



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

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

MATTER OF T-, INC.

DATE: MAY 11, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an information technology (IT) company, seeks to permanently employ the Beneficiary as its chief operating 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 evidence of record did not establish that: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary has been employed abroad in a qualifying managerial or executive capacity; (3) the Beneficiary will be employed in a qualifying managerial or executive capacity; and (4) the Petitioner has been doing business for at least one year before the petition's filing date.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by selectively considering previously submitted evidence and by not adequately explaining the grounds for denial. The Petitioner also requests oral argument.

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

Before turning to the merits of the case, we will consider the Petitioner's request for oral argument. The regulations provide that the affected party must explain in writing why oral argument is necessary. 8 C.F.R. § 103.3(b)(1). U.S. Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument (*see* 8 C.F.R. § 103.3(b)(2)) and will grant the request only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. In this instance, the Petitioner identifies no unique factors or issues of law to be resolved, and sets forth no specific reasons for oral argument. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

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I. LEGAL FRAMEWORK

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

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

* * *

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

A United States employer may file Form I-140 to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager.

II. QUALIFYING RELATIONSHIP

The Director denied the petition based, in part, on a finding that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary’s foreign employer.

To establish a “qualifying relationship” under the Act and the regulations, the Petitioner must show that the Beneficiary’s foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with “branch” offices), or related as a “parent and subsidiary” or as “affiliates.” *See generally* section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j).

The pertinent regulations at 8 C.F.R. § 204.5(j)(2) define the term “subsidiary” as:

a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

A. Facts

The Petitioner filed Form I-140, Immigrant Petition for Alien Worker, on March 19, 2014. The Petitioner is a subsidiary of [REDACTED], a holding company based in the Netherlands. The Petitioner indicated that the Beneficiary worked in [REDACTED] France, for two wholly owned foreign subsidiaries of [REDACTED] before entering the United States in 2007. Specifically, the

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Beneficiary worked for [REDACTED] (based in Ireland) from August 2004 to September 2005, and for [REDACTED] (based in France) from October 2005 to December 2005. An organizational chart submitted with the petition indicated that [REDACTED], and [REDACTED] are “No Longer Trading.”

The Director issued a request for evidence (RFE) on September 12, 2014. In the RFE, the Director stated: “The petitioner must establish that it maintained (at the time the petition was filed) and continues to maintain a qualifying relationship with the legal entity that employed the beneficiary abroad.” Noting the Petitioner’s assertion that the two foreign companies are “no longer trading,” the Director requested “evidence to establish that the foreign organizations that employed the beneficiary are still doing business.”

In response, the Petitioner submitted a November 25, 2014 letter from [REDACTED] director of [REDACTED] [REDACTED] stated that the two companies “are no longer actively trading abroad. . . . However, several companies under the [REDACTED] group umbrella remain actively trading abroad, thus [the Beneficiary] is still entitled to EB-13 classification.”

The Director denied the petition on January 26, 2015, based in part on the finding that the Petitioner had submitted “no evidence that the foreign company is doing business.”

On appeal, the Petitioner submits copies of recent invoices to demonstrate that various subsidiaries of [REDACTED] are still doing business.

B. Analysis

Upon review, as discussed below, we conclude that the Petitioner has not established that a qualifying relationship existed, at the time of filing, between the Petitioner and the foreign companies that had previously employed the Beneficiary during the three years prior to his entry into the United States as a nonimmigrant.

A petitioner must establish eligibility for the requested benefit at the time of filing the benefit request. *See* 8 C.F.R. § 103.2(b)(1). *See also* 8 C.F.R. § 204.5(j)(3)(i)(C), which requires a given petitioner to show that the prospective employer in the United States *is* (rather than *was*) the same employer or a subsidiary or affiliate of the legal entity that had employed a given beneficiary overseas.

