



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

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

MATTER OF N-, LLC

DATE: SEPT. 14, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a mattress import company, seeks to temporarily employ the Beneficiary as its executive director 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 an executive or managerial capacity.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not established that the Beneficiary will be employed in a managerial or executive capacity for the U.S. entity.

The matter is now before us on appeal. In its appeal, the Petitioner submits a statement and asserts that the Director erred when denying the petition. The Petitioner maintains that the record includes sufficient evidence to prove by a preponderance of the evidence that the Beneficiary is being transferred to the United States in an executive capacity and is eligible for the benefit sought.

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 proposed 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.

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

The Director denied the petition determining that the Petitioner had not established that it would employ the Beneficiary in a managerial or 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

(b)(6)

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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 was organized in the State of Florida in October 2013 and filed the Form I-129 on September 21, 2015.¹ On the Form I-129, the Petitioner indicated that it currently has four employees in the United States, and a gross annual income of \$1,129,824. The Petitioner claimed a qualifying subsidiary relationship with the Beneficiary's foreign employer, [REDACTED]

On the Form I-129, the Petitioner described the Beneficiary's proposed duties in the United States as follows:

Oversee the growth and ensure profitability of the U.S. subsidiary by hiring new employees and/or contractors, establishing an annual budget for the company and oversee expenditures, develop and manage a national expansion plan into new markets, oversee the timely and efficient distribution of products to all US and Canada customers and/or distributors, oversee the allocation of resources, training of U.S. distributors and monitoring of budget goals and sales progress. Oversee the

¹ The Petitioner submitted documentation to support the L-1A petition, including evidence regarding the proffered position, its employees, and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

import process by working with staff and/contractors making sure products meet the consumer safety commission standards of the United States.

In a letter submitted in support of the petition, the Petitioner stated that it currently has three employees and four independent contractors. The Petitioner listed the Beneficiary's proposed duties and responsibilities as executive director as follows:

- Develop and direct a national expansion plan into new markets;
- Oversee the timely and efficient distribution of products to all U.S. and Canadian customers;
- Oversee the allocation of resources, including equipment, employee provisions, and staff, to ensure the timely and cost effective completion of all services and/or distribution;
- Establish the regional budget, set profitability and utilization goals, monitor progress towards said goals, and adjust goals as needed;
- Establish an annual budget for the company, oversee expenditures, and monitor achievement of budget goals; and
- Make sure the company is in compliance with all importing of manufactured product regulations, licenses etc.

The Petitioner added that the Beneficiary will control a budget in excess of \$1,000,000 and report directly to the foreign entity's Board of Directors.

In a November 18, 2015, response to the Director's RFE, the Petitioner submitted a revised description of the Beneficiary's duties as executive director and allocated the Beneficiary's time to those duties as follows:

- 5% of his time will be spent on human resources issues such as hiring and firing of staff, vendors, suppliers, attorneys, consultants etc.
- 75% of his time will be spent interacting with others in meetings, phone calls and/or reading and responding to emails. The majority of these will comprise of meetings/calls with counsel re- United States regulations/compliance laws e.g. mattress import into the United States is fraught with complex rules/regulations, lawyers retained will work with [the Beneficiary] to make certain we comply with all the rules and regulations set forth by the Consumer Products Safety Commission (CPSC) and meet all the regulations set forth by the federal government and each individual state (each State ha[s] their own rules and regulations which sometimes differ from the federal government). Negotiating and signing contracts for the overall effective operation of the company.
- 10% of his time will be spent overseeing marketing efforts for expansion in liaison with the marketing staff in Brazil, until a marketing staff is put in place for the North American market. Monitoring sales levels and patterns to identify and

predict any potential problems. Representation of the company and brand at trade fairs and exhibitions.

- 10% of his time will be spent on establishing a budget for the company, overseeing expenditures for profitability etc.

The Petitioner explained further that a complete breakdown of the Beneficiary's proposed duties is difficult to provide as he will be the head of the company in the United States reporting only to the board of directors of the parent company in Brazil. The Petitioner noted that it needed an executive in the United States to make complex compliance decisions in a timely and continuous manner. The Petitioner noted specifically its dealings with the CPSC since February 2015 to make certain the imported mattresses meet U.S. standards.

