



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

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

MATTER OF E-I- CORP.

DATE: MAR. 28, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a telecommunications solutions company, seeks to permanently employ the Beneficiary as its Telecommunications Sales Manager 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 determined that the evidence of record did not establish that the Petitioner will employ the Beneficiary in a qualifying managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director's conclusion was based on an erroneous conclusion of fact and that the Director failed to address and analyze evidence establishing that the Beneficiary is employed as a function manager.

After a preliminary review on appeal, we issued a Notice of Intent to Dismiss (NOID) advising the Petitioner of potentially derogatory information we obtained regarding the identity of the Beneficiary's foreign employer which appeared to be inconsistent with the information provided in support of the petition. We received the Petitioner's response on December 16, 2015, and will address both the Beneficiary's foreign and U.S. employment in this decision.

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

I. THE LAW

A U.S. employer may file a petition on Form I-140 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.

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 who 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 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 beneficiary. Here, the Petitioner consistently explains that the Beneficiary will be employed in a managerial capacity rather than an 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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

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

The sole issue addressed by the Director is whether the Petitioner established that it will employ the Beneficiary in a qualifying managerial or executive capacity.

A. Facts

The Petitioner filed the petition on May 14, 2014. The Petitioner stated on the Form I-140 that it is a telecommunications solutions company with four employees and a gross annual income of \$10,002,893. It seeks to employ the Beneficiary as its Telecommunications Sales Manager. The Petitioner described the Beneficiary's proposed duties as follows:

[C]ontinue to be managing the sales of the company's telecommunications products in Latin America including negotiation of multimillion dollar contracts, direct staffing, training and performing evaluations, as well as develop and control sales programs. He will also be in charge of coordinating sales distribution by establishing sales territories, quotas and goals, reviewing market analysis to determine customer needs, volume potentials and price schedules, as well as, plan, develop and monitor sales campaigns to accommodate company's goals. The Sales Manager for our Telecom Division will review sales reports showing sales volume and potential sales, as well as analyze sales statistics to forecast future sales trends in the telecommunications industry. [The Beneficiary] will represent the company at international trade association meetings and before the company's Latin American customers and strategic partners with authority over the assigned sales territory in Latin America including the markets in Brazil, Chile, Nicaragua, Honduras, El Salvador, and Guatemala, overseeing the daily operations and sales activities of the company in those countries. As our Telecom Division Sales Manager, [the Beneficiary] will report directly to the President of the company.

As our Telecommunications Sales Manager, [the Beneficiary] will be expected to work with existing partners and establish new partnerships in the assigned region, develop strong relationships with partners and proactively co-sell with our strategic partners to support and drive higher value transactions; aggressively drive existing and new partners to maximize sales and total partnership potential through sales best practices training and support; work with marketing to develop and execute channel marketing programs; manage a complex, enterprise solution sale with [the Petitioner's] partners; attend and participate in sales meetings, product seminars and

trade shows; provide weekly reporting of pipeline and forecasting; conduct contract negotiations; as well as close sales and achieve quarterly sales quotas.

The Petitioner also submitted a copy of the Beneficiary's resume, in which he states that he performs the following duties as the Petitioner's "sales manager":

- Successful selling of the company Telecommunication product and services. Getting and exceeding the sales quota every quarter.
- Create the entire sales tools in the telecommunication division.
- Hire and supervise all the sales force in Florida.
- Coordinate the relationship between [the Petitioner] and the sister companies in Latin America.
- Training to the sales force.
- Evaluate new technologies to be included in the portfolio of [the Petitioner].
- Manufacturers and providers relationship. Canalize and Sign agreements. Analyze product services and new technologies.
- Planning Sales strategy and find niches in Latin America.
- Relationship with Government regulatory entities
- Support in Marketing and sales.
- Create the operating structure to manage the project in Latin America.

