



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

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

MATTER OF S-, INC.

DATE: MAR. 24, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an engineering project company, seeks to permanently employ the Beneficiary as its president and general manager under the immigrant classification of a multinational executive or manager. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). The Director, Texas Service Center, denied the petition and issued a finding of willful misrepresentation of a material fact. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal, and the finding of willful misrepresentation of a material fact will be withdrawn.

I. LAW

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

....

(C) *Certain multinational executives and managers.* An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

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

(b)(6)

Matter of S-, Inc.

or executive capacity. Such letter must clearly describe the duties to be performed by the alien.

II. ISSUES ON APPEAL

The Director denied the petition on two grounds: first, that the Petitioner did not establish that the Beneficiary worked for the foreign parent company in a qualifying managerial or executive capacity; and, second, that the Petitioner did not establish that it seeks to employ the Beneficiary in the United States in a qualifying managerial or executive capacity. The finding of misrepresentation derived from an apparent contradiction in the Beneficiary's claims regarding her employment history.

A. Managerial or Executive Capacity Abroad

The first question is whether the Beneficiary worked in a qualifying managerial or executive capacity for the Petitioner's foreign parent company, [REDACTED] (often abbreviated as [REDACTED]), for at least one year during the three years preceding her entry into the United States on February 24, 2007.

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, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

1. Facts

The Petitioner filed Form I-140 on April 23, 2012. The petition included a letter dated March 18, 2012, with the following description of the Beneficiary's duties with the foreign parent company. The Petitioner indicated that the Beneficiary "was working with the abroad company . . . [l]ike a CEO [chief executive officer]." The percentage figures refer to the approximate amount of time that the Beneficiary devoted to each of the duties specified:

- Direct and coordinate an organization's financial and budget activities to fund operations, maximize investments, and increase efficiency. (10%)
- Confer with board members, organization officials, and staff members to discuss issues, coordinate activities, and resolve problems. (10%)
- Analyze operations to evaluate performance of a company and its staff in meeting objectives, and to determine areas of potential cost reduction, program improvement, or policy change. (10%)
- Direct, plan, and implement policies, objectives, and activities of organizations or businesses to ensure continuing operations, to maximize returns on investments, and to increase productivity. (15%)
- Prepare budgets for approval, including those for funding or implementation of programs. (5%)
- Direct and coordinate activities of businesses or departments concerned with production, pricing, sales, or distribution of products. (10%)
- Negotiate or approve contracts and agreements with suppliers, distributors, state agencies, and other organizational entities. (10[%])
- Review reports submitted by staff members to recommend approval or to suggest changes. (10%)

(b)(6)

Matter of S-, Inc.

- Appoint department heads or managers and assign or delegate responsibilities to them. (10%)
- Direct human resources activities, including the approval of human resource plans or activities, the selection of directors and other high-level staff, and establishment and organization of major departments. (10%)

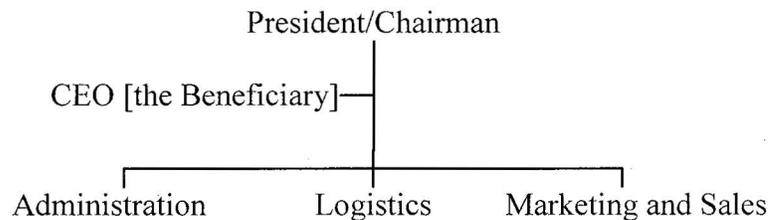
The Petitioner stated that the Beneficiary's subordinates abroad included a president, an administrative manager, a logistic manager, and a marketing manager. The Petitioner stated that the Beneficiary "had authority to recruit, hire, train, promote and terminate his staff even the President" (*sic*).

The Director issued a request for evidence (RFE) on June 29, 2013. The Director requested "a definitive statement from the foreign company" to describe the Beneficiary's former position and establish that it qualified as either managerial or executive.

