(b)(6)

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-S-, INC.

DATE: SEPT. 10, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an exporter of granite and marble, seeks to classify the beneficiary as a multinational manager or executive. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. 1153(b)(1)(C). The Director, Nebraska Service Center, denied the petition.[1] The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner is a California corporation and states that it has a qualifying relationship with [redacted] located in India. The Petitioner seeks to employ the Beneficiary as its Chief Executive Officer/Manager.

The Director denied the petition on January 13, 2010, concluding that the Petitioner did not establish that it had been doing business in the United States for at least one year prior to the petition's filing date, or that the Beneficiary's duties, either with his former foreign employer or in the United States, were in a qualifying managerial or executive capacity.

On appeal, the Petitioner submits a legal brief. The Petitioner contends that the Director applied an impermissibly high standard of proof, and did not follow required procedures regarding derogatory evidence. The Petitioner asserts that the Director drew unwarranted conclusions from incomplete evidence, and that an unbiased review of the record supports approval of the petition.

Before turning to the merits of the petition, we note that, on appeal, the Petitioner states: "Immigration regulations state that a petitioner **must** be provided adverse evidence where a denial is based on adverse or derogatory information, and the petitioner **must** be given an opportunity to rebut it" (emphasis in original). The Petitioner quotes the regulation at 8 C.F.R. § 103.2(b)(16)(i), which states, in pertinent part:

> If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or

[1] This immigrant petition as initially denied by the Director, California Service Center on August 9, 2005 and we dismissed the Petitioner's subsequent appeal on March 20, 2006. The Petitioner then filed a lawsuit in the United States District Court, Central District of California. Prior to entry of a ruling, the Petitioner reached a settlement agreement with the government and the case was returned to us for a new decision. On July 21, 2009, we issued a decision remanding the case to the Nebraska Service Center, which ultimately denied the petition on January 13, 2010.

> petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered.

This regulation does not require that the evidence "must be provided" to the petitioner, only that U.S. Citizenship and Immigration Services (USCIS) must advise a petitioner of the evidence's existence and provide the petitioner a chance to rebut it. Regardless, the Petitioner does not identify any "adverse or derogatory information" that the Director cited in the denial notice without prior notice to the Petitioner.

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 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, Immigrant Petition for Alien Worker, 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;

(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, 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. THE ISSUES ON APPEAL

The issues to be addressed are whether the Petitioner established: (1) that it had been doing business for one year at the time the petition was filed; (2) that the Beneficiary was employed in a qualifying managerial or executive capacity abroad for one year within the three years preceding his admission to the United States in September 2003; and (3) that the Beneficiary would be employed in a qualifying managerial or executive capacity in the United States.

A. Doing Business

1. Facts

The regulation at 8 C.F.R. § 204.5(j)(3)(i)(D) requires the petitioner to submit evidence that the prospective United States employer has been doing business for at least one year. "Doing business" means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office. 8 C.F.R. § 204.5(j)(2).

The record includes a copy of the Petitioner's October 31, 2002 articles of incorporation, showing that the company was incorporated 19 months before the petition's June 1, 2004 filing date. The Petitioner also submitted a copy of notes from a March 10, 2003 shareholder's meeting. The earliest evidence relating directly to the Petitioner's business activity, as opposed to its existence as a corporation, dates from October 2003. Documentation from that month included a sublease agreement dated October 8, 2003, effective November 1 of that year; a telephone bill stating "New Service Established on Oct 2, 2003"; an October 9, 2003 invoice from [redacted] showing the Petitioner's purchase of computer equipment and "6 hours onsite to fix wiring and setup local network/training"; and evidence that it joined the [redacted] on October 17, 2003. The Petitioner also documented its participation in several trade shows, the earliest of which occurred in October 2003.

