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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: FEB 18 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over the words "Thank you".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The petitioner filed an appeal before the Administrative Appeals Office (AAO), which was dismissed. The matter is once again before the AAO on a motion to reconsider. The AAO will grant the motion and affirm the dismissal of the appeal.

The petitioner filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary ability in the field of business. The petitioner states that it operates a non-profit organization in the United States. It seeks to employ the beneficiary in the position of communications/public relations director for a period of three years.

The director denied the petition concluding that petitioner failed to establish that the beneficiary qualifies as an alien with extraordinary ability in business. Specifically, the director determined that the evidence submitted did not satisfy the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). The director dismissed the petitioner's subsequent motion to reconsider, concluding that the motion did not meet the requirements at 8 C.F.R. § 103.5(a)(2).

The petitioner filed an appeal to the AAO. On appeal, counsel for the petitioner asserted that a review of the evidence in its entirety establishes that the beneficiary meets at least three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Counsel asserted that the director misapplied the law or overlooked essential aspects or arguments of the case. The AAO dismissed the appeal, concluding that the petitioner failed to establish eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

Specifically, the AAO determined that the petitioner failed to establish eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) based upon the petitioner's failure to submit sufficient documentary evidence or other independent corroboratory evidence of the beneficiary's claimed awards.

The AAO determined that the petitioner failed to establish eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), as the petitioner failed to establish that the articles were "about" the beneficiary relating to his work. The AAO observed that of the two submitted articles, only one briefly mentioned the beneficiary. The other article did not mention the beneficiary at all. In addition, the AAO found that the petitioner failed to establish that [REDACTED] is a professional or major trade publication or other major media.

The AAO determined that the petitioner abandoned its claim of eligibility at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

The AAO determined that the petitioner failed to establish eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), finding that the petitioner failed to establish that the beneficiary has made original business-related contributions of major significance in his field.

The AAO determined that the petitioner failed to establish eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The AAO determined that the testimonial letters submitted as evidence under this criterion did not establish that the beneficiary's role for his prior employers was essential or critical to those companies as a whole. The AAO found that the petitioner's evidence does not demonstrate how the beneficiary's role differentiated him from the other copywriters or creative supervisors at those companies, or from other senior staff such as partners, divisional directors and department heads. The AAO determined that the documentation submitted did not establish that the beneficiary was responsible for the previous employers' success or standing to a degree consistent with the meaning of "essential or critical capacity."

The AAO determined that the petitioner abandoned its claim of eligibility at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).

Finally, the AAO determined that the petitioner failed to establish that the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) were not readily applicable to the beneficiary's occupation. Therefore, the AAO determined that the regulatory language precluded the consideration of comparable evidence under 8 C.F.R. § 214.2(o)(3)(iii)(C) in this case.

Counsel now files the instant motion to reconsider. On motion, counsel asserts that the AAO erred in its interpretation of the law and its consideration of evidence under the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(3) and (7). Counsel cites to *Buletini v. INS*, 860 F.Supp. 1222 (E.D. Mich. 1994) and *Muni v. INS*, 891 F.Supp. 440 (N.D. Ill. 1995) to support the motion.

Specifically, under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7), counsel asserts that the AAO erred by dismissing the significance of the testimonial letters without sufficient explanation. Counsel asserts that the testimonial letters explain what the beneficiary's role and his role's responsibilities were with his former employers. With respect to this criterion, counsel also asserts that the AAO added a requirement not found in the regulations by requiring that the beneficiary's role "be different from others in the relevant organization."

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), counsel asserts that the AAO failed to acknowledge that the [REDACTED] article [REDACTED] is actually about the advertising campaign promoting the Indian Government's [REDACTED] and the success of that advertising campaign. Counsel asserts: "[The AAO] fails to recognize that the campaign was the beneficiary's work; they are one in the same. As creative supervisor, he created and decided upon the actual advertisements that ran in the campaign . . . Therefore, the article was about him and focused on his work in the field."

On motion, counsel does not discuss any other regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) or the comparable evidence regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C).

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The AAO finds that the instant motion meets the requirements of a motion to reconsider. The petitioner has sufficiently stated the reasons for reconsideration and supported the motion by pertinent precedent decisions. Therefore, the AAO will grant the motion. Upon review of the record, and for the reasons discussed herein, the AAO will reaffirm its decision dismissing the appeal.

With respect to the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7), counsel asserts that the AAO erred by dismissing the significance of the testimonial letters without sufficient explanation. Counsel asserts: “[The AAO’s] explanation simply ignores what is stated in these letters. In fact, these letters do explain [the beneficiary’s] role and his role’s responsibility in the companies’ success.” Counsel also asserts that the AAO added a requirement not found in the regulations by requiring that the beneficiary’s role “be different from others in the relevant organization.”

