U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-C-, LLC

DATE: APR. 25, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a seller of high end watches, seeks to extend the Beneficiary's temporary employment as its managing member under the L-1A classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in an executive or managerial capacity.

The Director, Vermont Service Center, denied the petition. The Director concluded that the evidence of record did not establish that: (1) the Beneficiary will be employed in a managerial or executive capacity; (2) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; and (3) the foreign employer is doing business as defined in the regulations.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director's decision is contrary to the law and the facts of this case. The Petitioner asserts that it has an affiliate relationship with the Beneficiary's foreign employer and that the foreign entity continues to do business in Jordan. Further, the Petitioner contends that the Beneficiary will be employed in an executive capacity "since he oversees 5 employees overseas, and one employee" in the United States.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a 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. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to render his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, 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.

II. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity under the extended petition. The Petitioner does not claim that the Beneficiary will be employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary will be employed in an executive capacity.

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, 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. *See* section 101(a)(44)(C) of the Act.

A. Evidence of Record

The Petitioner filed the Form I-129 on June 18, 2015. The Petitioner stated on the Form I-129 that it will employ the Beneficiary as its managing member. It did not list its current number of employees in the United States or its gross or net annual income. Where asked to describe the Beneficiary's duties in the United States, the Petitioner provided the following information:

- Direct or coordinate an organization's financial or budget activities to fund operations, maximize investments, or increase efficiency. See more occupations related to this task.
- Appoint department heads or managers and assign or delegate responsibilities to them. See more occupations related to this task.
- Appoint department heads or managers and assign or delegate responsibilities.
- Analyze operations to evaluate performance of a company or its staff to determine areas of potential cost reduction, program improvement, or policy change. See more occupations related to this task.
- Direct, plan or implement policies, objectives, or activities of organizations or businesses to ensure continuing operations to maximize returns on investments, or to increase productivity. See more occupations related to this task.
- Prepare budget for approval, including those for funding or implementation of programs.

The Petitioner provided a copy of its IRS Form 1065, U.S. Return of Partnership Income, for 2014. The Form 1065 shows that the company had approximately $1.78 million in sales, and paid $24,000 in salaries and wages and $22,300 in guaranteed payments to a partner.

The Petitioner submitted a copy of its business plan, which includes its 2014 actual financial results and forecasts for 2015-2016. Page 6 of the business plan includes a personnel table. For 2014, the personnel plan showed $24,000 paid to purchasing agents, $0 to an administrative assistant and $0 to sales. For 2015, the Petitioner stated that it would pay a total of $130,000 in wages including $70,000 to purchasing agents, $28,000 to an administrative assistant, and $32,000 to sales personnel. The Petitioner did not submit evidence of any actual wages paid to employees in 2015.

In a request for evidence (RFE), the Director advised the Petitioner that the initial job description was insufficient to establish the Beneficiary's employment in a managerial or executive capacity. The Director requested a more detailed description of the Beneficiary's duties identifying the amount of time he allocates to specific tasks, as well as evidence of the number of employees supervised by the Beneficiary, their position titles, their duties, and their salaries. The Director also recommended that the Petitioner submit a detailed organizational chart or diagram clearly identifying the Beneficiary's position, as well as evidence of wages paid to employees, including IRS Forms W-2 and 1099, state quarterly wage reports for the last two quarters of 2014 and the first two quarters of 2015, and employment agreements for any newly hired employees.

In response to the RFE, the Petitioner submitted a letter dated August 14, 2015, signed by as "manager," which included a list of the Beneficiary's job duties that was essentially identical to that provided at the time of filing. went on to state, "as the company's owner, [the Beneficiary's] day to day decisions range from investment of additional monies into more ventures, decisions regarding inventory and stock, taking executive decisions relating to staffing."

The Director denied the petition, concluding that the evidence of record was insufficient to establish that the Beneficiary will be employed in a qualifying managerial or executive capacity. The Director emphasized that the Petitioner provided only a generalized statement regarding the Beneficiary's job duties that did not demonstrate what his day-to-day tasks would be. Further, the Director emphasized that the Petitioner had not shown that it employs staff to perform the non-managerial duties required to operate the business.

