



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF GMDC-S-, INC.

DATE: JULY 8, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a cabinet importer and distributor, seeks to extend the Beneficiary's temporary employment as its general manager under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director, California Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the Beneficiary will be employed in a managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief and additional documentation, asserts that the Director erred in denying the petition, and claims that it provided a detailed description of the Beneficiary's managerial or executive duties and established that she will supervise subordinate professionals.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a 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. Section 101(a)(15)(L) of the Act. 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. *Id.*

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (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 management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that the Beneficiary will be employed in a 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.

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.

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A. Evidence of Record

The Petitioner filed the Form I-129 on August 12, 2015. On the Form I-129, the Petitioner stated that it has four current employees in the United States.

In a letter dated August 5, 2015, the Petitioner explained that the company “will operate as an independent importer and distributor for selected bathroom furniture and accessories from the parent company and other manufacturers of bathroom furniture and household products in China and from other countries.” The Petitioner provided a description of the Beneficiary’s duties as general manager, noting that she will: (1) plan, develop and implement business strategies and establish operational policies and goals; (2) review business reports and operational data to evaluate performance; (3) direct and supervise subordinate managers and employees with authority to make personnel decisions; (4) exercise authority to allocate human and financial resources; and (5) represent the company in business gatherings and business transactions.

The Petitioner submitted an organizational chart that depicts the Beneficiary as general manager, reporting to the board of directors, and directly supervising a vice president [REDACTED]. The chart shows that [REDACTED] supervises the sales/marketing department, which includes a manager (to be hired), and a marketing analyst, and the “corporation office” which includes one administrative assistant. The Petitioner did not identify the market analyst or administrative assistant by name.

The Petitioner also submitted a copy of its business plan dated June 30, 2014. The business plan states that [REDACTED] as executive vice president, “is responsible for the daily management, sales and development of the company,” while the Beneficiary, as “senior vice president,” would be responsible for “overall management and coordinating between [the Petitioner] and the parent company in terms of manufacturing, quality control, and shipping of the goods from China until they reach the U.S.”

According to the business plan, the Petitioner expected to employ a president, senior vice-president, vice-president/sales, vice president/operations (from China), and an office manager in 2014, and anticipated that it would add three to five regional sales representatives in 2015. The Petitioner submitted its IRS Form 941, Employer’s Quarterly Federal Tax Return, and California Quarterly Wage Report for the second quarter of 2015, which showed that it employed only the Beneficiary and [REDACTED] at the end of June 2015.

The Director issued a request for evidence (RFE) on August 24, 2015, instructing the Petitioner, among other things, to submit evidence that the Beneficiary will be employed in a managerial or executive capacity in the United States. The Director requested a statement of the Beneficiary’s duties during the previous year and her duties under the extended petition, as well as information and evidence regarding the Petitioner’s staffing and the duties performed by any subordinate employees.

In response to the RFE, the Petitioner re-submitted the same list of duties provided at the time of filing and added the percentage of time to be allocated to each area of responsibility, as follows:

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- Plan, develop and implement business strategies for the U.S. entity, establish and formulate operational policies and business goals. Percentage of time spent on these duties: about 15%
- Review business reports and operational data to evaluate performance of business operations and the company's financial status, identify and analyze issues affecting the company's operation and performance, make decision to adjust existing policies and to implement measures to address uses identified, review and approve business plans and schedules, direct and manage day-to-day business operations. Percentage of time spent on these duties: about 30%
- Direct and supervise subordinate managers and employees, establish responsibilities for other executives and business managers, establish reporting system for managerial personnel employees, conduct periodical review of job performance of managers and key employees, make decisions in hiring and firing employees and setting employee compensation. Percentage of time spent on these duties: about 30%
- Exercise the authority in allocating human power and financial resources to maximize operational efficiency and accommodate the need of business development and expansion, approve major spending and important business transactions. Percentage of time spent on these duties: about 15%
- Represent the company in business gatherings and business transactions, sign business contracts on behalf of the company or delegate the authority to subordinate employees. Percentage of time spent on these duties: about 10%

The Petitioner also provided a list of the "New Operation Staffing" and stated it currently employs four full-time employees. The list included the Beneficiary as the general manager. In addition, it listed [REDACTED] as vice president who will "assist General Manager in the overall operational management, mainly responsible for developing new business partners and distributors in selected markets." The Petitioner stated that [REDACTED] has a master's degree in finance and that he receives an annual salary of \$13,136.¹

The Petitioner stated that it employs [REDACTED] as a market analyst at a salary of \$24,000. The Petitioner provided evidence that [REDACTED] has a bachelor's degree in business administration and described his duties as follows:

Research market demand and supply information for bathroom cabinet products for households and commercial establishments, analyze market information and sales

¹ Although the Petitioner states that all of its employees are full-time, a full-time position at California's 2015 minimum wage of \$9.00 per hour would pay \$18,720 annually. [REDACTED] stated salary would equate to approximately 28 hours per week at a minimum hourly wage of \$9.00.

