



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

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

MATTER OF R-E-T- INC.

DATE: JUNE 28, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a television broadcasting network, seeks to permanently employ the Beneficiary as its vice president under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director, Texas Service Center, denied the petition. The Director concluded that the evidence of record did not establish that: (1) the Beneficiary will be employed in the United States in a qualifying managerial or executive capacity; (2) the Petitioner has been doing business for at least one year prior to the petition's filing date; or (3) the Beneficiary's former foreign employer continues to do business.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence which, according to the Petitioner, overcomes the stated grounds for denial.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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.

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. A labor certification is not required for this classification.

The regulation at 8 C.F.R. § 204.5(j)(3) states:

(3) Initial evidence—

(i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

(A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or

(B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

(D) The prospective United States employer has been doing business for at least one year.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based, in part, on a finding that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term “managerial capacity” as “an assignment within an organization in which the employee primarily”:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as "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.

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. *See* section 101(a)(44)(C) of the Act.

A. Evidence of Record

The regulation at 8 C.F.R. § 204.5(j)(5) requires the Petitioner to submit a statement which indicates that the Beneficiary is to be employed in the United States in a managerial or executive capacity. The statement must clearly describe the duties to be performed by the Beneficiary.

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The Petitioner filed Form I-140 on May 4, 2015, and claimed that it employed eight employees in the United States. The Petitioner's president, [REDACTED], stated in a letter:

As Vice President, [the Beneficiary] will manage the organization and its Operations Center in the United States. He will be directly responsible for the continued growth and success of [the parent company's] network broadcasting in the U.S. television market.

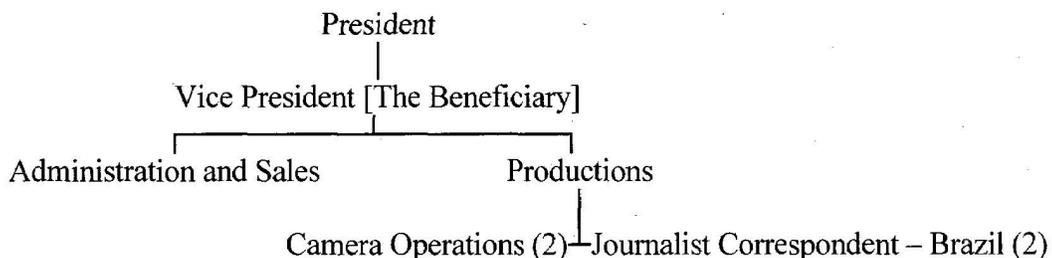
He will supervise and control the work of other supervisory and professional employees in Human Resources, Marketing, Sales, and Journalism. He will have full authority to hire, fire, and make other personnel decisions related to these supervised staff members, and he will grant promotions, authorize leave, and make needed changes in work assignments.

He will manage and oversee professional employees in the creation of marketing strategies for the company's programming content, and will oversee the creation of strategies to target potential viewers and additional service distributors in the United States. [The Beneficiary] will be directly responsible for developing and expanding the signal distribution of [the parent company] to additional cable television outlets in the United States, and he will be responsible for overseeing the market segment analysis of U.S. television viewers of Portuguese-language channels.

[The Beneficiary] will exercise discretion over the day-to-day operations of the company, and will oversee the development of financial statements and budgets prepared by subordinate employees. He will manage the budget, and will have authority to authorize the appropriation of funds to various departments. [The Beneficiary] will report to the company's senior U.S. and Brazilian executive team.

[REDACTED] added that "[o]ne of [the Beneficiary's] major responsibilities as Vice President will be managing the development of a new production facility" which "will employ 30 additional . . . professionals." [REDACTED] stated that the Beneficiary "will be managing an essential function of" the petitioning company by "managing the construction, furnishing, design, operations, and staffing of this new facility."

The Petitioner submitted its organizational chart, which showed the following structure:



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The Director issued a request for evidence, instructing the Petitioner to submit a more detailed job description for the Beneficiary, and evidence and information concerning the Beneficiary's subordinates.

