



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

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

MATTER OF W-G-S-, INC.

DATE: NOV. 25, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a gas station and convenience store, seeks to extend the Beneficiary's employment as an L-1A nonimmigrant intracompany transferee. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed

The Director determined that the Petitioner had not established a qualifying relationship with a foreign entity and had not established that the Beneficiary would be employed in a managerial or executive capacity for the U.S. entity. On appeal, the Petitioner asserts that the Director's basis for denial of the petition was erroneous and contends that it has satisfied all evidentiary requirements.<sup>1</sup>

For the reasons that will be discussed below, we agree with the Director's decision that the Petitioner has not established eligibility for the benefit sought. The appeal will be dismissed.

#### I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the Petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the Beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the Beneficiary's application for admission into the United States. In addition, the Beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a parent, subsidiary, or affiliate of the foreign employer.

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<sup>1</sup> The Petitioner checked the box 1(b) at Part 3 of the Form I-290B, Notice of Appeal or Motion, indicating that a brief would be submitted to this office within 30 days of filing the appeal. Although the record on appeal includes a brief dated May 17, 2015, a date prior to receipt of the Form I-290B on May 19, 2015, the record does not include an additional brief. The record is considered complete as currently constituted.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides the following pertinent definitions:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
  - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
  - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
  - (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

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- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means 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.
- (L) *Affiliate* means
  - (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
  - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, . . .

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 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

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

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

supervisor's supervisory duties unless the employees supervised are professional.

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

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

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.

## II. THE ISSUES ON APPEAL

### A. Qualifying Relationship

The first issue to be addressed is whether the Petitioner established that a qualifying relationship exists with a foreign entity.

#### 1. Facts

On the Form I-129, the Petitioner asserted that the Beneficiary owned 100 percent of the foreign entity and 60 percent of the Petitioner and that the two entities are thus affiliated. In the letter appended to the petition, the Petitioner asserted that it had issued 200 shares and that the Beneficiary had been issued 160 shares (or 80 percent of the authorized issued shares). The initial record included the Petitioner's stock certificate No. 2 showing the Beneficiary had been issued 160 shares. The record also included the Petitioner's shareholder agreement, signed by the Beneficiary and the individual holding 40 of the Petitioner's shares. The Petitioner's Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Return, for the 2012 and 2013 years, identified the Beneficiary's ownership in the Petitioner as 80 percent, or 160 of the authorized issued shares.

In response to the Director's request for evidence (RFE), the Petitioner submitted additional documentation supporting the claim that the Beneficiary owned 100 percent of the foreign entity. The Petitioner also submitted its stock transfer ledger showing that only two certificates had been

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issued, stock certificate No. 1 in the amount of 40 shares and stock certificate No. 2 to the Beneficiary in the amount of 160 shares.

On appeal, the Petitioner asserts that the Beneficiary owns and controls both it and the foreign entity.

## 2. Analysis

Upon review of the totality of the record, the Petitioner submitted sufficient evidence to demonstrate that more likely than not, the Beneficiary owned and controlled both the Petitioner and the foreign entity. Although the Petitioner indicated, in answer to one question on the Form I-129, that the Beneficiary only owned 60 percent of the Petitioner, the record includes sufficient clarifying information and supporting documentation to demonstrate that a qualifying affiliate relationship exists between the two entities. We review each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the evidence of record establishes a qualifying relationship. Accordingly the Director's decision will be withdrawn as it pertains to this issue only.

### B. U.S. Employment in a Managerial or Executive Capacity

The second issue to be addressed is whether the Petitioner established that the Beneficiary will be employed in an executive or managerial capacity in the United States.

#### 1. Facts

On the Form I-129, the Petitioner identified its type of business as a "Gas Station and Convenience Store" and the Beneficiary's position as "Director." In the letter appended to the petition, dated August 26, 2014, the Petitioner noted that "[t]his business was able to continue operations without interruption and presently employ[s] 5-7 individuals, including [the Beneficiary], [redacted], [redacted], the general manager, and a full[-]time staff." The Petitioner also provided a description of the general manager's duties. The position of the Beneficiary's subordinate, the general manager position, is described as follows:

[The general manager] is responsible for all of the day-to-day operations of the company. This includes the hiring and training of staff, setting of work schedules, making deposits, maintaining of accounts and business records relating to the separate franchise operations, reviewing inventory needs with [the Beneficiary], ordering of inventory and supplies. He is assisted in these duties by a four member staff that includes three cooks and cashiers whose job duties are more fully described on the annexed organization chart.<sup>2</sup>

The Petitioner also provided a job description for the Beneficiary's duties in the United States:

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<sup>2</sup> The initial record does not include the Petitioner's organizational chart.