The Petitioner also included a letter from its counsel dated December 2, 2015. In the letter, the Petitioner's counsel noted that the firm had been retained to assist with "the formation of [the Petitioner's] business and sales structure in the United States, as well as ensuring [the Petitioner's] compliance with state and federal laws relating to the mattress industry, preparation of legal documents, and coordination of efforts to comply with the standards and regulations of the Consumer Product Safety Commission." The Petitioner's counsel opined that "it is crucial for [the Petitioner] to have an executive in the United States in order to effectively and efficiently manage the day-to-day operations of the company, as well as to ensure its compliance with applicable law."

The Petitioner also submitted its organizational chart showing the foreign entity's board of directors at the top of the chart, the Beneficiary in the position of executive director, employees in the positions of manager and sales assistant, independent contractors which included the Petitioner's attorneys, a translation service, an accounting firm, and a marketing consultant, and a department identified as "Vendors" under the Board's supervision. The chart identifies the Beneficiary in the tier above the employees, contractors, and vendors but does not show these individuals directly reporting to the Beneficiary. The Petitioner submitted position descriptions for the two individuals named on the organizational chart in the positions of manager and sales assistant. The Petitioner also submitted a retainer contract between the Petitioner and counsel. Finally, the Petitioner submitted evidence that it had initiated a recall of mattresses that did not comply with federal mattress flammability standards.

On appeal, the Petitioner asserts that the Beneficiary's "transfer to the United States is to perform an essential and controlling function with respect to a complex business enterprise that requires significant decision making." The Petitioner cites an unpublished decision in support of its claim that the Beneficiary may be a function manager or executive even if he is the sole employee when he utilizes outside independent contractors or where the business is complex. The Petitioner maintains that the Beneficiary will not be performing the day-to-day operations or tasks necessary to produce a product or provide a service. Rather, due to the complex nature of the importing business and the Beneficiary's level of authority in the United States, the Petitioner asserts he will be primarily performing executive tasks with employees and independent contractors available to perform the necessary functions of importing and selling the product in the United States.

B. Analysis

Upon review of the petition and the evidence of record, we conclude that the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity in the United States.

When examining the managerial or executive capacity of the Beneficiary's position, 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 either a managerial or an 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.

As the Petitioner emphasized on appeal, it must prove by a preponderance of evidence that the Beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

The Petitioner here has submitted an overview of the Beneficiary's duties which essentially recited broadly-cast business objectives, rather than describing the actual daily duties of the position. In response to the Director's RFE, the Petitioner noted that almost 75 percent of the Beneficiary's time would be spent in meetings, on phone calls, and reading and responding to emails. The Petitioner added that the majority of the meetings, phone calls, and emails would involve the Petitioner's compliance with U.S. regulations. While we acknowledge that compliance regulations may be complex, it is not clear what the Beneficiary will actually be doing during or as a result of the meetings, phone calls, and emails. The record does not include probative evidence that these tasks would be ongoing or would be primarily executive or managerial in nature. The Petitioner has not provided any detail or explanation of the Beneficiary's proposed activities in the course of his daily routine. 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).

We note that also within this 75 percent of the Beneficiary's time, the Beneficiary will negotiate and sign contracts for the operation of the company. However, the Petitioner does not elaborate on the nature of the contracts and whether they are with vendors, marketers, distributors, employees, or independent contractors. The Petitioner indicates that the Beneficiary will spend ten percent of his time overseeing marketing efforts in liaison with the marketing staff in Brazil, until a marketing staff is put in place for the North American market, and an additional ten percent of his time on budgetary matters. While the marketing and budgetary duties would not be the Beneficiary's primary tasks, the

lack of personnel to carry out these duties, suggest that the Beneficiary will be performing rather than managing the performance of these duties.² We note that on the Form I-129, the Petitioner referred to the Beneficiary's responsibility for training distributors. The Petitioner does not refer to this duty again and thus it is not clear if the Petitioner still considers this part of the Beneficiary's overall responsibility.