In response, the Petitioner submitted a second letter from [REDACTED] which included a two-page job description for the Beneficiary's position. The principal elements of this description are paraphrased and condensed below, along with the percentage of time spent on each duty:

- 30% Manage each aspect of the Petitioner's operations, from content creation to distribution of the parent company's programming. The Beneficiary manages the Petitioner's finances, policies, programs, and special projects.
- 20% The Beneficiary supervises supervisory and professional employees. The Beneficiary manages the work of the producer and oversees professional sales, marketing, and administrative specialists, with full authority to hire, fire, and recommend personnel actions for these workers.
- 25% The Beneficiary develops the Petitioner's marketing strategies by overseeing the development of market segment analyses, managing service distributor research, and directing the development of model television language. The Beneficiary supervises the work of broadcast media professionals.
- 20% The Beneficiary's primary responsibility is overseeing the implementation of strategic plans and policies needed to increase the Petitioner's U.S. market penetration. The Beneficiary exercises complete control over the activities of the Petitioner's business unit, and he exercises wide discretion over the day-to-day business development operations. He defines daily projects, goals, and guidelines for subordinates, and regularly reviews company performance.
- 5% The Beneficiary exercises complete discretion over the Petitioner's finances and expenditures.

The Petitioner submitted an updated organizational chart, similar to the earlier chart except that the administration and sales manager had a newly identified subordinate with the title of sales and marketing manager. [REDACTED] stated that all of the Beneficiary's subordinates are professionals.

The Director denied the petition, based in part on the conclusion that the Petitioner had not established that the Beneficiary would serve in a qualifying managerial or executive capacity.

On appeal, the Petitioner repeats elements of previously submitted job descriptions and states that the "Beneficiary will be primarily responsible for the entire U.S. operation."

B. Analysis

Upon review, and for the reasons stated below, we find that the Petitioner did not establish that it will employ the Beneficiary in a qualifying managerial or executive capacity.

The Director had devoted more than two full pages of the denial notice to an explanation as to why the Petitioner had not established that the Beneficiary's intended position qualifies as primarily managerial or executive. Key findings cited the lack of detail in the Beneficiary's job description; insufficient evidence to support the Petitioner's claim that the Beneficiary's subordinates qualify as professionals; and discrepancies regarding the number of employees at the petitioning company. The Petitioner does not address or rebut any of these issues, either in the original appellate brief or in a supplemental brief submitted later. Instead, the Petitioner repeats the Beneficiary's job description and the statutory definition of "executive capacity," and asserts that "it is evident from the record that Beneficiary will act in an executive capacity." This conclusory assertion of eligibility does not overcome or refute the Director's detailed findings.

In general, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary's proposed job duties with the petitioning entity.¹ Published case law has determined that the duties themselves will reveal the true nature of the beneficiary's employment.² 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.

Also, the petitioner must establish that the beneficiary is "primarily" performing managerial or executive duties.³ A beneficiary may perform non-qualifying tasks necessary to produce a product or provide a service, as long as those tasks amount to a minority of the beneficiary's duties.

The Petitioner has stated that the Beneficiary "manages each aspect of the [Petitioner's] operations," "exercises complete budgetary authority," and "oversee[s] the implementation of strategic plans and policies." These general terms describe the level of the Beneficiary's authority, but do not shed light on the actual tasks that the Beneficiary performs in pursuit of the overall goals. The Director found that the Petitioner did not "provide any detail or explanation of the beneficiary's activities in the course of his daily routine." The Petitioner, on appeal, has not addressed this important finding.

The Petitioner asserts that the Beneficiary's subordinate staff relieves him from primarily performing the operational tasks of the petitioning business. The record casts doubt on the Petitioner's assertions regarding its staffing.

¹ See 8 C.F.R. § 204.5(j)(5).

² *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).

³ See Section 101(a)(44) of the Act, 8 U.S.C. §1101(a)(44).

