



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

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

MATTER OF R-, INC.

DATE: OCT. 28, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a telecommunications equipment company, seeks to permanently employ the Beneficiary as its director of sales for the American region under the multinational executive or manager 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 did not establish: (1) that the Beneficiary would be employed in the United States in a qualifying managerial or executive capacity; or (2) that the Petitioner had been doing business for at least one year prior to filing this petition.

On appeal, the Petitioner submits a legal brief disputing the Director's decision and additional evidence in support of its claim that the Petitioner and Beneficiary are fully qualified for the benefit sought.

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;

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- (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.

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 primary issue to be addressed is whether the Petitioner established that the Beneficiary will be employed in a qualifying managerial or executive capacity.

1. Facts

The Petitioner filed the Form I-140 on September 4, 2012. The Petitioner stated that it was incorporated in the State of Delaware on [REDACTED] and subsequently registered to do business in California and Florida. The Petitioner claims to employ 11 individuals and reports a gross annual income of \$6,390,792. The Beneficiary has been offered employment at its Florida office.

The Petitioner submitted a letter, dated August 3, 2012, stating that its Chinese parent company, [REDACTED] transferred the Beneficiary to the United States in an L-1A status in [REDACTED] 2011 in order to oversee, direct, and further strengthen and expand the company's product sales and marketing capabilities in the United States. The Petitioner described the Beneficiary's duties as follows:

- 1) Manage and Direct the product sales/marketing teams in providing technical services to clients relating to use, operation, and maintenance of equipment;
- 2) Review blueprints, plans, and other customer documents to develop and prepare cost estimates or projected increases in production form client's use of proposed equipment or services;
- 3) Provide technical guidance to product marketing team and discuss technical aspects of our products to determine technical specification required;
- 4) Direct product marketing teams to present [the Petitioner's] products to customers and to assist customers in planning installation and optimal use of our products;

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- 5) Direct product marketing team to ensure the prompt and dependable technical services offered by our company;
- 6) Provide feedback to technical team in our headquarters in [REDACTED] China regarding U.S. market needs and future technical trends; and
- 7) Gather competitive intelligence to assist sales efforts and marketing product planning and development; and
- 8) Interview and recruit qualified candidates to further expand the product marketing department for our new digital media service and solutions products.

The Petitioner submitted an organizational chart dated 2012 depicting the Beneficiary as Director of the American region reporting directly to the Petitioner's president, [REDACTED]. The chart depicts five employees reporting to the Beneficiary, including: (1) Sales Director US East - [REDACTED] (2) Sales Manager - [REDACTED] (3) Technical Manager (China) - [REDACTED] (4) Shipping Manager, (China) - [REDACTED] and (5) Marcom Manager (China) - [REDACTED]. The chart did not depict any employees reporting to the Beneficiary's subordinates. The organizational chart also depicts a VP Sales, USA who supervises a Sales Director US West (who is also depicted as having responsibility for Brazil), as well as open positions for a Sales Director for the "LATAM" region and a Sales Manager for Mexico. Overall, the chart identifies nine U.S.-based employees by name and indicates that there was an "offer sent" for the positions of Sales Manager, Mexico and Sales Director US West.

The Petitioner provided additional business documents, including lease documents for its Florida location, tax documents, salary and wage documents from 2010 and 2011, and financial documents.

On May 2, 2013, the Director issued a request for evidence (RFE) advising the Petitioner to provide additional evidence to establish that the Beneficiary would be engaged in a qualifying managerial or executive capacity.

In response, the Petitioner provided a letter, dated July 24, 2013, describing the Beneficiary's duties as follows:

- 1) Manage and direct the product sales/marketing teams in providing technical services to customers relating to use, operation, and maintenance of equipment (15%);
 - Direct the sales/marketing teams to work with technical support teams to resolve problems for customers
 - Provide guidance to subordinates in assisting customers in use, operation and maintenance of products and services
- 2) Review blueprints, plans, and other customer documents to develop and prepare cost estimates or projected increases in production from customer's use of proposed equipment or services (15%);