The Petitioner submitted an organizational chart showing four employees. The chart depicts the Beneficiary, the Administrative Manager, and the Purchasing and Logistics Manager all reporting to the General Manager, and shows that the General Manager reports to the Board of Directors. The Petitioner did not provide evidence of its staffing levels at the time of filing, but instead provided evidence of wages paid to its employees in 2012.

On August 16, 2014, the Director issued a Request for Evidence (RFE), and asked for additional details regarding the Beneficiary's position in the United States, including the percentage of time that the Beneficiary will spend on each job duty, a more detailed organizational chart, and copies of IRS Form W-2s for each employee. The Director also stated that if the Beneficiary does not supervise other employees, the Petitioner should specify the essential function that the Beneficiary manages for the Petitioner.

In response, the Petitioner provided a letter dated October 27, 2014 which included the following position description for the Beneficiary:

- Manage the sales operations of the company's telecommunications products in Latin America including negotiation of multi-million dollar contracts, direct staffing, provide strategic selling techniques, training, and performing evaluations as well as develop and control sales programs.
- Plan, direct and coordinate sales of our telecommunications products.

- Coordinate sales distribution by establishing sales territories to our sales representatives throughout Latin America, quotas and goals, reviewing market analysis to determine customers' needs, volume potentials and price schedules.
- Plan, develop, and monitor sales campaigns to be implemented by our company.
- Analyze sales statistics gathered by staff to determine sales potential and inventory requirements, and monitor the preferences of our customers.
- Review the sales reports prepared by each sales representative showing sales volume and potential sales, as well as analyze sales statistics to forecast future sales trends in the telecommunications industry.
- Prepare periodic sales reports showing overall sales volume and potential sales to be submitted to the company's CFO and Chairman for their review and approval.
- Oversee regional and local sales managers in Latin America and their staff.
- Determine price schedules and discount rates.
- Coordinate and follow up the sales support needed for the prospects of the sales funnel.
- Review and analysis of the sales funnel to compare the forecast of regional sales and prepare comparatives with the annual budget submitted to senior management.
- Travel to regional offices in Latin America and attend meetings as a high level support for potential customers or sales.
- Review, authorize and approve business trips expenses to the company's sales representatives.
- Attend telecommunications shows in representation of the company to analyze new products and solutions and report findings to the CFO and the Chairman so that new products may be included in the company's products portfolio.

The Petitioner also submitted a chart which listed the Beneficiary's duties and the percentage of time spent on each duty in an average week as follows:

- Attend weekly meeting with the CFO and President to report sales. 7.5%
- Attend weekly meeting of support of prospects of the sales funnel. 5%
- Preside the coordination of offers meetings [*sic*] with regional sales supervisors where the company's offers to its customers are reviewed and approved by the Telecommunications Sales Manager. Plan, develop and monitor sales campaigns to be implemented by our company. 7.5%
- Follow-up meetings and calls with providers in regards to the installation of new projects. 5%
- Analyze and review the weekly sales funnel report prepared and submitted by the regional sales supervisors to follow up the sales forecasts and the comparisons with the annual budget presented to the company. 10%
- Review the weekly sales reports prepared by each regional sales manager showing sales volume and potential sales and attend meetings personally or by

- teleconference with each regional sales manager to follow up the active accounts on the sales funnel. 15%
- Prepare weekly sales report showing overall sales volume and potential sales to be submitted to the company's CFO and President for their review and approval at the weekly meeting. 5%
- Travel to regional offices in Latin America to attend meetings as a high level support for potential customers or sales. 20%
- Attend meetings as a high level support for potential customers or sales at the regional offices. 20%
- Review, authorize, and approve business trips expenses to the company's sales representatives. 5%
- Attend telecommunications shows in representation of the company to analyze new products and solutions and report findings to the CFO and the Chairman so that new products may be included in the company's products portfolio. 5%

In addition, the Petitioner explained that the Beneficiary manages the Petitioner's sales function:

The management of the sales function at [the Petitioner] is an essential business function because net sales through the sale of communications product and services and its resulting profit drive its business and affects the overall performance of the organization . . . the management of the sales function includes the planning, implementation, and control of sales programs, as well as recruiting, training, motivating, and evaluating members of the sales force. The fundamental role of the [Beneficiary] as the company's Telecommunications Sales Manager is to develop and administer a selling program that effectively contributes to the achievement of the goals of the overall organization. The management of the sales function at [the Petitioner] includes three different areas: the sales planning, the recruiting of the sales staff in Latin America, and the sales reporting.

