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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: NOV 0 5 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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,

Ron Rosenberg
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the preference visa petition. The director dismissed the petitioner's two subsequent motions to reopen and reconsider the denial. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a Texas limited liability company, claims to have a qualifying relationship with the beneficiary's former employer in Mexico. It seeks to employ the beneficiary as its general manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition and dismissed the petitioner's subsequent motions based on a conclusion that the petitioner failed to establish: (1) that the beneficiary was employed by the foreign entity or would be employed in the United States in a qualifying managerial or executive capacity; and (2) that it has a qualifying relationship with the foreign entity.

On appeal, counsel disputes the director's latest adverse decision and asserts that the petitioner previously received ineffective assistance from an individual who misrepresented himself as an authorized attorney. Counsel also contends that the director did not properly evaluate the petitioner's supporting evidence. While counsel states that additional supporting documents will be provided within thirty days, the record reflects that neither counsel nor the petitioner submitted additional evidence within the required timeframe. The record will be considered complete as presently constituted.

## I. The Law

Section 203(b) of the Act states in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.
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.

Additionally, the regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

*Affiliate* means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

* * *

*Multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

## II. Procedural History

The record shows that the petitioner filed the Form I-140 on April 14, 2011 and submitted a number of supporting documents in an effort to establish eligibility for the above stated immigration benefit. The petitioner's submissions included various tax and financial documents, corporate and bank documents, as well as documents that address the beneficiary's former employment abroad and proposed U.S. employment.

After reviewing the petitioner's submissions, the director determined that the petition did not warrant approval. Accordingly, on December 13, 2011, the director issued a request for evidence (RFE) instructing the petitioner to provide supplementary job descriptions for both positions, listing the beneficiary's specific daily job duties with each entity and the amount of time that was and would be allocated to the items listed. The director further instructed the petitioner to provide both entities' organizational charts, the petitioner's payroll records from January through November 2011, and employer quarterly reports for the first three quarters of 2011. The director observed that the petitioner did not provided IRS Form W-2 Wage and Tax statements for three individuals who were included in the petitioner's organizational chart, which the petitioner provided among its original supporting documents. The director advised the petitioner that any foreign language documents the petitioner wished to submit must be accompanied by certified English language translations establishing the translator's competency to accurately perform the necessary translation.

The response, which was received on February 10, 2012, included job descriptions, organizational charts, and payroll records as requested. Nevertheless, the director denied the petition in a decision dated April 18, 2012, concluding that the petitioner failed to establish that the beneficiary was employed by the foreign entity or would be employed in the United States in a qualifying managerial or executive capacity.

In response, the petitioner filed the first of two motions to reopen, which was supported by additional information concerning the beneficiary's foreign and proposed employment as well as numerous foreign language documents, which were not accompanied by certified English language translations.

The director dismissed the petitioner's motion in a decision dated September 11, 2012. The director emphasized the petitioner's failure to provide certified translations for the foreign documents, which were provided with regard to the beneficiary's employment in Mexico, and further discussed the petitioner's staffing with regard to the beneficiary's proposed employment. The director determined that the beneficiary would primarily perform job duties that are of a non-qualifying nature. Additionally, the director determined that the petitioner failed to provide sufficient evidence to show that the beneficiary has ownership and control of the foreign and U.S. entities. Specifically, the director noted that while the foreign entity's articles of incorporation indicate that the general manager would have control of the organization, the record indicates that the beneficiary assumed the role of president. The director further observed that the petitioner has not provided evidence to establish whether he or his sibling controls the U.S. entity given that each individual owns an equal share.

On October 9, 2012 the petitioner filed a second motion to reopen and reconsider with various supporting documents, including a statement dated September 28, 2012 from [redacted] translations of certain foreign language documents, evidence of employees' professional and educational credentials, and notices showing approvals of the petitioner's nonimmigrant petitions, which the petitioner previously filed on behalf of the same beneficiary.