In response, the Petitioner submitted a letter dated September 19, 2013, from [REDACTED] chairman of the foreign company's board of directors. Most of the letter is copied from the Petitioner's earlier letter of March 18, 2012, including the percentage breakdown of duties and the assertion that the Beneficiary "had authority to recruit, hire, train, promote and terminate his staff even the president" (*sic*). The Petitioner also submitted an unattributed list of "Jobs and Descriptions" for the foreign company. The listing for CEO reads:

- Effective communication
- Understanding of the business and its impact in the technology decisions
- Strategic, tactic and operative planning
- Technology options knowledge
- Negotiation (with providers and sub-contractors)
- Recognizing and respecting its colleges [*sic*] and sub-contractors
- Technical abilities

The organizational chart for the foreign entity showed the following structure:



In a letter dated March 21, 2012, [REDACTED] formerly administration manager for the foreign company (and the Beneficiary's successor as CEO), stated:

[The Beneficiary] juggled literally hundreds of items, making their jobs easier and, by extension, helping . . . us and the Corporation to increase productivity and sales

Matter of S-, Inc.

by 18 percent in 2006. While at [REDACTED] she implemented a new spreadsheet system that resulted in a much smoother process from sales to delivery. At first, the management resisted the idea of doing things differently, but [the Beneficiary] was so adept at communicating her vision that it was ultimately adopted and embraced.

The Director denied the petition on April 28, 2015, concluding that the Petitioner had not established that the Beneficiary served the foreign company in a qualifying managerial or executive capacity for at least one year during the three years preceding her entry as a nonimmigrant. The Director concluded that the percentage breakdown of the Beneficiary's duties "established that the beneficiary is more of a supervisor," and that the Petitioner had not established that the Beneficiary's former subordinates abroad were professional, managerial, or supervisory employees.

On appeal, the Petitioner states that it had submitted an adequate description of the Beneficiary's duties abroad, and therefore the denial is unwarranted.

2. Analysis

For the reasons discussed below, we find that the Petitioner has not established that the Beneficiary worked in a qualifying managerial or executive capacity for the foreign employer.

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).

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The Petitioner, on appeal, contends that the director "jump[ed] to the conclusion" "without any meaningful analysis whatsoever." The Petitioner also states that "[t]he description of the duties is not vague. On the contrary [it] is very detailed."

The Director, in the denial notice, had not stated that the Beneficiary's foreign job description was vague or lacking in detail (although the Director came to such a finding regarding the Beneficiary's work in the United States). Rather, the Director concluded that the foreign job description appeared to be that of a supervisor rather than a manager or executive. Nevertheless, the record does not support the assertion on appeal that the Petitioner provided a "very detailed" description of the Beneficiary's former duties for the foreign company.

The Petitioner's response to the Notice of Intent to Deny (NOID) issued on April 29, 2014, included a May 30, 2014, printout from O*Net OnLine, a website sponsored by the U.S. Department of Labor, Employment and Training Administration. The printout shows a "Summary Report" for chief executives, and a list of tasks. The list of tasks on the O*Net printout is virtually identical to the first version of the Beneficiary's foreign job description. In the same way that the Petitioner cannot simply repeat the regulatory or statutory definitions of managerial or executive capacity, repeating the task list from the O*Net printout does not establish that the Beneficiary performs those tasks, nor does it provide any job-specific information about the Beneficiary's position with the foreign entity. The second list of duties, submitted in response to the RFE, is primarily a list of traits (such as "[e]ffective communication") rather than specific duties. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The Petitioner has provided insufficient details regarding the Beneficiary's activities in the course of her daily routine with the foreign entity. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The Petitioner contends that during her employment abroad, the Beneficiary was positioned at the top of the organizational hierarchy, and had the authority to recruit, hire, train, promote, and terminate her entire staff. Although the beneficiary is not required to supervise personnel, if the petitioner claims that the beneficiary's duties involve supervising employees, then the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* section 101(a)(44)(A)(ii) of the Act. The descriptions for the Beneficiary's foreign subordinates, like the Beneficiary's own job description, lack specific information about the company's business, and appear to derive from third-party templates. For example, in the introductory letter of March 18, 2012, the Petitioner stated that the president was responsible to "[o]versee activities directly related to making products or providing services," and "[d]etermine staffing requirements, and interview, hire and train new employees, or oversee those personnel processes." These are not specific duties. Rather, they are ranges of potential duties, as shown by the conjunction "or." Absent additional details regarding the nature of the duties associated with the positions of the subordinate employees, we cannot determine their role within the organization. The Director, in the denial notice, observed that the U.S. company and the foreign company used the same job description for the administrative manager, and that the job descriptions for the marketing managers are also identical. These similarities tend to support a finding that the job descriptions are general in nature, rather than showing details specific to one particular position. (The Petitioner has not claimed that the foreign entity and the petitioning U.S. employer are similar to the point of being identical, and requiring identical services from their identified staff.) Due to these generalized overviews of the positions of the Beneficiary's subordinate employees, we are precluded from finding that they act in a supervisory or managerial capacity.