Upon review of the testimonial letters, the AAO will affirm its previous finding that the petitioner failed to establish eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

With respect to the beneficiary’s employment at [REDACTED] (formerly [REDACTED]), the AAO finds that the testimonial letters fail to clearly specify the beneficiary’s role and his role’s duties in order to support the conclusion that the beneficiary was employed in a critical or essential capacity. Rather, these letters make vague and conclusory assertions regarding the beneficiary’s employment capacity. Conclusory assertions regarding the beneficiary’s employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

For instance, the letter from [REDACTED] states that the beneficiary joined [REDACTED] in 1989 as a junior copywriter, and left in 1998 as creative supervisor. The letter then states: “[The beneficiary] was in charge of several highly visible brands critical to the company’s success, brought acclaim to the company by regularly winning national and international advertising awards, and created some particularly exceptional work on [REDACTED].” This letter fails to clearly identify and explain the beneficiary’s role and his role’s duties with regards to the company’s “highly visible brands.” Simply stating that the beneficiary was “in charge” of major brands or that he “brought acclaim to the company,” without explaining what position the beneficiary held and his associated duties, is insufficient to establish the beneficiary’s employment capacity.

The letter from [REDACTED] states that the beneficiary joined [REDACTED] in 1989 as a junior copywriter, and left in 1998 as creative supervisor. The letter then states that the beneficiary “was in charge of high

profile multinational clients,” and that he “judg[ed] the work of his creative teams and [lead] them to produce effective advertising that delivered outstanding results for [the company’s] clients.” Again, this letter also fails to identify and explain with any specificity the beneficiary’s actual role and his roles’ duties with respect to the above. The writer’s conclusory assertion that the beneficiary “was a key individual at the New Delhi office, [redacted] largest office, and critical to our success,” is insufficient to establish the beneficiary’s employment capacity.

The letter from [redacted] states that the beneficiary joined [redacted] in 1989 as a junior copywriter, and left in 1998 as creative supervisor. The letter states that the beneficiary “was chosen to establish a satellite office for [redacted] in the city of [redacted] and that his “leadership at the creative department of this newly launched office helped make [redacted] the largest advertising agency in that city during its initial year of operation.” The letter also states that the beneficiary “was instrumental in helping the company win new business pitches,” was “variously responsible” for some of the company’s multinational clients, and “led a joint [redacted] and [redacted] team” on the [redacted] scheme. Again, the letter fails to identify and explain with any specificity what the beneficiary’s actual role and duties were in reference to the above. In addition, the letter fails to explain the significance of the [redacted] satellite branch to the overall company.

The letter from [redacted] states that the beneficiary joined [redacted] in 1989 as a junior copywriter, and left in 1998 as creative supervisor. The letter then focuses on the beneficiary’s responsibility “for judging and compiling the entire creative output of the New Delhi office, and submitting the company’s best work to the national/international award shows.” This letter explains the beneficiary’s specific responsibilities were to accept, review, and judge the company’s internal creative artwork, and decide which ones to enter in the various awards shows. The letter further states that this “was a critical task . . . since an advertising agency’s performance at the award shows is crucial to its reputation for excellence and winning new businesses.” While this letter provides more details regarding the beneficiary’s actual duties than the other letters above, the letter does not identify in what role the beneficiary performed these duties. The letter also fails to provide any detailed explanation of why the beneficiary’s duties of reviewing and submitting internal artwork to award shows was “crucial” for the overall organization. The letter’s vague assertion regarding the importance of awards to advertising agencies in general is insufficient to establish that the beneficiary himself contributed to the company’s success and that he was employed in a critical or essential capacity.

The letter from [redacted] states that the beneficiary “worked previously on the [redacted] brand” and “created the ground breaking Audio Visual film titled [redacted] in 1994.” The letter does not identify and explain with any specificity what the beneficiary’s actual role and associated duties were with regards to the company’s [redacted] account. Further, the letter does not explain the significance of the [redacted] film to the overall company.

The letter from [redacted] states that the beneficiary joined [redacted] in 1989, and was quickly promoted from Copy Trainee to Junior Copywriter, Copywriter, Senior Copywriter, and then Creative Supervisor when he left in 1998. While this letter explains the significance of the [redacted] campaign in particular, this

letter fails to provide any detailed explanation regarding the beneficiary's specific duties in execution of the company's high profile accounts and the [REDACTED] campaign.

The AAO observes that the letter from [REDACTED] states that the beneficiary joined [REDACTED] in 1989, and was promoted from Copy Trainee to Junior Copywriter, Copywriter, Senior Copywriter, and then Creative Supervisor.¹ The letter further states: "By definition, a copywriter is the driving force of an advertising agency and is therefore essential to its success. In each of his various capacities as a copywriter, [the beneficiary] not only has served in critical and essential roles, but has stood out as exceptional."