In a request for evidence (RFE) dated September 25, 2009, the Director noted that, on California Franchise Board Form 100, California Corporation Franchise or Income Tax Return, the Petitioner listed [redacted] as the "[d]ate business began in California or date income was first derived from California sources," and that "[a] letter from [redacted] states that the petitioner's business checking account was opened in [redacted] The Director instructed the Petitioner to "submit a detailed overview of the early chronology of the U.S. petitioner's operations. Please support all statements with evidence." Noting that the Beneficiary entered the United States on September 16, 2003, the Director asked: "Who was running the company (if anyone) prior to September 16, 2003?" In response, the Petitioner stated: "The company was not engaged in business prior to this date." A separate, unsigned document, prepared by the Petitioner, repeated this basic information: "Nobody was running the company prior to September 16, 2003. Once [the Beneficiary] was in the country on September 16, 2003, then only actual business activities started."

In the January 13, 2010 denial notice, the Director concluded that "the evidence does not establish that the U.S. petitioner was doing business for at least one year prior to the June 1, 2004 filing of the petition."

On appeal, the Petitioner asserts that it "has been in existence for over 1 year prior to the filing of the petition," as documented by the submission of "the company's first corporate minutes dated March 13, 2003."

Upon review, and for the reasons discussed below, we find that the Petitioner has not established that it was doing business for at least one year prior to the petition's filing date.

2. Analysis

The Petitioner's March 2003 meeting minutes indicate that the company existed at the time, but not that it was "doing business" through regular, systematic, and continuous provision of goods and/or services. By regulation, "the mere presence of an agent or office" does not constitute "doing business." The petitioning entity existed as a legal entity in late 2002 and early 2003, but the Petitioner has acknowledged that the company did not engage in "actual business activity" before the Beneficiary entered the United States on September 16, 2003. This information, by itself, renders the Petitioner ineligible for the benefit sought. USCIS cannot properly approve this petition with a priority date of June 1, 2004, because the Petitioner did not begin doing business until early [redacted] less than one year before the filing date.

The appeal will be dismissed as the Petitioner did not establish that it satisfied the regulatory requirement at 8 C.F.R. § 204.5(j)(3)(i)(D). However, we will also consider the other two stated grounds for denial, both of which concern the nature of the Beneficiary's job duties.

B. Executive or Managerial Capacity Abroad

1. Facts

In a letter dated May 11, 2004, which the Beneficiary signed in his capacity as CEO of the petitioning entity, the Petitioner stated that the beneficiary "has served as the CEO of [redacted] in India [of which the petitioner is a subsidiary] from June 3, 1998 until the time of his transfer to the United States in September, 2003."

The Petitioner's initial submission contained no detailed description of the Beneficiary's duties with the foreign entity. The Petitioner's response to an RFE issued in 2005 included a list of 23 duties, each occupying 10 percent or less of the Beneficiary's time. The two major duties were: "Direct, plan and implement policies, objectives and activities of organizations or businesses" and "Direct, coordinate, review and supervise activities in sales, export and Manufacturing of Marble and Slate Tiles." All other claimed duties were said to occupy 5 percent of his time or less. These lesser duties included: "Deliver speeches, write articles, and present information at meetings or conventions" and "Review and negotiate on the final contract price." An organizational chart

submitted at the time indicated that three managers reported directly to the beneficiary, specifically a Manufacturing Manager , a Sales Manager and an Exports Manager

In the 2009 RFE, the Director advised the Petitioner that the previous information did not contain sufficient details. The Director requested "a very detailed description of the beneficiary's actual day-to-day tasks in his position abroad," as well as organizational charts for the period when the Beneficiary worked for the parent company. The Petitioner's response included payroll figures from 1998 to 2003. These records identify the person whom the Petitioner had previously named as the parent company's "Sales Manager," as an "Assistant" who only worked for the company from August 2002 to January 2003, and in April 2003. name does not appear on the payroll lists at all.

The Petitioner submitted three organizational charts representing the structure of the foreign entity for the years ending March 31 of 2001, 2002 and 2003. Each chart indicated that the Beneficiary was "in[]charge [of] sales/purchase" and directly supervised one employee, specifically the Manager, Procurement & Dispatch, identified as (2001), (2002) and (2003). The Manager, Procurement & Dispatch, supervised the Executive Quality Control, Asst. Quality Control and Asst. Dispatch. The 2003 chart showed two names for each of the three positions beneath the Manager, Procurement & Dispatch. Other management tracks, which did not report to the Beneficiary, included an Accountant and an Assistant who both reported to the Director, Financial Matters, and a Record Keeper and Assistant who reported to the Director, Sales/Income Tax & Legal Affairs.