On appeal, the Petitioner asserts that the Beneficiary is employed in an executive capacity and that he supervises staff in the United States and overseas, as well as independent contractors who are integral to the Petitioner's organization. The Petitioner states that "executive capacity could be proven by supervision of a limited amount of staff when the business operation of the company necessitates the hiring of a limited amount of staff."

Specifically, the Petitioner states that the Beneficiary "has been and will continue to be the group's Chief Executive Officer, overseeing more than 5 professional workers in Jordan and in the United States." The Petitioner further states that "[The Beneficiary] has made the decision to expand the company's operations in the United States, showing that he makes executive decisions that would affect [the Petitioner's] direction. He comes to the United States several times yearly to supervise the decisions made by his subordinate employees."

The Petitioner further states that the Director did not consider the reasonable needs of the company, and explained as follows:

> [The Petitioner] is in the business of selling high end watches and clothing. The company sells these watches based on orders from other distributors around the world, which has been shown in the case at bar. [The Beneficiary] supervises the work of , the minority stock holder in the United States company who runs the company in [the Beneficiary's] absence. [The Beneficiary] also supervises managers and 5 employees in the Jordanian affiliate. The plethora of evidence in the case at bar shows that [the Beneficiary] sits at the top of the pyramid, and the reasonable needs of the company necessitate this staffing level.

The Petitioner submits a letter signed by and dated September 28, 2015, indicating that the Beneficiary's duties will be as follows:

- Oversees all company accounting practices, including managerial supervision of accounting departments, prepare budgets, financial reports, tax and audit functions - 60% of his time
- Directs financial strategy, planning, and forecasts; conferring with Managers - 10% of his time
- Assists in identifying and assessing new business opportunities for expansion and projection of future company growth -10% of his time
- Assists in the review, development and negotiation of contracts -10% of his time.

The letter goes on to state, "[The Beneficiary] currently oversees the company's operations in Jordan and in the United States, including the employment of 6 subordinate employees. He thus oversees subordinate managers in Jordan."

B. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has not established that the Beneficiary will be employed in an executive capacity under the extended petition.[1]

When examining the managerial or executive capacity of the Beneficiary, 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 in a managerial or executive capacity. *Id.*

The definitions of managerial and executive capacity each have two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World, Inc. v. INS*, 940 F.2d 1533.

The Petitioner's initial description of the Beneficiary's duties indicated that many of his responsibilities would fall in the financial, budgeting, and accounting management and compliance area; however, the responsibilities described are vague and do not provide a clear description of the actual tasks that the Beneficiary would be performing or percentages of time devoted to those tasks. The Petitioner stated that the Beneficiary would "appoint department heads or managers and assign or delegate responsibilities to them," and "[d]irect or coordinate an organization's financial or budget activities to fund operations, maximize investments, or increase efficiency."

In response to the RFE, the Petitioner did not clarify the original duties or include the percentage of time he allocates to executive tasks. For example, the Petitioner stated that the Beneficiary will

[1] As noted, the Petitioner does not claim that the proffered position is managerial. As such, we will restrict our analysis to whether the Beneficiary will be employed in an executive capacity.

direct or coordinate the company's financial or budget activities to fund operations, maximize investments, and increase efficiency, however it is unclear who performs the day to day tasks related to finance and budgeting. The Petitioner also stated that the Beneficiary will appoint department heads or managers and assign or delegate responsibilities to them, however, without an organizational chart or evidence of departments, department heads or other managers, it is unclear who the Petitioner employs, in addition to the Beneficiary. In the RFE response, explained that the Beneficiary's day to day decisions "range from investment of additional monies into more ventures, decisions regarding inventory and stock, taking executive decisions related to staffing," but the record does not contain evidence of any staffing decisions made by the Beneficiary or any evidence of employees responsible for handling routine inventory and stock matters.