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- Review blueprints, plans and other customer documents to analyze cost estimates
 - Direct the product increases from customer's use of products or services
- 3) Direct marketing teams to present [Petitioner's] products to customers and to assist customers in planning installation and optimal use of our products (15%);
- Direct the American Region Sales Division to present [Petitioner's] product and services to existing and potential customers
 - Direct subordinates to assist customers in the use of products and services
- 4) Direct marketing team to ensure the prompt and dependable technical services offered by our company (10%);
- Oversee the American Region Sales Division to coordinate with the technical teams to provide timely and efficient technical support to customers
 - Direct subordinates to introduce new products and services to customers
- 5) Provide feedbacks relating to sales and marketing in our headquarters in [REDACTED] China regarding U.S. market needs and future technical trends (15%);
- Review sales activity reports, financial statement, periodical achievement with sales and marketing management in China headquarters
 - Confer with management in [REDACTED] China regarding the U.S. market trends and future goals
- 6) Gather competitive intelligence to assist sales efforts and marketing product planning and development (15%); and
- Develop sales campaigns to accommodate goals of company
 - Establish a market intelligence team to monitor and analyze industry trends and movements
 - Advising dealers, distributors and customers concerning sales and advertising techniques
- 7) Interview and recruit qualified candidates to further expand the American Region marketing department for our new digital media services and solutions products (15%).
- Recruit and interview qualified candidates with marketing and technical background
 - Direct subordinates to provide training to new hires regarding our new digital media service and solutions products

The Petitioner further explained that, in this role, the Beneficiary would exercise full discretionary authority over day-to-day operation of sales and marketing activities. The Petitioner also asserted

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that the Beneficiary would supervise six professionals “all of whom possesses at least a Bachelor degree.”

The Petitioner submitted a new organizational chart dated 2013. Once again, the Beneficiary is shown reporting directly to the Petitioner’s president but in this version, his title is listed as “Senior Sales Director America Region.” The updated chart shows that the Beneficiary oversees seven subordinates instead of five and only one subordinate, Senior Sales Director USA East, [REDACTED] remains from the previously submitted organizational chart. New employees include: (1) Sales Director USA West- [REDACTED] (2) Sales Manager (Mexico) - [REDACTED] (3) Sales Manager (Central America) - [REDACTED] (4) Sales Manager (South America) - [REDACTED] and (5) and (6) two employees assigned from China to Brazil - [REDACTED] The chart further notes that [REDACTED] is a contract consultant.

The Petitioner provided the following table with information regarding the Beneficiary’s claimed current direct reports as of 2013:

Employee	Title Responsible Territory	Job Responsibilities	Compensation (Salary and commission)
[REDACTED]	Senior Sales Director (US-East) Full time Employee	Manage and develop accounts in US Eastern States. Supervise and develop new account representatives, channel partners	\$95K Annual Salary 3% commission on sales
[REDACTED]	Sales Director (US-West) Full time Sales Agent	Manage and develop accounts in US Western States	\$80K per year 3% commission on sales
[REDACTED]	Sales Manager (Central America) Foreign Full Time Contractor	Business Development in Central America and Colombia	\$48K per year Plus annual bonus
[REDACTED]	Sales Manager (Mexico) Foreign Full Time Contractor	Business Development in Mexico	\$75K per year
[REDACTED]	Sales Manager (South America) Foreign Full Time Contractor	Business Development in South America, manage existing channels in Argentina, Bolivia, and Uruguay	\$66K per year Plus commission on sales

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[REDACTED]	Sales Manager (Brazil) Assigned from HQ	Business liaison between (Petitioner) and regional distributors in Brazil	Paid by HQ
[REDACTED]	Technical Manager (Brazil) Assigned from HQ	Technical Support to regional distributors in Brazil	Paid by HQ

The Petitioner submitted resumes for [REDACTED] and [REDACTED] indicating that all of these employees have at least a Bachelor's degree.

The Petitioner submitted 13 Form W-2 Wage and Tax Statements for 2012; statements were included for the Beneficiary who earned \$65,066.64 and [REDACTED] who earned \$40,332.05. [REDACTED] was the only subordinate of the Beneficiary depicted on either organizational chart who received a Form W-2 in the year the petition was filed.

The Petitioner submitted a copy of an offer of employment letter sent to [REDACTED] dated August 2, 2012 which states that he was offered the position of "Senior Sales Director of USA Region" reporting directly to [REDACTED] the Petitioner's president and CEO. The Petitioner also submitted offer letters or independent consulting agreements for [REDACTED] and [REDACTED] which post-dated the filing of the petition.

In denying the petition, the Director stated that the Petitioner verified the employment of only one of the Beneficiary's claimed subordinates and had not submitted sufficient evidence to support a finding that the Beneficiary would perform primarily managerial or executive duties.

On appeal, the Petitioner asserts that the evidence submitted in response to the RFE and on appeal demonstrates that the Beneficiary will be employed in a qualifying managerial capacity. The Petitioner asserts that the Beneficiary allocates at least 70 percent of his time to qualifying duties and emphasizes that some of the Beneficiary's subordinates are located outside of the United States and therefore, the salaries paid to them are not shown on a Form W-2 or other U.S. tax statements. The Petitioner points to unpublished AAO decisions in which beneficiaries with subordinates located outside the United States were found to qualify for L-1A status. In support of the appeal, the Petitioner submits copies of its bank statements showing payments to the Beneficiary's claimed foreign subordinates for the period April 2013 through September 2013.