Upon review of the Beneficiary's duties, we are unable to determine the nature and scope of his proposed activities on behalf of the Petitioner. There is insufficient information in the record to make an informed decision on the Beneficiary's role within the organization in relation to its internal personnel. Similarly, the record lacks probative evidence of the Beneficiary's responsibilities associated with outside personnel or businesses. Of further importance, the evidence of record does not establish that the Petitioner has the necessary staffing to sufficiently relieve the Beneficiary from performing primarily operational and administrative tasks to continue its operations. We note that the Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition and must continue to be eligible for the benefit through adjudication. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). Here, the Petitioner has not sufficiently detailed the Beneficiary's actual daily duties such that we may ascertain whether the Beneficiary will primarily perform executive or managerial duties rather than carry out the essential operational and administrative functions of the business, when the petition was filed.

We also note that the fact that the Beneficiary will manage or direct 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 possess the requisite level of authority with respect to discretionary decision-making, the position descriptions alone are insufficient to establish that his actual duties 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,

² We acknowledge that the Petitioner indicates that the Beneficiary will be working with and overseeing the foreign entity's marketing staff until a marketing staff is hired in the United States. However, the record does not include evidence of the interplay between the Petitioner's marketing of mattresses and the foreign entity's marketing of mattresses. The record is not sufficiently concrete to establish that the Beneficiary will be primarily managing or supervising the foreign entity's marketing staff while in the United States. Moreover, while the Petitioner identifies a marketing consultant on its organizational chart, the record does not include evidence identifying this individual's duties or evidence that he has actually been employed.

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

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's organizational chart shows the employment of two individuals, a manager, and a sales assistant. As referenced above, the organizational chart does not clearly establish that these individuals report to the Beneficiary. Moreover, the record does not include probative evidence, such as state or federal quarterly wage or tax reports or payroll records, to establish that the Petitioner actually employed these individuals when the petition was filed. However, for thoroughness, we have reviewed the Petitioner's description of duties for these individuals.

We note that the manager communicates with supervisors and owners, resolves problems, and manages company emails, sales, financial/bank accounts and expenses, and monthly reports. It is not clear who the manager communicates with other than the owners as the record does not include any evidence that the Petitioner employs supervisors. Additionally, the description of duties for this individual notes that he gives advice and guidance and that he organizes meetings and events, among other duties. As this individual does not have any subordinates, it is not clear who he is advising or to whom he is offering advice. Similarly, the record does not detail the meetings and events he is organizing. Based on the descriptions of duties and the Petitioner's organizational chart, this individual's actual role in the business is not defined and we cannot conclude that the position is managerial.

Likewise, the duties of the sales assistant are broadly stated, indicating that he performs some reception duties, is involved in stock control and management, provides after sales service, maintains records, assists the manager, receives inventory, and processes transactions, refunds, and exchanges. This description suggests that this individual will be performing clerical and customer service tasks. It is not possible to conclude that this individual is a managerial employee.

Upon review of the totality of the record, the Petitioner has not identified or documented a subordinate level of managerial employees for the Beneficiary to direct. We have reviewed the other positions and departments listed on the Petitioner's organizational chart but do not find sufficient

evidence in the record to conclude that these positions and departments include managerial positions for the Beneficiary to direct. Further, as discussed above, the Petitioner has not provided a detailed description of the Beneficiary's duties supporting its claim that the Beneficiary will primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. The Petitioner has not provided probative evidence demonstrating the Beneficiary will perform tasks primarily in an executive capacity.

