U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-, INC.

DATE: MAR. 2, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an owner and operator of a restaurant, seeks to permanently employ the Beneficiary as a cook specializing in Chinese cuisine under the immigrant classification of skilled worker. *See* Immigration and Nationality Act (the Act) § 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

The Director, Nebraska Service Center, denied the petition on June 22, 2015. The Director concluded that the record did not establish the Petitioner's continuing ability to pay the proffered wage from the petition's priority date onward.

The matter is now before us on appeal. The Petitioner argues that the Director misconstrued the purpose of the ability-to-pay regulations and erred in discounting the personal assets of its president/sole shareholder. Upon *de novo* review, we will dismiss the appeal.

I. ABILITY TO PAY THE PROFFERED WAGE

A petitioner must demonstrate its ability to pay a proffered wage from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

In the instant case, the petition's priority date is July 30, 2011, the date the U.S. Department of Labor (DOL) accepted the accompanying ETA Form 9089, Application for Permanent Employment Certification (labor certification), for processing. *See* 8 C.F.R. § 204.5(d).[1]

A. The Proffered Wage

The accompanying labor certification states the proffered wage of the offered position of Chinese specialty cook as "$226,000" per year. However, this amount appears to reflect a typographical

[1] The record indicates the Petitioner's timely submission of the labor certification in support of a prior, unsuccessful petition on behalf of the Beneficiary. *See* 20 C.F.R. § 656.30(b)(1) (stating that an approved labor certification granted after July 16, 2007 expires if not filed in support of a petition within 180 calendar days of its certification date).

error. The Form I-140, Immigrant Petition for Alien Worker, and its supporting documentation state the proffered wage as "$26,000" per year. The labor certification states the prevailing wage as $25,334 per year. *See* 20 C.F.R. § 656.10(c)(1) (requiring an employer to attest that the proffered wage equals or exceed the prevailing wage).

The Petitioner did not explain the discrepancy between the proffered wage amounts on the Form I-140 and the accompanying labor certification as the Director asked in his request for evidence (RFE) of January 24, 2013, in the prior visa petition proceedings. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence). However, in response to the RFE, the Petitioner submitted a June 30, 2011, letter from the Oregon Employment Department, indicating advertisement of the offered position in a job order at an annual salary of $26,000.[2]

The Petitioner did not state that the proffered wage of $226,000 listed on the accompanying labor certification was incorrect and inadvertent. However, the record demonstrates the Petitioner's advertisement of the offered position to U.S. workers at an annual salary of $26,000, indicating an intended annual proffered wage of $26,000. Therefore, like the Director, despite the contrary amount stated on the accompanying labor certification, we will consider the proffered wage of the offered position to be $26,000 per year for the purposes of this discussion.

B. The Petitioner's Annual Amounts of Net Income and Net Current Assets

In determining a petitioner's ability to pay, we first examine whether it paid a beneficiary the full proffered wage each year from a petition's priority date. If a petitioner did not pay a beneficiary the full proffered wage each year, we next examine whether it possessed sufficient annual amounts of net income or net current assets to pay the differences between wages paid, if any, and the proffered wage. If a petitioner's amounts of net income or net current assets are insufficient to demonstrate its ability to pay the proffered wage, we may also consider other evidence of its ability to pay. *See Matter of Sonegawa,* 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).[3]
In the instant case, the record does not indicate any payments by the Petitioner to the Beneficiary. The record therefore does not demonstrate the Petitioner's ability to pay the proffered wage based on wages paid to the Beneficiary.

The record contains copies of the Petitioner's federal income tax returns from 2011 through 2014. The tax returns reflect the following annual amounts of net income and net current assets:

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[2] The Petitioner also submitted a copy of a newspaper advertisement for the offered position and an identical position. However, the ad does not contain proffered wage(s). *See* 20 C.F.R. §§ 656.17(f)(5), (7) (indicating that employers need not include proffered wages in newspaper ads).

