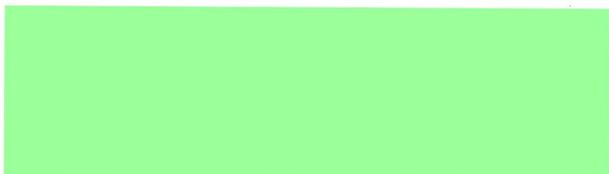
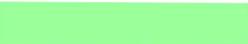


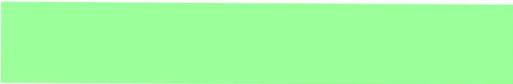
(b)(6)



U.S. Citizenship
and Immigration
Services

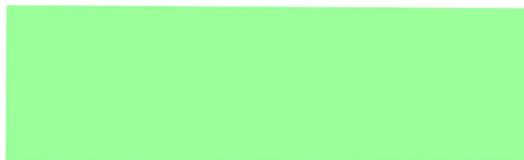


DATE: **JAN 02 2015** OFFICE: VERMONT SERVICE CENTER FILE: 

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,

R Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center ("the director"), 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 this Petition for a Nonimmigrant Worker (Form I-129) seeking to classify the beneficiary 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 Texas limited liability company established in 2012, states that it operates a baking academy for children and an ironing/dry cleaning business. The petitioner claims to be an affiliate of [REDACTED], located in Mexico. The beneficiary was previously granted one year in L-1A classification in order to open a new office in the United States, and the petitioner seeks to extend the beneficiary's employment as its general manager for two additional years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary is employed in a qualifying managerial or executive capacity. In denying the petition, the director emphasized that the petitioner had submitted an incomplete response to a request for additional evidence and had otherwise failed to establish eligibility.

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 it fully complied with the director's request for evidence and that the evidence of record is sufficient to establish the beneficiary's eligibility as an L-1A manager or executive.

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.
- (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.

II. Issue on Appeal

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

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised,

functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

A. Facts

The petitioner filed the Form I-129 to extend the beneficiary's L-1A status on August 14, 2013. In a letter submitted in support of the petition, the petitioner stated that it is operating two businesses: a cooking academy for children and dry cleaning/ironing business.

The petitioner stated that the beneficiary will continue to dedicate 100% of his time to the following duties in his role as general manager:

- General management of [the petitioner], which is responsible for two businesses: an academy and express iron
- Reviews financial statements, and services reports to gauge income and costs related to the rendition of company services. Determines areas which can use cost reduction and improvement in order to increase the company revenue.
- Determine additional services to be offered and how they will be offered. Will determine price schedules and whether discount rates apply. Prepares budgets and approves budget expenditures.
- Manages and hires the administration and determines staffing needs and assigns duties
- Negotiating contracts with financial institutions, outside professional services, etc.
- Directs and supervises company administrators to ensure the development and implementation of company policies.
- Is responsible for marketing and promoting the company's services to a wide range of clients.

The director issued a request for additional evidence ("RFE") notifying the petitioner that the initial evidence was insufficient to establish that the beneficiary is employed in a qualifying managerial or executive capacity. The director instructed the petitioner to provide a more detailed description of the beneficiary's duties as well as additional evidence of the staffing and structure of the company, including a detailed organizational chart, information regarding the number of employees and types of positions they hold, and evidence of wages paid to employees, in accordance with 8 C.F.R. § 214.2(l)(14)(ii).

The petitioner submitted a 197-page response to the RFE by fax on November 23, 2013, which included exhibits labeled "Exhibit 7" through "Exhibit 12." The petitioner's response included a letter dated November 21, 2013, in which it provided the following description of the beneficiary's duties:

- Will prepare budgets and review financial statements, and costs related reports in order to ensure that the company stays within budget; will determine areas which can use cost reduction and improvement in order to increase company revenue.
- Develop and expand both [REDACTED] by directing strategic marketing activities that will help continue to increase the expansion of the businesses throughout the [REDACTED]
- Oversees construction of second location for [REDACTED]. Engaged in negotiations pertaining to the lease of the new building, such as yearly rates and the term of the lease. Will determine if it is necessary to hire any necessary outside professional consulting services.
- Exercising his discretionary authority to hire additional administration, determining staffing needs and assign duties for the second location of [REDACTED]
- Meet on a monthly basis with company managers of [REDACTED] to review reports and make any necessary modifications to company budgets and discuss the companies policies are being abided by.
- Directs and supervises company administrators to ensure the development and implementation of company policies, such as state and federal laws, including OSHA compliance and ensure that the business's licenses and permits are up to date.

