

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



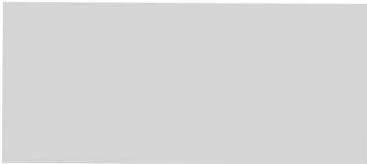
DATE: JUN 22 2015

PETITION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 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 Nebraska corporation established in [REDACTED] is in the business of agricultural and intermediate pharmaceutical manufacturing. The petitioner is a subsidiary of [REDACTED] located in Spain. The petitioner seeks to employ the beneficiary as a production superintendent for a period of two years.

The director denied the petition, finding that the petitioner did not establish that the beneficiary is employed in a qualifying managerial, executive, or specialized knowledge capacity with the foreign employer. Further, the director concluded that the petitioner did not demonstrate that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us. On appeal, the petitioner states that the director erroneously concluded that the beneficiary was not employed in a specialized knowledge capacity abroad, and emphasizes that the director failed to provide any explanation to support this conclusion. Further, the petitioner contends that the director concluded in error that the beneficiary's duties abroad and in the United States are primarily non-managerial in nature and asserts that the beneficiary acts as a function manager abroad and that he will act as a personnel manager and function manager in the United States.

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, Petition for a Nonimmigrant Worker (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.

II. THE ISSUES ON APPEAL

A. MANAGERIAL OR EXECUTIVE CAPACITY (US EMPLOYMENT)

The first issue to be addressed is whether the petitioner has established that the beneficiary will be employed in a managerial capacity in the United States. The petitioner has not claimed that the beneficiary has been or will be employed in an executive capacity.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

1. Facts

The petitioner filed the Form I-129 on August 15, 2014. In a letter dated August 13, 2014, the petitioner's director explained that it is a wholly owned subsidiary of the foreign employer, and that both companies are engaged in the production of "active pharmaceutical ingredients – primarily [REDACTED] – derived from animal origin raw materials." The petitioner indicated that the company "is the largest producer of non-Chinese [REDACTED] in the world." The petitioner stated that it "is the only manufacturer in the United States using [REDACTED] to extract our products from the raw material," and noted that this represents a proprietary process created by the foreign employer. The petitioner stated in the Form I-129 that it earned almost \$16 million in revenue in 2013 and that it employs eleven individuals.

The petitioner indicated that it "requires an individual who is familiar with our operations and acquisition procedures to be a Production Superintendent in the United States." The petitioner stated that the beneficiary would fill this role and "supervise all manufacturing processes in the United States and be responsible for all raw material acquisition for both our United States and Brazilian facility, and be responsible for establishing revised manufacturing procedures in the United States." The petitioner further described the beneficiary's proposed duties in the United States as follows:

The Production Superintendent will be responsible for traceability. He will perform periodic inspections on raw material suppliers to audit them in accordance with our quality system, implement systems to ensure that the origin and disposition path of our products is well documented, and perform experiments, which validate our traceability system.

The petitioner further indicated that the beneficiary would "be responsible for negotiations with our suppliers," "monitoring of the raw material to protect yields," and "working with our suppliers on an ongoing basis to improve raw material quality and yields." The petitioner stated that the beneficiary "will audit [petitioner] suppliers to ensure conformance with ISO standards, Good Manufacturing Processes, and [the petitioner's] global quality system." The petitioner stated that the beneficiary would "conduct internal audits on [the petitioner]" to maximize value, maintain "an ongoing relationship with our suppliers and working with their extraction personnel" to "teach them the particular methods and techniques (eg. water temperature of casings, homogenization of material, meat cuts, mincer sharpening, screen parameter setting, preservation strategies, etc.)." In addition, the petitioner explained that the beneficiary would "train [the petitioner's] next generation of production leaders and impart his knowledge to our personnel."

The petitioner proceeded to explain several of the processes with which the beneficiary holds significant experience. For instance, the petitioner indicated that the beneficiary "knows intimately" the [REDACTED]

█ process from beef and that he will relay this to the petitioner. The petitioner noted that "for this process it is especially critical to monitor the quality of the raw material and ensure minimal fat and meat is processed." The petitioner stated that the beneficiary "has worked directly with [the petitioner's] exported heparin product" in Spain and "performed troubleshooting for product issues that arose there," and that the beneficiary would provide the team in the United States "with the required expertise." The petitioner indicated that it "must have personnel that audit our suppliers on a continuing basis," that the beneficiary currently focuses on this in Spain with the foreign employer, and that "having the Beneficiary serve this function will also allow us to assign personnel to work with him to gain this training and assume the functions in the long-term." The petitioner explained that the beneficiary would also "train plant personnel on how to identify quality raw material, when to reject this material, and adaptations in the process that may be necessary."