[3] Federal courts have upheld our method of determining a petitioner's ability to pay. *See Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984); *see also River St. Donuts, LLC v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Estrada-Hernandez v. Holder*, -- F. Supp. 3d --, 2015 WL 3634497, *5 (S.D. Cal. 2015); *Rivzi v. Dep't of Homeland Sec.*, 37 F. Supp. 3d 870, 883-84 (S.D. Tex. 2014), *aff'd*, -- Fed. Appx. --, 2015 WL 5711445, *1 (5th Cir. Sept. 30, 2015).

Year	Net Income[4]	Net Current Assets
2011	$23,237	-$15,078
2012	-$1,700	-$21,040
2013	$2,825	$15,685
2014	$12,104	-$13,564

None of the annual amounts of net income or net current assets equal or exceed the annual proffered wage of $26,000. Thus, based on examinations of the wages paid to the Beneficiary by the Petitioner and its annual amounts of net income and net current assets, the record does not establish its ability to pay the proffered wage from the petition's priority date onward.

C. Another Pending Petition

Also, USCIS records indicate the Petitioner's filing of an additional Form I-140 on behalf of another beneficiary that remained pending after the instant petition's priority date.[5]

A petitioner must demonstrate its ability to pay the proffered wage of each petition it files. *See* 8 C.F.R. § 204.5(g)(2). Therefore, the instant Petitioner must demonstrate its ability to pay the combined proffered wages of the instant Beneficiary and the beneficiary of the other petition that remained pending after the instant petition's priority date. The Petitioner must demonstrate its ability to pay the combined proffered wages from the instant petition's priority date until the other beneficiary obtained lawful permanent residence, or until the other petition was denied, withdrawn, or revoked. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of petition where the petitioner did not demonstrate its ability to pay multiple beneficiaries).

The proffered wage of the Petitioner's other pending petition is also $26,000 per year. USCIS records indicate that the Petitioner did not pay any wages to the other beneficiary. As previously discussed, the record does not demonstrate the Petitioner's ability to pay the proffered wages of the instant Beneficiary based on examinations of the wages it paid to him and its annual amounts of net income and net current assets. Therefore, based on the same analysis, the record also does not establish the Petitioner's ability to pay the combined proffered wages of both beneficiaries.

[4] The record indicates the Petitioner's filings of its federal income tax returns as an S corporation. S corporations with income adjustments from sources other than their trades or businesses report their reconciled income amounts on Schedules K of IRS Forms 1120S, U.S. Income Tax Returns for S Corporations. *See* U.S. Internal Revenue Serv., Instructions to Form 1120S, 22, at https://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed Jan. 14, 2016). Because the Petitioner reported income adjustments in 2011 and 2013, our annual net income amounts for 2011 and 2013 refer to the reconciled income amounts on lines 18 of the Schedules K of the Petitioner's tax returns for those years.

[5] USCIS records identify the receipt number of the other pending petition as [redacted] That petition is also before us on appeal. However, we will address that appeal in a separate decision.

D. The Petitioner's Arguments

The Petitioner argues that a demonstration of ability to pay is not intended to "guarantee" payment of a beneficiary's proffered wage, but rather "to provide some reasonable indicia of the good faith nature of the . . . employer's job offer." Citing *Construction & Design Co. v USCIS*, 563 F.3d 593 (7th Cir. 2009), the Petitioner argues that demonstration of ability to pay is designed to prevent employers from sponsoring foreign workers without intending to actually employ them.

The *Construction & Design* decision was not issued by a U.S. court of appeals with jurisdiction over the area of intended employment in this matter. It therefore does not bind us in this case. *See Matter of U. Singh*, 25 I&N Dec. 670, 672 (BIA 2012) (holding that an agency need not apply the law of a circuit in cases arising outside that jurisdiction).

Also, *Construction & Design* interprets the purpose of the ability-to-pay requirement based on statements from a U.S. Attorney's Office. *Constr. & Design*, at 594 (citing Dep't of Justice, U.S. Atty's Office for the S. Dist. of Iowa, "Media Release: 11 Arrested, Indicted in Multi-State Operation in Targeting Visa and Mail Fraud," Feb. 12, 2009)). We do not find the statements of another agency regarding the purpose of USCIS regulations to be authoritative.

