



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF BW-M-, LLC

DATE: OCT. 16, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a hotel operator, seeks to permanently employ the Beneficiary as its Vice President under the multinational manager or executive immigrant classification. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director determined that the Petitioner had not established: (1) that the Beneficiary would be employed in the United States in a qualifying managerial or executive capacity; (2) that it had a qualifying relationship with the Beneficiary's foreign employer for at least one year prior to filing the petition; and (3) that the Beneficiary was employed abroad in a qualifying managerial or executive capacity.

On appeal, the Petitioner submits a legal brief and copies of supporting documents, most of them previously submitted. The Petitioner asserts that the Director relied on an incorrect interpretation of the law and imposed an impermissibly high standard of proof.

I. 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 the alien 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 only to 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 Form I-140 to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The regulation at 8 C.F.R. § 204.5(j)(5) states:

No labor certification is required for this classification; however, 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 letter must clearly describe the duties to be performed by the alien.

Section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), provides:

(A) 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.

(B) 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;

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- (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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. ISSUES ON APPEAL

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

The first issue to be addressed is whether the Petitioner established that it will employ the Beneficiary in a qualifying managerial or executive capacity in the United States.

1. Facts

The Petitioner filed the Form I-140 on May 7, 2013. The Petitioner stated on the petition that it operates a hotel with ten employees.

The Petitioner stated that the Beneficiary, as Vice President, would devote 35% of her time to “essential budgeting and financial analysis for business purposes”; 25% of her time to “coordinating [the Petitioner’s] sales and marketing operations”; 35% of her time to “managing and supervising daily operations of the hotel”; and the remaining 5% of her time to “networking, maintaining business relationships and developing on-going business relations.” Within each of these broad categories, the Petitioner provided additional details, some more specific than others.

An organizational chart for the petitioning company showed [REDACTED] as general manager, with three direct subordinates: a front desk manager (with three subordinates); a maintenance manager (with one subordinate); and a housekeeping manager (with two subordinates). The subordinates below the managerial level were identified by name but not by title.

In a request for evidence (RFE) issued on June 29, 2013, the Director instructed the Petitioner to specify the percentage of time the Beneficiary will allocate to “specific daily duties (rather than categories of duties)” and to provide an organizational chart along with information about the Beneficiary’s subordinates. In response, the Petitioner submitted the same list of duties for the Beneficiary, with slight revisions to the percentages assigned to the four areas of responsibility identified above.

The Petitioner submitted a second organizational chart, listing nine employees, and copies of IRS Forms W-2, Wage and Tax Statements, showing the salaries and wages paid to 20 employees in

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2013. The Petitioner's organizational chart showed the Beneficiary as vice president with three direct subordinates: the general manager, [REDACTED] who earned \$52,160; the front desk manager (\$22,387), who was identified as a front desk subordinate on the previous organizational chart; and the housekeeping manager (\$13,961), who was identified as a housekeeper on the initial organizational chart. The front desk manager and housekeeping manager each had two listed subordinates, identified, as before, only by name rather than by title. The general manager's only listed subordinate was the maintenance manager (\$21,000), who was listed as a subordinate to the maintenance manager on the original chart. The Beneficiary's title of vice president implies the existence of a president or other higher level of authority, but the chart identified no president, and did not otherwise show to whom the Beneficiary would report.

Comparing the IRS Forms W-2 to the charts, we note that nine employees were not identified on either of the submitted organizational charts. There were no W-2 forms submitted for the maintenance manager [REDACTED] and one of the front desk workers [REDACTED] named on the initial chart and it is unclear whether those positions were staffed at the time of filing. Overall, the size of the staff reduced from ten employees at the time of filing (not including the Beneficiary's proposed position), to eight employees at the time the Petitioner responded to the RFE.

In the denial notice, the Director stated that "all employees with exception [of] the Vice President and General Manager appear to be part-time employees or minimally paid employees," and emphasized that the Petitioner had not established the nature of the positions subordinate to the vice president. The Director concluded that "the majority of the Beneficiary's time would be consumed with the performance of non-qualifying duties" that are "typically handled by sales personnel," "first line supervisors," and other lower-level employees.

On appeal, the Petitioner maintains that it has documented its employment of a full-time general manager who reports to the Beneficiary, and that the Beneficiary "supervised/supervises other supervisory employees within a multitier management structure."

