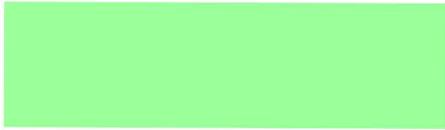


(b)(6)

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



U.S. Citizenship  
and Immigration  
Services



DATE: JUL 09 2014 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Texas corporation operating in the United States as a construction and real estate development company. It seeks to employ the beneficiary in the United States as its president to oversee all business operations. 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, concluding that the petitioner failed to establish that: (1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; (2) the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; and (3) the petitioner had been doing business for at least one year prior to filing the Form I-140.

### 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.

### II. Procedural History

The record shows that the petition was filed on September 28, 2012 and was accompanied by a brief letter, dated September 26, 2012, from counsel enumerating the various supporting documents that accompanied the

petition. The supporting evidence included corporate, bank, and financial documents as well as business invoices pertaining to the petitioner and the foreign entity where the beneficiary was previously employed. The record included a number of the petitioner's business invoices, the earliest of which was issued in January 2012, billing [REDACTED], and [REDACTED] respectively, for project management, administrative, and accounting services. It is noted that all three entities whom the petitioner billed, as well as the petitioner itself, were shown as being located at the same business address – [REDACTED]. Based on an ownership flow chart, which the petitioner also provided among its initial supporting evidence, the beneficiary indirectly owns the majority shares of all three entities to which the petitioner issued the billing invoices.

On January 3, 2013, the director issued a request for evidence (RFE), instructing the petitioner to address various deficiencies in the record. The RFE requested, *inter alia*, evidence that the beneficiary was employed abroad and that he would be employed in the United States in a qualifying managerial or executive capacity. More specifically, the director instructed the petitioner to individually list the beneficiary's job duties with each entity and to assign a percentage of time that the beneficiary allocated and would allocate to each duty during his former and proposed employment with the respective entities. The director asked that the petitioner supplement the job descriptions with organizational charts depicting the staffing and management structures within both entities. The director specifically noted that in the event that contract labor was used or would be used, the petitioner was to provide evidence showing remuneration paid to the contractors. In addition, the director stated that the petitioner must establish that it was doing business for one year prior to filing the petition. Accordingly, the director instructed the petitioner to provide evidence, which may include receipts, invoices, or detailed reports, to show the provision of goods and/or services.

The petitioner's response pertaining to the beneficiary's employment abroad included a statement, dated March 22, 2013, from the foreign entity's general manager, who provided the following job description:

As Chairman of the Board, [the beneficiary] created main policies which have been executed by the General Manager. Since January of 2005, when [the beneficiary] left the operative duties, he has been working . . . with this plan and signed loans, statutory durable powers of attorney, and all necessary documents so that the executives of the foreign entity could do their job themselves. Permanent leadership has been required to maintain focus in all the teamwork, as well as keep in touch with our clients, gain experience, and be alert to changing circumstances.

[The beneficiary]'s time with the Foreign Entity was spent doing both executive duties as well as non-executive functions. Since 2005, we've often met in long extensive meetings. Sometimes these meetings were held at the [REDACTED] facility and sometimes online . . . . Each one of the Business Unit Managers presents, through the General Manager, his production and balance report, after which we discussed it and made necessary decisions.

The general manager further stated that the beneficiary's time was distributed among four categories: (1) networking with government officials to which he allocated 20% of his time; (2) visiting and supervising the [REDACTED] site projects and plants to which he allocated 30% of his time; (3) networking with clients to which he allocated 20% of his time; and (4) planning and reviewing performance of the company to which he allocated the remaining 30% of his time.

The foreign entity's organizational chart depicted the beneficiary at the top of hierarchy, followed by the general manager, who was depicted as directly overseeing a managerial staff comprised of an administrative manager, a construction manager, an asphalt plant manager, a crushing plant manager, a machinery manager, a mixed concrete plant manager, a freight transport plant manager, and a project manager.

With regard to the beneficiary's proposed employment with the petitioning entity, the beneficiary, in his capacity as the petitioner's CEO, provided a statement, dated March 20, 2013, which included the following description of the proposed employment:

. . . As CEO of the company, [the beneficiary]'s duties will be managerial or executive in nature. . . .