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[The Beneficiary] will continue in the position of President of [the Petitioner] and Director of Financial Operations and Marketing for the [redacted]. He will continue to be responsible for establishing all company policies and reviewing the day-to-day operations of [the Petitioner] through his general manager. . . . [The Beneficiary] is responsible for reviewing and certifying [the general manager's] reports and accounts to the franchisors as required under the various franchise agreements. As Director of [redacted], he will meet with [redacted] several times a week to review the accounts of the company, including payroll, large purchases, and accounts payable. He recommends ways in which to increase profitability. He will develop a marketing plan to expand operations in the New York area and acquire new franchises that are currently undervalued through inept management.

[The Beneficiary's job duties involve total autonomy over all U.S. operations, of [the Petitioner] and financial operations of [redacted], including developing a marketing strategy, approving new contracts and pricing, maintaining bank records and reconciliations, and filing all tax and IRS requirements. He will also review recommendations for the hiring and training of new staff, raises and discharges, setting of work schedules and ordering of inventory.

The initial record also included the Petitioner's state quarterly wage reports for the first and second quarter of 2014, showing the Petitioner employed four individuals in the month of January 2014, and five individuals from February through June 2014. As noted above, the initial record also included the Petitioner's 2012 and 2013 IRS Forms 1120. The initial record further included the Petitioner's Forms W-2, Wage and Tax Statements, for 2012 and 2013.

In response to the Director's RFE, which requested additional evidence to demonstrate that the Beneficiary would be employed in a primarily managerial or executive capacity, the Petitioner asserted that the Beneficiary "is the Director and Operations Manager for three business entities which employ directly or indirectly 270 employees in the United States and an additional 250 in Nepal." The Petitioner noted that, on a daily basis, the Beneficiary spends 1.75 to 2.75 hours performing job duties for the foreign entity, an additional four hours performing job duties for the [redacted] and three hours performing job duties for the Petitioner. The Petitioner stated that the Beneficiary's job duties for it included:

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<sup>3</sup> The Petitioner notes that the Beneficiary purchased a 20 percent interest in the [redacted] a company that owns and manages multiple [redacted]. The record includes a purchase agreement between the Beneficiary and the controlling member and owner of the [redacted] dated May 29, 2012, which shows that the Beneficiary purchased a 20 percent interest in the [redacted]. The purchase agreement also notes that the Beneficiary will be responsible for the financial and marketing operations of the company. The record also includes a share certificate showing that the Petitioner owns a 20 percent interest in the [redacted].

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- Reviews and maintains the financial records of the business, reconciles daily bank deposits, reviews and reconciles monthly bank statements, prepares payroll, pays suppliers after consulting with General Manager (2 hrs a day)
- Meets with General Manger [*sic*] to determine that records are properly maintained, fees are properly paid and procedures are properly followed according to rules established by franchise agreements (.25 hrs a day)
- Reviews and approves the ordering of supplies and inventory and the payment of accounts payable; Reviews receipt of gasoline invoices and reports prepared by General Manger [*sic*] according to agreement with gas supplier (.5 hr a day)
- Performs miscellaneous tasks including: Meets with accountant to maintain books and records required by state, federal and local regulatory agencies in connection with lottery games and for the payment of all taxes, licenses and other fees; inspects kitchen facilities to ensure that standards are being maintained according to state and local health department regulations, approves work schedules established by General Manager (.25 hrs a day)

The Petitioner also provided an organizational chart depicting the Beneficiary as the owner of the Petitioner and the foreign entity. The organizational chart depicted the [REDACTED] and the Petitioner's general manager under the Petitioner's block. The organizational chart further identified a gas station with five employees, including attendants and cooks under the Petitioner's general manager's block.<sup>4</sup> The record also included [REDACTED] 2012 IRS Form 1065, U.S. Return of Partnership Income, and a letter dated December 12, 2014, signed by [REDACTED]

In denying the petition, the Director found that the description of the Beneficiary's duties with the Petitioner demonstrated that he would be engaged in the performance of non-qualifying tasks. On appeal, the Petitioner repeats the description of the Beneficiary's duties and the allocation of time spent on the duties and asserts that the "interlocking corporations provide an opportunity for [the Petitioner] to provide the management services for which it was formed." The Petitioner contends that the Petitioner provides actual managerial services for a larger organization as part of its key functions.

## 2. Analysis

Upon review, and for the reasons discussed below, the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity for the U.S. entity.