For a foreign employer to transfer an employee working abroad to a U.S. company as an E13 immigrant, a qualifying relationship must exist between the foreign employer and the U.S. employer at the time the petition is filed. Under the regulation at 8 C.F.R. § 204.5(j)(3)(i)(C), the prospective employer in the United States must be the same employer or have a qualifying relationship with the legal entity by which the beneficiary was employed overseas.

Each corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm’r 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm’r 1980). The

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legal entities which employed the Beneficiary overseas were [REDACTED] and [REDACTED], not [REDACTED] or any of its surviving subsidiaries. The evidence submitted on appeal concerns metalworking companies in Switzerland and the Netherlands. This evidence does not establish the Petitioner's ongoing qualifying relationship, at the time of filing, with the IT firms in France and Ireland that previously employed the Beneficiary.

The record does not show that either [REDACTED] or [REDACTED] were still doing business at the time the Petitioner filed the petition in March 2014. Therefore, there is no evidence that a qualifying relationship between those companies and the petitioning entity existed as of the filing date.

Accordingly, we find that the Petitioner did not provide reliable, probative evidence sufficient to establish that there was a qualifying relationship between the intending U.S. employer and the Beneficiary's former overseas employers at the time the Petitioner filed the petition. Therefore, the appeal will be dismissed.

III. EMPLOYMENT IN A QUALIFYING MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based, in part, on a finding that the Petitioner did not establish: (1) the Beneficiary has been employed abroad in a qualifying managerial or executive capacity; and (2) the Beneficiary will be employed in the United States in a qualifying managerial or executive capacity.

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

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

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

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

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

A. Employment in a Qualifying Managerial or Executive Capacity Abroad

1. Facts

As stated above, the Petitioner asserted that the Beneficiary worked for two foreign subsidiaries of [REDACTED] before entering the United States in 2007. The Petitioner submitted a copy of the Beneficiary’s *curriculum vitae*, showing the following information (some of it in French):

May 2001 - [REDACTED]
March 2007

- Gerant
- Consulting Firm specialized in Corporate Strategy and Technology Assessment for Private Equity
- 20 companies audited, 200+ funds analyzed
- Clients: [REDACTED] various corporate clients

May 2001 - [REDACTED]
March 2007

- Gerant
- Consulting Firm specialized in Corporate Strategy
- Clients: [REDACTED] Regular assignment for [REDACTED], various corporate clients

August 2004 - [REDACTED] office
September 2005

- Directeur technique

October 2005 - [REDACTED]
December 2005

- Directeur technique

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The Petitioner does not claim or document any qualifying relationship with [REDACTED] or with [REDACTED]. Therefore, any work that the Beneficiary performed as an employee of those companies would not count as qualifying experience.

The Petitioner submitted copies of pay receipts from [REDACTED], and [REDACTED], verifying the Beneficiary's employment with those companies, but the initial submission contained no other information about the Beneficiary's duties with either former employer.

In the RFE, the Director instructed the Petitioner to submit "a definitive statement from *the foreign company* which describes the beneficiary's job duties," as well as "[a]n organizational chart showing the number of subordinate managers/supervisors or other employees who reported directly to the beneficiary."

In response, [REDACTED] stated:

As Technical Director of our two subsidiaries in Europe, [the Beneficiary] managed between 10 to 16 individuals at a time, most of which possessed college degrees and were highly specialized IT-System Engineers. We have provided sample resumes for some of the individuals managed by [the Beneficiary] abroad. Exhibit T.

....

All of the individuals under [the Beneficiary's] authority were assigned to research and develop new proprietary software, which . . . laid the groundwork for the work done by [the petitioning entity]. . . .

[The Beneficiary] held all plenary authority over this project abroad, including the ability to hire and fire personnel at his sole discretion and establish objectives for the company. Personnel working on the project reported directly to [the Beneficiary].