The director later issued a request for evidence (RFE) advising the petitioner that the beneficiary's proposed duty description lacked specific detail to demonstrate the beneficiary's actual day-to-day tasks. The director noted that the petitioner did not provide the percentages of time that the beneficiary devotes to his managerial duties or an organizational chart showing the beneficiary's position within the company. As such, the director requested that the petitioner provide a letter reflecting the beneficiary's typical managerial duties and the percentage of time he would devote to each task, and also to articulate how the beneficiary would supervise and control the work of other supervisors, managers or professionals. The director asked the petitioner to submit an organizational chart listing the names of each of the beneficiary's subordinates and colleagues, their duties, education levels, and salaries. Further, the director requested that the petitioner submit payroll documentation and IRS and state tax documentation to corroborate its stated staffing levels and the information provided in its organizational chart.

In a response letter dated August 26, 2014, the petitioner stated that the beneficiary "will spend 50% percent of his time on various day to day production activities, 30% percent on purchasing and raw material management functions, and 20% percent on global supply matters." The petitioner indicated that the beneficiary would "supervise all production employees and production operations." The petitioner further listed the beneficiary's duties organized under six separate headings, which included the following:

Process Management

- Production planning on daily, weekly, and monthly basis;
- Ensure production occurs according to methods registered with regulatory authorities and customers;
- Ensure █ production occurs according to customer's religious requirements;
- Troubleshoot issues which develop during biological production process;
- Monitor processing equipment to ensure it is within control parameters;
- Schedule maintenance tasks in harmony with production;
 - Eg. Routine tasks like oil changes and coupling checks, troubleshooting equipment breakdowns, equipment clean-in-place procedures, equipment cleaning and sanitization

- Train new employees for proper performance of process;
- Perform process and raw material trials and document their effect on the production process; and
- Make effective recommendations on personal decisions for production employees, including hiring, promotion, increases, discipline, and termination.

Raw Material

- Ensure the quality of raw materials (beef cartilage and pork mucosa);
 - Preservation control, cleaning percentage achieved, determination of suitability for pharmaceutical and food processing
- Train employees for raw material control;
- Perform traceability validations on raw material received, and
- Coordinate raw material arrival.

Current Good Manufacturing Practices (cGMP) Responsibilities for Regulatory Compliance

- Document (batch production and housekeeping records, logbooks) review and control;
- Daily facility status reviews to ensure that:
 - Marked (approved, quarantined, rejected) areas appropriately used
 - Reagents are prudently controlled and their use registered
 - Pest control plan is enforced and functional
- Production checks (non-conformities are documented and reviewed, critical control points (CCP) are respected, and process phases are marked on equipment;
- Training of employees for cGMPs occurs as needed if deviations are identified; and
- Implementation of corrective and preventative actions on an as-needed basis.

Further, the petitioner indicated that the beneficiary would be responsible for varying tasks related to "Production Reporting," including "preparation of daily, weekly and monthly key performance indicator (KPI) reporting for management team" and the "review of correspondence from foreign management and implementation of global production plan." The petitioner also stated that the beneficiary would be tasked with "Purchasing and Raw Material Management" responsibilities which include "identification of potential suppliers," making initial contact with said suppliers, and negotiating "with new and existing suppliers regarding volumes and pricing." The petitioner indicated that the beneficiary will be responsible for auditing existing suppliers, including scheduling the audits, corresponding with suppliers regarding action points, maintaining audit documentation from slaughterhouses, and planning scheduled deliveries. Finally, the petitioner noted that the beneficiary would be tasked with "Global and Local Liaison" responsibilities, including communicating "about production issues and goal orientation with Nebraska Director" and implementing "strategies and tasks defined by Spanish parent."