After reviewing the petitioner's motion and supporting evidence, the director issued a decision dated January 22, 2013, dismissing the motion. The director concluded that the petitioner failed to submit sufficient evidence to show that it has an affiliate relationship with the beneficiary's foreign employer, as claimed. The director determined that the beneficiary's support staff at the time of filing was primarily comprised of part-time employees and thus concluded that neither the petitioner's support personnel at the time of filing nor the beneficiary's job description establishes that the beneficiary would primarily perform job duties within a qualifying managerial or executive capacity. Finally, the director declined to rely on the approvals of the petitioner's previously filed Form I-129 nonimmigrant petitions as indicators of the petitioner's eligibility in the matter at hand. The director properly noted that the approvals were issued in matters that dealt with separate records of proceeding and pointed to the petitioner's burden of proof in establishing eligibility in the instant matter, regardless of prior approvals in those separate proceedings.

On appeal, counsel disputes the director's latest adverse decision, claiming that "the petition and subsequent motions were prepared by a person who mis-represented [*sic*] himself as an attorney authorized to practice before USCIS in the United States." Counsel also contends that the director did not properly evaluate the petitioner's supporting evidence. Counsel claims that the petitioner's employees are employed on a full-time,

rather than on a part-time basis, contrary to the director's earlier finding. Lastly, while counsel states that additional supporting documents will be provided within thirty days, there is no indication that the record has been supplemented with any further evidence.

**III. Analysis**

Upon review, counsel's assertions are not sufficient to overcome the grounds for denial of the petition and subsequent dismissals of the motions to reopen and reconsider.

First, with regard to counsel's claim that the petitioner was represented by someone who was not authorized to practice law before USCIS, there is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1; *see also Hernandez v. Mukasey,* 524 F.3d 1014 (9th Cir. 2008) ("non-attorney immigration consultants simply lack the expertise and legal and professional duties to their clients that are the necessary preconditions for ineffective assistance of counsel claims"). The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) (requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). In the present matter, despite the fact that the petitioner was assisted by in completing the Form I-140, as indicated by Mr. signature at Part 9 of the petition, the record lacks evidence showing that the petitioner sought legal counsel from anyone other than current counsel whose Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, was presented at the time of the petitioner's appeal. The record contains no other Form G-28 or any evidence to establish that anyone other than the petitioner's corporate officers assisted with the compilation and submission of the supporting evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel's remaining assertions pertain to the merits of the petitioner's claimed eligibility, specifically the beneficiary's former employment abroad, his proposed employment with the U.S. entity, and the petitioner's qualifying relationship with the beneficiary's former employer.

A. Employment in a Managerial or Executive Capacity

The first two issues to be addressed in the present matter require an analysis of the job duties the beneficiary performed during his former employment with the foreign entity and the job duties that the beneficiary would perform in his proposed position with the petitioner.

In general, when examining the executive or managerial capacity of the beneficiary, the AAO reviews the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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). The AAO will then consider this information in light of

other relevant factors, including (but not limited to) job descriptions of the beneficiary's subordinate employees, the nature of the business conducted by the entity or entities in question, the size of each entity's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual roles in the two respective entities.

In the present matter, the petitioner included brief job descriptions in its original supporting statement dated April 11, 2011. In addressing the beneficiary's proposed position with the U.S. entity, the petitioner stated that the beneficiary manages its administrative functions by overseeing personnel and company operations and working to expand the variety of locations where the petitioner's services can be offered. The beneficiary would also set the company's goals and objectives, oversee training and staff management, and coordinate with operations in the Mexican entity. The petitioner stated that during his former employment abroad, the beneficiary assumed the role of head manager and was instrumental to the foreign entity's growth and business success.

The petitioner also provided organizational charts pertaining to both companies. The petitioner's chart depicted the beneficiary as second from the top management tier, assuming the position of general manager with an "administrative" position as his sole direct subordinate. A supervisor of production and a sales person were depicted as the "administrative" employee's two subordinates, followed by a driver as the sales person's subordinate and five individuals (with undefined position titles) as the production supervisor's subordinates. The petitioner also provided an untranslated organizational chart pertaining to the foreign entity. Although the beneficiary was depicted as one of two employees at the top-most tier within the company's hierarchy, his position title was not identified. The general manager position was depicted as the only subordinate to the top-tier employees and it was the only position title that was written in English. The remaining position titles were not written in English and the chart was not accompanied by a certified English translation as required by 8 C.F.R. § 103.2(b)(3).

