



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

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

MATTER OF UMSE-, INC.

DATE: MAY 9, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a Texas corporation engaged in the retail sale of popular range items to convenience stores, seeks to extend the Beneficiary's temporary employment as its director/president under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not established that (1) it would employ the Beneficiary in a managerial or executive capacity; (2) a qualifying relationship existed with the foreign entity; and (3) it has the necessary premises to house its business operation. The Petitioner subsequently filed two consecutive motions to reopen and reconsider. Upon review of the Petitioner's submissions with the first motion, the Director found that it had submitted sufficient evidence to establish that a qualifying relationship existed with the foreign entity, and that basis for the denial was withdrawn. The combined motion was ultimately denied, however, based on the Petitioner's insufficient evidence to overcome the other two bases outlined in the initial decision. The Petitioner subsequently filed a second combined motion, which was also denied.

The matter is now before us on appeal. In its appeal, the Petitioner disputes the grounds for denial, asserting that it provided sufficient evidence to overcome the remaining two grounds cited by the Director in the original decision.

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

Matter of UMSE-, Inc.

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.

II. EVIDENTIARY STANDARD

As a preliminary matter, and in light of the Petitioner's references to the requirement that we apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

....

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

....

Thus, in adjudicating the application pursuant to the preponderance of the evidence

standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “more likely than not” or “probably” true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support the Petitioner’s contentions that the evidence of record establishes eligibility for the benefit sought.

III. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based, in part, on a finding that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity in the United States.

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.

A. Evidence of Record

The Petitioner filed the Form I-129 on November 29, 2011. On the Form I-129, the Petitioner indicated that it has seven current employees in the United States and a gross annual income of \$571,800.

In a supporting statement, the Petitioner provided the following overview of the Beneficiary's position:

[The Beneficiary] leads the management team and serves as liaison for all financial and marketing efforts and with the foreign parent company.

....

[The Beneficiary] has to do multi tasking. He may one day visit and supervise company operations. One day he may visit sales locations in the morning and meet candidates for an interview in the afternoon. He may attend trade association meeting during the same day. He also has to be prepared to frequently switch from one task to another. He has the insight, knowledge and familiarity with the strengths and weaknesses of the firm that he will use to decide which macro environment trends are relevant for the company.

The Petitioner also broadly listed the various components of the Beneficiary's proposed position with the U.S. entity and the percentage of time allocated to each of those six elements as follows:

Strategic analysis of opportunities and competitive profiling of the company will take around twenty percent of his time. Organizing and coordinating managerial force will take around twenty five percent of his time. Assisting in coordinating between departments and with outside agencies, specifically vendors and financial institutions will take up about fifteen percent of his time. Leading and representing the corporation to outside groups will take up about fifteen percent of his time. Coordination with the Financial area of the foreign company would take about ten percent of his time. He would spend the remaining of his time mentoring managers.

The Director issued a request for evidence (RFE), instructing the Petitioner to provide evidence pertaining to various eligibility factors, including evidence establishing that the Beneficiary's U.S. employment would be primarily comprised of managerial or executive job duties.

In response, the Petitioner provided a statement claiming that the company's vice-president, general manager, and office manager all report directly to the Beneficiary. The Petitioner provided a nearly identical job description and percentage breakdown as the one originally submitted in the earlier supporting statement. The Petitioner also provided photocopies of seven IRS Form W-2s and seven IRS Form 1099-MISCs for 2011, indicating that it had seven employees and contracted seven workers. The Beneficiary's Form W-2 shows that the Beneficiary received \$45,000 in total wages for 2011. The Petitioner also provided the Beneficiary's monthly pay stubs for July 1, 2011, through December 31, 2011, showing a year to date total gross salary of \$22,500.

In the first adverse decision, dated August 20, 2012, the Director pointed to discrepancies concerning documents provided to show the wages paid to the Beneficiary at the time the Form I-129 was filed. The Director concluded that the Petitioner did not establish that it has the financial capability of supporting a staff of employees sufficient to support the Beneficiary in a qualifying managerial or executive capacity. The Director specifically noted that the evidence submitted appeared inconsistent with regard to the wages paid to the Beneficiary.

