



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

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

MATTER OF R-I-, LLC

DATE: SEPT. 18, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a provider of cleaning and property management services, seeks to temporarily employ the Beneficiary as the general manager of its new office under the L-1A nonimmigrant classification. *See* Immigration and Nationality 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.

In denying the petition, the Director determined that the evidence of record did not establish that the Beneficiary would be employed in the United States in a qualifying managerial or executive capacity within one year of the approval of the petition. The Director's decision also included a statement that the Petitioner did not establish "that the beneficiary was employed in a qualifying position abroad," but contained no additional discussion regarding the issue of the Beneficiary's foreign employment.

On appeal, the Petitioner submits a brief disputing the denial and addressing the Director's adverse findings.

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 three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

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, 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. U.S. Employment in a Managerial or Executive Capacity

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*Matter of R-I, LLC*

The primary issue to be addressed is whether the Petitioner established that its new office will support will support an executive or managerial position within one year of the approval of the Petition.

1. Facts

The Petitioner filed the Form I-129 on October 15, 2015, and requested that the Beneficiary be granted a one-year approval, from October 29, 2014 until October 28, 2015, to serve as its general manager. The Petitioner stated that it had three employees at the time of filing and described its business as “commercial/residential cleaning services and property management.” The Petitioner listed projected gross annual income of \$120,000.

The Petitioner described the Beneficiary’s proposed duties as follows:

Supervise the work of the financial/administration manager and the work of the supervisor of housekeeping, and other professional staff that eventually will be added. Review financial statements, sales and activity reports. Determine, fix and adjust the pricing and sale of services considering local market conditions, time, effort, location and expenses involved. Direct the financial goals of the company and coordinate the allocation of budget to fund business operations in order to maximize investments and increase productivity. Ensure that allocated company funds are used consistently with company policy in alignment with business operation necessities and company goals. Responsible for carrying out policies, goals, and objectives established by the company. Will have authority to hire and fire employees, or recommend appropriate actions consistent with state and federal laws. Exercise wide discretion over the day-to-day operations of the company.

The Petitioner also submitted an October 12, 2014 letter from its Venezuelan parent company, which included an nearly identical description of the Beneficiary’s proposed duties, adding that he will also “[n]egotiate and approve contracts.” The parent company’s letter added that the Beneficiary will dedicate 80 percent of his time to performing these duties.

The Petitioner also submitted an October 13, 2014 letter, signed by the Beneficiary, in which he explains that the company is ready to do business, and intends to operate in three distinct areas of business which will be developed in three phases. Specifically, he stated that the Petitioner will initially providing cleaning services for residential and commercial clients in the [REDACTED] area, and later offer property management services, such as landscaping, painting and repairs. The third phase of the business would involve acquiring residential units, homes and apartments for rehabilitation, rent and resale. The Beneficiary explained that he would hire a licensed real estate broker as property manager to manage and develop the second and third phases of the business.

The Beneficiary stated that the staffing for the initial phase will include his position of general manager, a manager of finance and administration, an administrative assistant, a supervisor of

housekeeping, and three housekeeping subcontractors. Further, he stated that the Petitioner intends to hire a handyman and additional subcontractors as the business progresses into its planned property maintenance and renovation phases.

The Petitioner provided an organizational chart which depicts the Beneficiary as General Manager, overseeing the manager of finance and administration. According to the chart, this employee directly supervises the administrative assistant and supervisor of housekeeping, who will supervise the three subcontracted housekeepers. The Petitioner submitted a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the second quarter of 2014, as well as copies of paystubs, as evidence that it had already hired the individuals identified on the chart as the manager of finance and administration, administrative assistant and housekeeping supervisor as of August 2014.

The Petitioner's initial evidence also included its "Strategic & Tactical Business Plan." The business plan includes a different version of the organizational chart which has a "property manager" position senior to the housekeeping supervisor position. According to the business plan, the Petitioner anticipated that "the second phase of the business will kick in by December of [2014] and the third phase will in the third quarter of 2015." The Business Plan indicates that William Sandoval had already been selected for the position of property manager and that he would supervise contractors hired in connection with the second and third phases of the business.

The Petitioner's business plan includes a Profit & Loss Statement for the years 2014 (September to December) through 2018. The Petitioner projected gross sales of \$120,000 for the first four months of operation, \$360,000 for its first full year of operations (2015), and an increase of \$40,000 in gross sales in each year thereafter. With respect to operating expenses, the Petitioner indicates that it expects to pay \$50,000 in salaries and wages in 2014, \$150,000 in 2015, \$170,000 in 2016, \$180,000 in 2017 and \$190,000 in 2018. The Petitioner's projected profit and loss statements do not include any anticipated payments to contractors.

The Director issued a request for additional evidence (RFE) on October 28, 2014 in which she requested, in relevant part, additional information to show how the new office would support an executive or managerial position within one year of the petition's approval. Specifically, the Director advised the Petitioner that it did not submit evidence of a staffing plan adequate to show that the Beneficiary would be relieved from performing non-managerial, day-to-day duties within one year. The Director suggested that the Petitioner provided a more detailed organizational chart listing all proposed positions with a summary of proposed duties for each employee and their expected educational levels, as well as a business plan that includes a timetable for each proposed action for the initial year of operations.