However, to allow the broad application of the term "critical or essential capacity" to include any lower-level position within the company, such as copy trainee or junior copywriter, would render the term meaningless. Neither the letter from [REDACTED] nor the petitioner has explained how the beneficiary's lower-level positions could constitute employment in a "critical or essential capacity" consistent with the purpose of the criterion, namely, to establish that the beneficiary is an alien of extraordinary ability.

Here, it is important to note that during the beneficiary's nine-year career at [REDACTED] the beneficiary apparently held various roles within the company, including copy trainer, junior copywriter, copywriter, senior copywriter, and creative supervisor.² However, the letters submitted under this criterion do not identify and explain which of the beneficiary's roles the writers were referring to when describing the beneficiary's responsibilities and employment capacity. Moreover, the petitioner submitted no evidence clearly delineating each of the beneficiary's positions and the position's associated duties and responsibilities, as well as when the beneficiary served in which positions. This lack of explanation and documentation is critical to the issue at hand, because the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7) focuses on the beneficiary's role itself, not the beneficiary's achievements. The lack of evidence identifying and explaining the beneficiary's actual roles and roles' responsibilities precludes a finding of eligibility under this criterion.

¹ In contrast, the other letters vaguely state that the beneficiary "joined . . . as a junior copywriter in 1989, and left in 1998 as creative supervisor." The beneficiary's resume indicates that he held the position of creative supervisor from June 1989 through January 1998.

² As stated above, the documentation in the record is inconsistent regarding the beneficiary's positions at [REDACTED]. See footnote 1 *supra*. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

On motion, counsel asserts that the letters “do explain [the beneficiary’s] role and his role’s responsibility in the companies’ success.” Counsel points to the letter from [REDACTED] asserting that this letter “specifically names [the beneficiary’s] role of creative supervisor, and in this role, ‘he was in charge of several highly visible brands critical to the company’s success. . . .” Counsel makes a similar assertion regarding the letter from [REDACTED]. However, counsel’s assertions are inaccurate. None of the submitted letters specifically state that the beneficiary was in charge of the company’s visible brands in his role as creative supervisor, as counsel claims. With specific reference to the letter from [REDACTED] this letter states that the beneficiary was in the writer’s business unit during 1994-1997 with a 1-year gap, and that the beneficiary was in charge of several highly visible brands; this letter does not specifying what the beneficiary’s actual position(s) was. Likewise, the letter from [REDACTED] states that the beneficiary was in charge of high profile multinational clients, without specifying what the beneficiary’s actual position(s) was. As discussed above, none of the submitted letters identified and explained which position(s) correlated to the job duties and responsibilities mentioned in the letters.

With respect to the beneficiary’s employment at [REDACTED] the petitioner submitted a letter from [REDACTED]. This letter states that the beneficiary “joined [REDACTED] (then [REDACTED]) in 1998 as Associate Creative Director responsible for the [REDACTED] business,” and that the [REDACTED] account was the company’s single largest account at the [REDACTED] New Delhi branch and the second nationwide. The letter does not explain with any specificity what the beneficiary’s actual duties were with regards to the company’s [REDACTED] account. Simply stating that he was the Associate Creative Director “responsible for” this account is insufficient to establish the nature of his employment capacity. This letter further mentions the beneficiary’s other duties of reviewing and evaluating a team of eight art directors and copywriters, helping his team “grow and created [sic] some of the agency’s best work” for the company’s clients, and serving on a panel to review and judge internal work. This letter does not provide any further detail regarding the beneficiary’s other duties and the significance of these other duties to the overall company.

With respect to the beneficiary’s employment at [REDACTED] the AAO finds that the letters submitted sufficiently establish that the beneficiary was employed in a critical or essential capacity as its Editor/Creative Director. However, as discussed above, the petitioner failed to establish that the beneficiary was employed in a critical or essential capacity for any other organizations and establishments of distinguished reputation. The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7) requires evidence that the beneficiary has been employed in a critical or essential capacity for *organizations* and *establishments* that have a distinguished reputation, in the plural. Significantly, not all of the criteria at 8 C.F.R. § 214.2(o)(3)(iii) are worded in the plural. Specifically, the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4) only requires service on a single judging panel. Moreover, when the regulation at 8 C.F.R. § 214.2(o) wishes to include the singular within the plural, it expressly does so, as when it states at 8 C.F.R. § 214.2(o)(3)(ii)(D) that the petitioner must submit a “written advisory opinion(s) from the appropriate consulting entity or entities.” Thus, the AAO can infer that the plural in any regulatory criterion has meaning.