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statistics to formulate marketing strategies, review market data to identify target areas and regions for growth, determine customer needs, volume potential, analyze information on competitors and develop proposals for price schedules and discount rates, prepare sales manuals and reports, prepare periodic market analysis reports and provide management with market data and information for business planning and policy decisions.

Finally, the Petitioner stated that it employs [REDACTED] who has a bachelor's degree in management science, in an "inside sales/office support" role with an \$18,000 annual salary. The Petitioner stated that this employee will "receive, organize and maintain business transactional documents, answer customer inquiries on products and price information, process shipments, and perform general office duties including receiving mails and answering phones."

The Petitioner provided evidence that it employed all four employees at the time of filing. The Petitioner also provided a revised organizational chart which identifies all employees by name and indicates that all three subordinates report directly to the Beneficiary.

The Director denied the petition on November 11, 2015, concluding that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity in the extended petition. In denying the petition, the Director found that the Petitioner did not adequately describe that Beneficiary's duties, and that, based on the Petitioner's organizational structure, it appears that the Beneficiary would be primarily assisting with the day to day non-supervisory duties of the business. The Director also concluded that the Beneficiary would not be supervising professional employees or acting as a function manager.

On appeal, the Petitioner states that it provided a description of the Beneficiary's duties that is sufficient to establish her employment in a managerial or executive capacity. Further, the Petitioner asserts that the Beneficiary will supervise two professional employees.

B. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity under the extended petition.

When examining the managerial or executive capacity of the Beneficiary, we will look first to the Petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The Petitioner's description of the job duties must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *Id.*

The definitions of managerial and executive capacity each have two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove

that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. See *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

Here, the Petitioner has submitted a vague duty description that does not sufficiently articulate the Beneficiary's day-to-day tasks as of the date the petition was filed. For instance, the Petitioner indicates that the Beneficiary is responsible for various duties that could apply to any manager or executive working for any business in any industry including stating that she will "plan, develop and implement business strategies for the U.S. entity, establish and formulate operational policies and business goals"; "review business reports and operational data to evaluate performance of business operations"; exercise authority in allocating resources; represent the company "in business gatherings and business transactions"; and "direct and supervise subordinate managers and employees." The Petitioner provides few specifics as to what these general duties entail, nor does it provide supporting documentation to reflect her performance of these duties. In addition, the Petitioner did not provide additional details after the Director requested additional evidence regarding the nature of the Beneficiary's proposed duties under the extended petition. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The 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).

According to the Petitioner's business plan, the Beneficiary's responsibilities include "coordinating between [the Petitioner] and the parent company in terms of manufacturing, quality control, and shipping of the goods from China until they reach the U.S." These duties are also poorly defined and suggest that she may be directly involved in sourcing and importing products to the United States, rather than performing managerial duties associated with these functions of the business. However, these responsibilities were left out of the Petitioner's breakdown of the Beneficiary's responsibilities and we cannot determine how much time she would spend on these non-managerial activities.

The fact that the Beneficiary manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act. While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possesses the requisite level of authority with respect to discretionary decision-making, the position description alone is insufficient to establish that his actual duties, as of the date of filing, would be primarily managerial or executive in nature.

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 company's organizational structure, the duties of a Beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business,

and any other factors that will contribute to understanding a Beneficiary's actual duties and role in a business.

The Petitioner stated that it will employ the Beneficiary as well as a vice president, a market analyst and an inside sales/office support employee. The Petitioner provided a brief job description for each position. Although the existing staff will perform some non-managerial activities necessary for the day-to-day operations of the business, it is not clear who will handle the purchasing, sales, inventory, shipments and customs and all the administrative work that is necessary in running this type of business. For example, the Petitioner's business plan states that, upon the Beneficiary's arrival, it expected to have an immediate need for an employee to enter and maintain day-to-day financial entries, balance its checkbook, reconcile bank statements, performing invoicing, billing and payment expediting duties, organize paperwork related to orders placed for shipments from China and prepare "the landed coast for each imported item." The record does not reflect that an employee or employees have been hired to perform these non-managerial functions.

