



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

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

MATTER OF T-, INC.

DATE: MAR. 15, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a social media business, seeks to permanently employ the Beneficiary as its vice president and chief marketing officer 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 Petitioner did not establish that (1) the Beneficiary will be employed in a qualifying managerial or executive capacity; (2) the Petitioner and its foreign counterpart have successfully met their respective requirements for doing business; and (3) the Petitioner has and would continue to have the ability to pay the Beneficiary's proffered wage. The Petitioner subsequently filed a motion to reopen and reconsider, which the Director denied, thereby affirming the original decision.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in the conclusions reached in both the original decision as well as the latest decision, in which the Director found that the Petitioner submitted no new evidence in support of the motion to reopen. The Petitioner claims that it has the ability to pay the Beneficiary's proffered wage, that it provided sufficient evidence to establish that it has employed and would continue to employ the Beneficiary in a managerial or executive capacity, and that it did and continues to do business in the United States.

Upon *de novo* review, we will dismiss the appeal.¹

¹ After reviewing the Director's latest decision and the Petitioner's submissions in support of the motion to reopen and reconsider, we find that the Director dismissed the Petitioner's motion without properly giving due consideration to new evidence that the Petitioner submitted in support thereof. Accordingly, our discussion below will address the Beneficiary's proposed position with the U.S. entity, whether the Petitioner has been and continues to conduct business, whether the Petitioner continues to conduct business on a multinational level, and whether the Petitioner provided sufficient documentation establishing its ability to pay the Beneficiary's proffered wage.

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 to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A U.S. employer may file a petition on Form I-140, Immigrant Petition for Alien Worker, for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

II. MANAGERIAL OR EXECUTIVE CAPACITY IN THE UNITED STATES

The first issue to be addressed is whether the Petitioner will employ the Beneficiary in a managerial or executive capacity.

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

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;

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

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

The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

A. Facts

The record shows that the petition was filed on June 12, 2013, and was accompanied by a supporting statement, dated May 2, 2013, in which the Petitioner described the nature of its business, the basis of its relationship with the Beneficiary's former employer abroad, and the Beneficiary's duties and responsibilities in his proposed position with the U.S. entity. The Petitioner also provided corporate and financial documents pertaining to the U.S. and foreign entities.

Regarding the Beneficiary's proposed position in the United States, the Petitioner claimed that the Beneficiary would be employed in the position of vice president and chief marketing officer. In its

May 2, 2013 supporting statement, the Petitioner described the Beneficiary's duties in part as follows:

[The Beneficiary] manages marketing activities of the U.S. subsidiary, he is responsible for global marketing operations and overall U.S. sales and distribution operations; he supervises and controls work of other supervisory/professional or managerial employees, including employees, independent contractors and subcontractors; he has the authority to hire and fire personnel; he oversees [sic] day-to-day operations under his control relating to design, marketing and technological aspects of the product.

On July 11, 2013, the Director issued a request for evidence (RFE), informing the Petitioner that the record lacked sufficient evidence to meet certain eligibility requirements. With regard to the Beneficiary's proposed position with the U.S. entity, the Director instructed the Petitioner to provide an additional job description using a percentage breakdown to show how much time the Beneficiary plans to allocate to his assigned list of tasks. The Director also asked for the Petitioner's organizational chart accompanied by evidence of any contract labor used to relieve the Beneficiary from various non-qualifying operational tasks.

In response, the Petitioner provided an organizational chart, naming 26 individuals, including the company CEO and the Beneficiary. The Petitioner indicated that the Beneficiary has seven individuals reporting directly to him, including the head of communications and a curation manager from the marketing department, two people from the design department, a chief technology officer from the IT development department, one attorney, and one accountant. The Petitioner also provided a list of the Beneficiary's key duties and tasks, classifying each item into one of five categories as follows:

Tasks involving decision-making authority

- Definition of group[-]wide marketing strategy and communication concept[;]
- Implementation of branding[;]
- Responsible for corporate design [and] identity[;]
- Initiation and coordination of internal marketing campaigns[;]
- CRM – Customer Relationship Management[;]
- Agency management international and Americas[;]
- Efficient application of tools [and] technologies (in particular: website/community, SM, SEO, CRM and direct marketing[;]
- Target group definition and segmentation[;]
- Budget planning; [sic] Marketing (group level), Region/Countries [the] Americas[;]
- Management of the countries and overall P&L responsibility of the Americas[;]
- Public relations (group level [and the] Americas)[;]
- Conception/strategy for lead and recommendation management[;]
- Group[-]wide responsibility for Merchandising (strategy, implementation)[;]
- Strategy, planning and implementation brick-and-mortar business[;]

- Definition and application of social media marketing[;]
- Definition of rules and regulations for the partner pool (Agencies, designer, photographers, copywriter) and appointment of partners (international and local)[.]