Preliminarily, we find that the Beneficiary's job duties for [REDACTED] are not relevant to establishing the Beneficiary's managerial or executive position with the Petitioner. The Petitioner has not established that it has a qualifying relationship with [REDACTED] or that the Petitioner has a contract with [REDACTED] to provide services for [REDACTED]. Moreover, the record includes inconsistent

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<sup>4</sup> The organizational chart also identified a general manager position and 270 employees under the [REDACTED] block and a general manager and 250 employees under the foreign entity block.

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information regarding the actual ownership of [REDACTED]. The Petitioner submitted a May 29, 2012 Shareholders Agreement which specified that the Beneficiary, as an individual, purchased a 20% interest in [REDACTED] with [REDACTED] holding the remaining 80%. We point out, however, that a 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). According to this shareholders agreement, the Petitioner in this matter has not acquired an ownership interest in [REDACTED].

Other documents in the record, however, indicate that the Petitioner, rather than the Beneficiary, holds an ownership stake in [REDACTED]. Share certificates, also dated May 29, 2012, indicate that [REDACTED] owns 80 of 100 shares, and that the Petitioner owns the remaining 20 shares. [REDACTED] 2012 IRS Form 1065, U.S. Return of Partnership Income, includes three Schedules K-1, Partner's Share of Income, Deductions, Credits, etc. These Schedules K-1 indicate that [REDACTED] owns 75% of the entity; [REDACTED] owns 5%; and the Petitioner owns the remaining 20%. These certificates, if verified, could possibly establish the Petitioner's minority ownership, but do not establish control.<sup>5</sup>

[REDACTED] in a letter dated December 12, 2014, stated that the Beneficiary, "through [the petitioning] organization, became a minority owner of [REDACTED]. She did not claim that the Beneficiary has any control over the organization. Rather, he is "responsible for [REDACTED] financial management." She also specified that she is "the sole owner of [REDACTED]. Thus, while the [REDACTED] organization may play a management role but it does not own the restaurants.

The present proceeding involves three entities, of which the Beneficiary has varying levels of ownership. The Petitioner's introductory statement described the foreign entity as "the parent company," but there is no evidence that the foreign entity has any ownership interest in either the Petitioner or [REDACTED]. The petitioner has asserted that the Beneficiary is the sole owner of the foreign entity; 80% owner of the petitioning entity; and 20% owner of [REDACTED]. Under these conditions, [REDACTED] is not a subsidiary of either the foreign entity or the petitioning company.

[REDACTED] is, likewise, not an affiliate of the petitioning company. If the Beneficiary is the owner of a 20% share of [REDACTED], that percentage is not approximately the same share as his sole ownership of the foreign entity or his 80% stake in the Petitioner. Also, the companies are not owned by "the same group of individuals" as the regulation requires; [REDACTED] majority shareholder owner [REDACTED] is not the same person as the Petitioner's minority shareholder [REDACTED].

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<sup>5</sup> It appears from the record that the Beneficiary, not the Petitioner, purchased the 20 percent interest in the [REDACTED]. The record does not include further agreements or transfers of this 20 percent interest from the Beneficiary to the Petitioner. Again, a corporation is a separate and distinct legal entity from its owners or stockholders. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not include sufficient consistent, probative evidence establishing the Petitioner and/or the Beneficiary's ownership interest in the [REDACTED] organization.

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Therefore, if the Beneficiary is the minority shareholder, [REDACTED] does not meet the regulatory definition of an affiliate of the petitioning U.S. employer. If, on the other hand, we consider the share certificate and tax documents which attest that the Petitioner, rather than the Beneficiary, owns 20% of [REDACTED] the Petitioner's minority ownership also does not establish control.

Here, the Petitioner asserts that the Beneficiary "will play a major role in the operation of" [REDACTED] but neither the foreign entity nor the Petitioner controls [REDACTED]. The shareholder agreement indicates that the Beneficiary "shall be responsible for [REDACTED] financial and marketing operations," whereas [REDACTED] shall be responsible for the day-to-day operation of the business." The Beneficiary's financial and marketing responsibilities, however, do not assist in establishing the Petitioner's control of the company. Because [REDACTED] is neither an affiliate nor a subsidiary of the Petitioner in this matter, the Beneficiary's proposed work for [REDACTED] cannot qualify him for the classification sought in this petition.

We will next address the Petitioner's assertion that the Beneficiary will work in a qualifying managerial or executive capacity.

In general, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary's proposed job duties with the petitioning entity. *See* 8 C.F.R. § 214.2(l)(3)(ii). 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.* 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.

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). While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify a given beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. *See* Section 101(a)(44) of the Act.