On September 21, 2012, the Petitioner filed the first of two motions to reopen and reconsider, disputing the Director's findings. The Petitioner contended that supporting evidence had been submitted earlier in support of previously approved petitions. The Petitioner asserted that since it is no longer a new office "the documentary requirements should be minimal." The Petitioner dismissed the inconsistencies pointed out in the Director's decision with regard to the Beneficiary's salary for 2011.

In the Director's second adverse decision, dated November 29, 2012, the Director found, in part, that the Petitioner did not overcome the earlier finding concerning the Beneficiary's proposed position with the U.S. entity.

In support of the Petitioner's second motion to reopen and reconsider, filed on January 2, 2013, the Petitioner asked the Director to refer to "Exhibit B" for evidence of the Beneficiary's hourly

breakdown of job duties. The Petitioner also provided other supporting documents, including a current organizational chart, and contended that it had met its evidentiary burden of proof.

In response, the Director issued a third decision, dated August 23, 2013, affirming the earlier findings. The Director found, in part, that the previously submitted evidence did not include an hourly breakdown of job duties to be performed by the Beneficiary and his subordinates. The Director concluded that the Petitioner did not establish that the Beneficiary's employment in the United States would be in a qualifying managerial or executive capacity.

On appeal, the Petitioner asserts that it has met its burden of proof with previously submitted evidence.

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.

In the present matter, the Director notified the Petitioner that the job descriptions it submitted regarding the Beneficiary's U.S. employment were insufficient, as they did not include a detailed breakdown of the Beneficiary's assigned list of job duties. The Director also informed the Petitioner that the record contained insufficient information regarding the job duties assigned to the remainder of the support personnel. However, despite these adverse findings, the Petitioner reiterated information included in earlier submissions with regard to the Beneficiary's U.S. employment and declined to submit the requested information pertaining to the Petitioner's support staff. Furthermore, as previously noted in the above discussion of the evidence of record, the Petitioner provided a nearly identical job description and percentage breakdown of the time the Beneficiary would devote to his duties in both the initial letter of support and in response to the RFE, despite the Director's request for a more detailed overview of the Beneficiary's position. 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 addition, we find that the content of the job description lacked sufficient detail to convey a meaningful understanding of the actual daily tasks the Beneficiary would perform within the context of the retail business it originally claimed as its operation. For instance, the Petitioner claimed that the Beneficiary would be responsible for “strategic analysis of opportunities and competitive profiling of the company.” However, the Petitioner did not explain what specific tasks would be representative of “strategic analysis” or clarify what specific opportunities the Beneficiary would analyze. The Petitioner also did not explain how the Beneficiary would organize and coordinate its “managerial force” or which employees comprised the managerial force. While the Petitioner provided what it claimed was its updated organizational chart in support of its second motion, it is unclear whether that chart represented the organizational structure that the Petitioner had in place at the time it filed the instant petition. We note that the Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after a petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

We consider the Beneficiary’s job description within the context of the organizational structure of the U.S. employer, the existence of support personnel capable of relieving the Beneficiary from having to allocate his time to primarily non-qualifying operational tasks, and the Beneficiary’s proposed role with respect to the Petitioner’s staff. Thus, in order to determine how much evidentiary weight to allot to the previously submitted organizational chart, it is crucial to determine whether the chart reflected the Petitioner’s staffing structure at the time of filing. Here, the Petitioner referred to the chart as “current,” thus indicating the possibility that it may account for the organizational hierarchy that was current with the date of submission of the chart rather than with the date the petition was filed.

Further, in reviewing the contents of the Petitioner’s most recent submissions, it appears that the Petitioner no longer operates a business whose main focus is the retail of food, general goods, and gift items, as was originally claimed at Part 5, No. 11 of the Form I-129. Rather, the Petitioner now claims to operate an entirely different business, whose focus is skin care, rather than retail. This significant change gives rise to questions concerning any changes that would necessarily be reflected in the Petitioner’s organizational structure as well as the Beneficiary’s job duties and changed role within the new business enterprise. It appears that even if the Beneficiary’s previously offered job description was complete with the requested information, it would no longer be applicable to the changed circumstances of the Petitioner’s new business operation. As previously stated, a petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Id.* at 249. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). Here, the Petitioner provides evidence to show that the facts and circumstances that existed at the time the petition was filed no longer apply.