The petitioner provided an organizational chart reflecting that the beneficiary reports to the "Nebraska Director." The next tier of the chart includes a process and quality employee, an administrative coordinator, and an environmental health and safety position listed as "to be filled." As noted above, the petitioner indicated that the beneficiary would supervise all production personnel. Although there are no direct reporting lines drawn between the beneficiary and subordinate staff, the chart includes production personnel divided into "██████████ Production" and "██████████ Production." There are no subordinate supervisors or managers identified on the chart. The ██████████ Production section includes six shift operator positions, with one position unstaffed, and a quality control operator. The ██████████ Production section includes four shift operators, with one position unstaffed, and a quality control operator. The petitioner did not submit duties or education levels for any of the named employees. The petitioner stated in its support letter that "none of the employees to be supervised by the Beneficiary are professionals."

In denying the petition, the director concluded that the petitioner's description of the beneficiary's proposed position included a significant number of non-qualifying operational duties and noted that the petitioner did not articulate, as requested by the director, the percentage of the beneficiary's tasks that were managerial and non-managerial. As such, the director found that it was not possible to determine whether the beneficiary would devote a majority of his time to qualifying tasks. Further, the director stated that the petitioner did not provide duty description, names, and education levels for all of the beneficiary's asserted subordinates. In sum, the director found that the evidence indicated that it was more likely than not that the beneficiary would be primarily engaged in non-managerial duties.

On appeal, the petitioner contends that the beneficiary will supervise employees of the plant and "several other staff positions." The petitioner asserts on appeal that the beneficiary's subordinates need not be professional for the beneficiary to qualify, indicating that the beneficiary is more than a first line supervisor overseeing fifteen employees. The petitioner contends that the director overemphasized a few non-qualifying operational duties in the beneficiary's duty description and applied a "non-existent" standard of law to deny the petition.

2. 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 qualifying managerial capacity.

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 definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In the current matter, the petitioner has submitted duty descriptions indicating that the beneficiary will likely be primarily engaged in the performance of non-qualifying operational tasks. Contrary to the petitioner's contention on appeal, the director did not apply a "non-existent" legal standard when she required that the petitioner demonstrate that the beneficiary will be engaged in qualifying tasks, such as those relevant to the setting of goals and policies and not specific to the direct provision of goods or services and other related tasks relevant to supporting the provision of such goods or services. Indeed, as noted, 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.

Although some of the beneficiary's tasks are qualifying managerial tasks, such as those relevant to negotiating with suppliers, production planning, recommending personnel actions, and implementing strategies and policies, a majority of the beneficiary's listed duties are related to directly performing daily non-qualifying operational tasks associated with the sourcing of raw materials, production and quality control. Furthermore, the petitioner did not list merely "a few" non-qualifying operational tasks, as suggested by the petitioner. Rather, the non-managerial duties in the beneficiary's position description occupied a significant portion of the overall job description. These non-managerial duties include being the sole individual responsible for ensuring compliance with [REDACTED] religious requirements, troubleshooting production issues, monitoring processing equipment, scheduling maintenance tasks like oil changes, being responsible for maintaining equipment, performing process and raw material trials and documenting their results, performing traceability validations on raw materials, coordinating the arrival of raw materials, documenting review and control of goods, performing daily facility status reviews and production checks, preparing performance indicator reports for the "management team," and performing site audits of existing suppliers. Therefore, we do not find the petitioner's contention that the director overemphasized "a few" operational tasks persuasive.

Overall, the petitioner listed the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the amount of time the beneficiary will spend on them. In fact, the petitioner vaguely stated that the beneficiary will devote 50% of his time on "various day to day production activities," and a further 30% on "purchasing and raw material management," only reinforcing a conclusion that the beneficiary will likely allocate the majority of his time to non-qualifying operational tasks. Since the petitioner has neither articulated how the beneficiary will be primarily engaged in qualifying tasks nor appropriately documented these duties with percentages, we cannot determine whether the beneficiary would be primarily performing the duties of a manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Further, when examining the managerial or executive capacity of a beneficiary, USCIS reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts that contribute to understanding a beneficiary's actual role in a business.