The Petitioner claimed eight U.S. employees at the time it filed Form I-140, and nine employees on the organizational chart submitted in response to the RFE. Internal Revenue Service documentation submitted with the RFE response, however, does not support those figures. IRS Form W-3, Transmittal of Wage and Tax Statements, indicated that the Petitioner had seven salaried employees in 2014. IRS Forms 941, Employer's Quarterly Federal Tax Returns, indicated that the Petitioner had only five employees on March 12, 2015, and the same number of employees on June 12, 2015. The monthly figures included in those returns did not show significantly higher salary payments in May 2015, and therefore the returns do not give cause to believe that the Petitioner had more than five employees when it filed the petition in May 2015.

Five of the individuals named on the first organizational chart also received IRS Forms W-2, Wage and Tax Statements, for 2014. (The Director found that only one employee named on the chart received a 2014 W-2, but several of the names on the IRS Forms W-2 are identifiable variants of the names on the chart.) Those five names correspond to the titles of vice president (the Beneficiary); administration and sales; producer; and the two camera operators.

The Petitioner did not submit IRS Forms W-2 for the two individuals with the title "Journalist Correspondent – Brazil." This may be because the correspondents are based in Brazil (as their titles suggest), in which case they would not number among the Petitioner's employees in the United States. Foreign staff that further the Petitioner's business can count as qualifying employees, but the Petitioner must document their employment and establish their roles.⁴ Wherever the journalist correspondents are based, the record does not support the Petitioner's claim, on Form I-140, that it had eight employees in the United States at the time of filing.

The Petitioner had stated that the Beneficiary "oversees professional . . . marketing . . . specialists," but the record does not identify marketing staff that the Petitioner employed at the time of filing. The question therefore arises as to who, if not the Beneficiary himself, performed the Petitioner's marketing functions at the time of filing. Stating that the specialists were overseas does not relieve the Petitioner of the burden of documenting their employment.

The Petitioner has stated that the Beneficiary's subordinates are professionals. In evaluating whether the Beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor.⁵ Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The key issue is not merely whether the subordinates *hold* baccalaureate degrees, but whether their positions inherently *require* those degrees.

⁴ See *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 5 (AAO Apr. 14, 2016).

⁵ Cf. 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation").

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The Petitioner has submitted copies of résumés and diplomas, indicating that three individuals named on the Petitioner's first organizational chart, and three shown on the second version of the chart, hold bachelor's degrees:

First Chart

██████████, producer
██████████ camera operator
██████████, camera operator

Second Chart

██████████ producer
██████████ camera operator
██████████, sales and marketing

The Petitioner has asserted (but not documented) that one of its three named camera operators holds a bachelor's degree. The implication is that the others do not hold such a degree, and therefore that the position does not require it.

The Petitioner documented ██████████ bachelor's degree, but did not submit or cite any evidence to show that television production qualifies under the relevant definition of a profession.

██████████ provided the following description of the producer's duties:

[T]he company's Producer . . . produces television programming content for distribution in the United States and abroad. He produces and edits news stories in the United States for global broadcast on Portuguese-language channels, and he oversees production operations and editing. He manages two professional camera operators, and oversees the work of two professional Brazilian correspondents and journalists.

We note that the Petitioner does not claim to employ many personnel typically associated with television production, such as sound and lighting technicians. Likewise, ██████████ stated that the producer "oversees . . . editing," but the Petitioner has not identified any editors on its staff, and elsewhere ██████████ stated that the producer himself "edits news stories."

The Petitioner asserted, in response to the RFE, that the producer also qualifies as a supervisor and a manager, but the Petitioner has not shown that the producer's duties are primarily supervisory or managerial.

The Petitioner stated that its two journalist correspondents have "professional training," but did not elaborate or provide supporting evidence.

The Petitioner submitted the résumé for the person identified, on the second organizational chart, as the Petitioner's "Administration & Sales Manager," with authority over the "Sales & Marketing Manager." ██████████ stated:

The Administration & Sales Manager and the Sales & Marketing Manager oversee accounting, market research, sales analysis, and the recruitment of new service distributors and clients. These managers are professionals in business management and

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business development. . . . The Administration & Sales Manager . . . holds an advanced degree in Business Administration from [REDACTED], Florida.