The petitioner also provided its IRS Form W-3 and IRS Form W-2, Wage and Tax Statement for 2012, which show that the company had one employee who earned \$3,480 in wages. The petitioner submitted its IRS Form 941, Employer's Quarterly Federal Tax Return, for the first three quarters of 2013. The petitioner reported no employees or salaries and wages paid in the first quarter, three employees and \$5,433.60 in salaries paid in the second quarter, and four employees and \$10,793 in salaries paid during the third quarter of 2013.

Finally, the petitioner submitted copies of IRS Forms W-4, Employee's Withholding Allowance Certificate and Form I-9, Employment Eligibility Verification, for eight employees including: [REDACTED] (signed May 13, 2013); [REDACTED] (signed August 16, 2013); [REDACTED] (signed October 21, 2013); [REDACTED] (signed September 2, 2013); [REDACTED] (signed October 21, 2013); [REDACTED] (signed May 20, 2013); [REDACTED] (signed November 4, 2013), and [REDACTED] (signed October 17, 2013).

The petitioner indicated on its fax cover sheet that it would be sending a copy of the response by first-class mail. However, no mailed response was incorporated into the record.

The director denied the petition on December 3, 2013 finding that the petitioner failed to establish the beneficiary's employment in a primarily managerial or executive capacity. The director specifically noted that the petitioner did not submit its organization chart or requested information about the beneficiary's subordinate employees in response to the RFE.

On appeal, the petitioner asserts that the evidence is sufficient to establish that the beneficiary has been and will be employed in a managerial or executive capacity. The petitioner states that the beneficiary meets the definition of a personnel manager because he manages a professional accountant and managerial employees. The petitioner also asserts that the evidence establishes the beneficiary's employment as a function manager due to his management of the entire company.

The petitioner further contends that it submitted a complete response to the RFE that included the requested organizational chart and information regarding the beneficiary's subordinates and their job duties. The petitioner submits a partial copy of the RFE response, along with a copy of a Federal Express mailing label and confirmation of delivery of the package at the Vermont Service Center on November 25, 2013.

The newly submitted copy of the RFE response includes an organizational chart containing nine positions. The organization chart places the beneficiary at the highest level of authority over "[REDACTED]". Directly subordinate to the beneficiary is an external accountant. The store manager of the dry cleaning business and the cooking academy manager are also directly subordinate to the beneficiary. The academy manager has a subordinate instructor and the store manager has five subordinate operators. The names of the employees on the chart correspond to the names identified on the previously submitted Form I-9s and W-4s.

The petitioner also submits position descriptions for all nine employees. It states that the store manager supervises the operators, opens and closes the store, communicates with customers and advises the beneficiary of any escalated concerns, intakes and assigns garments to operators for handling, maintains quality assurance, and handles payroll. The petitioner states that the academy manager oversees the instructor, coordinates lesson plans for private and public classes, ensures that ingredients and supplies are in stock, handles client transactions prepares payroll and supply reports, addresses customer concerns, and reinforces procedures and policies.

B. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed in a managerial or 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 petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.* 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 functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The petitioner describes the beneficiary's position using language suggestive of the beneficiary's authority, but fails to provide sufficient detail to demonstrate the beneficiary's actual duties. For example, the petitioner states that the beneficiary "oversees construction," "directs and supervises company administrators," "develops and expands" business, and "manages . . . the administration." While the terms generally suggest the beneficiary's level of authority; they provide little insight into how he spends his time on a day-to-day basis. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 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.). "

Furthermore, the position description also indicates that the beneficiary performs tasks not typically considered as qualifying managerial or executive duties. For example, the petitioner states that the beneficiary is responsible for marketing and promoting the company's services, negotiating contracts, and determining budgets, price schedules, and whether discount rates apply. The petitioner has not provided sufficient detail to establish that these duties are more than non-qualifying financial, marketing, and/or administrative activities associated with the day-to-day operations of the company.