[The beneficiary]'s duties will include planning and visualizing the main goals for the U.S. Entity, integrating and supervising the staff of professionals in charge of accounting, legal services, etc[.], and integrating the outsourcing group of specialist advisers for the U.S. Entity. Moreover, [the beneficiary] has been managing the entity by contracting personnel in accordance with the business needs such as technical advisors, supervisors, and subcontractors for different activities. All of these positions have been filled by U.S. Citizens and Legal Permanent Residents, all of whom reside locally.

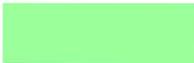
The petitioner also provided a separate job description with percentage allocations indicating that 15% of the beneficiary's time would be allocated to participating in the formulation of corporate strategy; 75% would be allocated to coordinating the implementation of corporate finances, accounting, human resources, facilities maintenance, information systems and general warehouse strategies; and the remaining 10% would be allocated to participating in the evaluation of corporate strategy. The petitioner listed job duties within each of the three categories.<sup>1</sup> The petitioner also submitted an organizational chart, which depicts the beneficiary at the top of the hierarchy followed by the company's manager as his only subordinate. The chart also shows the beneficiary as head of the following: (1) administration, which includes purchasing, accountant, tax, and payroll; (2) planning, which includes costs, bids, and quotations; (3) real estate development, which includes projects, lands, and legal; and (4) construction, which includes technical support, supervision, and project management. The chart listed the external consultants who provide the petitioner's various financial and real estate development services. The petitioner provided two invoices showing that it was billed for engineering and environmental services provided by [REDACTED] in October and December 2012 and February 2013.

Lastly, the petitioner provided additional business invoices in which it billed [REDACTED] for the provision of project management, administrative, and accounting services. The earliest of the invoices dates back to October 2012.

After reviewing the record, the director determined that the petitioner failed to establish eligibility for the immigration benefit sought. Therefore, the director issued a decision, dated August 29, 2013, denying the petition.

---

<sup>1</sup> As the director included the entire job description in the denial, it need not be repeated in our review of the record's procedural history.



### III. Issues on Appeal

The three issues to be addressed in this discussion are as follows: (1) whether the beneficiary was employed abroad in a qualifying managerial or executive capacity; (2) whether the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; and (3) whether the petitioner had been doing business for one year prior to filing the instant petition.

#### A. Employment Abroad

The first issue to be addressed in this proceeding is the beneficiary's employment abroad and whether the petitioner provided sufficient evidence to establish that the beneficiary was employed in a qualifying managerial or executive capacity.

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.

In general, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary's job duties for the position in question. See 8 C.F.R. § 204.5(j)(5). Published case law has determined that the duties themselves will reveal the true nature of the beneficiary's 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). In the present matter, the petitioner has provided a job description that fails to list the specific daily tasks the beneficiary performed during his employment abroad. Instead, the job description listed four general categories, which, based on the March 22, 2013 letter, involved both qualifying and non-qualifying tasks. While the petitioner claimed that the beneficiary was ultimately responsible for the organization and thus had the discretionary authority to determine how the organization would be run, the petitioner failed to describe the beneficiary's job duties in his former position abroad with any degree of specificity, thus providing no real insight as to the proportion of the beneficiary's time that was spent performing qualifying executive tasks versus non-qualifying tasks. For instance, the petitioner claimed that the beneficiary allocated 20% of his time networking with government officials. However, the petitioner did not clarify the nature of the specific interactions with government officials or the precise goal of such interactions. It is possible that the beneficiary's interactions with government officials were for the purpose of obtaining various business licenses or directly bidding on government contracts, neither of which would be deemed as tasks and that fit the criteria of executive capacity.

The fact that the petitioner failed to specifically discuss the express purpose of the beneficiary's interactions with government officials or to precisely state what portions of time were allocated to interactions that would fall within the category of operational tasks precludes us from being able to fully analyze the extent to which the beneficiary's networking responsibility entailed qualifying tasks. The petitioner was equally vague in its claim that 30% of the beneficiary's time was spent visiting and supervising project sites and plants and another 30% was spent planning and reviewing the company's performance. Namely, with regard to the former, the petitioner failed to discuss the frequency of the beneficiary's site visits, explain how the beneficiary carried out his supervisory tasks, or define what the supervisory tasks were. With regard to the latter, the petitioner failed to explain how planning and reviewing the company's progress translates into daily or weekly tasks. In other words, the petitioner did not clarify what tasks the beneficiary performed on a regular daily or weekly basis that were indicative of the beneficiary's responsibility to plan and review company progress.

Lastly, the petitioner indicated that the beneficiary allocated 20% of his time to networking with clients. However, no explanation was provided to establish how client-related job duties fall within the executive capacity criteria. 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 in his former position abroad 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).

