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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

PUBLIC COPY

[redacted]

FILE: WAC 02 051 53314 Office: CALIFORNIA SERVICE CENTER Date: JUN 10 2003

IN RE: Petitioner: [redacted]
Beneficiary

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

ON BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, [redacted] Inc. [redacted] claims to be a subsidiary of an Egyptian company [redacted]. [redacted] states that it intends to export steel sheets and parts to Egypt and plans to purchase commercial and residential real estate in the United States. The U.S. entity was incorporated in the State of California on April 21, 2000. In November 2000, the U.S. entity petitioned the Bureau to classify the beneficiary as a nonimmigrant intracompany transferee (L-1). The Bureau approved the petition as valid from December 20, 2000 until December 19, 2001. The petitioner now endeavors to extend the petition's validity and the beneficiary's stay for three years. The petitioner seeks to employ the beneficiary's services as the U.S. entity's president at an annual salary of $68,000. On February 26, 2002, the director determined, however, that the beneficiary did not qualify as an executive or a manager. Consequently, the director denied the petition.

On March 20, 2002, the petitioner's counsel submitted a brief with additional evidence. In a separate filing, on March 25, 2002, the petitioner's counsel submitted additional evidence with a motion to reopen and reconsider. Although the director granted the motion to reopen the petition and evaluated the new evidence, she affirmed the prior decision denying the petition. While reconsidering the petition, the director held the March 20 brief and evidence submitted with it in abeyance. After affirming the denial, the director forwarded the March 20 brief with its evidence to the AAO for consideration. On appeal, the petitioner asserts that the beneficiary works in a primarily executive and managerial capacity.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. Furthermore, 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.

Under 8 C.F.R. § 214.2(l)(3), an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
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> (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.
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> (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization with the three years preceding the filing of the petition.
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> (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 serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Pursuant to 8 C.F.R. § 214.2(l)(14)(ii), a visa petition that involved the opening of a new office under section 101(a)(15)(L) may be extended by filing a new Form I-129, accompanied by:

> (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
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> (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The primary issue in this proceeding is whether the beneficiary has been and will be primarily performing managerial or executive duties. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means 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), provides:

> The term "executive capacity" means 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.

When examining the executive or managerial capacity of the beneficiary, the Bureau will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Moreover, a petitioner cannot claim that some of the duties of the proffered position entail executive responsibilities, while other duties are managerial. A petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are *either* in an executive *or* managerial capacity. *Id.* In this instance, counsel's March 20, 2002 brief asserts that the beneficiary will be serving as a manager and an executive; therefore, the petitioner must demonstrate that the beneficiary's responsibilities will meet the requirements of each capacity. On Form I-129, the petitioner described the beneficiary's proposed U.S. duties as:

> 1. Exercising a wide latitude in discretionary decision-making authority over day to day business operations, including overseeing the

company's finance, accounting and management functions;

2. Developing short and long range corporate goals and objectives for the enhancement of business;

3. Planning, developing and establishing [the petitioner's] policies in accordance with the corporate charter, as well as revising the company objectives and plans in accordance with current and future developments;

4. Developing company policies to coordinate [the petitioner's] business activities, including import/export, marketing and financial operations;

5. Negotiating and finalizing contracts and agreements with potential metal/stainless steel suppliers in the [United States];

6. Negotiating and entering into franchise agreement[s] with U.S. lines to own and operate their line of products in Egypt;

7. Contacting developers, contractors and real estate investors for the purchase of commercial and residential units;

8. Contacting travel agencies to introduce AMCO Travel and transportation lines between Hurghada/Sharm Sheikh and Hurghada and Saudi Arabia;

9. Coordinat[ing] with other travel agency services for the sale of [travel] packages to Egypt[; and]

10. Monitoring and evaluating the company's progress and performance by reviewing activity reports and financial statements.

On December 5, 2001, the director asked the petitioner to submit additional evidence "to establish that the beneficiary has been or will be performing the duties of a manager or executive with the U.S. company[.]" In particular, the director requested

detailed descriptions for the prior six months of specific goals and policies set, discretionary decisions made, and day-to-day duties accomplished. Additionally, the director requested an organizational chart not only depicting the beneficiary's position, but identifying the names, education, and duties of employees the beneficiary supervised.

On February 15, 2002, the petitioner responded by asserting that the beneficiary "exercised wide latitude in discretionary decision-making authority over day to day business operations . . . ." The claimed discretionary tasks included:

- Arranging for legal counsel and accounting services, obtaining business licenses, filing incorporation documents, opening a bank account, and opening a line of credit;
- Buying 60 percent of the shares in American Bike & Machine Industries, Inc. (ABM);
- Leasing office space for the petitioner and ABM;
- Incorporating Pacific League Corporation (Pacific League), which then purchased the Big Bear Lake Inn;
- Monitoring financial records of the petitioner, ABM, and Pacific League; and
- Hiring Woodbridge Hotels, Inc. (Woodbridge) to manage Big Bear Lake Inn.