A review of regulatory history shows that the ability-to-pay regulation at 8 C.F.R. § 204.5(g)(2) was intended to implement pre-existing case law. *See* Proposed Rule for Employment-Based Immigrants, 56 Fed. Reg. 30703, 30704 (July 5, 1991) (stating that the regulations will reflect the case-law requirement that a petitioner demonstrate its ability to pay as of a petition's priority date).

In *Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977), the petitioning corporation suffered operating losses in a 12-month period before the petition's filing, but asserted its ability to pay the proffered wage in the future. *Id.* at 143-44. However, the Acting Regional Commissioner of the former Immigration and Naturalization Service (INS) held that a petitioner must demonstrate its ability to pay from a petition's priority date. *Id.* at 145. "The petitioner in the instant case cannot expect to establish a priority date for visa issuance for the beneficiary when at the time of making the job offer and the filing of the petition with this Service he could not, in all reality, pay the salary as stated in the job offer." *Id.* The decision also cited the purpose of the Act's labor certification requirement "to provide strong safeguards for American labor and to provide American labor protection against an influx of aliens entering the United States for the purpose of performing skilled or unskilled labor where the economy of individual localities is not capable of absorbing them at the time they desire to enter this country." *Id.* at 144 (quoting H.R. Rep. No. 1365 (1952), *reprinted in* 1952 U.S.C.C.A.N. 1705).

Thus, contrary to the Petitioner's argument, we find *Great Wall* to govern the purpose of the ability-to-pay regulations in this matter. *Great Wall* indicates that the ability-to-pay requirement is intended not merely to confirm a petitioner's intention to employ a beneficiary, but its financial ability to pay a specified proffered wage from a petition's priority date onward.

The Petitioner also argues that USCIS erred in refusing to consider the personal assets of its president/sole shareholder in determining its ability to pay. Copies of the Petitioner's tax returns from 2008 through 2014 indicate loans totaling more than $325,000 from the president/sole shareholder to the corporation. The Petitioner asserts that cases cited by USCIS in support of its refusal are distinguishable from the instant matter.

The Director's decision cited *Matter of Aphrodite Invs., Ltd.*, 17 I&N Dec. 530 (Comm'r 1980) and *Sitar Rest. v. Ashcroft*, No. Civ. A. 02-30197-MAP, 2003 WL 22203713 (D. Mass. Sept. 18, 2003) for the proposition that USCIS cannot consider the personal assets of shareholders in determining a corporation's ability to pay a proffered wage. The Petitioner notes that ability to pay was not at issue in *Aphrodite*. It also argues that *Sitar* is distinguishable from the instant case because a corporate director in *Sitar* sought to guarantee a beneficiary's proffered wage "without any evidence that he or she had funded the applicant restaurant."

Although *Aphrodite* did not involve a petitioner's ability to pay, the Director appropriately cited the case's specific holding that a corporation is "a separate legal entity from its owners or even its sole owner." *Aphrodite*, 17 I&N Dec. at 531. *Aphrodite* in turn cited *Matter of M-*, 8 I&N Dec. 24 (BIA 1958; A.G. 1958), which stated:

> It is an elementary rule that a corporation is a legal entity entirely separate and distinct from its stockholders; and this is true even though one person may own all or nearly all of the capital stock. . . . The fact that one person owns a majority or all of the stock in a corporation does not, of itself, make him liable for the debts of the corporation, and this rule applies even where an individual incorporated his business for the sole purpose of escaping individual liability for corporation debts.

M-, 8 I&N Dec. at 50-51 (citations omitted).

Thus, *Aphrodite* supports the Director's finding that USCIS cannot consider the personal assets of the Petitioner's president/sole shareholder because he lacks any legal obligation to pay the proffered wage on behalf of the corporation.