In response to the director's RFE, the petitioner supplemented the record with additional documents pertaining to the beneficiary's two positions. With regard to the beneficiary's former employment abroad, the petitioner provided a statement dated February 3, 2012 from the who identified himself as director. Mr. stated that the beneficiary was employed abroad in the position of general manager from July 2001 through July 2009. This information is inconsistent with the foreign entity's originally submitted organizational chart, where was identified as the company's general manager and subordinate to the beneficiary and Daniel Sandoval, the director who signed the RFE response statement. Mr. further stated that the beneficiary negotiated prices and contracts with materials and equipment suppliers, supervised business operations, created the logistics for collecting and delivering materials, provided accounting information to stockholders, projected expenses and elaborated on monthly budgets, managed the staff's time, visited existing customers and provided price quotes to new customers, monitored accounts payable and receivable, evaluated new business opportunities, recruited new employees, and supervised subordinate employees. The petitioner did not comply with the director's request for an assignment of time constraints to each of the beneficiary's individual job duties. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

An hourly breakdown of the beneficiary's proposed employment was included in a separate document, which [redacted] also signed in his capacity as director. A number of the job duties that were previously attributed to the beneficiary's position abroad were also common to the beneficiary's proposed employment.

A review of the above submissions indicates that the director properly concluded that the petitioner failed to establish that the beneficiary's former employment abroad and his proposed position with the U.S. entity fit the statutory criteria of a qualifying managerial or executive capacity.

Turning first to the beneficiary's employment with the foreign entity, the job description that was provided in response to the RFE indicates that a number of the beneficiary's duties, including negotiating contracts with various suppliers, visiting customers and providing new customers with price quotes, and recruiting new employees were indicative of operational and administrative tasks rather than the tasks that are performed within a qualifying managerial or executive capacity. While it is unclear how much of the beneficiary's total time was allocated to these non-qualifying job duties, this ambiguity is the direct result of the petitioner's failure to comply with the director's express RFE instructions, which thereby precludes U.S. Citizenship and Immigration Services from being able to gauge how much of the beneficiary's time was allocated to tasks of a qualifying nature. While no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary performed during his former employment with the foreign entity were only incidental to the position in question. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Given that the petitioner chose not to assign time constraints to the beneficiary's assigned duties, it cannot be determined that the beneficiary had more likely than not devoted his time primarily to the performance of tasks within a qualifying capacity.

In addition to the ambiguity regarding the time spent performing non-qualifying tasks, a number of the activities that were listed in describing the beneficiary's employment abroad were themselves ambiguous in terms of the specific tasks the beneficiary was actually performing. For instance, the job description indicated that the beneficiary was required to "elaborate monthly budgets." However, it is unclear what the term "elaborate" signifies in the context of a monthly budget and what specific act the beneficiary performed. The job description also indicated that the beneficiary managed "personnel's time," but did not explain what specific actions the beneficiary performed in his time management responsibility or why the beneficiary was responsible for time management of personnel when he was depicted as overseeing a single employee within the foreign entity's organizational hierarchy. Simply put, it is unclear why the beneficiary would have been responsible for managing the staff's time when, according to the foreign entity's organizational chart, most members of the staff appear to have had an immediate supervisory to oversee their work. Lastly, the claim that the beneficiary supervised subordinates in their execution of assigned tasks is not credible when considered within the scope of the foreign entity's organizational chart, which, as stated above, indicated that most of the company's employees had immediate supervisors or managers, other than the beneficiary, to oversee their work.

Although the petitioner provided additional evidence in support of its first motion to reopen and reconsider, including a statement from the beneficiary further describing his employment abroad, that statement also refers to the beneficiary's former position as that of general manager in direct contradiction to the foreign entity's organizational chart, which identifies as the company's general manager and altogether fails to specify the beneficiary's position title. Also at odds with the previously submitted organizational chart is the beneficiary's claim that he managed four departments and supervised the work of two managers, a general accountant, three supervisors, and three professional employees. First, regardless of the petitioner's failure to provide a certified translation of the foreign entity's organizational chart, a general overview of the chart does not support the claim that the foreign entity was divided into four departments. Second, as indicated above, the foreign entity's organizational chart indicates that the beneficiary had only one immediate subordinate employee - the company's general manager. There is no indication from looking at the chart that the beneficiary had the subordinates he listed in the statement he submitted to support the petitioner's first motion. 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).