In the matter at hand, the petitioner failed to provide a detailed description of the actual job duties the beneficiary performed on a daily basis or to establish what portion of the beneficiary's time was allocated to non-qualifying tasks. Despite the foreign entity's organizational chart depicting the beneficiary at the top of the company's organizational hierarchy, the record does not support the claim that the beneficiary's time was primarily allocated to tasks within a qualifying managerial or executive capacity.

On appeal, the petitioner provides an appellate brief, where the only issue counsel addresses pertains to the beneficiary's proposed employment with the petitioning entity. Accordingly, in light of the petitioner's failure to address or provide evidence to overcome the director's conclusion with regard to the beneficiary's employment abroad with the foreign entity, the petitioner, in effect, concedes the director's finding that the beneficiary was not employed abroad in a qualifying managerial or executive capacity and on the basis of this initial adverse conclusion, the instant petition cannot be approved.

#### B. Qualifying Employment in the United States

The second issue to be addressed in this discussion is the beneficiary's proposed employment with the petitioning U.S. entity.

As previously indicated, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary's proposed job duties. See 8 C.F.R. § 204.5(j)(5). 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. The petitioner must demonstrate that the beneficiary's responsibilities will meet the requirements of one or the other capacity. Also critical to this analysis are factors such as staffing size, job descriptions of the beneficiary's subordinates and other employees who would carry out the petitioner's daily operational tasks, the nature of the business conducted, and any other factors that may contribute to a comprehensive understanding of the beneficiary's role within the petitioning organization.

Turning first to the job description the petitioner provided in its response to the RFE, the record shows that the petitioner failed to clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. Rather, the petitioner generally indicated that the beneficiary's "duties [in the proposed position] will be managerial or executive in nature." However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5.

Further, looking beyond the petitioner's overly generalized statement, the record shows that the additional job description that accompanied the beneficiary's March 20, 2013 statement was deficient in its failure to adhere to the director's express instructions. Namely, the director instructed the petitioner to provide an itemized list of the beneficiary's specific daily job duties accompanied by time constraints showing what percentage of the beneficiary's time at work was devoted to each item on the petitioner's list of job duties. The petitioner failed to comply with this request, instead choosing to assign a percentage of time to each of three broad job categories, each with its own list of job duties, a number of which were not clearly defined and were as vague as the job category into which they were incorporated. For instance, the petitioner stated that 75% of the beneficiary's time would be allocated to the following list of job duties:

- Opening [b]usiness [o]pportunities
- Business [s]trategy [p]lanning
- Selecting and [c]ontracting [a]dvisors [sic] [s]taff
- Study of [r]egulation [i]mpact
- Opening [f]inancial [n]etwork
- Acting as operative until be [sic] necessary.
- Ensure that the company is effective in achieve [sic] results.
- Address the needs of customers, employees, suppliers, [s]hareholders, society[,] and environment [sic].

However, the petitioner did not explain specifically what actions would be entailed in opening business opportunities, planning business strategy, acting as an "operative," or ensuring that the company attains its goals. Given the variety of tasks that can fall within any of these vaguely defined job duties, it is not clear whether the tasks would be primarily of a qualifying or non-qualifying nature. With regard to the two remaining categories, which would comprise the remaining 25% of the beneficiary's time, the petitioner was equally vague, making broad supporting statements to indicate that the beneficiary would participate in "internal audits of management processes, product realization processes, resources management processes . . . and improvement processes," without explaining what each process entails, who be charged with carrying out the underlying tasks of each process, or what the beneficiary's specific role would be in participating in the audits of these processes. The petitioner also failed to define what is meant by "environmental review" in which the beneficiary is also claimed to assume a participatory role.

In addition, in view of the petitioner's limited staffing hierarchy, which includes one full-time employee aside from the beneficiary, as well as outside consultants and attorneys who seemingly provide certain administrative, real estate development, and legal service on an as-needed basis, it is unclear how the petitioner would be capable of relieving the beneficiary from having to allocate his time primarily to non-qualifying tasks at the time of filing. Although the chart includes a planning division, which is comprised of costs, bids, and quotations, and a construction division, which is comprised of technical support, supervision, and project management, the petitioner provided no supporting evidence to establish who would executive the operational tasks within these divisions. The director expressly instructed the petitioner to disclose its use of any contract labor and to provide evidence of remuneration for such labor. However, the petitioner did not comply with this request as it pertains to the planning and construction divisions within its organization. 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).