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. While a beneficiary may perform non-qualifying duties, the petitioner must establish that the beneficiary's duties are primarily managerial or executive. In the instant matter, the petitioner has not indicated that the beneficiary spends 100% of his time performing the listed duties. The petitioner failed to provide a clear description of the duties or a breakdown of the time that the beneficiary spends performing qualifying versus non-qualifying duties. Therefore, the evidence fails to establish that the beneficiary is employed in a primarily managerial and executive capacity.

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 a complete understanding of a beneficiary's actual duties and role in a business.

The record reflects that the petitioner had, at most, four employees at the time the petition was filed, but it subsequently hired additional employees before responding to the RFE. The petitioner submits an organization chart including the additional employees and provides IRS Form W-4s for eight individuals. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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). Only two of these eight individuals were working for the company at the time of filing, although it appears that one additional

employee completed his Form W-4 just two days later and had likely been offered employment as of the date of filing. Therefore, the record reflects that the petitioner employed the beneficiary and three operators at the time of filing. The record does not establish that the baking academy had hired either the manager or the instructor as of August 2013, although the initial evidence included photographs showing the business was operational.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Although the beneficiary is not required to supervise personnel, if it is claimed that the beneficiary's duties involve the supervision of employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. 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).

While the petitioner submitted an organizational chart depicting two subordinate managers for the petitioner's respective businesses, it did not provide evidence that either of these positions was staffed at the end of the company's initial year of operations. 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). The record does not establish that the beneficiary was supervising subordinate managers or supervisors when the petition was filed.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). We 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.

Although the petitioner states that the beneficiary manages a professional level external accountant, the petitioner has not provided objective evidence to support this claim. The petitioner did not submit a detailed description of the accountant's position or describe the nature and scope of the services he provides, evidence of the wages paid to him, a copy of his contract, or any other evidence to establish that the beneficiary holds the appropriate level of authority or control over the external accountant to qualify as a manager of professional level employees. 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)). As noted, the beneficiary's documented subordinates as of the date of filing included two to three operators

working for the dry cleaning business. The petitioner did not establish that the position of operator is a professional position and thus has not supported its claim that the beneficiary qualifies as a personnel manager.

The evidence also fails to establish the beneficiary's employment as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a position description that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. Here, the petitioner failed to identify the function with specificity and articulate the essential nature of the function. The beneficiary's overall responsibility over the U.S. entity does not constitute the management of an essential function. The petitioner mentions the beneficiary's financial responsibilities; however, it cannot be determined that the beneficiary primarily manages the function absent a detailed description of the essential function, the duties performed to manage the function, and the percentage of time the beneficiary spends performing those duties.

Similarly, the petitioner has failed to establish that the beneficiary will act in an "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. 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. 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.*

The record reflects that the beneficiary had been acting as a first-line supervisor of two to three employees who provide dry cleaning and ironing services. The petitioner has not identified anyone other than the beneficiary who was available to provide the services and perform other non-qualifying functions associated with the operation of the baking academy or to provide first-line supervisory and other administrative and operational duties associated with the operation of the dry cleaning business. Accordingly, the record does not support a finding that the beneficiary was allocating his time primarily to the broad goals and policies of the organization at the time of filing. The petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

The AAO does not doubt that the beneficiary exercises discretion over the petitioning entity and has the appropriate level of authority as general manager and co-owner of the organization, however, the petitioner

has failed to show that his actual day-to-day duties, as of the time of filing, were primarily managerial or executive in nature. 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").

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 applicable 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).¹ 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. The record shows that, as of the date of filing, the petitioner was operating a children's baking academy and a dry cleaning business with a staff of three to four people that included only the beneficiary and dry cleaning operators. The petitioner has not established that it employed sufficient subordinate workers to relieve the beneficiary from extensive involvement in the day-to-day operations of its two service-oriented businesses. While the petitioner submitted evidence that it has moved forward with additional hiring and business expansion subsequent to the filing of the petition, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition.

For the foregoing reasons, the petitioner has not established that the beneficiary is employed in a qualifying managerial or executive capacity. Accordingly, the appeal will be dismissed.

III. Conclusion

The appeal will be dismissed and the petition will remain denied 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.

¹ 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).