The Petitioner submitted a new foreign job description for the Beneficiary which included nine items, the most significant of which were "Supervising work of other supervisory or managerial employees," said to occupy 30 percent of the Beneficiary's time, and "Supervising day-to-day operations of the company" for 20 percent of his time. The list indicated that the Beneficiary devoted 10 percent of his time to "Overseeing Government Reporting" and 5 percent of his time to "Oversee[ing] banking and banking relationships," although the organizational charts did not place "Financial Matters" or "Tax & Legal Affairs" under his authority.

The record shows that on May 23, 2007, filed a Form I-140 on the Beneficiary's behalf, seeking to employ the Beneficiary as a Buyer. The Director, Texas Service Center, approved that petition on May 29, 2007, granting the Beneficiary classification as a skilled worker under section 203(b)(3) of the Act, with a priority date of February 26, 2007. The approved petition included an approved ETA Form 9089, Application for Permanent Employment Certification. Part K of that form requests information regarding "all jobs the alien has held during the past 3 years" as well as "any other experience that qualifies the alien for the job opportunity for which the employer is seeking certification." Part K of ETA Form 9089 listed two full-time jobs that the Beneficiary had held: Manager at the petitioning company from September 18, 2003 to present, and Buyer for in India from September 1, 1994 to September 1, 1998. The form did not mention the Beneficiary's employment with

The Director, in the RFE issued on September 25, 2009, noted that the Beneficiary did not list his employment with [redacted] on ETA Form 9089, and that his claim to have worked full-time for [redacted] until September 1998 conflicted with the Petitioner's claim that the Beneficiary "served as the CEO of [redacted] . . . from June 3, 1998 until . . . September, 2003." In response, the Petitioner stated that the Beneficiary "also owned [redacted] . . . and was its principal buyer" during the dates listed on ETA Form 9089, and that the Beneficiary "phased out" the company as [redacted] became more established. The Petitioner submitted no evidence to support these claims, stating: "Petitioner no longer has access to documents regarding [redacted] The Petitioner also stated that the Beneficiary "received compensation commencing approximately April 2000."

In the 2010 denial notice, the Director stated that the Petitioner had not addressed the omission of [redacted] from ETA Form 9089, and that the job description submitted in response to the RFE was "a *less* detailed description that varied significantly from the first" (emphasis in original). The Director also found that the various organizational charts and payroll records are not consistent with respect to the names or titles of the Beneficiary's claimed subordinates.

On appeal, the Petitioner states that the information omitted from ETA Form 9089 was irrelevant in the context of that form, and that "USCIS mischaracterized the job duties and description provided in response to the RFE."

Upon review, and for the reasons stated below, we find that the Petitioner has not established that the Beneficiary's former positon abroad with [redacted] was in a qualifying managerial or executive capacity.

2. Analysis

On appeal, the Petitioner contends that Part K of ETA Form 9089 does not require a complete accounting of all the Beneficiary's past employment, and that the Beneficiary's work for [redacted] did not meet the criteria for inclusion on that part of the form because it did not occur within three years of the execution of the form, and was not relevant to the "Buyer" position offered in the 2007 immigrant petition. The Petitioner maintains that the Beneficiary could have worked for [redacted] and [redacted] at the same time, because "[i]t is not uncommon for driven individuals and entrepreneurs to work full time for more than one employer concurrently." This last assertion is general, conjectural, and unsupported by the record. Nevertheless, this is not a fatal flaw in the petition, as the Petitioner need establish only one year of executive or managerial employment by the Beneficiary prior to his entry into the United States, and 1998 preceded the statutory three-year period during which that employment had to take place.

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. 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).