2. Analysis

Upon review, and for the reasons stated below, we find that the Petitioner has not established that the Beneficiary's proposed position with the petitioning entity is in a qualifying managerial or executive capacity.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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, 1108 (E.D.N.Y. 1989),

aff'd, 905 F.2d 41 (2d. Cir. 1990). Reciting the beneficiary's vague job responsibilities or broadcast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Id.*

The Petitioner, on appeal, contends that *Fedin Bros.* "is clearly distinguishable from the instant case," because *Fedin Bros.* involved a company that "employed only one other individual besides the Beneficiary," and provided insufficient evidence and information regarding the Beneficiary's duties. The Petitioner in the present matter states that it "provided a detailed list of job duties" and "is adequately staffed to relieve the beneficiary from having to primarily perform non qualifying operational tasks." The Petitioner cites several unpublished AAO decisions which, the Petitioner asserts, more closely fit the fact pattern of the present case.

The Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions cited on appeal. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The Director cited *Fedin Bros.* not because of any narrow, case-specific findings, but because that case emphasized the importance of credible, verifiable detail in the job description of an intending manager or executive.

It is true that the Petitioner has submitted a much longer list of duties than the summary version proffered in *Fedin Bros.* Nevertheless, the submission of a long list does not inevitably establish eligibility. Many of the specific items on the Beneficiary's list of duties are repetitive. For example, one item stated that the Beneficiary will "[e]nsure that the housekeeping division has kept all areas of the hotel clean and up to code," while another item stated that she will "[i]nspect [the] hotel for cleanliness and appearance." Also, one item required the Beneficiary to "[i]dentify target and potential customers and initiate contact to develop business," while another item called on her to "[i]dentify and acquire new customers through personal sales and networking."

The descriptions also group together managerial and non-managerial tasks under a common heading, without showing how the Beneficiary's time will be divided between qualifying and non-qualifying duties. For instance, the general category of "managing and supervising daily operations of the hotel" includes lower-level functions such as staff supervision, processing payments, planning menus, performing routine facilities inspections, event planning with clients, scheduling pick-up and delivery of laundry, and ordering supplies.

Furthermore, the Beneficiary's claimed job duties include functions relating to "sales and marketing staff," but the organizational chart does not show that the Petitioner employs any sales and marketing staff; the only identified departments are housekeeping, maintenance, and front desk. Sales and marketing duties are neither executive nor managerial, and the Petitioner has not established the existence of a subordinate staff that would relieve the Beneficiary of performing those functions.

Based on the current record, we are unable to determine whether the claimed managerial duties constitute the Beneficiary's primary duties, or whether the Beneficiary will primarily perform non-managerial administrative or operational duties associated with the day-to-day operation of the hotel. The Petitioner's description of the Beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Beyond the required description of the job duties, we review the totality of the record when examining whether a beneficiary is employed in a qualifying managerial or executive capacity, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The Petitioner operates a franchised hotel and has documented its employment of a general manager, a maintenance worker, three housekeeping staff, a front desk manager, and two front desk staff identified on its organizational chart at the time of filing. Although requested by the Director, the Petitioner did not provide job duties for any subordinate staff members; therefore, we cannot conclude that the subordinate managers are actually performing managerial or supervisory duties. The record shows that the Petitioner operates a hotel that offers a pool and recreation facilities, special events rooms, a free hot breakfast daily, and other amenities. It is unclear how three front desk staff relieve the general manager and the Beneficiary from routine guest services given the nature of the business and a hotel's need to have someone available to respond to customer requests at any hour. Further, the record does not establish who sets up, prepares and cleans up the breakfast service on a day-to-day basis. Given the nature of the business, it appears to be minimally staffed in terms of housekeeping and front-desk operations with no additional staff for ancillary hotel functions. In addition, as discussed above, the Petitioner states that the Beneficiary will be responsible for the company's sales and marketing operations, but it has not identified any subordinate staff who perform sales or marketing duties.

While we do not doubt that the general manager oversees subordinate staff, without a job description for this employee, we cannot determine to what extent the general manager relieves the Beneficiary from involvement in the routine functions of operating the hotel and supervision of non-professional

staff. As noted, the Petitioner indicates that the Beneficiary will be involved in ordering supplies, overseeing food and restaurant operations, inspecting the work of housekeeping staff, coordinating laundry services, banking, event planning, and other non-managerial hotel functions. Therefore, while the Beneficiary will have supervisory duties, the record does not establish that she would be primarily engaged in supervision of a subordinate staff of managers, supervisors or professionals or that she would qualify as a personnel manager.