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

(b)(6)

Matter of UMSE-, Inc.

IV. SUFFICIENT BUSINESS PREMISES

The Director also denied the petition, in part, on a finding that the Petitioner had not established that it maintained sufficient premises for the purpose of conducting its business operations. Upon review, we find that the record lacks sufficient evidence to support a finding in favor of the Petitioner.

The “physical premises” requirement that applies to new offices¹ serves as a safeguard to ensure that a newly established business immediately commence doing business so that it will support a managerial or executive position within one year. *See* 52 FR 5738, 5740 (February 26, 1987). After one year, USCIS “will determine, in [its] discretion, whether the new office is ‘doing business’ when an extension of the petition is adjudicated.” *Id.*; *see also* 8 C.F.R. § 214.2(l)(14)(ii). A petitioner is not absolved of the requirement to maintain “sufficient physical premises” simply because it has been in existence for more than one year. In order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic and continuous manner. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Inherent to that requirement, the Petitioner must possess sufficient physical premises to conduct business.

A. Evidence of Record

In support of the petition, the Petitioner submitted a copy of its commercial lease, which commenced on November 1, 2008, and terminated on October 31, 2008

In the RFE, the Director instructed the Petitioner to provide evidence pertaining to various eligibility factors, including evidence establishing that the Petitioner has sufficient business premises to house its operations.

In response, the Petitioner provided additional evidence, including a one-page lease, dated May 6, 2010, and commencing on June 1, 2010, naming the Petitioner as the tenant of a property located at [REDACTED]. Under “Term,” the lease indicates that it will continue for one year. Additionally, Provision No. 1 in the body of the lease, titled “Term,” states that the lease term “shall continue, unless sooner terminated as provided hereinafter.”

On August 20, 2012, the Director issued the first of three adverse decisions. The Director pointed to numerous discrepancies in the record, noting specifically that the Petitioner’s commercial lease was over two years old and no additional documentation, such as a current lease or photos of its business premises, was submitted despite the requests for such information in the RFE. The Director also found that the record contained insufficient evidence to allow a determination of whether the Petitioner is a franchise business.

¹ The regulation at 8 C.F.R. § 214.2(l)(3)(v)(A), which applies to new offices, provides that a petitioner shall submit evidence that “[s]ufficient physical premises to house the new office have been secured.”

In its first combined motion, filed on September 21, 2012, the Petitioner focused on its previously approved petitions to continue the Beneficiary's employment in the L-1A nonimmigrant visa classification and noted that supporting evidence had previously been submitted. The Petitioner also clarified the misunderstanding regarding the franchise tax documents that were previously submitted and asserted that since it is no longer a new office "the documentary requirements should be minimal."

On November 29, 2012, the Director issued a second decision affirming the original denial. Although the Director determined that the Petitioner resolved the questions regarding its filing of a franchise tax document and provided sufficient evidence of a qualifying relationship, the Director found that the Petitioner did not show that it has a valid lease for premises from which to operate its business.

In its second combined motion, filed on January 2, 2013, the Petitioner referred to its previous lease agreement, dated May 6, 2010, and photographs of office space, contending that it met its evidentiary burden of proof. The Petitioner also submitted a copy of a DBA certificate, dated December 27, 2012, showing that it commenced doing business under the assumed name of [REDACTED] located at [REDACTED] TX [REDACTED] a location for which the Petitioner did not provide a valid lease.

On August 23, 2013, the Director issued another decision affirming the earlier findings regarding the lack of evidence showing sufficient business premises to house the Petitioner's operation. The Director acknowledged the Petitioner's DBA certificate indicating that the Petitioner is doing business as [REDACTED]. However, the Director pointed out, in part, that the Petitioner provided an expired lease agreement, which was deemed insufficient to establish that the Petitioner has sufficient business premises from which to conduct business.

On appeal, the Petitioner addresses the Director's adverse findings, again asserting that it has met its burden of proof with previously submitted evidence. Specifically, the Petitioner claims on appeal that it has "an oral month-to-month agreement which extends to the previous written lease," and concludes that, based on a preponderance of the evidence, it has established that it is still doing business at the same location identified in the initial lease agreement.