Similarly, *Sitar* found that "[t]he regulation at 8 C.F.R. § 204.5(g)(2) does not permit the AAO to consider the financial resources of individuals or entities with no legal obligations to pay a proffered wage." *Sitar*, 2003 WL 22203713 at *3. Whether the corporate director who offered to pay the beneficiary's wage in *Sitar* had funded the restaurant was immaterial. The court ruled that, absent a legal obligation by the director to pay the proffered wage, USCIS "had no need to determine whether his income was sufficient to pay [the beneficiary's] salary." *Id.* Like the petitioner in *Sitar*, the instant Petitioner does not provide any authority to support its argument that we must consider the promise of its president/sole shareholder to pay the proffered wage.

The Petitioner argues that other cases have considered assets of companies and individuals other than petitioners in determining ability to pay. In *Matter of Ohsawa Am.*, 1988-INA-00240, 1988

WL 235836 (BALCA Aug. 30, 1988), the Petitioner argues that the Board of Alien Labor Certification Appeals (BALCA) approved reliance on a financial commitment by a major shareholder of an employer. In *Matter of Ranchito Coletero*, 2002-INA-00105, 2004 WL 192974 (BALCA 2004) (*en banc*), the Petitioner argues that BALCA considered the personal assets of a sole proprietor. In *Full Gospel Portland Church v. Thornburgh*, 730 F. Supp. 441 (D.D.C. 1988), *reversed in part on other grounds* at 927 F.2d 628 (D.C. Cir. 1991), the Petitioner argues that a U.S. district court considered financial support from a church's parent organization.

In *Ohsawa America*, the employer corporation reported losses and negative working capital at the time of the labor certification's filing. *Ohsawa America*, 1988 WL 235836 at *3. Nonetheless, a BALCA panel found the employer's demonstration of funds sufficient to pay the proffered wage based in part on the financial worth and continuing financial support of a major shareholder. *Id.*; *see also* 20 C.F.R. § 656.10(c)(3) (requiring an employer to attest to its possession of "enough funds available to pay the wage or salary offered the alien").

We do not find the decision in *Ohsawa America* persuasive. BALCA decisions do not bind us. Moreover, in addition to the shareholder's personal worth and willingness to continue funding the employer, the panel in *Ohsawa America* considered evidence that the employer had "increased sales and reduced operating losses." *Id.* The instant record does not similarly establish a pattern of increased sales and reduced operating losses by the Petitioner.

In *Ranchito Coletero*, the BALCA held that individual assets may be considered when assessing a sole proprietorship's ability to pay a proffered wage. *Ranchito Coletero*, 2004 WL 192974 at *3. However, the record establishes the instant Petitioner as a corporation, not a sole proprietorship. We therefore do not find *Ranchito Coletero* persuasive in this matter.

The Petitioner argues that its president/sole shareholder effectively constitutes a sole proprietor. It argues that he has a substantial interest in the Petitioner's financial success because he owns the building in which the Petitioner is housed and relies on the Petitioner's rental payments to fund the building's mortgage.[6] However, unlike a sole proprietor, the Petitioner's president/sole shareholder lacks personal liability for the Petitioner's debts and obligations. We therefore decline to treat him as a sole proprietor by considering his personal assets.

In *Full Gospel Portland Church*, the court reopened the revocation of a petition's approval in part because the court found that INS erred in refusing to consider the promised financial support of the petitioning church's national organization. *Full Gospel*, 730 F. Supp. at 449. The court stated:

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[6] The record identifies the Petitioner's president/sole shareholder as a member of a limited liability company (LLC) that owns the building in which the Petitioner is housed. The Petitioner submitted a copy of an April 4, 2013, amended LLC operating agreement, identifying the Petitioner's president/sole shareholder as the LLC's sole member. However, online government records also identify his spouse as an LLC member. *See* Or. Sec'y of State, Corp. Div., at [redacted] (accessed Jan. 14, 2016). The record does not explain the discrepancy in the number of LLC members.