On appeal, the Petitioner suggests that even if the Beneficiary does not supervise other employees she “must function at a senior level within the organizational hierarchy,” and will manage the “essential function” of the company. Specifically, the Petitioner asserts that the Beneficiary “will be primarily managing the essential function of analyzing budget and finances of [the Petitioner], coordinating [the Petitioner’s] sales and marketing operations, managing and supervising daily operations of the hotel.”

The term “function manager” applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an “essential function” within the organization. *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 in managing the essential function, 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. *See* 8 C.F.R. § 204.5(j)(5). 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).

In this matter, the Petitioner has not provided evidence that the Beneficiary will manage an essential function. The Petitioner generally asserts the Beneficiary will manage the essential functions of the company and operate at a senior level in the organization’s hierarchy, but it has not defined a specific function to be managed or established that the Beneficiary primarily performs managerial duties in general, or with respect to a specific, defined function.

Accordingly, we find that the Petitioner has not provided reliable, probative evidence sufficient to establish that the Beneficiary will be employed in the United States in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

B. Qualifying Relationship

The next issue before us concerns the relationship between the petitioning U.S. employer and the foreign entity that previously employed the Beneficiary. The regulation at 8 C.F.R. § 204.5(j)(2) provides the following relevant definitions:

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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.

Affiliate means:

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

(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. . . .

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.

1. Facts

An Agreement for the Purchase and Sale of Shares in the record indicates that the Beneficiary's foreign employer, [REDACTED] purchased a 51% ownership interest in the petitioning entity on March 20, 2013. In denying the petition, the Director noted that this sale occurred less than two months before the petition's filing date, and therefore "the two companies were not affiliated one year prior to filing."

On appeal, the Petitioner asserts that, so long as the qualifying relationship existed on the date of filing, there is no requirement that it must have existed one year prior to filing.

2. Analysis

The Director cited no support for the finding that the qualifying relationship between the Petitioner and the Beneficiary's foreign employer must exist for at least one year prior to filing. Section 203(b)(1)(C) of the Act requires that the beneficiary "has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof." The term "a firm or corporation or other legal entity," however, does not necessarily refer to the petitioning entity. The same statutory clause indicates that the petitioner could be "the same employer or . . . a subsidiary or affiliate thereof."

We agree with the Petitioner that the current statute and regulations do not specify when the qualifying relationship must begin, so long as that relationship exists as of the filing date. For this reason, we withdraw the Director's finding.

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Nevertheless, the record does not permit an affirmative finding that the Petitioner has established a qualifying relationship with the Beneficiary's former foreign employer. Because we review the record on a *de novo* basis, we may identify additional grounds for denial beyond what the Service Center identified in the initial decision. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The regulations and case law confirm that ownership and control must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, we are unable to determine the elements of ownership and control.

In this instance, the Petitioner's formation documents from 2007 identified [REDACTED] as the sole owner and manager of the petitioning limited liability company. The Petitioner stated: "To ensure stable growth during the econom[ic] downturn and even wish for a possible expansion, in March 2013, [the Petitioner] transferred 51% of its shares to . . . [REDACTED] . . . making [the Petitioner] a subsidiary of the oversea[s] company."

Other documents in the record raise questions about which entity [REDACTED] purchased. The petitioner has submitted a photocopied Percentage Interest certificate, dated March 27, 2013, stating: [REDACTED] is the owner of Fifty-one Percentage Interest of the above Limited Liability Company." The company named on

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the certificate is not the Petitioner, but rather [REDACTED] a separate company with a different Federal Employer Identification Number.

Bank documents show that the Beneficiary sent the purchase funds by wire transfer from her own account, and that [REDACTED] issued reimbursement payments, with the explanation that Chinese currency controls required this series of transactions. The transferred funds did not go directly to the Petitioner, however. [REDACTED] received the wire transfer, and later deposited those funds into the Petitioner's bank account.

The Petitioner's RFE response includes a copy of its IRS Form 1120S, U.S. Income Tax Return for an S Corporation, prepared on March 10, 2014. That return included Schedule K-1, Shareholder's Share of Income, Deductions, Credits, etc. According to Schedule K-1, [REDACTED] owned 100% of the Petitioning company at the end of 2013 and was the only owner during that year. This is inconsistent with the claim that [REDACTED] had sold a 51% interest in the company to [REDACTED] in March 2013. The Schedule K-1 submitted with [REDACTED] Form 1120S return, prepared the same day, also identified [REDACTED] as the sole shareholder. Neither of the Form 1120S returns indicated that either entity had an ownership interest in the other; both denied that such a relationship existed.