In response to the RFE, the Petitioner provided recent paystubs and canceled checks as evidence of its continued payment of wages to the individuals identified as its administrative assistant, its supervisor of housekeeping, and the manager of finance and administration. In addition, it submitted a letter from the foreign entity dated December 8, 2014 which briefly addressed the Petitioner's proposed staffing levels as follows:

*Matter of R-I, LLC*

[The Petitioner] has already hired and is actually employing three qualified U.S. workers since the beginning of August of 2014. . . . Three housekeeping subcontractors will also be hired. Additional staff will be added as the company progresses within the first year. Additional housekeeping and maintenance staff will be added in January of 2015. Also in the first quarter of 2015, we anticipate hiring Mr. [REDACTED] as manager of the property management and acquisitions division. Mr. [REDACTED] is a licensed real estate broker with years of experience in the Central Florida real estate market. Financial projects, size of investment, nature and scope of the business and other pertinent information about the new office in Florida has been previously submitted.

The Director denied the petition on December 23, 2014, concluding that the Petitioner did not establish that it would support a managerial or executive position within one year of the approval of the Petition. In denying the Petition, the Director determined that the Petitioner provided an overly generalized description of the Beneficiary's proposed duties, a vague business plan with insufficient information regarding the company's timetable for hiring additional staff, and insufficient information regarding the duties to be performed by the company's existing and proposed staff. Accordingly, the Director found that the evidence did not support its claim that the company would grow to the point where it would employ the Beneficiary in a qualifying managerial or executive capacity within one year. Rather, the Director concluded that, given the proposed nature and size of the business as documented in the record, it was more likely than not that the Beneficiary would not be relieved from performing non-managerial and non-executive duties within a one year timeframe.

On appeal, the Petitioner asserts that the Director mischaracterized the facts and the content of the evidence submitted, and dismissed probative, credible and relevant evidence establishing that it would support a qualifying managerial position within one year. The Petitioner emphasizes that the Beneficiary, as general manager, occupies the senior position in the organization, and that his direct subordinate, the manager of finance and administration, possesses a Bachelor's degree and also supervises a subordinate supervisor. Further, the Petitioner asserts that the Director erred by observing an "alleged deficiency" with the submitted business plan for the first time in the notice of denial, without giving the Petitioner an opportunity to respond. Nevertheless, the Petitioner contends that its business plan did contain financial projections and other relevant financial information, and that it established by a preponderance of the evidence that the Beneficiary is qualified for the benefit sought.

## 2. Analysis

Upon review, and for the reasons discussed herein, the Petitioner has not established that the new office will support a managerial or executive position within one year.

The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position. *See* 8 C.F.R. 214.2(l)(3)(v)(C). Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business

immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

When examining a beneficiary's executive or managerial capacity, we will look first to the petitioner's description of the job duties. *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.* Beyond the required description of the job duties, we review the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of any proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of others to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

In the instant matter, the Petitioner described the beneficiary's proposed position in very general terms, noting that he will "direct the financial goals of the company," "ensure that allocated company funds are used consistently with company policy," be "responsible for carrying out policies, goals and objectives," "hire and fire employees, or recommend appropriate actions" and "[e]xercise wide discretion over the day-to-day operations of the company." While these broadly described responsibilities indicate the Beneficiary's senior level of authority within the company, they offer little insight into what he will actually do within the context of the petitioning business on a day-to-day basis during the first year of operations and beyond. Further, the Petitioner stated that these areas of responsibility would require 80 percent of the Beneficiary's time, but it offered no information regarding how he would spend his remaining time.

Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Although the Director observed that the Petitioner's description of the Beneficiary's duties was too general, the Petitioner has not provided any additional information regarding his actual proposed duties on appeal, or acknowledged the Director's finding that the submitted description was insufficient. Instead, the Petitioner asserts that the initial evidence was sufficient to establish eligibility in this matter by a preponderance of the evidence.

However, while several of the broadly-drawn duties attributed to the position would generally fall under the definitions of managerial or executive capacity, the lack of specificity in the record as a whole raises questions as to the beneficiary's actual proposed responsibilities. We do not doubt the beneficiary's authority to make decisions, establish policies, hire employees, or his senior role in the

new company; however, the record does not establish how the beneficiary would perform primarily managerial or executive duties within one year. 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.

Further, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has established that the beneficiary would have the appropriate level of authority over the business, but the record does not establish what he would actually do on a day-to-day basis after one year. The actual duties themselves 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).

The Petitioner has consistently explained its intent to operate three different lines of business implemented in three separate "phases." Specifically, it states that it would initially operate a residential and commercial cleaning business, begin offering property management and maintenance services within a few months, and, before the end of the initial year, begin purchasing and renovating homes for resale. However, the Petitioner's business plan does not discuss any of these actions in detail, nor do the financial projections therein support the Petitioner's claim that it would be operating three businesses within one year.