> Clearly, if Full Gospel [church] is financially linked to the larger church, the INS must consider these resources. New divisions in businesses or new parishes of larger churches may not themselves be financially profitable, but if documents show that they may rely on the larger body for support, it is arbitrary and capricious for the INS not to consider the resources of the larger organization in making its evaluation to pay.

Id. at 449-50.

We are not bound to follow published decisions of U.S. district courts, even in cases arising within the same district. *Matter of K-S-*, 20 I&N Dec. 715, 718 (BIA 1993). Even if we were, however, the instant case appears distinguishable from *Full Gospel*. Unlike the national church in *Full Gospel*, the Petitioner's president/sole shareholder is not its "larger organization." Rather, the Petitioner is a separate legal entity from its president/sole shareholder.

Moreover, *Full Gospel*'s decision is inconsistent with the ability-to-pay regulations and their purpose. We agree with the U.S. district court in *Sitar* that 8 C.F.R. § 204.5(g)(2) "does not permit [us] to consider the financial resources of individuals or entities with no legal obligations to pay a proffered wage." *Sitar*, 2003 WL 22203713 at *3. Also, recognizing promises to pay proffered wages by companies or individuals without legal obligation to do so would not result in realistic job offers and protect the jobs of U.S. laborers pursuant to the purpose of the ability-to-pay regulations. *See Great Wall*, 16 I&N Dec. at 144-45.

For the foregoing reasons, the Petitioner's arguments do not establish its ability to pay the proffered wage.

E. Matter of Sonegawa

However, we agree with the Petitioner that we must consider factors beyond its net income and net current assets in determining its ability to pay to pay the proffered wage. As previously indicated, we may consider other evidence of a petitioner's business activities in determining its ability to pay. *See Sonegawa,* 12 I&N Dec. at 614-15.

In *Sonegawa*, the petitioner conducted business for more than 11 years, routinely earning a gross annual income of about $100,000 and employing at least four full-time workers. *Id.* at 612. In the year of the petition's filing, however, the petitioner's financial documentation did not reflect its ability to pay the proffered wage. *Id.* at 614. During that year, it relocated its business, causing it to pay rent on two locations for a five-month period, to incur substantial moving costs, and to briefly suspend its business operations. *Id.* Despite these setbacks, the Regional Commissioner determined that the petitioner would likely resume successful business operations and had established its ability to pay the proffered wage. *Id.* at 615. The record established the petitioner as a fashion designer whose work had been featured in national magazines. *Id.* Her clients included the then Miss Universe, movie actresses, society matrons, and women on lists of the best-dressed in California. *Id.*

The record also indicated the petitioner's frequent lectures at design and fashion shows throughout the United States and at California colleges and universities. *Id.*

As in *Sonegawa*, we may consider such factors as: the number of years a petitioner has conducted business; the growth of its business; its number of employees; the occurrence of any uncharacteristic business expenditures or losses, its reputation in its industry; whether a beneficiary will replace a current employee or outsourced service; or other evidence of the petitioner's ability to pay the proffered wage.

In the instant case, the record indicates the Petitioner's continuous business operations since [redacted]. The Petitioner employs 12 people, although its president/sole shareholder stated that most of them work on a part-time basis. Its tax returns from 2008 through 2014 reflect largely stable gross annual revenues and costs of labor.

The Petitioner's president/sole shareholder stated the Beneficiary's possible replacement of current part-time cooks. However, the proposed replacement was not definite. The Petitioner also did not provide evidence of the hours and wages of the cooks to be replaced. *See Matter of Soffici*, 22 I&N Dec. 358, 365 (Comm'r 1998) (citation omitted) (finding that unsupported assertions do not meet the burden of proof in visa petition proceedings).

Unlike in *Sonegawa*, financial documents do not reflect the instant Petitioner's ability to pay the proffered wage in any relevant year. The record also does not indicate any uncharacteristic business expenditures or losses. Also unlike in *Sonegawa*, the instant Petitioner must demonstrate its ability to pay the combined proffered wages of two beneficiaries. Thus, assessing the totality of the circumstances in this individual case, the record does not establish the Petitioner's continuing ability to pay the proffered wage pursuant to *Sonegawa*.