The Director's decision, however, is not free from error. For instance, the Director stated that the foreign company's organizational chart did not include the Beneficiary, and therefore the Director "could not conclude her hierarchy [*sic*] within the company." The record, however, contains more than one version of the foreign entity's organizational chart. The version without the Beneficiary's

name is marked as the “current” version. We would not expect the Beneficiary’s name to be on the foreign company’s current organizational chart, because she left Venezuela several years ago. The earlier version, with the heading “Organizational Before Chart” (*sic*), shows the Beneficiary’s name and title (as discussed above). That chart, however, ranks the president above the CEO, which appears to contradict the claim that the Beneficiary, as CEO, had the authority to fire the president of the company. Therefore, while the Director’s assertions are, at times, incorrect or unsupported by the record, review of the overlooked evidence does not strengthen the Petitioner’s case.

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. 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.” Although the Petitioner contends that the foreign subordinates holds various levels of degrees in the fields of economics, computation, and administration, the lack of detail with regard to the nature of their positions renders it impossible for us to determine whether the positions actually require such degrees as prerequisites for entry. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm’r 1972)).

For the reasons discussed above, we find that the Petitioner has not met its burden of proof to establish that the Beneficiary worked in a qualifying managerial or executive capacity for the foreign parent company. For this reason, we cannot approve the petition.

B. Managerial or Executive Capacity in the United States

The second issue under consideration is whether the Petitioner has established that it seeks to employ the Beneficiary in a qualifying managerial or executive capacity in the United States.

1. Facts

The Petitioner’s introductory letter of March 18, 2012, referred to the Beneficiary as general manager of the petitioning company, but also stated that she “is the President and General Manager of the US company.” The letter included the following list of the Beneficiary’s “duties in general” as the Petitioner’s general manager:

- Plans, coordinates, and controls the daily operation of the organization through the organization’s managers.
- Establishes current and long range goals, objectives, plans and policies, subject to approval by the Board of Directors.
- Dispenses advice, guidance, direction, and authorization to carry out major plans, standards and procedures, consistent with established policies and Board approval.

(b)(6)

Matter of S-, Inc.

- Meets with organization's other executives to ensure that operations are being executed in accordance with the organization's policies.
- Oversees the adequacy and soundness of the organization's financial structure.
- Reviews operating results of the organization, compares them to established objectives, and takes steps to ensure that appropriate measures are taken to correct unsatisfactory results.
- Plans and directs all investigations and negotiations pertaining to mergers, joint ventures, the acquisition of businesses, or the sale of major assets with approval of the Board of Directors.
- Establishes and maintains an effective system of communications throughout the organization.
- Represents the organization with major customers, shareholders, the financial community, and the public.