The petitioner claimed that the beneficiary had set goals; however, the listed goals essentially restated the claimed discretionary tasks. Furthermore, the petitioner asserted:

> [The beneficiary] developed short and long range corporate goals and objects for the enhancement of business. [The beneficiary] planned, developed and established [the petitioner's] policies and procedures in accordance with the corporate charter, as well as revised the company objectives and plans in accordance with current and future developments. [The beneficiary] has further developed [the petitioner's] import/export, marketing and financial operations.

The February 15 letter also presented a list of the beneficiary's claimed day to day activities. This list essentially recapped the beneficiary's claimed discretionary duties with several additions:

> [The beneficiary] commence[s] his day by reviewing faxes and e-mails received from the Parent Company, [redacted]. After reviewing [redacted] activities, [the beneficiary] would advise his lower level executive to undertake action. He further updates [redacted] with the progress and goals of [the petitioner] on a day to day basis.
>
> [The beneficiary] contacts [redacted]. . . . to follow up on the progress of the manufacturing process as well as the company's daily activities, finances, accounting and future expansion. [The beneficiary] has made two (2) trips to . . . personally review and supervise [redacted]s] activities. Meanwhile, [the beneficiary] is currently appointing importers from Egypt for the purchase of the motorcycle spare parts [which [redacted] manufactured in the United States.

The petitioner provided an organizational chart as well as a narrative description of the organization. The chart and the narrative state that the petitioner comprises three divisions:

- Pacific League (50 percent ownership) (Big Bear Lake Motel);
- Import and export of steel; and
- ABM Industries (60 percent ownership) (design & sales of motorcycle parts).

The narrative and chart depict the import and export of steel as the only division over which the petitioner maintains 100 percent ownership and control. The import/export business has only one employee, namely, the beneficiary. The import/export business claims that it is seeking an administrative assistant. The narrative and chart indicate that ABM comprises five employees: a president/office manager; a vice president/shop manager, a CAD/CNC programmer, a design engineer, and a machine

shop supervisor. The narrative and chart state that the beneficiary supervises the ABM employees. Finally, the narrative reports that Big Bear Lake Inn has three employees: a general manager and two room attendants. In regard to Big Bear Lake Inn, the organizational chart places the beneficiary above Ahmed Kassem (VP/Secretary), the general manager, and the two room attendants. The following sections of the management services agreement between Woodbridge and Pacific League establish:

Section	Summary
1.1	Woodbridge is sole operator of Big Bear Lake Inn for the term the of agreement.
3.1.A.	Woodbridge has the authority to hire and fire the hotel's general manager.
3.1.B.	Woodbridge is responsible for hiring the entire hotel staff.
3.1.C.	Woodbridge is responsible for all of the hotel's administrative operations.
3.2.	Woodbridge may terminate the contract if the Big Bear Lake Inn's owners interfere with the hotel's operation.

The proposed duties on Form I-129 employed words and phrases such as "exercising a wide latitude," "overseeing," "developing short and long range corporate goals and objectives," "planning, developing and establishing . . . policies," "negotiating and finalizing," "contacting," "monitoring and evaluating," and "coordinating." These words and phrases are, however, generalities. For example, they do not identify what "short and long range corporate goals objectives" the beneficiary will develop. Similarly, the words and phrases fail to list any concrete "policies" which the beneficiary will plan, develop, or establish. Likewise, the February 15, 2002, letter again presents general terminology. For instance, the petitioner reports that the beneficiary "planned, developed and established . . . policies and procedures in accordance with the corporate charter . . . ." The petitioner did not enumerate any of these policies or procedures, however.

In sum, the petitioner described the beneficiary's duties in general terms, largely paraphrasing the statutory and regulatory executive and managerial requirements. Going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings. *Ikea US, Inc. v. INS,* 48 F.Supp. 2d 22, 24-5 (D.D.C. 1999); *see generally Republic of Transkei v. INS,* 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, counsel's assertions do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980).

The Form I-129 and the February 15, 2001 letter further describe the beneficiary's duties as largely negotiating contracts with metal and steel suppliers, travel agencies, and real estate developers, contractors, and investors. These duties primarily appear to comprise marketing tasks. Marketing duties, by definition, qualify as performing a task necessary to provide a service or produce a product. An employee who primarily performs the tasks necessary to produce a product or provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International,* 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner contends that the beneficiary qualifies as a manager because he supervises and controls the work of other supervisory, professional, or managerial employees. As indicated on the organizational chart and related narrative, the petitioner comprises three divisions. The petitioner asserts that, as president, of the "import & export of steel" division, the beneficiary will supervise an administrative assistant. However, as of the filing date of the application, the petitioner had not hired the administrative assistant. The Bureau may not approve a visa petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire,* 17 I&N Dec. 248, 249 (Reg. Comm. 1978). The Bureau will adjudicate the appeal based only on the record proceedings before the director. *See Matter of Soriano,* 19 I&N Dec. 764 (BIA 1988). Thus, the presence of the proposed administrative assistant cannot establish that the beneficiary will serve in a managerial capacity.