On appeal, the Petitioner submitted a different set of job duties with percentages of time attached, however, they do not provide any additional information regarding how the Beneficiary will function as an executive within the organization. For example, the Petitioner indicates that the Beneficiary will spend 60% of his time overseeing "all company accounting practices, including managerial supervision of accounting departments, prepare budgets, financial reports, tax and audit functions," however it has not explained who prepares the budget or financial and tax reports. The record also does not include evidence of an accounting department in place for the Beneficiary to direct.

The initial duties submitted are vague and broad categories of responsibility, and they do not indicate what the Beneficiary will do on a daily basis or what proportion of the Beneficiary's duties is executive in nature. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). The job duties listed on appeal are no more specific. They also recite the regulations broadly without providing specific daily tasks, and the percentages of time noted and do not add up to 100%. They also refer to departments and staff that the Petitioner has not established was in place at the time of filing. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Overall, the Petitioner has not provided a sufficient description of the Beneficiary's duties to establish that his actual day-to-day tasks will be primarily executive in nature.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

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. 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. Further, while the definition of "executive capacity" does not require a petitioner to establish that a beneficiary supervise a subordinate staff comprised of managers, supervisors and professionals, it is the petitioner's burden to establish that the beneficiary will be relieved from having to carry out the day-to-day, non-executive functions of the organization.

Initially, the Petitioner did not submit an organizational chart or evidence of the number of employees who will be managed by the Beneficiary, their position titles, duties or salaries. In response to the RFE, the Petitioner explained that the Beneficiary's day to day decisions "range from investment of additional monies into more ventures, decisions regarding inventory and stock, taking executive decisions related to staffing." On appeal, the Petitioner states that the Beneficiary will oversee five employees of the foreign entity in Jordan and one U.S.-based employee, . The Petitioner has not identified the five employees that he will supervise in the foreign entity or how their services relate to the day-to-day operations of the Petitioner. The Petitioner states that is the minority stock holder in the Petitioner and "runs the company in [the Beneficiary's] absence." The Petitioner further explains that "[the Beneficiary] comes to the United States several times yearly to supervise the decisions made by his subordinate employees." However, the Petitioner has not identified "subordinate employees" in the United States except for . It is unclear who will perform the tasks relating to finance, operations or staffing or to whom the Beneficiary will delegate day-to-day responsibilities, especially if he plans to spend the majority of his time outside of the United States.

Therefore, a review of the Beneficiary's role within the context of the totality of the evidence submitted sheds no additional light on what he actually does on a day-to-day basis the company's current staffing structure, and the Petitioner's claims are not adequately supported in the record. As noted, the record contains no evidence of additional employees, either at the foreign entity or with the Petitioner such as organizational charts, payroll summaries, or job descriptions. Furthermore, the Petitioner states for the first time on appeal that the Beneficiary will oversee six subordinate employees; however, no evidence has been submitted to support this assertion such as payroll records, tax documents, or organizational charts. While we acknowledge the Petitioner's claim that the Beneficiary supervises the foreign entity's employees, these employees will only be considered if they are shown to contribute to the day-to-day operations of the petitioning company. The Petitioner has not submitted position descriptions for the foreign employees and or evidence of any payments made to employees in the United States or abroad in 2015. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (quoting *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The Petitioner states on appeal that the Director should have taken into account the reasonable needs of the organization in concluding that it did not have sufficient organizational structure to employ the Beneficiary as an executive. We note that a company's size alone, without taking into account

the reasonable needs of the organization, may not be the determining factor in denying a visa petition for classification as a multinational manager or executive. *See* section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See e.g., Family Inc. v. USCIS* 469 F.3d 1313; *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *See Systronics*, 153 F. Supp. 2d at 15.

In this case, the Petitioner did not provide a detailed description of the Beneficiary's day-to-day tasks and did not submit evidence that it employed any subordinate staff members who would perform the actual day-to-day operations of the company. In the submitted business plan, the Petitioner indicated that it expected to employ purchasing agents, an administrative assistant, and sales personnel in 2015; however, the Petitioner has not established that any of these employees were in place at the time of filing. Further, the Petitioner did not explain how the Beneficiary will primarily be employed as an executive without employees or other staff to perform the day-to-day operational duties of purchasing, selling, and exporting watches, as well as administrative tasks associated with the business. While the Petitioner claims it has one employee, it has not provided sufficient evidence of his employment such as tax documents or payroll receipts, nor has it provided a description of his duties or explained how he alone performs all operational tasks necessary for the day-to-day functioning of the business.