2. Analysis

Upon review, and for the reasons stated herein, the Petitioner has not established that the Beneficiary will be employed in a qualifying managerial or executive capacity.

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 with the

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petitioning entity. 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). We then consider the beneficiary's job description in the context of the petitioner's organizational structure, the duties of the beneficiary's subordinates, and any other relevant factors that may contribute to a comprehensive understanding of the beneficiary's actual duties and role within the petitioning entity.

The Petitioner concedes that the Beneficiary's responsibilities for gathering competitive intelligence and reviewing blueprints, plans and other customer documents, which require 30 percent of his time, are not managerial in nature. We note that the Petitioner also initially stated that the Beneficiary will "provide technical guidance to product marketing team and discuss technical aspects of our products to determine technical specification required," but did not include this non-managerial duty when assigning percentages to the Beneficiary's areas of responsibility in response to the RFE.

Nevertheless, the Petitioner maintains that the Beneficiary's remaining duties, accounting for 70 percent of his time, are qualifying managerial duties. However, upon review of the duties categorized as managerial, we note that such duties are described in vague and repetitive terms. For example, the Petitioner asserts that the Beneficiary allocates 15 percent of his time to "manage and direct the sales marketing teams in providing technical services," an additional 15 percent of his time to "direct marketing teams" in planning installation and use of products, and 10 percent of his time to "direct marketing team to ensure the prompt and dependable technical services offered by our company." These duties are general, appear to overlap and do not provide any insight into what the Beneficiary actually does on a daily basis. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. The Petitioner has not provided sufficient detail or explanation regarding the Beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the 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). Thus, while the Petitioner added percentages to the initial position description in response to the RFE, it also removed one non-qualifying duty and did not add sufficient information to establish that the specific tasks he performs are primarily managerial in nature.

Further, the Beneficiary's duty description indicates that the Beneficiary will manage and direct sales teams and/or marketing teams; however, the record does not support that the Petitioner employed such teams subordinate to the Beneficiary at the time this petition was filed. 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).

The organizational chart submitted at the time of filing in September 2012 showed that the Beneficiary supervised two sales employees who appeared to be based in the United States [REDACTED], and three employees based in China who were responsible for technical

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management, shipping management and marketing communications. The Petitioner did not provide position descriptions for the Chinese employees or any evidence of payments to them, and they were not included on the updated chart in 2013. We cannot conclude that they were part of a sales and marketing team responsible for the American region at the time the petition was filed. 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)).

Further, the initial organizational chart showed several sales employees, or proposed employees, with responsibilities for sales in the United States and the Americas region who were not depicted under the Beneficiary's supervision, including positions with responsibility for Brazil, Latin America, the Western United States and Mexico. The Petitioner subsequently grouped these positions under the Beneficiary's authority in the chart submitted in response to the RFE, but it did not clarify the reason for the apparent reorganization. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Regardless, with the exception of [REDACTED] the Petitioner has not provided evidence of payments made in 2012 to any claimed subordinate of the Beneficiary included on either organizational chart. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Therefore, after our review of the record, we agree with the Director's finding that the Petitioner has not provided sufficient evidence to establish that the Beneficiary had more than one subordinate employee at the time the petition was filed. Further, we note that, although the Petitioner included [REDACTED] among the Beneficiary's subordinates on both organizational charts, the offer letter issued to [REDACTED] in August 2012 suggested that he was offered a different position, as Senior Sales Director for the entire United States, and that he, like the Beneficiary was to report to the Petitioner's president. This evidence casts doubt on the Petitioner's claim that [REDACTED] was the Beneficiary subordinate at the time of filing. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Due to the inconsistencies in the record, the Petitioner has not established that the Beneficiary supervised a team comprised of professional, supervisory or professional employees at the time the Petition was filed, or that he had a team of sales and marketing staff to relieve him from performing non-qualifying duties within his area of responsibility.