The Director, in denying the petition, focused on the Beneficiary's three hours of claimed daily duties with the petitioning entity. The Petitioner claims that the Beneficiary devotes three hours a day to the affairs of the petitioning entity.<sup>6</sup> With respect to the Beneficiary's position as Director of the

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<sup>6</sup> The Petitioner attests that the Beneficiary spends the remaining portion of his day working for [REDACTED] (four hours)

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petitioning entity, the majority of his claimed duties in that capacity relate to the Petitioner's finances, specifically "maintain[ing] the financial records," "reconcil[ing] monthly bank statements," "prepar[ing] payroll" and "pay[ing] suppliers." These duties, as described, appear to be administrative rather than managerial or executive. The Petitioner contends that the Beneficiary devotes 15 minutes a day to miscellaneous functions including "[meeting] with accountant to maintain books and records." The Petitioner also, however, states that the Beneficiary himself "maintains financial records" for two hours a day. Financial tasks such as bookkeeping and issuing payments are operational tasks, involved in the direct operation of the business. If the Beneficiary performs these tasks himself, then he is directly performing functions of the business rather than managing those functions. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

An organizational chart included in the Petitioner's RFE response indicates that the gas station has "5 employees including attendants [and] cooks," in addition to the general manager. The Petitioner, however, has not identified any subordinate staff that is responsible for performing the financial functions discussed above. Also, the Petitioner has not established that the petitioning gas station has a sufficient level of organizational complexity to justify two levels of management as claimed. For example, the Petitioner submits only the first two quarterly tax returns for 2014 which document the wages paid to its employees. The petition was filed in the third quarter of 2014 and the record does not include documentary evidence establishing the number of persons the Petitioner employed or the wages that they were paid for that quarter. 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)). Even if the Petitioner employed the same number of individuals during the third quarter and in the positions identified on its organizational chart, the record does not include sufficient evidence to ascertain whether these employees are employed on a full-time basis. The record does not include the gas station's operating hours and does not include sufficient evidence that four individuals could staff the operation without the Beneficiary contributing to the performance of additional non-qualifying duties.

On appeal, the Petitioner repeats the same list of claimed duties, but does not dispute the Director's findings regarding those duties. The Petitioner, therefore, has not rebutted or overcome the Director's finding that the Beneficiary's duties for the Petitioner are not primarily managerial or executive.

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and managing the foreign entity (1.75 to 2.75 hours). USCIS records do not appear to show that the Beneficiary is authorized to work for [REDACTED] either through an approved nonimmigrant petition or through general employment authorization. The Beneficiary's previously accorded L-1A nonimmigrant status only authorizes him to work for the Petitioner. *See* 8 C.F.R. § 274a(b)(12). Moreover, there is no evidence in the record to establish that the Petitioner entered into an agreement to provide managerial or operational financial services to the [REDACTED]

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We acknowledge the Petitioner's contention on appeal that: "The interlocking corporations provide an opportunity for [the Petitioner] to provide the management services for which it was formed. . . . [The Beneficiary's] services are critical to the operation of more than 13 restaurants." However, the record does not support the Petitioner's claim that "the Petitioner is . . . a management consulting company that directly owns and manages a gas station and convenience store while simultaneously owning a 20% interest in another entity, [REDACTED] which owns and manages 13 fast food restaurants." As discussed above, [REDACTED] is a separate company that does not have a qualifying relationship with the Petitioner or the foreign entity. For this reason, we cannot consider the Beneficiary's proposed job duties with [REDACTED]

The Beneficiary's claimed ongoing duties for the foreign entity also cannot qualify him for the nonimmigrant status he seeks in this proceeding. The statute and regulations establish that the Beneficiary must seek employment as a manager or executive for a United States employer. The foreign entity does not meet that requirement, as it is not doing business in the United States. The Petitioner claims that the Beneficiary continues to run the foreign entity by telephone and other means, but his presence in the United States does not mean that the foreign entity is doing business in the United States. "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. § 214.2(l)(1)(ii)(H).

As discussed above, the Beneficiary's claimed duties with the foreign entity and [REDACTED] do not constitute work (whether managerial, executive, or otherwise) for the petitioning U.S. employer. In this matter, the Petitioner did not provide sufficient probative and descriptive evidence regarding the Beneficiary's duties and sufficient consistent evidence that he would primarily perform managerial or executive duties for the Petitioner. Accordingly, we will uphold the Director's determination that the Petitioner did not establish that the Beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

### III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reason. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the Petitioner. 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 W-G-S-, Inc.*, ID# 15021 (AAO Nov. 25, 2015)