Moreover, to qualify as a manager, the beneficiary must supervise a subordinate staff of professional, managerial, or supervisory personnel who can relieve him from performing nonqualifying duties. The petitioner, however, submitted no evidence setting forth the duties the administrative assistant would perform. Therefore, it is impossible for the Bureau to discern from the record whether the administrative assistant would serve in a supervisory, professional, or managerial capacity. *Ikea US, Inc. v. INS, supra; see generally Republic of Transkei v. INS, supra; Matter of Treasure Craft of California, supra.* Thus, the petitioner failed to demonstrate that the administrative assistant would relieve the beneficiary from performing nonqualifying duties.

Additionally, as previously discussed, the February 15, 2001 letter claims that the beneficiary would "[a]fter reviewing AMCO Egypt's activities . . . advise his lower level executive to undertake action." The organizational chart and its accompanying narrative do not, however, name the lower level executive or describe that person's duties. The petitioner must provide independent objective evidence to resolve any inconsistencies in the record. Failure to provide such proof may cast doubt on the reliability and sufficiency of the remaining evidence. *Matter of Ho,* 19 I&N Dec. 582, 591-2 (BIA 1988). In short, the inconsistency between the February 15 letter and the organizational chart raises doubts about the petitioner's evidence.

The organizational chart, its accompanying narrative, and the February 15 letter suggests that the beneficiary may supervise professionals at ABM and Pacific League. The relationship between the petitioner and ABM is unclear, however. According to ABM's stock certificate number one, the company authorized 9,000 shares to be issued. On October 26, 2001, the petitioner purchased 2,400 shares of ABM stock. The record further indicates that the petitioner owns 60 percent of ABM's stock, while Thomas E. Conrad and Arlyn Westerberg each own 20 percent of the remaining stock. Sixty percent of all authorized stock would, however, equal 5,400 shares, and 20 percent of all authorized stock would equal 1,800 shares. The record however, contains no stock certificates showing that 1,800 shares were sold to either Thomas E. Conrad or Arlyn Westerberg. Moreover, the record does not account for the other 3,000 shares which may have been sold to the petitioner. This inconsistent, incomplete evidence casts doubt on whether the beneficiary actually has the

authority to manage ABM. *Matter of Ho, supra; Ikea US, Inc. v. INS, supra; see generally Republic of Transkei v. INS, supra; Matter of Treasure Craft of California, supra.*

Assuming that ABM's relationship to the petitioner were clear, it is still questionable whether the beneficiary functions in a managerial capacity over ABM's employees. First, the petitioner fails to identify with specificity how the beneficiary manages ABM. For example, as previously discussed, the petitioner claimed the beneficiary "follow[s] up on the progress of [ABM's] manufacturing process as well as the company's daily activities, finances, accounting and future expansion." Furthermore, the beneficiary has visited ABM's premises only twice. Thus, the beneficiary's involvement with the company appears to be undefined and tangential. *Ikea US, Inc. v. INS, supra; see generally Republic of Transkei v. INS, supra; Matter of Treasure Craft of California, supra.*

Second, despite titles which include the terms "president" and "v[ice] p[resident]," it appears doubtful that either [redacted] or [redacted] functions in a managerial or executive capacity; instead, it appears that Mr. [redacted] and Mr. [redacted] perform the daily tasks needed to manufacture motorcycle parts. Specifically, Mr. [redacted] "manages and supervises the operations of [ABM], including accounting, purchasing, financing and sales." Similarly, Mr. [redacted] "manages and supervises the shop [and is] responsible for sales, purchases, and maintains all equipment." In sum, the duties Mr. [redacted] and Mr. [redacted] actually perform casts doubt on the use of executive titles. *Matter of Ho, supra*

In regard to the third division, Big Bear Lake Inn, the record reveals that the beneficiary neither directly manages nor controls any of Big Bear Lake Inn's employees. Specifically, as set out earlier, the contract between Big Bear Lake Inn and Pacific League explicitly forbids Pacific League employees - the beneficiary, for example - from supervising personnel at the motel. Furthermore, although the record suggests that the beneficiary supervises Pacific League vice president and secretary [redacted] the evidence contains no description of Mr. [redacted] duties. Therefore, it is impossible for the Bureau to determine whether Mr. [redacted] could relieve the beneficiary of nonqualifying duties.