On appeal, the Petitioner refers to its RFE response, stating that the Beneficiary supervised six employees but "some employees are located outside of the U.S. and the salaries paid to them are not shown on the U.S. W-2 or other statements." In support of this assertion, the Petitioner submitted bank statements demonstrating money transfers to several of the "employees" identified on the 2013 organizational chart. We reiterate that the Petitioner's 2013 organizational chart is almost entirely different from the chart it initially submitted in support of this petition, and that there is no evidence

that most of the subordinates depicted on the 2013 chart were employed in September 2012. However, even if the Petitioner's second organizational chart was originally presented, the Petitioner did not sufficiently explain or document the nature of the subordinate employees' status or their job duties. For example, the documentation suggests that some employees listed on the Petitioner's chart are independent consultants or employees of another company but the evidence does not clarify their employment status, nor does the Petitioner sufficiently establish that these "employees" were actually paid for work done for the Petitioner at the time of filing. 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)).

In regards to the Petitioner's assertions on appeal, we note that purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a Petitioner cannot offer a new position to the Beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The Petitioner must establish that the position offered to the Beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the Petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. In this matter, the Petitioner's response to the Director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather it changed the Beneficiary's entire staff and focus. Therefore, our analysis of the Beneficiary's position is based on the structure described at the time of filing.

We find that even if the Petitioner had sufficiently demonstrated that it employed the subordinates listed on its 2012 organizational chart, it did not sufficiently establish that they would relieve the Beneficiary from primarily performing non-qualifying duties. As noted, three of the employees listed on the chart were based in China, did not appear to be sales or marketing employees, and there was no evidence that they were part of the "teams" to be managed by the Beneficiary. The remaining two employees were the sales director, who may actually report to the president and not to the Beneficiary, and a sales manager whose job duties and employment have not been documented in the record. The record does not show that the Beneficiary's subordinates as depicted on the 2012 organizational chart would relieve him from performing non-qualifying duties and given the lack of staffing, we cannot determine that he was not primarily engaged in those duties at the time of filing. Therefore, the Petitioner has not established that the Beneficiary would be primarily performing in a managerial or executive role. 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. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The Petitioner refers to an unpublished decision issued by this office in which we determined that a beneficiary met the requirements of serving in a managerial and executive capacity for L-1

classification based on his or her supervision of subordinates who were located outside the United States. The Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. As discussed above, while both organizational charts submitted show the Beneficiary with subordinates located outside the United States, the initial organizational chart was not accompanied by any evidence showing payments to those foreign employees or information regarding their job duties, while the 2013 organizational chart did not establish that the Beneficiary supervised those foreign employees when the petition was filed. 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.

We also acknowledge the Petitioner's assertion that the Beneficiary was previously granted L-1A status as a nonimmigrant intracompany transferee in May 2011. While we acknowledge that the L-1A nonimmigrant classification and this immigrant classification rely on the same statutory definitions of managerial and executive capacity, it must be emphasized that each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Here, the Petitioner did not provide a detailed description of the Beneficiary's duties or evidence that it actually employed his claimed subordinates in September 2012 when the petition was filed. As such, the Petitioner did not meet its burden to establish by a preponderance of the evidence that the Beneficiary would be employed in a qualifying capacity as of the date of filing. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

Based on the Beneficiary's general duty description, the lack of evidence regarding the Beneficiary's claimed subordinates at the time of filing, the lack of personnel to assist the Beneficiary with non-qualifying duties, and the unresolved inconsistencies in the record, the Petitioner has not established that the Beneficiary would be employed in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

B. Doing Business

The second issue addressed by the Director is whether the Petitioner provided sufficient evidence to demonstrate that it has been doing business for at least one year prior to filing this petition. *See* 8 C.F.R. § 204.5(j)(3)(i)(D).

In denying the Petition, the Director acknowledged that the Petitioner submitted its corporate tax returns for 2011 and 2012, audited financial statements, lease agreements and evidence of liability insurance. The Director found that the Petitioner did not submit invoices dated prior to June 2013 as evidence that it is engaged in the sale of telecommunications equipment to customers. Further, the Director observed that the Petitioner did not provide a current, valid lease agreement for its Florida

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location, as there appeared to be at least a six-month gap between the expiration of the lease for the former premises and the commencement date for the lease for new physical premises.

On appeal, the Petitioner submits copies of invoices and purchase orders dated throughout 2011 and 2012, and an explanation, with supporting documentation, addressing the Director's concerns regarding its physical premises in Florida during 2012. Further, we observe that the Petitioner's initial evidence included copies of invoices issued to customers between January 2012 and August 2012 which the Director did not acknowledge in denying the petition.

Upon review of the petition and additional evidence submitted on appeal, the Petitioner has demonstrated by a preponderance of the evidence that it had been doing business in the United States for at least one year prior to the date this petition was filed. Therefore, we withdraw the Director's decision with regard to this issue.

III. CONCLUSION

The appeal will be dismissed for the above stated reason. 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 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of R-, Inc.*, ID# 14150 (AAO Oct. 28, 2015)