In the course of our preliminary review of the record on appeal, we found that the record was missing documents that the Petitioner claimed to have provided in support of its second motion. Therefore, we issued a letter, dated November 9, 2015, requesting that the Petitioner provide a copy of the missing documents. We allowed the Petitioner 33 days from the date of our letter to submit the requested documents. To date, however, we have not received the requested documents. Accordingly, a decision in this matter will be based on the evidence that was in the record at the time of our second review, after the expiration of the additional 33 days.

B. Analysis

Prior to adjudication, the Petitioner relied on its May 6, 2010, lease agreement, which commenced on June 1, 2010 for a period of one year, as evidence that it maintained sufficient physical premises

(b)(6)

Matter of UMSE-, Inc.

to house its business operations. However, as correctly noted by the Director, the lease agreement terminated on May 31, 2011, and no additional evidence to establish its renewal was submitted. The Petitioner's claim on appeal indicating that it has "an oral month-to-month agreement which extends to the previous written lease" is not supported by any of the evidence submitted either on appeal or in support of the Petitioner's two prior motions. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As properly pointed out in the Director's latest decision, despite the Petitioner's submission of a DBA certificate showing that it commenced doing business as [REDACTED] the certificate clearly states that the address where the Petitioner conducts business under its assumed name is [REDACTED] TX [REDACTED]. This document identifies a location for which the Petitioner did not provide a valid lease.

The location and physical premises of the Petitioner are material to eligibility as the Director must determine whether a petitioner possesses sufficient physical premises to conduct business in a regular, systematic, and continuous manner. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). In the present matter, the Petitioner's entire claim of having sufficient business premises is based on the Petitioner's uncorroborated assertions claiming that it has an oral contract with an unknown party. Thus, we find that the Petitioner's claims cannot be deemed as sufficient supporting evidence for the purpose of establishing that the Petitioner met the applicable regulatory requirements.²

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that it possesses sufficient physical premises to conduct business in a regular, systematic, and continuous manner.

V. PRIOR APPROVALS

The Petitioner asserts that USCIS previously granted the requested status, thereby recognizing that the Beneficiary is employed in a qualifying managerial or executive capacity and the Petitioner has satisfied the evidentiary requirements to establish that it has maintain sufficient physical premises and continues to do business. In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give some deference to a prior determination of eligibility. However, the mere fact that USCIS approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *See, e.g., Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm'r 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate

² The regulation at 8 C.F.R. §§ 214.2(l)(3)(i), (ii), (iii), and (iv) specify the required evidence the Petitioner must submit in support of the Form I-129. In addition, 8 C.F.R. § 214.2(l)(3)(viii) allows the Director the discretionary authority to request any additional evidence that he may deem necessary.

(b)(6)

Matter of UMSE-, Inc.

burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

The Petitioner's explanation on motion that it is currently doing business as [REDACTED] in contrast to its claim at the time the Petition was filed that it is engaged in the retail sale of food, general goods, and gift items to convenience stores, is in itself an indication that there has been a material change in circumstances and therefore a valid basis for not deferring to USCIS's prior approvals.

Regardless, the Petitioner bears the burden of establishing that the circumstances that were in place at the time of this petition's filing were sufficient to support the Beneficiary in a qualifying managerial or executive capacity. See section 291 of the Act, 8 U.S.C. § 1361. In the present matter, the Director reviewed the record of proceeding and concluded that the Petitioner was ineligible for an extension of the nonimmigrant visa petition's validity based on the Petitioner's failure to establish eligibility. Collectively, in the RFE and the subsequent denials, the Director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. The Director properly stated that if any one of the previous petitions was approved based on the same deficient evidence of the Beneficiary's eligibility, such approval would constitute gross error.

We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See *Matter of Church Scientology Int'l*, 19 I&N Dec. at 597. USCIS is not required to treat acknowledged errors as binding precedent. *Sussex Eng'g. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. See *La. Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

VI. 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. 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 Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of UMSE-, Inc.*, ID# 13673 (AAO May 9, 2016)