Further, the submitted business plan states that the Beneficiary herself was being transferred to coordinate with the Petitioner's parent company "in terms of manufacturing, quality control, and shipping of the goods" and it has not identified employees who would assist her with these activities. The business plan further indicated that the Petitioner expected to employ up to 10 employees by 2015, including multiple vice presidents, an office manager and regional sales representatives, but it had not carried out these plans as of the date of filing. In addition, despite the Petitioner's claim that all three of the Beneficiary's subordinates are full-time employees, the vice president's salary is not commensurate with full-time employment.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See sections 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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)(4). If a petitioner claims that a beneficiary directly supervises other employees, those subordinate employees must be supervisory, professional, or managerial, and the beneficiary must have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Sections 101(a)(44)(A)(ii)-(iii) of the Act; 8 C.F.R. §§ 214.2(l)(1)(ii)(B)(2)-(3).

To determine whether the Beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Cf. 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). 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."

On appeal, the Petitioner states that the Beneficiary will manage two professional employees, the vice president and the market analyst. We must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a master's or bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the Petitioner has not, in fact, established that a bachelor's degree is required to perform the duties assigned to the market analyst or the broadly described duties assigned to the vice president. The Petitioner indicated that the Department of Labor's *Occupational Outlook Handbook* states that a bachelor's degree is necessary to perform the functions of a market analyst. However, in this case, it is not clear if the market analyst is solely working as an analyst or if the employee also needs to assist in the sales, marketing and administrative operations of the business. Further, although the Beneficiary's job description refers to her supervision of "managers," the Petitioner has not established that any of her subordinates as of the date of filing were supervisors or managers. Finally, even if the Petitioner had established that the Beneficiary supervises one or more subordinate professionals, the record does not establish that supervision of personnel accounts for a significant portion of her time. Therefore, the Petitioner has not supported its claim that the Beneficiary qualifies as a personnel manager.

The Petitioner has neither claimed nor established, in the alternative, that the Beneficiary will be employed primarily 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. The term "essential function" is not defined by statute or regulation. If a Petitioner claims that a Beneficiary will manage an essential function, a Petitioner must clearly describe 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 a Beneficiary's daily duties dedicated to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, a Petitioner's description of a Beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform the duties related to the function. As noted above, the Petitioner provided a vague and generalized job description for the Beneficiary, and did not provide sufficient evidence to establish that the Beneficiary will primarily manage a function of the company.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a Beneficiary to direct and a 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 an owner or sole managerial employee. A 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 Petitioner has not established that the Beneficiary will be employed in an executive capacity under the extended petition. The Petitioner’s description of the Beneficiary’s duties is vague and does not establish how she will primarily focus on the goals and policies of the organization rather than being involved in its day-to-day operations. As noted, the Petitioner did not provide supporting documentation to substantiate its employment of subordinates that perform many of the day-to-day operations associated with an import and distribution business. While an executive is not required to supervise subordinate professionals, the Petitioner must still establish that someone other than the Beneficiary is available to provide the goods and services offered by the company and perform other non-qualifying duties associated with its day-to-day operations. The Petitioner in this matter has not done so and the evidence of record is insufficient to establish that the Beneficiary will be employed in an executive capacity.

We note that a company’s size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa petition for classification as a multinational manager or executive. See section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company, or a “shell company” that does not conduct business in a regular and continuous manner. See *e.g.*, *Family Inc.*, 469 F.3d 1313; *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

In the present matter, however, the regulations require USCIS to examine the organizational structure and staffing levels of the petitioner.² See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the “new office” operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the Petitioner has not reached the point that it can employ the Beneficiary in a managerial or executive capacity.

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).

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity under the extended petition.

III. DOING BUSINESS

Although not addressed by the Director, the record as presently constituted does not contain evidence that the Petitioner has been doing business as defined in the regulations for the previous year. Further, the record does not contain sufficient evidence of the financial status of the U.S. operation as required by 8 C.F.R. § 214.2(l)(14)(ii)(E).

The Petitioner here is seeking an extension of its new office petition. Accordingly, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. The term “doing business” is defined in the regulations as “the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.” 8 C.F.R. § 214.2(l)(1)(ii)(H). There is no provision in the regulations allowing for the extension of this one-year period. If the business is not sufficiently operational after one year, a petitioner is ineligible for an extension by regulation.

The Petitioner submitted a copy of its IRS Form 1120, U.S. Corporation Income Tax Return, which shows that it had no revenue in 2014. The Petitioner provided evidence that it rented an office and paid for telephone and Internet service during the previous year, but did not provide evidence of its regular, systematic and continuous provision of goods or services. The Petitioner provided copies of purchase orders dated in July and August 2015, but the record contains no other evidence of business transactions and no evidence of the company’s financial status other than the tax return from 2014 showing no revenue. Therefore, we conclude that there is insufficient evidence to establish that the regulatory requirements at 8 C.F.R. §§ 214.2(l)(14)(ii)(B) and (E) have been met.

IV. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. The petition will be denied and the appeal dismissed for the above reason. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of GMDC-S-, Inc.*, ID# 17180 (AAO July 8, 2016)