The above information is not consistent with the evidence of record. On her résumé, the individual whom the Petitioner had identified as the “Administration & Sales Manager” stated her job title as “Administrative Assistant,” with the following duties:

- Create and maintain reports: Weekly report, BMI, ASCAP, petty cash NY & FL, weekly media map for newspapers, employees’ vacation and sick days, travel expenses, annual contracts spreadsheet & annual filing reports for the states
- Make payments and deposits
- Maintain accounting software system up to date with daily transactions (QuickBooks)
- Maintain a filing system for record keeping. . . .
- Provide assistance on semi annual audits
- Organize insurance renewals
- Prepare invoices & contracts
- Provide consumer service relations by phone and email

The résumé also indicated that she had begun studying for a bachelor’s degree in business administration in 2014, the year before the Petitioner filed the petition. Her diploma from [REDACTED] is not an “advanced degree” as the Petitioner asserts, but rather an associate’s degree (generally a two-year degree) in Business Administration.

As shown above, the Petitioner’s statements regarding the above individual’s duties, academic degree, and even job title are not consistent with the evidence of record, including her own statements. 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.⁶ Therefore, the Petitioner has not established that the administration and sales manager is, as the Petitioner has claimed, a professional or a manager.

The Petitioner has also claimed that its sales and marketing manager is a manager, but the Petitioner did not employ anyone in that capacity at the time of filing. The subsequent creation of the position cannot establish eligibility as of the filing date.⁷ Also, the Petitioner provided a single, combined job description (quoted above) for both the sales and marketing manager and the administration and sales manager, without explaining how both of those positions are managerial. Both positions are said to “oversee accounting, market research, sales analysis, and the recruitment of new service distributors and clients,” without explaining who performs these overseen functions. The Petitioner identifies no lower-level employees tasked with those duties, and therefore it appears that these non-managerial, non-supervisory functions fall to the individuals identified as managers.

⁶ *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

⁷ See 8 C.F.R. § 103.2(b)(1); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

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In a supplement to the appeal, the Beneficiary states: “I supervise and manage many independent contractors for the Petitioner, including technical support, media buyers, operational engineers, and those contractors currently engaged in constructing the Petitioner’s new facilities in [REDACTED] Florida.” The Petitioner maintains that many of these contractors are professionals. The Petitioner has not submitted evidence to support these assertions, or to show that the Beneficiary has managerial authority over the claimed contractors. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.⁸

In the supplementary submission, the Petitioner cites *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016). The Petitioner states that, according to that decision, “USCIS officers must weigh all relevant factors including evidence of the beneficiary’s role within the wider qualifying international organization.” The Petitioner states that “the Beneficiary influences decision making at the highest level with respect to the Petitioner and its parent company’s U.S. market development and expansion.” This statement adds nothing new of substance to the record, because it simply restates assertions that the Petitioner had previously made regarding the Beneficiary’s claimed level of authority.

The Director, in the denial notice, cited several specific reasons (detailed above) for finding that the Petitioner had not established that the Beneficiary’s position qualifies as primarily managerial. On appeal, the Petitioner does not address any of these points. Instead, the Petitioner submits a brief from its new counsel of record, in which counsel restates the Beneficiary’s job description; quotes the statutory definition of executive capacity; and states “it is evident from the record that Beneficiary will act in an executive capacity.”

The terms “manager” and “executive” are not interchangeable. The statute defines the two terms differently. Previously, throughout the proceeding, the Petitioner (through [REDACTED] letters) had consistently and exclusively referred to the Beneficiary as a “manager.” The Petitioner has never previously claimed that the Beneficiary qualifies as an executive. This new assertion appears only on appeal, and only through the Petitioner’s new counsel. The appeal includes no specific claim as to how the Beneficiary’s position is primarily in an executive capacity.