The Petitioner also has not established that the Beneficiary will primarily perform in a managerial capacity for the Petitioner. 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 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 Petitioner does not claim that the Beneficiary will perform primarily as a personnel manager and we find that the record also does not support such a claim. The Petitioner does not identify the Beneficiary on its organizational chart or in its description of the Beneficiary's duties as primarily supervising subordinate employees. The Petitioner also has not sufficiently identified the outsourced individuals and teams the Beneficiary will work with in terms of their responsibilities in support of the Petitioner's operations. Although the Petitioner claims the Beneficiary will be involved with its attorneys who will assist in formulating its sales structure and its compliance with regulatory standards, the record includes little information on the Beneficiary's actual tasks other than stating that he will participate in meetings. Rather, the record suggests at most that the Beneficiary will carry out its counsel's instructions or follow the advice of counsel regarding its sales structure and compliance requirements. We also find that while the record includes a contract between the Petitioner and its attorneys for services, the record does not include similar evidence that the Petitioner has contracted with other independent outsourced firms or businesses. Upon review of the totality of the record, there is insufficient documentary evidence to assess the Beneficiary's role as a personnel manager, and whether he will primarily supervise and control other supervisory, managerial, or professional employees. Accordingly, the record as constituted is insufficient to demonstrate that the Beneficiary's position is a position that primarily supervises and controls the work of supervisory, professional, or managerial employees. *See* sections 101(a)(44)(A)(ii)-(iii) of the Act; 8 C.F.R. §§ 214.2(l)(1)(ii)(B)(2)-(3).

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 attributed 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.

Here, the Petitioner's general descriptions of the Beneficiary's duties do not include sufficient information regarding what the Beneficiary will actually do, such that we may conclude that the Beneficiary will manage a specific function. It appears that the Petitioner expects the Beneficiary to enter into employment to generally develop the Petitioner's business including working on the Petitioner's compliance with state and federal regulatory standards for mattresses. However, the lack of probative evidence regarding who will perform the routine duties of the Petitioner's mattress distribution operation including its compliance with federal and state regulatory standards undermines any claim that the Beneficiary will primarily manage an essential function.

As referenced above, the Petitioner has not submitted probative evidence supporting its claim that it has three employees and four independent contractors who would carry out the routine operational and administrative functions of the business. Other than providing a broad overview of the duties of the manager and sales assistant and a retainer agreement for a law firm, it has not submitted probative evidence that it actually employs anyone. For example, while the Petitioner claims to use a marketing consultant, the record does not include probative evidence of this individual's role or responsibilities for the Petitioner. Nor does the record include a consulting agreement or evidence that this individual performed work for the Petitioner. While the record includes some information that the Petitioner works with an accounting firm to file its taxes, the record does not identify what other tasks, if any, the accounting firm performs. Similarly, the Petitioner identifies a translating service on its organizational chart and the record includes evidence that documents were translated. The Petitioner, however, does not explain the role of the translating service, state whether it is an ongoing role, what purpose it serves, or whether the service was used only for immigration filings. With regard to the Petitioner's retention of a law firm, we again find that the Petitioner has not specified the Beneficiary's role as it involves interaction with the law firm, such that we may conclude that the law firm is performing the essential functions of the Petitioner's business operations. Upon review of the totality of the record, the Petitioner has not submitted probative evidence of its employees or independent contractors who will carry out the daily administrative, operational, budgetary, and human resource functions of the business.

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. v. USCIS* 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and does not believe that the facts asserted are true. See *Systronics*, 153 F. Supp. 2d at 15.

The Petitioner refers to an unpublished decision in which we determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. However, the Petitioner has furnished no evidence to establish that the facts

of the instant petition are analogous to those in the unpublished decision. Moreover, while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Upon close review of the record, including the descriptions of duties, the nature of the Petitioner's business, the lack of documentary evidence substantiating its staffing levels, and the lack of information regarding the Beneficiary's actual role in the business, the record does not establish that the Petitioner's organization is sufficiently developed to support a managerial or executive position as defined in the statute. The Petitioner has not developed the Beneficiary's position so that we may understand the Beneficiary's actual duties and role in the business. The Petitioner has not adequately described and attributed the duties required to support its day-to-day operational needs while it is in the process of establishing its sales structure, organizing its distribution network, and establishing its compliance procedures. The record does not include probative evidence identifying who the Beneficiary will rely on to accomplish the non-executive and non-managerial duties in the Petitioner's continued operations. Accordingly, we cannot conclude that the Beneficiary would primarily perform managerial duties.

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

III. CONCLUSION

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 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 N-, LLC*, ID# 18339 (AAO Sept. 14, 2016)