Tasks involving responsibility to provide information

- Providing know-how-[sic]/information transfer[;]
- Participation of [sic] executive meetings and country/regional meetings for countries in the Americas (incl. reporting)[;]
- Market-research, customer and trend insight[;]
- Competitor analysis[;]
- Providing continuous information for the other member of the executive management on the developments of the markets and marketing[;]
- Financial and management reporting for the Americas region[;]
- Provision and interpretation of relevant marketing figures and financial key figures for the Americas[.]

Tasks involving control responsibility

- Project cost and budget controlling (Marketing and Americas)[;]
- Marketing mix of countries/markets[;]
- P&L Americas[;]
- Compliance with CI/CD and branding requirements/guidelines[.]

Tasks involving responsibility for drawing up documents

- Budgets: Marketing Department (group), Americas Division (including countries)[;]
- Preparation of marketing plans (local for Americas plus group[-]wide)[;]
- Yearly preparation of marketing budget and country budgets for the Americas (including cost and FTE planning)[;]
- Preparation of periodical reports according to specifications of the board of the group (respectively the group CEO for management of the Americas)[;]

Management tasks

- Management and lead of the marketing department incl. all subordinate staff and contractors[;]
- Management of the IT development and product incl. all subordinate staff and contractors[;]
- Management and lead of the Americas including the country managers/affiliates[;]
- Process management and safeguarding of the cooperation between country units and headquarters[;]
- Management of the marketing staff (group) + US/Americas staff (= direct reports)[;]

- Accomplishment of periodical employee assessments[;]
- Safeguarding and facilitation of employee's qualification and training[.]

The Petitioner also provided various business documents, including bank statements from 2012 and 2013, 2012 invoices for work performed for the Petitioner as well as invoices issued by the Petitioner for services it performed for clients in 2012 and 2013, internally generated monthly accounting ledgers listing expenses and earnings from January through April 2013, the Petitioner's tax return and IRS Form W-2s and Form 1099s showing wages and salaries paid in 2012, and the Beneficiary's payroll summary showing wages paid from January through April 2013.

On October 17, 2013, the Director issued a decision denying the petition, concluding that the Petitioner did not provide sufficient evidence to establish that it would employ the Beneficiary in a qualifying managerial or executive capacity.

On November 12, 2013, the Petitioner filed a motion to reopen and reconsider, which was accompanied by a supporting brief and additional evidence.

Notwithstanding the Petitioner's submissions, the Director determined that the Petitioner had not met the requirements of a motion to reopen or a motion to reconsider and therefore issued a decision, dated May 6, 2014, dismissing the Petitioner's motion and affirming the original decision.

The Petitioner now files an appeal, disputing the Director's original findings as well as the conclusion reached in the latest decision in which the Director found that the Petitioner submitted no new evidence in support of the motion to reopen. The Petitioner claims that the Petitioner has provided sufficient evidence to establish that it has employed and would continue to employ the Beneficiary in a managerial or executive capacity.

B. Analysis

Upon review, and for the reasons discussed herein, we find that the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity. In general, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary's job duties with the U.S. entity. 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, its staffing and operational needs, as well as the job duties performed by support personnel. The sum of these factors contributes to our ability to gain a comprehensive understanding of the Beneficiary's placement and role within the Petitioner's organizational hierarchy.

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).