The record raises a further deficiency concerning the beneficiary's alleged duties. Specifically, the petitioner submitted no information to establish the percentage of time the beneficiary actually performs or will perform the claimed managerial and executive duties. As plainly stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive in nature. *See* Section 101(a)(44)(A) and (B) of the Act. Furthermore, the petitioner bears the burden of documenting what proportion of the beneficiary's duties will be managerial and executive and what proportion will non-managerial and non-executive. *Republic of Transkei v. INS, supra* at 177. Given the lack of these percentages, the record cannot demonstrate that the beneficiary will function primarily as a manager and executive.

Summing up, the beneficiary qualifies as neither an executive nor a manager. The petitioner failed to list duties with adequate specificity to demonstrate that the beneficiary serves in a primarily managerial or executive capacity. Additionally, the petitioner has not demonstrated that any employees are able to assume the beneficiary's nonqualifying duties. Finally, the beneficiary appears to be primarily engaged in producing a product or service, namely, importing and exporting steel. Therefore, the AAO will not disturb the director's finding that the beneficiary does not serve in an executive or managerial capacity.

On appeal, the petitioner asserts that the U.S. entity's small size should not preclude the beneficiary from functioning in a managerial or an executive capacity. The AAO recognizes that an entity's size does not necessarily decide the question of managerial or executive capacity. *See* Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). Instead, the duties of the proffered position must be the critical factor. Section 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A) and (B). As established previously, however, the beneficiary is not only performing tasks required to provide a service or produce a product, but has no staff to relieve him of those duties. Thus, regardless of the U.S. entity's size, the petitioner has not established that the beneficiary is primarily functioning as an executive or a manager.

The petitioner also cites unpublished cases to support its view that the U.S. entity's small number of employees should not prevent the beneficiary from serving in a managerial or an

executive capacity. While 8 C.F.R. § 103.3(c) provides that the published Bureau precedent decisions are binding on all Bureau employees in the administration of the Act, unpublished decisions are not similarly binding. Consequently, despite the U.S. entity's small number of employees, the director permissibly denied the petition.

On appeal, the petitioner argues that because it "was only operating for less than a year and was deemed to be in its . . . developmental stage, [it] should have been afforded the [benefit of the] [']new business rule.[']" The AAO acknowledges that, under 8 C.F.R. § 214.2(l)(3)(v)(C), a United States entity must, within one year of opening a new office, be able to support an executive or managerial position as defined at 8 C.F.R. § 214.2(l)(1)(ii)(B) or (C). Also, the AAO recognizes that, during the first year, a beneficiary may perform duties which may include tasks necessary to produce a product or a service.

In this instance, the U.S. entity became incorporated in California on April 21, 2000; therefore, the first year of operation was from April 21, 2000 to April 20, 2001. During that year, the U.S. entity petitioned the Bureau to classify the beneficiary as a nonimmigrant intracompany transferee. The Bureau approved the petition as valid from December 20, 2000 until December 19, 2001. Therefore, by December 2001, when the petitioner requested a three year extension for the beneficiary's stay, the office had been doing business for more than one year and should have already been able to support a manager or executive. Given that the U.S. entity was no longer a new office when the petition for an extension was filed, the director properly determined whether the beneficiary would be serving in a primarily managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(14)(ii)(C) and (D). There is no provision in the statute or regulations that would allow a petitioner to extend its initial "new office" start up status. The petitioner must be able to support an executive or managerial position within one year of opening a new office. In short, the petitioner cannot avail itself of the new office provisions to qualify the beneficiary as either a manager or an executive and this issue need not be examined further.

Finally, the petitioner asserts that, because the U.S. entity has presented "evidence of ongoing business operations," the Bureau should grant the petition. Under, 8 C.F.R. § 214.2(l)(1)(ii)(H), "doing business" is defined as: "The

regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States."[1] The record is, in fact, unclear whether the petitioner is doing business. For example, the record contains a letter of credit issued to the petitioner to purchase steel on one occasion. A single transaction does not qualify as "doing business" under the regulations. However, even if it were assumed that the petitioner is doing business, the petitioner would still have to demonstrate that the beneficiary is serving in a primarily executive or managerial capacity. As previously established, the record fails to show that the beneficiary has or will be serving in a primarily managerial or executive capacity. Therefore, the question of whether the petitioner is doing business need not be examined further.

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; *Transkei*, 923 F.2d at 178 (holding burden is on the petitioner to provide documentation); *Ikea*, 48 F.Supp at 24-5 (requiring the petitioner to provide adequate documentation). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

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[1] The petitioner cites *Boyang, Ltd. v. INS*, 67 F.3d 305 (1995) to support this argument. First, the AAO notes that the case is unpublished; thus, it lacks precedential value. Second, the court decided the case on grounds other than whether the petitioner was doing business in the United States as defined by the statute.