[The Beneficiary's] time as Technical Director of our European subsidiaries was allotted approximately as follows:

Managing the day-to-day affairs of the software development team and developing and implementing policies to increase efficiency.
Hours per week: 18

Supervising and controlling the work of senior IT-System Engineers and setting agendas for smaller teams under senior personnel.
Hours per week: 5

Evaluating performance of software development team and making personnel decisions. Exercising complete authority over personnel decisions for research and development team.

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Hours per week: 5

Reviewing activity reports to determine progress and status of obtaining objectives and revising business plans in accordance with current conditions.

Hours per week: 10

Consulting with partners on progress of software development and future of project.

Hours per week: 2

The sample résumés all refer to [REDACTED] which is not one of the Beneficiary's former employers. One résumé refers to a role as an "Offshore Technical/Project consultant for product development project for [REDACTED]. The implication is that the workers whom the Beneficiary managed were offshore contractors employed through [REDACTED].

In the denial notice, the Director stated that the Petitioner had not submitted "the requested documentation relating to the foreign company's staff," including an organizational chart and corroborating information regarding the Beneficiary's claimed subordinates. The Director concluded that "the petitioner has not established that the beneficiary was primarily engaged in the supervision of a subordinate staff comprised of managers, supervisors or professionals."

On appeal, the Petitioner notes the prior approval of nonimmigrant petitions to classify the Beneficiary as an L-1A nonimmigrant, based on the same foreign employment as the present petition. The Petitioner also states: "There is nothing in the record to contradict [REDACTED] classification of Beneficiary's employment abroad." The Petitioner asserts that "all of Beneficiary's subordinates did in fact have college degrees and were professionals."

The Petitioner submits an organizational chart for [REDACTED], indicating that the Beneficiary had three direct subordinates: a project manager; a head architect; and a head of engineering. The head of engineering, in turn, supervised six front-end engineers and five back-end engineers.

2. Analysis

Upon review, and for the reasons stated below, we find that the Petitioner has not established that the Beneficiary's former position abroad meets the parameters of 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 a given beneficiary's proposed job duties with the petitioning entity. *See* 8 C.F.R. § 204.5(j)(5). 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, the duties of the beneficiary's subordinates, and any other relevant factors that may contribute to a comprehensive understanding of the beneficiary's actual duties and role within the petitioning entity.

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With respect to the prior approvals of nonimmigrant petitions granting the Beneficiary L-1A status based on the same facts, the record of proceeding does not contain copies of the visa petitions that the Petitioner claims were previously approved. Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

If the previous nonimmigrant petitions were approved based on the same core facts contained in the current record, the approval would constitute material and gross error on the part of the Director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). A federal agency is not required to treat acknowledged errors as binding precedent. *Sussex Eng'g Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the Beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The organizational chart submitted on appeal relates to [REDACTED], where the Beneficiary worked for approximately two months in late 2005. The Petitioner has provided no such organizational chart for [REDACTED], which is the only affiliated foreign employer where the Beneficiary worked for at least a year as required.

In his letter, [REDACTED] asserted that the Beneficiary “managed between 10 to 16 individuals at a time.” but the record does not identify that number of subordinates at [REDACTED]. The Petitioner submitted only four résumés in response to the RFE, and only one of those mentioned [REDACTED] [REDACTED] also asserted that “most of” the Beneficiary’s subordinates held bachelor’s degrees, which conflicts with the claim on appeal that all of them did. Because the Petitioner has not identified those subordinates or provided the relevant information or documentation, the Petitioner has not substantiated either of these claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The Petitioner, on appeal, disputes the Director’s citation of *Soffici* and *Treasure Craft*, stating that they involved different fact patterns than the matter currently under review. In *Treasure Craft*, the regional commissioner held that, because the burden of proof is on the petitioner, it cannot suffice for the petitioner to “go on record” with a particular claim; the record must support that claim. *Soffici* distilled this principle into the sentence quoted above. The cases are relevant because, whatever the specific fact pattern, the basic requirement stands that the Petitioner must substantiate its claims rather than assert them without support.