Turning first to the job description provided in response to the RFE, we note that the Petitioner did not comply with the Director's express instructions, which asked the Petitioner to not only list the Beneficiary's specific job duties, but to also indicate what percentage of time the Beneficiary planned to allocate to each of his assigned tasks. While the Petitioner in the present matter provided a comprehensive list of the Beneficiary's job duties, we have no way of assessing what portion of the Beneficiary's time would be allocated to qualifying tasks and how much of his time would be spent conducting market research, performing competitor analysis, preparing marketing plans, or carrying out "operational tasks," which the Petitioner did not specify in its job description. We note that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As the Petitioner did not assign time constraints to any of the job duties listed in the Beneficiary's job description, we are unable to determine how the Beneficiary's time was distributed among his qualifying and non-qualifying job assignments. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

While we acknowledge that the Beneficiary is not required to allocate 100% of his time to managerial- or executive-level tasks, the Petitioner must establish that the non-qualifying tasks the Beneficiary would perform are only incidental to the proposed position. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

We further note that certain items in the Beneficiary's job description were vague and thus failed to convey a meaningful understanding of the Beneficiary's actual underlying tasks to be performed. For instance, while the Beneficiary's decision-making authority would include some responsibility with regard to agency management, public relations, and merchandising, the Petitioner did not clarify what specific role(s) the Beneficiary would assume in relation to these broad responsibilities. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting

in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 204.5(j)(4)(i). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 204.5(j)(2).

Given the Petitioner's emphasis on the Beneficiary's role as a personnel manager, we find that the Petitioner did not adequately support the position that it has sufficient staff and/or contractual workers for the Beneficiary to manage and relieve him from having to allocate his time primarily to non-qualifying tasks. While we acknowledge the Petitioner's submission of various wage and tax documents as well as contractor invoices to account for work carried out by employees and contractors in 2012, the Petitioner has not provided similar evidence to establish who performed its underlying operational tasks at or around the time the Form I-140 was filed in June of 2013. We note that a petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). As such, the Petitioner's submission of evidence demonstrating its organizational complexity and ability to support the Beneficiary in a qualifying managerial or executive role prior to the date the petition was filed is not sufficient; we cannot assume that the Petitioner was able to employ the Beneficiary in a qualifying managerial or executive capacity at the time of filing based on outdated evidence that pertains to the facts and circumstances that existed up to one year prior to the filing of this petition. Thus, despite the assertions made in the Petitioner's organizational chart, which depicts a complex organizational hierarchy comprised of managerial and operational personnel, merely going on record without providing 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 the alternative, we find that the Petitioner has not demonstrated that the Beneficiary qualifies as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function.

Here, the Petitioner appears to assert that the Beneficiary will manage the marketing function. As noted previously, the Petitioner lists the Beneficiary's duties as including both managerial and administrative or operational tasks, but did not quantify the time the Beneficiary spends on them. This lack of documentation is important because several of the Beneficiary's daily tasks, such as

initiating national marketing campaigns, conducting marketing research and competitor analysis, and preparing market plans, do not fall directly under traditional managerial duties as defined in the statute. Without an explanation of how the Beneficiary divides his time between the non-qualifying and qualifying marketing tasks, we cannot determine that the Beneficiary is primarily performing the duties of a function manager, rather than performing the operational duties related to the function. *See generally IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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

While the definition of “executive capacity” does not require the Petitioner to establish that the Beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the Petitioner’s burden to establish that someone other than the Beneficiary carries out the day-to-day, non-executive functions of the organization. Here, the Petitioner has not demonstrated that the Beneficiary’s duties will primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations, nor has the Petitioner established that it has sufficient staff to relieve the Beneficiary from primarily performing non-qualifying duties. Therefore, the Beneficiary has not been shown to be employed in a primarily executive capacity.

In the present matter, we find that the record lacks sufficient evidence to support the conclusion that the Beneficiary would allocate his time to performing tasks that are primarily within a qualifying managerial or executive capacity or that the Petitioner was adequately staffed at the time of filing, such that it was capable of relieving the Beneficiary from having to allocate his time primarily to the Petitioner’s non-qualifying operational tasks. Accordingly, the appeal will be dismissed.

III. ABILITY TO PAY

The next issue to be addressed in this discussion is whether the Petitioner has submitted sufficient evidence to establish that it had the ability to pay the Beneficiary’s proffered wage of \$130,000 per year since the date the petition was filed.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

In the present matter, the evidence that the Petitioner submitted did not meet the requirements specified above. We acknowledge the Petitioner's submission of its 2012 tax return and the Beneficiary's corresponding IRS Form W-2 for 2012, as the Petitioner's 2013 tax return was not available at the time the Form I-140 was filed or at the time the Director issued the RFE. However, during our *de novo* review of the record, we observed the documentary deficiency and therefore issued our own RFE on April 7, 2015. We informed the Petitioner that despite its submission of *prima facie* evidence of its ability to pay in the form of 2013 quarterly wage reports and the Beneficiary's payroll documents for the relevant time period, such documents, by themselves, would not be deemed sufficient, as they are not in compliance with relevant provisions of 8 C.F.R. § 204.5(g)(2). While additional evidence may be submitted to establish the petitioner's ability to pay the proffered wage, it may not be substituted for evidence required by regulation.