The Petitioner's letter indicated that the Beneficiary has three immediate subordinates, each with an assistant:

- Administrative manager
- Administrative assistant
- Marketing and sales manager
- Sales assistant
- Logistics manager
- Logistics assistant

In the June 29, 2013 RFE, the Director noted the small size of the Petitioner's claimed staff (seven employees) and requested additional details about the Beneficiary's position to show that it qualifies as either managerial or executive.

In response, in a letter dated September 15, 2013, [REDACTED] from the parent company repeated the same list of duties that had accompanied the initial submission, and also provided a breakdown of the hours the Beneficiary devotes to various tasks on a weekly basis, summarized below:

- 5 hrs. Answer e-mails and messages
- 7.5 hrs. Meeting to coordinate with Administrative Manager
- 5.5 hrs. Conference call with [foreign] Company office in Venezuela
- 5.5 hrs. Lunch and café break
- 8 hrs. Appointments with customers or provider representatives
- 1.5 hrs. Meeting with Logistics Manager
- 1 hr. Meeting with subcontracted transport company
- 1.5 hrs. Analyze financial and bank statements
- 0.5 hr. Check the sales forecast
- 1 hr. Search by internet to get more providers in Canada and United States
- 2 hrs. Meeting with new prospective ventures representative
- 1 hr. Conference call with clients in Venezuela

The Petitioner submitted an organizational chart which showed the same organizational structure described in the Petitioner's letters submitted with the petition and in response to the RFE, with the Beneficiary overseeing three managers, each with a subordinate assistant. The Petitioner submitted copies of IRS Forms W-2, Wage and Tax Statements, showing that the company employed eight people during 2012 and paid them as follows (job titles correlated from organizational charts):

President	\$30,000
Administration Manager	2,880
Administration Assistant	15,360
Marketing and Sales Manager	17,280
Sales Assistant	7,680
Logistics Manager	14,400
Logistics Assistant (1)	15,360
Logistics Assistant (2)	15,360

In the April 29, 2014 NOID, the Director stated that the Petitioner had not established the managerial or executive nature of the Beneficiary's position with the company. The Director noted the Petitioner's "limited number of employees" and found that the Petitioner had not established that the employees were professionals, managers, or supervisors.

In response, the Petitioner asserted in a letter dated May 30, 2014: "The Beneficiary supervises at least 2 employees that are supervisory, managerial or ex[e]cutive," specifically the administrative manager and the marketing and sales manager. The Petitioner stated that the previously submitted job descriptions for the two positions demonstrated "their executive and professional capacity." Those two descriptions read as follows:

Administrative Manager

- Monitor the facility to ensure that it remains safe, secure, and well-maintained.
- Direct or coordinate the supportive services department of a business, agency, or organization.
- Set goals and deadlines for the department.
- Prepare and review operational reports and schedules to ensure accuracy and efficiency.
- Analyze internal processes and recommend and implement procedural or policy changes to improve operations, such as supply changes or the disposal of records.
- Acquire, distribute and store supplies.
- Plan, administer, and control budgets for contracts, equipment, and supplies.
- Oversee construction and renovation projects to improve efficiency and to ensure that facilities meet environmental, health, and security standards, and comply with government regulations.
- Hire and terminate clerical and administrative personnel.
- Oversee the maintenance and repair of machinery, equipment, and electrical and mechanical systems.