The statutory definition of the term “executive capacity” focuses on a person’s elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person’s authority to direct the organization.⁹ Under the statute, a beneficiary must have the ability to “direct[] the management” and “establish[] the goals and policies” of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise.

⁸ *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)).

⁹ Section 101(a)(44)(B) of the Act, 8 U.S.C. §1101(a)(44)(B).

An individual will not be deemed an executive under the statute simply because they have an executive title or because they “direct” the enterprise as the owner or sole managerial employee. The beneficiary must also exercise “wide latitude in discretionary decision making” and “receive[] only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.” *Id.*

The Beneficiary’s authority over a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be “primarily” of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). While the Beneficiary may exercise discretion over the Petitioner’s day-to-day operations and possesses the requisite level of authority with respect to discretionary decision-making, the position description alone is insufficient to establish that his actual duties, as of the date of filing, would be primarily managerial or executive in nature. The record details the Petitioner’s plans to expand by constructing new facilities and hiring 30 more employees. At the time of filing, however, those plans were at an early stage, and do not establish the executive (or managerial) nature of the Beneficiary’s work as of the petition’s filing date.

We also consider the proposed position in light of nature of the Petitioner’s business, its organizational structure, and the availability of staff to carry out the Petitioner’s daily operational tasks. Federal courts have generally agreed that in reviewing the relevance of the number of employees a Petitioner has, USCIS “may properly consider an organization’s small size as one factor in assessing whether its operations are substantial enough to support a manager.”¹⁰ Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company’s small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a “shell company” that does not conduct business in a regular and continuous manner.¹¹

In this instance, the Petitioner had a minimal staff at the time of filing, and appears to exist primarily as a conduit through which the parent company’s television programs are licensed to U.S. cable providers. Information supplied with the petition does not corroborate the Petitioner’s assertions about its staff (for example, the self-described “Administrative Assistant,” whom the Petitioner has termed an “Administrative and Sales Manager” with an advanced degree that she does not actually hold).

The company’s activities may grow in the future, with its planned expansion, but the expansion had not occurred as of the filing date. As explained above, developments after the filing date cannot cause a previously ineligible beneficiary to become eligible for the benefit sought.

¹⁰ *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d at 42; *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003).

¹¹ *See, e.g., Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

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Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity in the United States.

III. DOING BUSINESS

The Director denied the petition based, in part, on a finding that the Petitioner did not establish that it has been doing business for at least one year prior to the filing date, and that its foreign parent company continued to do business.

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.¹²

While the Petitioner must have been doing business for at least one year prior to the petition's filing date, the related foreign company must also remain in business. Otherwise, the Petitioner is not part of a multinational organization as the law requires.

The Director, in the denial notice, found that the Petitioner had "only submitted bank statements and leasing invoices" for the petitioning entity, and "tax and marketing records" for the foreign parent company. The Director found that these materials do not show that the Petitioner or the parent company have been, and continue to be, "engaged in business transactions that involved the provision of goods and/or services."

On appeal, the Petitioner submits materials showing that the foreign parent company has acquired broadcast rights for the [REDACTED]. The Petitioner also submitted an article from the entertainment trade publication [REDACTED] describing the theatrical release of a biblical epic that the foreign network had adapted from its television series.

With regard to the petitioning U.S. entity, the Petitioner submits a copy of a 2009 "Affiliation and Distribution Agreement" through which the Petitioner would provide programming for broadcast by [REDACTED]. The Petitioner also submits a copy of an amendment to an "International Affiliation Agreement" between the Petitioner and [REDACTED]. The document is dated March 24, 2015, but it refers to a previous agreement "dated February 3, 2012."

The evidence described above shows that the Petitioner provided television programming more than a year before filing Form I-140 on May 4, 2015, and that the foreign parent company remained in business after that date. The Petitioner has, therefore, overcome this ground for denial.

¹² 8 C.F.R. § 204.5(j)(2).

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IV. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reason. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of R-E-T- Inc.*, ID# 17036 (AAO June 28, 2016)