Accordingly, we instructed the Petitioner to provide copies of its annual reports, federal tax returns, or audited financial statements for 2013 and, if available, for 2014 as well. We also allowed the Petitioner the opportunity to provide the Beneficiary's Form W-2s for 2013 and 2014. The Petitioner was given a period of 30 days in which to submit the requested documents. However, to date, we have received no further correspondence from the Petitioner in response to our April 7, 2015 RFE. As previously stated, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Therefore, given that the Petitioner did not respond to our request for evidence, which is expressly required by regulation, we find that the Petitioner has not established its ability to pay the Beneficiary's proffered wage and on the basis of this second adverse finding, this petition cannot be approved.

IV. DOING BUSINESS

The final two issues to be addressed in this decision are whether the Petitioner and the Beneficiary's foreign employer abroad have been and continue to do business in compliance with statutory and regulatory provisions.

The regulation at 8 C.F.R. § 204.5(j)(2) defines the term *doing business* as "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

A. U.S. Petitioner

A review of the analysis included in the original October 17, 2013 decision indicates that the Director's findings were contradictory and resulted in an incorrect conclusion. To clarify, while the Director expressly acknowledged that the Petitioner "is conducting business with clients" outside of the United States, he nevertheless determined that the Petitioner failed to establish that it has been doing business in the United States. These two findings are inconsistent. Regardless of the physical location of the Petitioner's clients, the very acknowledgement that the Petitioner has clients with whom it engaged, and continues to engage, in various business transactions is sufficient to conclude that the Petitioner does meet the regulatory definition of *doing business*. The issue of whether the Petitioner's clients are located within or outside of the United States is not relevant for the purpose of determining whether the Petitioner engages in the provision of goods and/or services on a regular, systematic, or continuous basis.

In the present matter, the record contains a variety of business documents, including contracts and invoices for services that the Petitioner has provided. The dates on such documents indicate that the Petitioner has engaged and continues to engage in the sale of its services to clients both prior and subsequent to the filing of the instant petition. Therefore, contrary to the Director's conclusion, we find that the Petitioner has provided sufficient evidence to establish that it meets the "doing business" requirement. Accordingly, we hereby withdraw the Director's conclusion with regard to the specific issue of whether the Petitioner has been doing and continues to do business in the United States.

B. Foreign Entity

Notwithstanding the withdrawal of one portion of the Director's decision on the issue of doing business, we note that the Director also issued a separate finding with regard to the foreign entity and whether it has been doing business. Specifically, the Director concluded that the Petitioner has not provided evidence to establish that the foreign entity is currently doing business.

A review of the record indicates that the Director's conclusion on this issue was correct. While the Petitioner provided a number of its foreign affiliates' bank statements, which show incoming funds throughout 2012, the Petitioner provided no corresponding invoices, which would establish not only the sources of such funds, but would also demonstrate whether the funds were the result of services and/or goods provided by the Petitioner's foreign affiliates. Furthermore, even if we were to deem these bank statements as sufficient evidence of the foreign affiliates' doing business, there is no evidence that either foreign affiliate continued to do business during and beyond the date the Petition was filed.

In order for the Petitioner to establish that it is a *multinational* entity, it must establish that it conducts business, through an affiliate or subsidiary, in two or more countries, one of which is the United States. *See* 8 C.F.R. § 204.5(j)(2). While the Petitioner has provided sufficient evidence to establish that it is doing business in the United States, in order to meet the criteria of being

multinational, the Petitioner must also provide sufficient evidence to show that it has continued to do business abroad through an affiliate or subsidiary since the date it filed the Form I-140. Given the lack of sufficient evidence presented in support of this petition documenting ongoing business transactions of the Petitioner's foreign affiliates, we find that the Petitioner has not established that it meets the definition of *multinational* and on the basis of this adverse finding, the petition cannot be approved.

V. CONCLUSION

Accordingly, we find that denial of the petition was warranted for the above stated reasons, with each considered as an independent and alternative 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, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of T-, Inc.*, ID# 10898 (AAO Mar. 15, 2016)