We also note that the Petitioner stated on the Form I-140 that it had four full-time employees when it filed the petition in May 2014. The organizational chart submitted by the Petitioner in response to the RFE lists six employees. This inconsistency was noted by the Director in the RFE. In response, the Petitioner explained that "the organization underwent a series of executive changes in the Board of Directors positions in the year 2014," however, the specific changes were not explained. The record also contains several tax documents for the Petitioner including IRS Form 941, Employer's Quarterly Federal Tax Returns, and 2013 IRS Form W-2, Wage and Tax Statements, for three employees.

On March 18, 2015, the Director denied the petition stating that the evidence of record did not establish that the Beneficiary would be employed in a qualifying managerial or executive capacity. The Director stated that the Petitioner did not submit sufficient evidence that the company's staffing is of sufficient size and composition to support an executive or managerial position. The Director noted in particular that the Beneficiary would be traveling two days per week to Latin America and

would be out of the U.S. office and therefore, would not be able to perform primarily managerial duties with such limited time spent in the U.S. office.

On appeal, the Petitioner asserts that the denial decision impermissibly makes the assumption that because the Beneficiary will travel to regional offices of the Petitioner in Latin America to negotiate multi-million dollar contracts for telecommunications products, he is unable to primarily perform managerial duties. The Petitioner contends that the Director failed to address and analyze the evidence submitted supporting the Beneficiary's role as a function manager for the company.

In a brief submitted in support of the appeal, Petitioner states that "the personnel that Beneficiary will direct and manage are not direct employees of the U.S. Petitioner, but of the Petitioner's affiliates operating in Colombia, Ecuador, Peru, Brazil, Chile, Panama and Mexico, but who report to the Petitioner's Sales Telecommunications Manager as the sales they make are part of the Petitioner's sales of products." Petitioner submits an organizational chart for the "sales team" of the Petitioner in Latin America. There are eight employees listed as "Sales Manager" for Colombia, Ecuador, Peru, Brazil, Chile, Panama, and Mexico. The chart reflects that these employees report to the Beneficiary, along with a "Sales Administrator" based in Venezuela.

The Petitioner asserts that the Beneficiary's job descriptions submitted previously showed that he "will manage and direct the sales staffing of the Petitioner's regional offices in Latin America." The Petitioner explains that "the international sales team is composed by Regional Sales Managers of the different countries and the employees who are in charge of performing the sales function at the Petitioner's business, and who will report to Beneficiary, as opposed to manage the sales function, which will be entrusted to the Beneficiary."

The Petitioner submits printouts of e-mails (written primarily in Spanish) among the sales managers and the Beneficiary regarding the status of sales operations in the United States and Latin America and a copy of "a presentation illustrating the remote tools that Beneficiary is required to use to manage the sales function of the company."

B. Analysis

Upon review, and for the reasons discussed herein, the Petitioner has not established that it will employ the Beneficiary in a qualifying managerial or executive capacity. In this case, the Petitioner specifically asserts that the Beneficiary will be employed as a function manager. Therefore, we will restrict our analysis to this issue.

When examining the executive or managerial capacity of the beneficiary, USCIS will look first to the Petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). The Petitioner's description of the job duties must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* A detailed job description is crucial, as 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 will then consider this information in light of other relevant factors, including (but not limited to) job descriptions of the Beneficiary's subordinate employees, the nature of the business conducted, the size of the Beneficiary's subordinate staff, and any other facts that may contribute to a comprehensive understanding of the Beneficiary's actual role in the organizational hierarchy of the entity in question.