Furthermore, the beneficiary's supplemental job description goes on to list two additional non-qualifying tasks - conducting market research and training employees - without providing any indication as to the amount of time the beneficiary allocated to these and other non-qualifying job duties that were listed in the earlier job description. Again, the mere fact that the beneficiary performed non-qualifying tasks as part of his former employment does not lead to a finding of ineligibility. However, the petitioner maintains the burden of demonstrating that the non-qualifying tasks the beneficiary performed during his employment abroad did not consume the primary portion of the beneficiary's time. The submissions in support of the first motion were not sufficient to enable the petitioner to meet this burden.

Finally, the additional job description the petitioner provided in response to the second motion restates much of the information that was provided in the previously submitted job descriptions and fails to address or reconcile the inconsistencies between the job descriptions and the foreign entity's organizational chart in terms of establishing who the beneficiary supervised. Although the petitioner provided letters from the foreign entity's employees, who repeated the information the beneficiary provided in his earlier statement as to the subordinates he supervised, such claims from third parties do not serve as independent objective evidence that is needed to resolve the inconsistencies between the beneficiary's claims and the organizational chart that depicted the foreign entity's staffing hierarchy.

The evidence of record when reviewed in totality shows that the petitioner submitted ambiguous and inconsistent information that lacks sufficient probative value. Thus, given these considerable shortfalls, the AAO cannot conclude that the beneficiary more likely than not allocated his time primarily to the performance of tasks within a qualifying managerial or executive capacity and on the basis of this initial conclusion the instant petition must be denied.

Next, turning to the evidence that pertains to the beneficiary's proposed position with the U.S. entity, the hourly breakdown that the petitioner provided in response to the RFE plays a pivotal role. In the present

matter, the beneficiary's job description indicates that a considerable portion of the beneficiary's time would be spent performing various operational and administrative tasks, including supplying materials for the petitioner's customers, visiting customers, paying state and federal taxes, carryout out various banking transactions, providing price quotes for and negotiating with new customers, and writing sales reports for the director's review. While none of these tasks, when viewed individually, indicates that the beneficiary would not be employed in a managerial or executive capacity, when evaluated together, these non-qualifying tasks would consume twenty one hours of the beneficiary's time during an average week. Furthermore, while the petitioner did not define the beneficiary's actual role with respect to collecting accounts payable, exports to Mexico, and "general supervision of full movements of [the petitioner]," which would cumulatively comprise another eight and a half hours of the beneficiary's time, such duties may also fall outside of the parameters of what is deemed as being within a qualifying managerial or executive capacity. Regardless, the mere fact that at least twenty one hours of the beneficiary's time would be allocated to non-qualifying tasks undermines the petitioner's claims that the beneficiary would primarily perform qualifying managerial or executive duties.

Although the petitioner provided additional statements in the course of filing two motions, such evidence, which included statements from the beneficiary and [redacted] was not sufficient to establish that the beneficiary's time would be primarily allocated to tasks within a qualifying managerial or executive capacity. Specifically, [redacted] claims that the beneficiary would create, implement, and monitor the petitioner's current and future contracts, formulate company policies, oversee managerial staff, and oversee the petitioner's finances until a financial manager is hired, are overly broad statements that fail to specify the beneficiary's role and specific tasks. As previously indicated, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103. Further, although Mr. [redacted] indicated that the petitioner has since hired a financial manager and is currently working on hiring a production manager, the petitioner's eligibility is based on the facts and circumstances that existed when the petition was first filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