Marketing and Sales Manager

- Resolve customer complaints regarding sales and service.
- Oversee regional and local sales and his staff.
- Plan and direct staffing, training, and performance evaluations to develop and control sales and service programs.
- Determine price schedules and discount rates.
- Review operational records and reports to project sales and determine profitability.
- Prepare budgets and approve budget expenditures.
- Confer or consult with department heads to plan advertising services and to secure information on equipment and customer specifications.
- Direct and coordinate activities involving sales of manufactured products, services, or other subjects of sale.
- Confer with potential customers regarding equipment needs and advise customers on types of goods purchase [*sic*].
- Formulate, direct and coordinate marketing activities and policies to promote products and services, working with advertising and promotion managers .
- Identify, develop, and evaluate marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors.
- Direct the hiring, training, and performance evaluations of marketing and sales staff and oversee their daily activities.
- Evaluate the financial aspects of product development, such as budgets, expenditures, research and development appropriations, and return-on-investment and profit-loss projections.
- Develop pricing strategies, balancing firm objectives and customer satisfaction.
- Compile lists describing product or service offerings.
- Initiate market research studies and analyze their findings.
- Use sales forecasting and strategic planning to ensure the sale and profitability of products, lines, or services, analyzing business developments and monitoring market trends.
- Coordinate and participate in promotional activities and trade shows, working with developers, advertisers, and production managers, to market products and services.
- Consult with buying personnel to gain advice regarding the types of products or services expected to be in demand.

In the denial notice, the Director stated that “[t]he petitioner established that the beneficiary is more of a supervisor and did not paint a clear picture that the beneficiary is performing managerial duties but rather operational duties.” The Director also stated that the listed duties “suggest a general sense of the beneficiaries [*sic*] heightened degree of discretionary authority but . . . fail to convey an understanding of what the beneficiary would actually be doing on a daily basis.” Noting the 2012 IRS Forms W-2 in the record, the Director noted that most of the Petitioner’s employees received very low wages, not consistent with full-time professional, managerial, or supervisory staff.

On appeal, the Petitioner repeats statements first made in response to the NOID, and adds this passage:

The Beneficiary's detail[ed] breakdown of her duties DOES NOT include day to day operations tasks [*sic*]. On the contrary, it includes task[s] that require her total discretion and expertise. As stated in the original documents submitted with Form I-140, the Beneficiary has total discretion and authority to act on behalf of the Petitioner. The Service's decision seems to be arbitrary like if they had made up their mind from the beginning. The Service's decision lacks a true independent analysis.

(Emphasis in original.)

2. Analysis

For the reasons discussed below, the Petitioner has not established that it seeks to employ the Beneficiary in a qualifying managerial or executive capacity. The case law cited above with respect to the Beneficiary's earlier employment abroad also applies to her intended work in the United States.

The job descriptions submitted for the Beneficiary and her subordinates appear to be generalized templates without specific reference to the Petitioner's particular business activities. The Beneficiary's own job description indicates that the Beneficiary "[p]lans and directs all investigations and negotiations pertaining to mergers, joint ventures, the acquisition of businesses, or the sale of major assets." The record, however, does not show any evidence of mergers, joint ventures, or acquisitions, and the Petitioner's income tax returns do not show any non-monetary assets for which the Beneficiary would need to negotiate sales.

The Petitioner asserted that some of the administrative manager's tasks are to "[m]onitor the facility to ensure that it remains safe, secure, and well-maintained," to "[o]versee the maintenance and repair of machinery, equipment, and electrical and mechanical systems," and to "[o]verse construction and renovation projects." The Petitioner, however, has not established that it has any facility or systems that require such maintenance or renovation. The record shows that the Petitioner rents a virtual office, and that the Beneficiary works out of her home. Under those circumstances, the Petitioner has not shown how oversight of "maintenance and repair" and "construction and renovation projects" could represent major job duties for the administrative manager. The statement that the administrative manager must "[d]irect or coordinate the supportive services department of a business, agency, or organization" has the appearance of a generalized template rather than a specific job description tailored to a particular position.

As discussed previously, if the beneficiary's duties involve supervising employees, then the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* section 101(a)(44)(A)(ii) of the Act. Similar to the position descriptions for the foreign subordinates, the description of duties for the U.S. subordinate positions are likewise vague and provide little insight on the nature of the roles of these individuals within the organizational hierarchy. As noted, the position descriptions for the administrative manager and the marketing

manager both in the U.S. and abroad are virtually identical, therefore raising questions regarding the legitimacy of the claimed duties. The minimal information provided for these positions, as well as for the other employees who claim to be directly or indirectly subordinate to the Beneficiary, prohibits us from fully understanding the nature of the claimed organizational structure. Consequently, we are unable to determine whether the Beneficiary is supervising a subordinate staff of managers or supervisors such that she would be elevated to a position that is primarily managerial or executive in nature.

