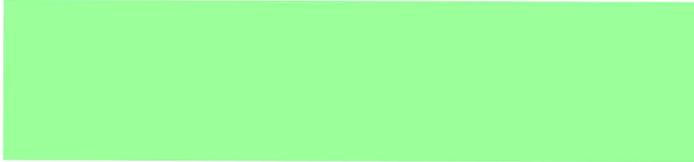


(b)(6)



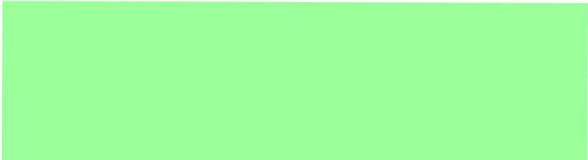
U.S. Citizenship
and Immigration
Services



DATE: **DEC 12 2014** OFFICE: NEBRASKA SERVICE CENTER FILE 

IN RE: Petitioner: 
Beneficiary: 

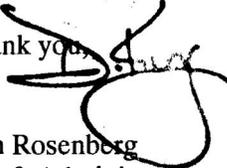
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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 Nebraska Service Center Director denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this Form I-140, Immigrant Petition for Alien Worker, 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 petitioner, a Michigan corporation, is engaged in "construction equipment procurement," and claims to be an affiliate of [REDACTED] the beneficiary's former employer in Iraq. The petitioner seeks to employ the beneficiary in the position of President/Chief Executive Officer.

The director denied the petition on May 7, 2014, concluding that the petitioner has not established that it has been doing business for at least one year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, counsel submits a brief disputing the director's adverse findings.

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.

Pursuant to 8 C.F.R. § 204.5(j)(3)(i)(D), the petitioner must establish that it has been doing business for at least one year. In turn, 8 C.F.R. § 204.5(j)(2) provides that "[d]oing business means the

regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

Additionally, the regulations at 8 C.F.R. § 204.5(j)(3)(i) state that the petitioner must provide the following evidence in support of the petition in order to establish eligibility:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

II. THE ISSUES ON APPEAL

A. The Petitioner Doing Business

The director denied the petitioner concluding that the record lacks evidence to establish that the petitioner is doing business in the U.S. The regulation at 8 C.F.R. § 204.5(j)(2) states that doing business means "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

The petitioner provided several documents demonstrating ongoing contracts with the petitioner's parent company and branch offices abroad. The petitioner also submitted Form 1120, U.S. Corporation Income Tax Returns, for 2010 and 2011 that indicated \$0 for gross receipts and sales.

On December 24, 2013, the director sent a request for evidence ("RFE") asking for additional information and evidence that the U.S. petitioner was doing business for at least one year before filing the instant petition. The director requested the petitioner's 2012 federal income tax return; Forms W-2 and 1099 for all employees in 2012; the petitioner's invoices and sales contracts; and a list of current employees including job duties, educational level, salary and geographic location.

In a response letter dated March 7, 2014, the petitioner explained that it was incorporated in Michigan in 2010 and the company leased office space in [REDACTED] Michigan and received an initial capital of \$25,000 from the parent company. The petitioner also stated the following:

As the attached invoices and quotes demonstrate, [the petitioner] presently conducts a large volume of business through its international affiliates with suppliers of construction materials and equipment around the world. Because [the petitioner's] growth has been affected by [the beneficiary's] lack of permanent presence in the U.S., many of these large deals – even those with U.S. suppliers – are currently routed through other Uqba affiliates.

* * *

[The petitioner] currently has one employee permanently present in the United States Mr. [REDACTED] is the corporate secretary and a degreed civil engineer in his own right. He manages the U.S. company's operations from its office in [REDACTED] Michigan. Please note that [the beneficiary] previously held L-1A status for three years. That status recently lapsed and was not extended because [the beneficiary] was out of the country for an extended period and chose to instead pursue this petition as means for establishing a more long-term and stable presence for his continuous and growing investment in the U.S. However, because of [the beneficiary's] vital function at [the petitioning company] and his responsibility for all elements of the company's management and direction, [the petitioner] has not been in a position to grow or fully engage with U.S. suppliers in his absence. Upon approval of this petition, [the beneficiary] will establish a long-term presence in the United States and perform the vital functions necessary for the company to expand its operations in the U.S.

The petitioner also stated that the petitioner's "business is such that each completed transaction represents an enormous effort both before and after the transaction is finalized." The petitioner further stated that "while this effort has not required a large number of U.S. employees and is not necessarily reflected in the company's periodic quotes and invoices, it nonetheless clearly represents a large volume of business being performed on a regular, systematic, and continuous basis."

The petitioner also submitted Form 1120, U.S. Corporation Income Tax Return, for 2012 that indicated \$0 for gross sales and receipts. In addition, the petitioner stated that it employs one individual but did not provide any documentation of employment of this individual such as a Form W-2, paystubs, or employment quarterly tax records. The petitioner also submitted email correspondence between [REDACTED] and a company regarding a quote.

Upon review of the record, the petitioner did not provide sufficient evidence to establish that it is doing business. The documentation presented included invoices and contracts for the foreign branch offices rather than the U.S. office. The petitioner provided its certificate of incorporation dated 2010 and a copy of a lease agreement; however, an office is not sufficient evidence of doing business. All of the

tax records submitted by the petitioner indicated \$0 for gross receipts or sales. In addition, the petitioner did not provide any evidence that it employs any employees.

The petitioner is correct that the definition of "doing business" at 8 C.F.R. § 204.5(j)(2) contains no requirement that a petitioner for a multinational manager or executive must provide goods and/or services to an unaffiliated third party. While the petitioner may provide services to the affiliated parent company, the petitioner has not provided evidence of this situation in the current petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

B. Additional Issues

1. U.S. Employment in a Managerial or Executive Capacity

Beyond the decision of the director, upon review of the totality of the record, the evidence does not support a finding that the beneficiary would allocate his time primarily to the performance of tasks that are within a qualifying managerial or executive capacity.

The petitioner provided a vague job description that did not include a percentage breakdown for each duty. In addition, it is not clear who, if anyone, the beneficiary would manage. The petitioner stated that it employs one individual but did not present any evidence that the petitioner currently employs any employees. Thus, it may be that the beneficiary would be the only employee in the U.S. petition. 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'r 1988).

The petitioner has not established that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

2. Employment Abroad in a Managerial or Executive Capacity

Beyond the decision of the director, the petitioner did not establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

The petitioner did not provide a detailed job description, with a percentage breakdown for each duty, of the duties performed by the beneficiary for the foreign company. In addition, the petitioner did not provide sufficient information of the beneficiary's subordinates and their job duties. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

3. Ability to Pay

Beyond the decision of the director, the petitioner did not establish it has the ability to pay the beneficiary's proffered wage.

The petitioner has offered the beneficiary a wage of \$30,000 per year. As the petition was filed on May 20, 2013, the petitioner must establish its ability to pay the beneficiary the proffered wages as of this date. As of that date, the petitioner's 2012 federal income tax return is the most recent return available. The petitioner's IRS Form 1120S stated its net income as \$-2,601. Therefore, for the year 2012, the petitioner did not establish that it had sufficient net income to pay the proffered wage of \$30,000.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.¹ The petitioner's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of the petitioner's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's tax returns stated its net current assets as \$27,005 and its liabilities as \$0. Thus, the net current assets were \$27,005. Therefore, the petitioner has not established that it had sufficient net current assets to pay the beneficiary's salary of \$30,000.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

III. CONCLUSION

The petition will be denied and the appeal dismissed 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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

¹ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.