The Petitioner has provided evidence that it hired three employees to date and identified them as supervisor of housekeeping services, manager of finance and administration, and administrative assistant. While the Petitioner indicates that it will hire three housekeeping contractors, a property manager and handy man, and add additional contractors to perform property management and maintenance services, it has not provided a timeline for hiring staff and contractors, and its financial projections do not account for any payments to additional employees. For example, the Petitioner's profit and loss projections assume that the company will pay \$50,000 in salaries and wages during the four months of 2014 and a total of \$150,000 for all of 2015, a figure which indicates no increase in staff. Similarly, the Petitioner's projected sales for 2015 are static in comparison with the last four months of 2014, notwithstanding its claim that it expects to add two additional lines of revenue by the third quarter of 2015.

Further, the Petitioner states that the actual services of the business will be performed by contractors, but its financial projections do not include any contractor expenses, much less show sufficient expenses to show that the Petitioner's employees would be relieved from providing services. 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)). Although the Director specifically mentioned the insufficiency of the Petitioner's business plan in denying the petition, the Petitioner maintains that the business plan contained all required projections and is

sufficient to establish eligibility. For the reasons stated, the projections included in the business plan do not support the Petitioner's claims regarding its hiring and expansion plans.

While its future hiring plans are not well-corroborated in the record, the Petitioner has provided evidence that it employed three employees at the time of filing and that the Beneficiary would supervise these employees. 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. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The Petitioner has established that the Beneficiary would have the authority to hire and fire employees and supervise the staff already hired; however, the Petitioner has not established that these subordinate employees are managers, supervisors or professionals. The initial evidence contained no information regarding these positions other than the job titles assigned, and the Petitioner did not respond to the Director's request for position descriptions for all of the Beneficiary's proposed subordinates. The evidence must substantiate that the duties of the Beneficiary and his subordinates correspond to their placement in an organization's structural hierarchy; job titles alone are not probative and will not establish that an organization can support an executive or manager position. Absent information regarding the actual duties performed by the Beneficiary's subordinates, we cannot determine whether they are performing duties that are managerial or supervisory, or whether they are professionals.<sup>1</sup>

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<sup>1</sup> In evaluating whether the beneficiary manages professional employees, we evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, we focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. Here, while the Petitioner established that the manager of finance and administration has a bachelor's degree in business administration, it has not provided a description of her duties and we cannot determine if she performs duties for which a bachelor's degree is required.

Nor has the Petitioner provided probative evidence of a proposed organizational structure that would be sufficient to relieve the beneficiary from performing non-qualifying duties within one year. As discussed above, the staffing levels indicated on the petitioner's proposed organizational chart are not fully corroborated by its business plan or any other evidence in the record, as the Petitioner's financial projections do not account for any payments to contractors, despite its claims that contractors will perform the services of the business. Further, without descriptions of the duties to be performed by the existing subordinates, we cannot determine how work is allocated within the company or whether these employees are actually capable of relieving the Beneficiary from direct involvement in its routine, day-to-day activities. For example, the Petitioner has not identified any present or proposed staff who would be responsible for marketing or selling the company's services to customers, a function that would reasonably require a substantial amount of time, particularly for a new business with no established customer base.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* Here, the Petitioner has not established that the Beneficiary would be relieved from focusing on the day-to-day operations of its newly acquired business within one year, such that he could focus primarily on the goals and policies of the organization.

The Petitioner correctly states that it has the burden to prove by a preponderance of evidence that the Beneficiary is fully qualified for the benefit sought. The "preponderance of the evidence" standard requires that the evidence demonstrate that the petitioner's or applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating a petition pursuant to the preponderance of the evidence standard, we examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Here, the Petitioner's brief on appeal focuses on the quantity of the evidence submitted, but does not adequately address the deficiencies the Director found with respect to the quality of the submitted evidence. For the reasons discussed above, we find that several pieces of key evidence are lacking in probative value. Overall, the vague job description provided for the Beneficiary, considered in

light of the Petitioner's insufficiently documented business and hiring plans for the first year of operations, and the lack of information regarding the current staff, prohibits a determination that the Petitioner would support a managerial or executive position within one year. Accordingly, the appeal will be dismissed.

#### B. Foreign Employment in a Managerial or Executive Capacity

The remaining issue to be addressed is whether the Petitioner established that Beneficiary has been employed by its Venezuelan parent company in an executive or managerial capacity for one continuous year in the three year period preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

The Director's decision included a statement that the Petitioner did not establish "that the beneficiary was employed in a qualifying position abroad," but contained no additional discussion regarding the issue of the Beneficiary's foreign employment. The Director did not address any evidence pertaining to the Beneficiary's foreign employer or explain the reasons for denial. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

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 that the Beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity. Accordingly the Director's decision will be withdrawn as it pertains to this issue only.

### III. CONCLUSION

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 R-I-, LLC*, ID# 13606 (AAO Sept. 18, 2015)