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The description offered by [REDACTED] is general and lacking in specific detail. [REDACTED] for instance stated that the Beneficiary spent 18 hours per week “[m]anaging the day-to-day affairs of the software development team” which, apparently, consisted of [REDACTED] contractors. The record does not show where this team worked or the nature of the Beneficiary’s contact and involvement with the team. The Petitioner has not even directly documented the Beneficiary’s supervision of these workers. Rather, the Petitioner has implied that supervision, by submitting résumés from [REDACTED] workers and labeling them as “sample resumes” from the Beneficiary’s subordinates.

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. 1108. Reciting a beneficiary’s vague job responsibilities is not sufficient; the regulations require a detailed description of the beneficiary’s daily job duties. *Id.* The assertion that the Beneficiary, for instance, “[m]anag[ed] the day-to-day affairs of the software development team” provides no indication as to what, exactly, this activity entailed.

Accordingly, we find that the Petitioner did not provide reliable, probative evidence sufficient to establish that the Beneficiary was employed abroad in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

B. Employment in a Qualifying Managerial or Executive Capacity in the United States

In the denial notice, the Director stated that the Petitioner “failed to establish that the Beneficiary’s proposed employment with the U.S. entity would be within a qualifying managerial capacity. The following is a discussion:” (*sic*). The decision, however, does not contain any further discussion of that issue, or any explanation as to how the Director reached that conclusion. The Petitioner notes this omission on appeal.

The regulation at 8 C.F.R. § 103.3(a)(1)(i) requires the Director to explain the specific reasons for denial. In this instance, the Director did not provide any specific reasons to support the finding regarding the Beneficiary’s proposed duties in the United States. On appeal, in the absence of specific grounds for denial, the Petitioner provides a general defense of its earlier assertions.

Review of the record indicates that the Beneficiary has two direct subordinates, specifically a head of operations and a head of engineering. The head of engineering has seven named subordinates. The Petitioner’s substantial payroll (over \$2,000,000 in salaries per year) demonstrates the employment of subordinate staff to relieve the Beneficiary from having to primarily perform the company’s day-to-day functions, and the Petitioner’s description of the Beneficiary’s duties is detailed and credible.

For the above reasons, and because the Director did not provide any explanation for the adverse finding, we will withdraw the finding that the Petitioner has not established that it seeks to employ the Beneficiary in a qualifying managerial or executive capacity.

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IV. DOING BUSINESS

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

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

A. Facts

On Form I-140, the Petitioner stated its date of establishment as [REDACTED] more than nine years before the petition's March 19, 2014 filing date. In an accompanying introductory letter dated March 2014 (day not specified), [REDACTED], president of the petitioning company, asserted that the Petitioner "was established and began trading on [REDACTED] . . . Our proprietary product, a cloud computing software package, has been completed and was launched early March 2012."

The Petitioner submitted a printout of an article from [REDACTED] identifying the Petitioner as one of [REDACTED]. The relevant section of the article indicated that [REDACTED] and the Beneficiary launched the petitioning company "in 2012," and that "[i]n May 2013, the company made the leap from software to hardware." The article described the Petitioner as "'well-funded' by private investment" and having "enterprise clients including U.K.-based food chain [REDACTED] and a major U.S. financial institution," but also indicated that [REDACTED] declines to reveal figures about financing, user base or revenue."

The Petitioner submitted copies of its IRS Forms 1120, U.S. Corporation Income Tax Returns, for 2010, 2011 and 2012. The returns included these figures:

Year	2010	2011	2012
Gross receipts or sales	\$9,750	\$20,042	\$28,988
Salaries and wages	2,069,496	2,015,162	2,092,324
Taxable income	-3,494,310	-3,424,094	-3,262,036

The Director issued a request for evidence (RFE) on September 12, 2014. The Director instructed the Petitioner to "submit evidence to establish that the Petitioner has been doing business for at least one year," including "[e]vidence to show that the petitioner has conducted a regular, systematic, and continuous provision of goods and/or services" and "[r]eceipts, invoices, and detailed reports to show that the petitioner traded or exchanged goods or services."