In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.³

On motion, counsel asserts that the AAO added a requirement not found in the regulations by requiring that the beneficiary's role "be different from others in the relevant organization." Counsel's assertion is not persuasive and takes the AAO's statement out of context. In stating that "the petitioner's evidence does not demonstrate how the beneficiary's role differentiated him from the other copywriters or creative supervisors at those companies, or from other senior staff such as partners, divisional directors and department heads," the AAO first observed that the beneficiary may have served as part of a team that resulted in significant profit for the employer. The AAO's statement was intended to highlight the lack of evidence establishing that the beneficiary himself was responsible for the previous employers' success or good standing, as opposed to merely being a part of a larger team of employees. Without a clear understanding of how the beneficiary's role and duties differed from other employees – or even what the beneficiary's role and duties were- the petitioner cannot successfully assert that the beneficiary's role was in a critical or essential capacity within the meaning of the term. As discussed above, to allow the broad application of the term "critical or essential capacity" to include almost all positions within a company team would render the term meaningless.

In summary, the AAO affirms its prior conclusion that the evidence in the record fails to establish the beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). Upon review of the record, the AAO will also affirm its previous finding that the petitioner failed to establish eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), counsel asserts on motion that the AAO misevaluated the published articles about the beneficiary's work. In particular, counsel asserts that the [redacted] article, published by [redacted] was about the beneficiary and his work in the [redacted] advertising campaign. Counsel asserts: "[The AAO] fails to recognize that the campaign was the beneficiary's work; they are one in the same. As creative supervisor, he created and decided upon the actual advertisements that ran in the campaign . . . Therefore, the article was about him and focused on his work in the field."

Counsel's assertions on motion are unpersuasive. The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) requires that the published material be "about" the beneficiary, relating to his work in the field for which classification is sought. A plain reading of the [redacted] article reflects that the article is primarily "about" the [redacted] campaign, not primarily "about" the beneficiary. Moreover, counsel's assertion that "the campaign was the beneficiary's work; they are one in the same" is not supported by a plain reading of the article, which only briefly mentions the beneficiary, or by any other reliable evidence. To the contrary, the evidence in the record reflects that the [redacted] campaign was a

³ See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

collaborative effort between the Indian government, [REDACTED], and another advertising company. While the AAO does not doubt that the beneficiary contributed to the [REDACTED] campaign through his work at [REDACTED] there is no evidence to support counsel's assertion that the entire campaign "was the beneficiary's work; they are one in the same." See, e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

Regardless, on motion counsel fails to discuss address the AAO's finding that the petitioner failed to establish that [REDACTED] is a professional or major trade publication or other major media. As such, the AAO considers this particular issue to be abandoned. See *Sepulveda v. U.S. Attorney General*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiffs claims to be abandoned as he failed to raise them on appeal to the AAO). Ultimately, the AAO reaffirms its previous determination that the documentary evidence submitted by the petitioner does not meet the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

Finally, on motion, counsel does not contest the AAO's findings with respect to any other regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) or the comparable evidence regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C). Accordingly, the AAO will not reconsider the other previously claimed criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (4), (5), (8), and 8 C.F.R. § 214.2(o)(3)(iii)(C), will not further discuss them here.⁴

The AAO's review in this matter is narrowly limited to the reasons for reconsideration raised by the petitioner in the instant motion. In the current proceeding, counsel for the petitioner only contests the AAO's findings with respect to the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) and (7). Thus, even if the AAO had found counsel's assertions regarding the evidence under 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) and (7) to be persuasive, the petitioner would still have failed to establish eligibility under at least three of the six regulatory criteria as required by the regulation. Therefore, the proper conclusion in any case is that the applicant has failed to satisfy the regulatory requirement of three types of evidence. See *Kazarian v. USCIS*, 596 F.3d 1115, 1122 (9th Cir. 2010). The petitioner failed to establish that the AAO erred in dismissing the appeal.

⁴ In describing the letters submitted under 8 C.F.R. § 214.2(o)(3)(iii)(B)(7), counsel states, for the first and only time, that "[t]he Petitioner believes that these letters, when taken together with the other submitted evidence, show that at least two (2) of the criteria have been met: nationally or internationally recognized awards (§214.2(o)(3)(iii)(B)(1)); and essential or critical role in distinguished organization (§214.2(o)(3)(iii)(B)(7)). However, counsel does not make any other assertions regarding the criterion at §214.2(o)(3)(iii)(B)(1), including any explanation of why counsel believes the AAO's decision was incorrect with respect to this criterion. Since counsel did not identify any claimed error regarding this criterion, the petitioner's eligibility under §214.2(o)(3)(iii)(B)(1) is not properly before the AAO on motion to reconsider.

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NON-PRECEDENT DECISION

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In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The AAO's decision dated February 19, 2013 is reaffirmed. The petition remains denied.