Regarding the Beneficiary's job description, the Petitioner states: "The RFE response included additional details . . . in over 3 pages of text of which only a portion consisted of the 9 general duties." The RFE response included several paragraphs of information about the Beneficiary's duties, but these add up to considerably less than "3 pages of text" unless one counts statements quoted or paraphrased from the RFE itself. The information consisted primarily of examples correlated with elements of the statutory definitions of executive and managerial capacity. Some of the specific examples (such as decisions about purchases) derive from either the first or second version of the percentage breakdown; others show no specific estimated percentage. In the RFE, the Director had stated: "Estimate the percentage of time dedicated to each specific task. Do not lump the tasks together when estimating the percentage of time dedicated to each specific task." The Petitioner, in the RFE response, did not follow these instructions, instead providing estimated percentages for nine very broad categories.

With respect to the discrepancies in the organizational charts, the Petitioner does not deny that they exist or attempt to resolve them. Instead, the Petitioner states: "It is uncommon for companies of [the foreign entity's] size to maintain an organizational chart." The Petitioner also contends that "[r]ecord keeping is more informal" in "Indian Business Culture" than in the United States. These assertions are, themselves, unsupported, appearing only in a brief prepared by counsel. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

By signing Form I-140, the Petitioner declared under penalty of perjury that the information submitted was true and correct to the best of the Petitioner's knowledge. The Petitioner, on appeal, essentially concedes that the organizational charts amount to after-the-fact conjecture for which no supporting evidence exists. Under the circumstances, the charts have negligible evidentiary weight. 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'l Comm'r 1972)).

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).

The Petitioner contends that the Beneficiary meets all the requirements of both an executive and a manager. Based on the current record, we are unable to determine whether the claimed executive and managerial duties constitute the majority of the Beneficiary's duties, or whether the Beneficiary primarily performed non-qualifying administrative or operational duties. Although the Director specifically requested this information, the Petitioner's description of the Beneficiary's job duties does not establish what proportion of the Beneficiary's duties was executive or managerial in nature, and what proportion was actually non-executive and non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

For the above reasons, we find that the Petitioner has not overcome the Director's finding that the Petitioner has not met its burden of proof with respect to the Beneficiary's claimed employment abroad. The Petitioner did not provide reliable, probative evidence sufficient to establish that the foreign entity employed the Beneficiary in a qualifying managerial or executive capacity. For this additional reason, USCIS cannot approve this petition.

C. Executive or Managerial Capacity in the United States

1. Facts

The Petitioner's detailed job description for the Beneficiary, submitted in response to the Director's 2009 RFE, indicated that he devotes 35 percent of his time to "execution of plans," including "[t]raining of personnel" and "[d]irect[ing] personnel in merchandising of products, advertising campaigns, designing and implementation of various marketing plans and use of point of sales material." Under the Beneficiary's "relationship," responsibilities said to take up 20 percent of his time, one item indicated that the Beneficiary is to "[c]o-ordinate closely with staff and management and other personnel and primary distributors."

The Petitioner submitted a three-level organizational chart, with the Beneficiary at the top level as "CEO/Manager." The second level included his spouse, named Manager of Marketing and Imports, who supervised "Office Administration and Receptionist staff"; [redacted] Sales Manager, supervising two independent contractors serving as sales associates; and Procurement and Warehouse Manager [redacted] The job descriptions for the Manager of Marketing and Imports and the Procurement and Warehouse Manager both referred to hiring and training of unspecified subordinate staff. On the Form I-140, the Petitioner stated that it had three employees.

Quarterly wage reports, submitted at various times throughout the proceeding, show that the Petitioner paid the following wages in 2004:

Employee Name	Q1	Q2	Q3	Q4
[The Beneficiary]	$2,000.00	-	$40,500.00	$9,000.00
[The Beneficiary's spouse]	-	-	-	1,000.00
[redacted]	1,188.79	$7,678.80	-	-
[redacted]	5,400.00	-	-	4,200.00
[redacted]	2,484.00	-	-	-

In the denial notice, the Director concluded that the organizational structure claimed on the organizational chart and in the various job descriptions did not exist when the Petitioner filed the petition in June 2004, and therefore, "the record does not support a finding that the beneficiary was primarily performing qualifying duties at the time the petition was filed."