In addition, there is insufficient evidence to establish that the Beneficiary is supervising a subordinate staff of professional employees. Again, while the Petitioner contends that four of the seven subordinate employees hold degrees in disparate areas including industrial engineering, international economic relations, commercial engineering, and fashion design, the record contains no evidence to demonstrate that their positions within the Petitioner's organization require these degrees. For instance, while the administration assistant holds a degree in fashion design, there is no evidence demonstrating that such a degree was a prerequisite for her position. The lack of evidence regarding the educational requirements for these positions, coupled with the vague descriptions of the duties of these positions, renders it impossible for us to determine whether the Beneficiary's claimed subordinates are professionals.

The Petitioner, therefore, has not established the actual nature of the Beneficiary's duties or those of her subordinates. Without this required information, we cannot conclude that the Petitioner has shown that the Beneficiary qualifies as a manager or executive.

The Director, in the denial notice, indicated that the Petitioner's salary figures did not indicate that the company has a full-time staff sufficient to relieve the Beneficiary from having to perform operational tasks. The Petitioner, on appeal, does not address this finding.

Review of the record supports the Director's concerns. The Director noted that, in 2012, the minimum wage in Florida was \$7.67 per hour.¹ Assuming the standard work schedule of eight hours per weekday, there were 2,088 work hours in 2012. Therefore, a full-time minimum wage employee in Florida would have earned \$16,014.96 in 2012. All but one of the Beneficiary's subordinates earned less than that amount during that year, and the remaining employee (the marketing and sales manager) exceeded it by less than eight percent. Therefore, the record does not show that the Beneficiary had a full-time staff in 2012 that was available throughout the day to relieve the Beneficiary from performing non-qualifying operational tasks.

For the above reasons, we find that the Petitioner has not established that it has employed, or will employ, the Beneficiary in a qualifying managerial or executive capacity. Therefore, we cannot approve the petition.

¹ See "Florida Minimum Wage History 2000-2013," available from the Florida Department of Economic Opportunity at <http://www.floridajobs.org/minimumwage/FloridaMinimumWageHistory2000-2013.pdf> (added to record February 17, 2016).

Matter of S-, Inc.

C. Willful Misrepresentation of a Material Fact

Beyond the grounds for denial of the petition, the Director entered a finding of willful misrepresentation of a material fact. This finding arose from purported discrepancies between the Beneficiary's résumé and information that she provided on Form G-325A, Biographic Information, executed in April 2009. In the NOID, the Director stated: "On the beneficiary's resume she indicated that she was the President of [REDACTED] from January 2, 2004 to present. The beneficiary's G-325 indicates she was the CEO of [REDACTED] [sic] from July 2001 to present." The Director concluded that the Beneficiary had, therefore, "misrepresented her employment history in order to obtain immigration benefits." The Director later repeated this conclusion in the denial notice.

We cannot find any résumé for the Beneficiary matching the above description in the record. The record of proceeding for a prior filing does, however, contain a résumé for [REDACTED] indicating that she, not the Beneficiary, became president of the foreign entity on January 2, 2004. This is consistent with the record of proceeding in the present proceeding, which consistently refers to [REDACTED] as the president of the foreign entity. The Director appears to have mistaken [REDACTED] résumé for the Beneficiary's résumé, perhaps owing to their shared surname.

The perceived conflict between the résumé and the Form G-325 was the only stated basis for the finding of misrepresentation. There is, however, no conflict, because the two documents pertain to two different individuals. We therefore withdraw the finding of willful misrepresentation of a material fact. The other grounds for denial, however, remain, and for this reason we must dismiss the appeal.

III. CONCLUSION

We will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-, Inc.*, ID# 15662 (AAO Mar. 24, 2016)