For the foregoing reasons, the record does not establish the Petitioner's continuing ability to pay the proffered wage from the petitions' priority date onward. We will therefore affirm the Director's decision and dismiss the appeal.

II. THE BENEFICIARY'S QUALIFYING EXPERIENCE

Beyond the Director's decision, the record also does not establish the Beneficiary's qualifying experience for the offered position.

A petitioner must establish a beneficiary's possession of the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(l), (12); *see also Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating a beneficiary's qualifications, we must examine the job offer portion of an accompanying labor certification to determine the minimum requirements of the offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See*

K.R.K. Irvine, Inc. v. *Landon,* 699 F.2d 1006, 1009 (9th Cir. 1983); *see also Madany* v. *Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc.* v. *Coomey,* 661 F.2d 1, 3 (1st Cir. 1981).

In the instant case, the accompanying labor certification states the minimum requirements of the offered position of Chinese specialty cook as 24 months experience in the job offered. The labor certification does not require any education or training. Part H.14 of ETA Form 9089 states that the offered position does not require any special skills or other requirements "beyond use of kitchen tools and utensils traditionally & normally used in performance of listed job duties: stoves, woks etc."

The Beneficiary attested on the accompanying labor certification to almost 16 years of full-time qualifying experience before the petition's priority date. The Beneficiary stated employment as a cook by [redacted] China from December 1, 1995 to July 30, 2011. The Beneficiary also stated his employment as a cook's assistant at the same restaurant from March 1, 1992 to December 1, 1995.

A petitioner must support a beneficiary's claimed qualifying experience with a letter from an employer. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letter must provide the name, address, and title of the employer, and a description of a beneficiary's experience. *Id.*

The Petitioner submitted an October 28, 2004, "certificate of work experience" stating the Beneficiary's employment by [redacted] as a kitchen helper from March 1992 to November 1995 and as a cook since December 1995. However, contrary to 8 C.F.R. § 204.5(l)(3)(ii)(A), the certificate does not include the name or title of the employer or describe the Beneficiary's experience. The certificate therefore does not establish the Beneficiary's claimed qualifying experience.

The Petitioner also submitted a July 8, 2012, "employment certification" from a manager of a "food restaurant." The certification states the Beneficiary's employment as a cook since 2007 and describes his duties.

However, the record does not establish issuance of the 2004 and 2012 documents by the same employer claimed by the Beneficiary on the accompanying labor certification. Both documents state the Beneficiary's employment in the same city. However, the 2012 certification generically identifies the employer as a "food restaurant." The record therefore does not establish the certification's issuance by [redacted] as specified on the labor certification. *See Ho*, 19 I&N Dec. at 591-92 (requiring petitioners to resolve inconsistencies of record by independent, objective evidence).

Also, the 2012 certification states the start date of the Beneficiary's qualifying employment as a cook as "2007." The Beneficiary attested on the accompanying labor certification that his employment as a cook began on December 1, 1995. The unexplained discrepancy in the Beneficiary's start date of employment casts further doubt on his claimed qualifying experience. *Id.*

For the foregoing reasons, the record does not establish the Beneficiary's possession of the qualifying experience for the offered position by the petition's priority date. We will therefore dismiss the appeal for this additional reason.

III. CONCLUSION

The record does not establish the Petitioner's continuing ability to pay the proffered wage from the petition's priority date onward. We will therefore affirm the Director's decision and dismiss the appeal. In addition, the record does not establish the Beneficiary's possession of the qualifying experience for the offered position by the petition's priority date. We will therefore also dismiss the appeal on this ground.

The petition will be denied for reasons indicated above, with each considered an independent and alternative basis for denial. In visa petition proceedings, a petitioner bears the burden of proving eligibility for the benefit sought. INA § 291; 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner did not meet that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of E-, Inc.*, ID# 15944 (AAO Mar. 2, 2016)