate development and construction operations. However, as noted by the director, the petitioner failed to provide any evidence that the company's current involvement in the field of real estate development and/or construction. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a qualifying executive capacity. Accordingly, the appeal will be dismissed.

III. Conclusion

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.