The Director also noted that, on the ETA Form 9089 mentioned previously, the Beneficiary had indicated that one of his duties was to "resolve customer complaints regarding sales and services," and another was to "represent [the] company at trade association meetings."

On appeal, the Petitioner maintains that the Beneficiary has had full control over the company, and that any perceived inconsistencies are the result of USCIS's failure to comprehend that conditions change frequently when operating a new business.

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

2. Analysis

On appeal, the Petitioner asserts: "The USCIS is taking a static look at employment and fails to recognize that business operations are fluid." The Petitioner asserts that the Beneficiary "has ultimate authority" over the petitioning company, whether or not subordinate employees were present. The Director, however, did not deny the petition because the Beneficiary lacked authority over the company. Rather, the Director denied the petition because the Petitioner had not provided accurate information about the company's structure.

As noted previously, the Petitioner must establish that the Beneficiary has specified high-level responsibilities, and also that the Beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his time on day-to-day functions. The absence of subordinate employees leaves the Beneficiary responsible for non-qualifying operational and administrative tasks necessary to the day-to-day operations of the business. The Petitioner indicated, for instance, that [redacted] as Procurement and Warehouse Manager, would "[p]repare and process requisitions and purchase orders" and "[m]aintain records of goods ordered and received." The quarterly payroll documentation indicates that the Petitioner did not employ [redacted] in mid-2004, and therefore someone else had to perform those functions at the time. The Beneficiary was the Petitioner's only paid employee in the third quarter of 2004, and therefore the implication is that the Beneficiary must have performed the non-qualifying operational and administrative functions needed to operate the company.

Furthermore, the claimed duties of the identified managers include supervision of lower-level subordinates, but the record includes no evidence that those lower-level workers exist. This discrepancy necessarily reflects on USCIS's perception of the accuracy of the job descriptions.

With respect to the job duties listed on the Beneficiary's ETA Form 9089, the Petitioner stated:

> The job duties and responsibilities provided in the I-140 are not the most exhaustive and most comprehensive descriptive list. The additional duties do not detract or in any way demote [the Beneficiary's] position. They are merely two additional general duties that fall within the broader job description duties listed on the I-140. . . . The USCIS is interpreting an inconsistency again where one does not exist.

The Director had previously instructed the Petitioner to provide "very detailed" information about the Beneficiary's duties, and therefore the omission of significant duties is relevant to our review of the Beneficiary's positon description or the evidence as a whole.

Furthermore, closer examination of the Beneficiary's job description on ETA Form 9089 shows that it closely matches the job description that the Petitioner had provided for [redacted] as Sales Manager. (The Director, in the RFE, found those duties to be more appropriate for a "salesman" than a sales manager.) Two of the overlapping functions are the ones that the Director had identified in the denial notice. Before that, the Director had quoted the entire job description in the RFE. Thus, the Beneficiary claimed this set of duties on ETA Form 9089, while the Petitioner claimed that the Beneficiary had delegated most of those same functions to a Sales Manager. That individual, in turn, earned less than $9,000 working for the Petitioner in the first half of 2004, indicating that he was not otherwise available to perform those functions for the company. This is not a matter of "interpreting an inconsistency . . . where one does not exist." Rather, it is a significant discrepancy that is objectively apparent from review of the available documentation.

The Petitioner has not overcome the finding that the Beneficiary's job description has been inconsistent, and the Petitioner has not established that subordinate staff have been consistently available to relieve the Beneficiary from performing day-to-day operational and administrative functions. Therefore, while the Beneficiary may control the company, the Petitioner has not shown that the Beneficiary's duties are *primarily* executive and/or managerial as the statute requires.

Accordingly, we find that the Petitioner did not provide reliable, probative evidence sufficient to establish that it will employ the Beneficiary in a qualifying managerial or executive capacity. For this additional reason, USCIS cannot approve this petition.

IV. 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.

This decision is without prejudice to the separate petition that [redacted] filed on the Beneficiary's behalf. The approval of that petition remains in effect at this time.

ORDER: The appeal is dismissed.

Cite as *Matter of S-S-, Inc.*, ID# 13216 (AAO Sept. 10, 2015)