Here, the Petitioner asserts that the Beneficiary will be employed as a function manager. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 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. 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.

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 has not established that the Beneficiary's actual duties are primarily within a managerial capacity. Rather, the record includes some explanations of the Beneficiary's duties that clearly describe a sales position, and not a managerial role. For example, the record contains a letter from the Petitioner submitted with the initial petition which states that the Beneficiary will be expected to work with existing partners and establish new partnerships in the assigned region, and to "proactively co-sell with our strategic partners to support and drive higher value transactions." He will also be required to work with marketing to develop and execute channel marketing programs and attend and participate in sales meetings, product seminars and trade shows as well as "close sales and achieve quarterly sales quotas." The Beneficiary included similar non-managerial duties in his resume, where he stated that he is responsible for "successful selling of the Telecommunication product and services," creating sales tools," evaluating new technologies to be included in the Petitioner's portfolio, and providing "support in marketing and sales." These duties are not managerial and rather, confirm that the Beneficiary is performing non-managerial tasks on a regular basis.

In addition, the Beneficiary's resume states that he "hires and supervises all the sales force in Florida," however, the organizational chart does not depict a sales force located in Florida and it is

unclear if the Beneficiary himself may be responsible for duties assigned to this sales force. Furthermore, the Petitioner's initial job description indicated that the Beneficiary has "authority over the assigned sales territory in Latin America including the markets in Brazil, Chile, Nicaragua, Honduras, El Salvador, and Guatemala." However, the Petitioner has not identified subordinates responsible for some of these markets. Also, the Petitioner's claimed subsidiaries in Latin America are located in Venezuela, Ecuador, Mexico, Columbia and Panama. It's not clear who employs the various sales managers he is claimed to oversee (some of which have different country responsibilities), or how much time the Beneficiary devotes to overseeing these claimed subordinates. Based upon the job description, we are unable to determine how much of the Beneficiary's time is allocated to overseeing the sales team and how much of his time is actually spent performing sales duties and other non-managerial tasks. Therefore, we cannot conclude that the Beneficiary is employed as a personnel manager or that he primarily manages the sales function. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

The Petitioner also submitted a lengthy description of the Beneficiary's duties in response to the RFE which included a number of duties that would reasonably be associated with managing sales for a company. However, this description also included duties that have not been shown to be managerial in nature. For example, the Petitioner stated that the Beneficiary spends 40 percent of his time attending meetings with potential customers, 5 percent of his time attending "weekly meeting of support of prospects of the sales funnel," and 5 percent of his time preparing weekly sales reports. Based on this job description the Beneficiary spends half of his time performing duties that would be typical of a sales representative, not a sales manager. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

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. As discussed above, many of the Beneficiary's stated duties require him to attend weekly sales meetings, meet with potential customers and prepare sales reports on active accounts. The Petitioner indicates that these duties require at least half of the Beneficiary's time, and therefore, we cannot conclude that he primarily performs managerial duties associated with the petitioning organization's sales function.

Furthermore, while the Petitioner asserts that the sales representatives that are working for the company's Latin American affiliates perform the day to day sales functions of the organization, their role has not been sufficiently established by the evidence contained in the record. The only evidence of the sales representatives that is presented is an organizational chart entitled, "International Sales Organizational Chart," submitted by the Petitioner. This chart lists eight individuals reporting directly to the Beneficiary, one from each of eight Latin American countries. There is little evidence to support their role as sales representatives or their revenue, daily tasks, or relationship to the

Petitioner. Specifically, the Petitioner did not identify the entities that employ the claimed subordinates, describe their job duties, or provide evidence that the Petitioner pays a commission or fees to these sales representatives or their employers. While the Petitioner has submitted some evidence of email correspondence between the Beneficiary and the sales representatives, we are unable to determine the nature of the relationship between them, or determine the role of the sales representatives, based on these emails alone. We acknowledge that there appears to be some direction provided to these sales representatives, however, based upon the limited evidence provided, we cannot conclude what percentage of time the Beneficiary spends overseeing the sales function verses performing the sales function. 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)).