On appeal, counsel provides a supporting brief in which he asserts that the beneficiary would be employed in the capacity of a function manager, whose focus is on the management of an essential function rather than the management of personnel. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. As previously stated, an employee who primarily performs the tasks necessary to produce a product or to

provide services is not considered to be 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. at 604. The petitioner should not claim to employ the beneficiary in the role of a function manager as a default mechanism when the petitioner cannot establish the beneficiary's role as a personnel manager based on the petitioner's lack of personnel within an adequately complex organizational hierarchy.

In this matter, contrary to counsel's assertion, the petitioner has not provided evidence that the beneficiary manages an essential function. Counsel's own brief does not explain which characteristics of the proposed employment would qualify the beneficiary as a function manager. Rather, counsel uses paraphrased language directly from the statutory definition of executive capacity to support his claim and refers to the "comprehensive description" of job duties he claims the petitioner has already provided. Counsel provides little in the way of supporting his assertions and further confuses the whole concept of a function manager by asserting that "the beneficiary supervises and controls the work of subordinate employees," which is a characteristic of a personnel manager. Moreover, as previously discussed, the record lacks evidence to establish that the petitioner had the requisite support staff for the beneficiary to manage. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Despite the claims made on appeal, the record lacks the requisite supporting evidence to establish that the beneficiary's proposed employment with the petitioning U.S. entity would be primarily comprised of qualifying managerial- or executive-level tasks. As discussed above, the petitioner's supporting evidence includes a deficient job description, which lacks specificity and fails to clarify what portion of the beneficiary's job duties would be allocated to qualifying tasks, and an organizational chart that fails to illustrate a staffing hierarchy capable of supporting the beneficiary in a position that would be primarily comprised of qualifying tasks. In light of these considerable evidentiary deficiencies, the petitioner has failed to establish that the beneficiary's proposed employment would be within a qualifying managerial or executive capacity and on the basis of this second adverse finding this petition cannot be approved.

### C. Doing Business One Year Prior to Filing

The final issue to be addressed in this discussion is the petitioner's business activity. Specifically, we will review the record to determine whether the petitioner provided sufficient evidence to establish that it meets the criteria specified at 8 C.F.R. § 204.5(j)(3)(i)(D), which requires the petitioner to establish that it had been doing business for at least one year prior to filing the Form I-140.

The regulation at 8 C.F.R. § 204.5(j)(2) defines doing business as 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. Initially, in support of the Form I-140, the petitioner provided a number of business invoices that the petitioner issued for project management, administrative, and accounting services. The earliest invoice was issued in January 2012 and therefore did not establish that the petitioner had been doing business for one year since prior to filing the Form I-140. Accordingly, the director addressed this deficiency in the RFE, asking the petitioner to supplement the record with additional evidence, including invoices, and reports showing that it provided goods and/or services on a regular, systematic, and continuous basis for one year prior to the date the petition was filed. Although the petitioner responded with additional invoices, none addressed the time period

prior to January 2012. Moreover, looking at the petitioner's corporate tax return for 2011, the information provided indicates that no gross receipts or sales were reported, no employee wages or salaries were paid, and no operating loss deductions were declared. While a petitioner's tax return is generally not an accurate indicator of ongoing business transactions, the lack of business transactions is more easily tracked when a petitioner declares no earnings or employee wages, as is true in the matter at hand.

In addition, while not previously discussed in the director's decision, we observed an additional anomaly during the course of reviewing the petitioner's business invoices. Specifically, we observed that the petitioner had the same business address as the three companies – [REDACTED] – which were identified as the customers to whom the petitioner issued the billing invoices. Given that all four entities were organized and incorporated separately, it is unclear why and how the petitioner and its customers can carry on business activity while operating on the same premises. 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, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Here, there is no evidence or explanation as to the means by which four separate entities – most importantly the petitioner – can operate and engage in the regular, systematic, and continuous provision of goods and/or services while sharing the same business premises.

Regardless, as the petitioner failed to acknowledge or address the director's adverse conclusion regarding the petitioner's failure to meet the regulatory requirement discussed in this section of the discussion, we find that the petitioner once again effectively concedes the director's finding. We further find, notwithstanding the petitioner's failure to address an issue discussed in the director's decision, that the record lacks evidence to establish that the petitioner had been doing business for the requisite time and in the manner required by regulation. Therefore, on the basis of this final adverse finding, the instant petition cannot be approved.

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

**ORDER:** The appeal is dismissed.