On appeal, the petitioner suggests that the petitioner acts as a personnel manager, stating that he will oversee fifteen production employees. 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). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Here, the petitioner has not demonstrated that the beneficiary acts as a personnel manager. The petitioner has not demonstrated that the beneficiary would oversee and control other supervisory or professional subordinates in order to qualify as a personnel manager. The petitioner concedes that none of its production employees are professionals and the submitted organizational chart does not depict any subordinate supervisors or managers who would report to the beneficiary. Rather, the chart shows that the first-, second- and third-shift operators in both production sections would report to the beneficiary; the chart does not clearly identify a section or department head for either of the two main products processed at the petitioner's plant. In addition, the petitioner has not submitted a duty description for any employees to substantiate that the beneficiary's subordinate staff includes supervisors. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In fact, the petitioner's duty description indicates that he is working directly with shift operators performing operational duties and training these employees to take over these duties. Again, 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).

The petitioner also contends on appeal that the beneficiary qualifies as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Although we concur with the petitioner that a beneficiary may qualify as a manager even without direct subordinates, we do not find that the totality of the evidence establishes that the beneficiary functions primarily as a function manager. As noted above, an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See id.* The petitioner contends that the beneficiary is not primarily engaged in the performance of non-qualifying operational tasks. However, as discussed, the beneficiary's duty description reflects that he will be engaged in numerous operational tasks incidental to the operation of the plant, and in turn, the provision of goods and services. The record established that the petitioner employs production personnel to operate the processing equipment, but the beneficiary's duties reflect that he will be directly involved in some ancillary production tasks such as scheduling, equipment monitoring, performance trials and troubleshooting, that have not been shown to be managerial in nature. In addition, the beneficiary would be performing duties associated with quality assurance, raw material sourcing and delivery, records maintenance, and reporting, and the record does not contain evidence that such non-managerial tasks would be allocated to his subordinate staff members, as the petitioner has not provided position descriptions for his subordinates. The petitioner has not demonstrated that the beneficiary's proposed role will include primarily managerial tasks, such that he could qualify as a function manager.

For the foregoing reasons, the petitioner has not established that the beneficiary will be employed in a qualifying managerial capacity. For this reason, the appeal will be dismissed.

B. MANAGERIAL OR EXECUTIVE CAPACITY (FOREIGN EMPLOYMENT)

As indicated previously herein, the director also denied the petition based on a finding that the petitioner had not established that the beneficiary has been employed in a qualifying managerial, executive or specialized knowledge capacity with the foreign employer. On appeal, the petitioner contends that the director overlooked the fact that the beneficiary acts in a specialized knowledge capacity abroad and failed to explain how she reached her conclusion that the beneficiary does not possess, and the position does not require, specialized knowledge. Further, the petitioner asserts that the beneficiary alternatively qualifies as a function manager based on his current position as the foreign entity's Purchasing and Traceability Manager.

The regulations require the submission of evidence to establish that the beneficiary's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iv). As noted by the director, the beneficiary's duties abroad, similar to those analyzed with respect to the beneficiary's proposed U.S. employment analyzed herein, indicate that the beneficiary is also likely primarily engaged in non-qualifying operational duties abroad. Further, the petitioner failed to submit the percentages of time the beneficiary devotes to his various tasks abroad, leaving further question as to whether he primarily performs qualifying tasks. Therefore, while the petitioner provided a detailed position description in response to the director's RFE, many of the duties were non-managerial in nature and the petitioner did not provide even a general breakdown as to how the beneficiary's time was allocated among qualifying and non-qualifying duties. While the duties the beneficiary performs are undoubtedly essential, the record does not show that the beneficiary's traceability and purchasing duties are primarily

managerial in nature, as he appears to be solely responsible for these functions, including all non-qualifying duties associated with these functions, for his assigned products.

Further, the petitioner has provided little supporting documentation or relevant comparison of the beneficiary against his colleagues or those similarly placed in the industry to establish that the beneficiary's knowledge can be considered special or advanced. The petitioner reiterates that the products the beneficiary sources, pork mucosa and beef cartilage, are unusual and are critical to the petitioner's production operations, but it has not established why the knowledge required to source and coordinate delivery of these raw materials requires knowledge that falls within the statutory and regulatory definitions of "specialized knowledge." 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)). Accordingly, we will affirm the director's conclusion that the petitioner did not establish that the beneficiary has been employed abroad in a position requiring specialized knowledge, or as a personnel or function manager.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.