Additionally, as previously noted in the director's second decision regarding the petitioner's previously approved nonimmigrant petitions, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof. Therefore, each petition must stand on its own individual merits. USCIS is not required to assume the burden of searching through previously provided evidence submitted in support of other petitions to determine the approvability of the petition at hand in the present matter. The approval of a nonimmigrant petition in no way guarantees that USCIS will approve an immigrant petition filed on behalf of the same beneficiary. It is not uncommon for USCIS to deny an I-140 immigrant petition, despite having approved a prior nonimmigrant I-129 L-1 petition. *See, e.g., Q Data Consulting, Inc. v. INS,* 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). The burden is on the petitioner to establish by a preponderance of the evidence that the beneficiary would be employed in a qualifying capacity. Any time the petitioner fails to meet that burden, regardless of prior filings, USCIS must deny the petition, regardless of any previously approved petition(s). *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. at 597. Neither USCIS nor any agency is required to treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Lastly, regarding counsel's claim on appeal in which he contends that the director did not properly evaluate the evidence of the petitioner's full-time employees, the AAO has examined the petitioner's quarterly wage report for the 2011 second quarter and the petitioner's earnings report for 2011. These documents indicate that the petitioner's staff was largely employed on a full-time basis. Thus, the director's observation to the contrary was not warranted. However, merely demonstrating that the petitioner had full-time employees at the time of filing does not establish that the petitioner was able to relieve the beneficiary from having to primarily perform non-qualifying tasks at the time of filing. As discussed earlier in this decision, the job description offered to address the beneficiary's proposed employment does not establish that the beneficiary would allocate his time primarily to performing job duties of a nature. Therefore, the petitioner has failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. Accordingly, the appeal will be dismissed.

B. Qualifying Relationship

Finally, the AAO will address the issue of the petitioner's claimed qualifying relationship with the beneficiary's foreign employer.

A discrepancy in the record was first noted in the director's December 13, 2011 request for evidence, in which the director observed that the petitioner's stock certificate, which showed the beneficiary's foreign employer as sole owner of the U.S. entity, is inconsistent with the petitioner's 2010 tax return, which indicated that the beneficiary and are equal owners of the U.S. entity.

In response to the RFE, the petitioner provided an undated statement signed by who claimed that on February 11, 2011, the petitioner held a board of director's meeting where it was decided that the petitioner's stock would be redistributed with equal portions being divested to the beneficiary and Mr. In support of Mr. statement, the petitioner provided two stock certificates reflecting the new ownership.

In support of the petitioner's first motion before the director, the petitioner submitted a statement dated May 3, 2012 in which the beneficiary claimed to own 90% of the foreign entity's stock while sharing 50/50 ownership of the U.S. entity's stock with The petitioner also provided a partial two-page translation of a foreign document, which indicated that the beneficiary owned one of the foreign entity's three equity shares and that his monetary contribution was $45,000 of a total $50,000. The translation was accompanied by a copy of the original foreign document, which consisted of 21 pages.

In an adverse decision dated September 11, 2012, the director pointed out that while the foreign entity's articles of incorporation indicate that the foreign entity is a manager-run company, the beneficiary's position is that of president, which thus indicates that the beneficiary is not a manager and does not run the foreign entity. The director further determined that while the petitioner provided evidence indicating that the beneficiary and his brother equally own the petitioning entity, the record lacks evidence to show which of the individuals actually controls that entity.

In response to the director's adverse determinations, the petitioner resubmitted the foreign entity's articles of incorporation and its partial translation.

In reviewing the supporting documentation on record, the AAO finds that the petitioner failed to provide evidence to support the claimed affiliate relationship between itself and the beneficiary's employer abroad. The regulation at 8 C.F.R. § 103.2(b)(3) states the following with regard to the submission of foreign language documents:

> Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

In the present matter, the record indicates that in support of its first motion, the petitioner provided two documents containing the foreign company's name, thus indicating that both pertain to the foreign company. One document appears to represent the foreign entity's articles of incorporation consisting of seven pages, while the second document, also appearing to consist of numerous acts and clauses, consists of twenty one pages. The translation pertaining to each foreign document consists of two pages. Given the length of the original documents and the length of their respective translations, neither can be deemed to be a full translation of the original document and thus neither translation meets the regulatory provisions specified above. Accordingly, the petitioner's failure to submit certified translations of the documents precludes the AAO from being able to determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Therefore, the petitioner failed to submit probative evidence to establish that it has a qualifying affiliate relationship with the beneficiary's former employer abroad and the appeal will be dismissed for this additional reason.

## IV. Conclusion

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. The petitioner has not sustained that burden.

**ORDER**: The appeal is dismissed.