As noted by the Petitioner, a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS “may properly consider an organization’s small size as one factor in assessing whether its operations are substantial enough to support a manager.” *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 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). 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 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. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

All companies, regardless of size, require leaders or individuals who plan, formulate, direct, manage, oversee and coordinate activities. However, the record should support a finding that someone other than the Beneficiary is available to perform the company’s non-managerial sales tasks. Here, our finding is not based on the number of employees working for the petitioning company, but rather on evidence showing that the Beneficiary performs a significant number of non-managerial duties and insufficient evidence to document and explain the duties performed by the Beneficiary’s claimed foreign subordinates.

For the foregoing reasons, the Petitioner has not established that the Beneficiary will be employed in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

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III. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

Beyond the Director's decision, we find that the evidence of record is insufficient to establish that the Beneficiary was employed in a managerial or executive capacity with a qualifying foreign entity for one year in the three years preceding his admission to the United States. *See* 8 C.F.R. § 204.5(j)(3)(i)(B).

As noted, we issued a Notice of Intent to Dismiss (NOID) on November 13, 2015, to attempt to resolve a discrepancy regarding the identity of the Beneficiary's foreign employer. In the instant petition, the Petitioner indicated that the Beneficiary was employed as Managing Director of [REDACTED] located in [REDACTED] Spain, from August 2010 to October 2011. However, U.S. Department of State records indicate that when the Beneficiary applied for an H-1B visa in September 2011, he stated on his visa application that he was employed by [REDACTED] Venezuela as a Latin American Regional Director.

In response to our NOID, the Petitioner submits a statement indicating that in 2010, [REDACTED] entered into a service agreement with [REDACTED] to provide services relating to the installation of energy backup systems. The Petitioner explains that the Board of Directors of [REDACTED] required the Beneficiary to oversee the company operations in execution of the contract. The Petitioner states that the Beneficiary remained employed by [REDACTED]. In support of the response, the Petitioner submits a translated copy of the contract for services between [REDACTED] and [REDACTED] along with a statement signed by [REDACTED] Director of [REDACTED]. The statement repeats that the Beneficiary was assigned to a [REDACTED] account and charged with executing the contract of behalf of [REDACTED]. The Petitioner also submits four handwritten pay receipts dated September 2010, February 2011, April 2011, and June 2011.

In this case, the evidence submitted does not establish the Beneficiary's employment with the foreign entity through October 2011 and merely confirms the existence of a contract for services between the foreign entity and [REDACTED]. "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

The Petitioner provided detailed descriptions of the Beneficiary's duties with [REDACTED] at the time of filing and in response to the RFE. Neither description mentioned the Beneficiary's assignment to a project or account in Venezuela, nor did they mention [REDACTED]. Rather, the Petitioner stated that the Beneficiary was the Managing Director responsible for the overall oversight and direction of the foreign entity. It is unclear how the Beneficiary simultaneously worked in Venezuela on one customer account or contract and also, as stated by the Petitioner throughout the record, served as the top managerial position within the Spanish company's organizational hierarchy. If the Beneficiary was in fact assigned to the client account, and not performing the duties described in the record for [REDACTED] then we must conclude that we do not have an accurate description of the actual duties he performed during his 14 months of claimed employment with

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As such, we cannot conclude that he was employed in a qualifying managerial or executive capacity. Again, 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. at 165 (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Therefore, we cannot conclude that the Beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity for the requisite period. For this additional reason, the petition cannot be approved.

IV. CONCLUSION

The petition will be denied and the appeal dismissed 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 E-I- Corp.*, ID# 14437 (AAO Mar. 28, 2016)