In response, the Petitioner stated: "The early years of the company were focused on research and software development, but in 2012, [the Petitioner] launched its proprietary cloud computing

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software package.” The Petitioner submitted documents pertaining to its lease, utilities and employee health insurance. The Petitioner also submitted an announcement of a venture with [REDACTED] and printouts from its web site, offering various monthly plans.

The Petitioner submitted a copy of the Petitioner’s IRS Form 1120 return for 2013 showed gross receipts of \$21,213; salaries of \$2,188,435; and taxable income of -\$3,401,418. These figures are broadly similar to the figures on the returns for earlier years, described above.

In denying the petition, the Director acknowledged the Petitioner’s evidence but stated that the Petitioner had not submitted evidence such as “service contracts” to show “that the petitioner has engaged in business transactions that involved the provision of goods and/or services.”

On appeal, the Petitioner submits copies of invoices showing payments of £275 per month from [REDACTED] in the United Kingdom “[f]or services rendered . . . [in the] [REDACTED] throughout 2013 and 2014, and \$1,500 per month from [REDACTED] for the use of [REDACTED] during the same period.

For reasons to be discussed below, we find that the Petitioner has not established that it has been doing business, as the regulations define that term, for at least one year prior to the filing date.

B. Analysis

The documents submitted with the initial filing, and in response to the RFE, do not establish that the Petitioner had been doing business for at least a year prior to the filing date. They demonstrate only the presence of an office, which, by regulation, is not sufficient evidence that the Petitioner is doing business. The minimal sales volume shown in the tax returns, covering less than one percent of the Petitioner’s annual expenses, is not facially indicative of regular, systematic and continuous business.

The Petitioner announced the [REDACTED] partnership on September 10, 2014, nearly six months after the petition’s filing date. The printouts from the Petitioner’s web site show a 2014 copyright date, less than a year before the March 2014 filing date. Furthermore, a web site offering these software plans does not establish that the company has regularly, systematically, and continuously been providing services to clients. It shows only that customers had the opportunity to purchase the Petitioner’s services, not that they have actually been doing so.

Documents submitted on appeal show that the Petitioner began serving [REDACTED] in December 2005, and [REDACTED] in August 2009. The 2013 invoices from these two clients are sufficient, by themselves, to account for the Petitioner’s entire reported gross sales income for 2013. The record, therefore, does not indicate that the Petitioner sold any new products or secured any new clients during the year preceding the petition’s filing date. The Petitioner’s only documented business during that period was the service of two existing contracts, with the payments apparently securing the clients’ right to continue using existing software that the Petitioner had already provided to them.

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as well as related support services. The Petitioner, therefore, was providing services to some extent in 2013, but at a level that was too low even to pay the Petitioner's telephone bill (\$32,573.90 in 2012).¹ The Petitioner has not established that its provision of services at this minimal level is regular, continuous, and systematic, as the regulation requires.

Therefore, while the Petitioner has existed for several years, there is not sufficient evidence in the record to show that the Petitioner has provided services on a regular, continuous, and systematic basis, as required by the regulatory definition of the term "doing business," for at least one year prior to the petition's filing date. For this reason, the appeal will be dismissed.

V. 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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of T-, Inc.*, ID# 13622 (AAO May 11, 2016)

¹ In the context of the Petitioner's finances, it is relevant to note that among the utility bills submitted in response to the RFE is a "Final Turn-Off Notice" from [REDACTED] issued in November 2014. We further note that the company continues to rely on very substantial infusions of capital from the parent company. The Petitioner's 2013 IRS Form 1120 return shows loans from shareholders in excess of \$15.8 million. The record does not demonstrate the Petitioner's long-term viability.