To qualify as a subchapter S corporation, a corporation's shareholders must be individuals, estates, certain trusts, or certain tax-exempt organizations, and the corporation may not have any foreign corporate shareholders. A corporation is not eligible to elect S corporation status (and thus file a Form 1120S tax return) if a foreign corporation owns it in any part. *See* Internal Revenue Code, § 1361(b), 26 U.S.C. § 1361(b)(1) (2011). This discrepancy raises further doubts regarding the ownership of the petitioning corporation. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In this proceeding, the Petitioner has not submitted sufficient evidence to establish [REDACTED] ownership and control of the petitioning entity. The Petitioner did not submit an updated operating agreement showing that [REDACTED] exercises any control over the petitioning company, nor did it submit any of its membership certificates. The overseas wire transfer of the purchase funds went not to the Petitioner, but to [REDACTED]. The Petitioner's 2013 tax return, prepared in 2014, does not reflect [REDACTED] claimed majority ownership of the company, and such ownership would disqualify the Petitioner for the S corporation status claimed on that tax return.

As a result of these omissions and inconsistencies, we conclude that the Petitioner has not established that it has a qualifying relationship with the Beneficiary's foreign employer. For this additional reason, the petition cannot be approved.

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C. Foreign Employment in a Managerial or Executive Capacity

The remaining issue in this proceeding is whether the Petitioner has established that the Beneficiary served in a qualifying managerial or executive capacity while employed abroad.

1. Facts

In an introductory letter dated May 2, 2013, the Petitioner stated that the Beneficiary had served as the chief financial officer of [REDACTED] since 1994. The Petitioner indicated that the Beneficiary “oversaw three departments,” specifically finance, human resources (HR), and procurement.

In response to the Director’s RFE, the Petitioner provided a letter from the foreign entity, which included a list of 16 duties performed by the Beneficiary in her role as CFO. The foreign entity divided these duties into management functions requiring 70% of her time, and non-management functions requiring 30% of her time.

The RFE response included an organizational chart for the foreign entity which identified the Beneficiary’s subordinates as an HR manager, a financial manager, and a procurement manager. The Petitioner indicated that the HR manager held a master’s degree in business administration and oversaw three subordinates; the financial manager, with a master of arts degree, supervised three subordinates; and the procurement manager, who held a bachelor of arts degree, oversaw five subordinates.

In the denial notice, the Director stated:

The beneficiary spent 70% of her time performing management duties and 30% of her time performing non-management duties. The petitioner ascribed no actual executive-level duties to the beneficiary and again failed to demonstrate that the foreign employer had any full-time managers, supervisors or professionals. According to the description, the beneficiary was responsible for many of the day-to-day duties associated with the foreign company’s operations.

The Director concluded that the Petitioner “failed to demonstrate that the beneficiary was performing in an executive or managerial capacity for the foreign corporation.”

On appeal, the Petitioner asserts that the Beneficiary “was fully responsible for three departments as the Chief Financial Officer. . . . She reported directly to the President and Chairman of the company and clearly functioned at a senior level within the organizational hierarchy.” The Petitioner also notes the prior submission of samples of the Beneficiary’s work at [REDACTED]. The Petitioner contends that the Beneficiary’s overseas position “meets all four prongs of the regulatory requirements [for a manager] under 8 C.F.R. § 204.5(j)(2).” The Petitioner disputes the Director’s finding that the job description lacked detail.

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2. Analysis

Upon consideration, the Petitioner's assertions on appeal are valid. The Director's findings regarding the Beneficiary's overseas employment occupy only one paragraph of the denial notice, with several key conclusions asserted without explanation. The Director's finding that "[t]he Beneficiary spent 70% of her time performing management duties" with "no actual executive-level duties" is not a disqualifying finding; managerial duties, like executive duties, can establish eligibility.

The Petitioner maintains that it has established eligibility by a preponderance of the evidence. The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (discussing "more likely than not" as a greater than 50 percent probability of something occurring).

While some parts of the job description are more detailed than others, the evidence and information regarding the Beneficiary's role with the foreign entity are credible and consistent. On balance, the submitted evidence is sufficient to establish by a preponderance of evidence that the Beneficiary served in a managerial capacity at [REDACTED]

Accordingly, we withdraw the Director's finding that the Petitioner has not established that the Beneficiary worked abroad in a qualifying capacity.

III. CONCLUSION

We will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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, the Petitioner has not met that burden.

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ORDER: The appeal is dismissed.

Cite as *Matter of BW-M-, LLC*, ID# 13933 (AAO Oct. 16, 2015)