Based on the Petitioner's representations, it has not been established how the reasonable needs of the petitioning company might plausibly be met by one "manager" and one executive, particularly in light of the Petitioner's statements that it anticipated employing purchasing, sales and administrative personnel by 2015. Regardless, the reasonable needs of the Petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The Petitioner must still establish that the Beneficiary will be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the Petitioner has not established this essential element of eligibility.

We also note that the Petitioner further refers to a number of unpublished decisions in which we determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee of the petitioning organization. The Petitioner has not established that the facts of the instant petition are analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary will be employed in an executive capacity under the extended petition. As such, the petitioner cannot be approved.

III. QUALIFYING RELATIONSHIP

The Director also denied the petition based 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, a 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).

A. Evidence of Record

On the L Classification Supplement to Form I-129, the Petitioner identified the Beneficiary's last foreign employer as located at in Jordan. The Petitioner stated that U.S. company is an affiliate of the foreign entity based on the following description of the stock ownership and control of each company:

(60%)
(100%)

The record shows that the petitioning company was established as a Florida corporation in and converted to a Florida limited liability company on The Petitioner submitted copies of its 2014 and 2015 Florida Limited Liability Annual Reports which show the Beneficiary and as Manager-Members. The Petitioner also provided a copy of its 2014 IRS Form 1065, U.S Return of Partnership Income, including Schedules K-1, which list the Beneficiary as an owner of 60% of the Petitioner's membership interest and as owner of 40% of the membership interest.

With respect to the foreign entity, the Petitioner submitted a Certificate of Trade Register, dated February 5, 2012, issued by the Jordanian Ministry of Industry & Trade. The certificate was issued to the Beneficiary authorizing him to engage in the retail clothing trade under the trade title The certificate lists the location of the business as and lists the business' e-mail address as The Petitioner also submitted a professional license issued to the Beneficiary to operate the retail boutique in 2013. Finally, the Petitioner submitted the results of an Internet search for which shows that this store is located at the same address listed on the above-referenced certificate of trade register and professional license.

In the RFE, the Director noted that the documents submitted did not establish the ownership of the Beneficiary's claimed foreign employer, The Director requested additional evidence of the ownership of both the Petitioner and the foreign entity.

In response to the RFE, the Petitioner submitted a Certificate of Registration with the Chamber of Commerce for the Financial Year 2015 which states that the Beneficiary is registered at the chamber of commerce under the name The Petitioner also submitted a 2015 professional license issued to the Beneficiary for operation of a retail clothing store located at Neighborhood in Jordan.

The Petitioner provided a letter dated August 10, 2015, signed by Advocate & Legal Consultant, based in Jordan. states "[p]lease consider this letter confirmation that [the Beneficiary] is the owner of in Jordan. [The Beneficiary] owns 100% of the stock of the company. The company is registered under the name and is doing business under the name under Jordanian law, the company name must be in Arabic."

With respect to the Petitioner's ownership, it submitted a copy of its limited liability company operating agreement, a share certificate, and a "consent of shareholders" document as further evidence of the Beneficiary's ownership of a 60 percent interest in the U.S. company.

On September 1, 2015, the Director denied the petition on the grounds that the Petitioner did not establish that it has a qualifying relationship with the foreign entity. The Director acknowledged the evidence submitted regarding but found that the Petitioner did not establish a relationship between this business and the Beneficiary's claimed foreign employer, The Director acknowledged the statement from but found it was insufficient without corroborating evidence such as stock ledgers and annual reports.

On appeal, the Petitioner asserts that the foreign entity is registered as in order to comply with Jordanian law, and that the company is doing business as The Petitioner also submits a copy of the Jordanian "Trade Names Law" for 2006 that states that trade names should be registered in the Arabic language, along with an undated letter written on letterhead stating that [the Beneficiary] is the "owner of the company." The Petitioner also submits copies of the unaudited financial statements for 2012 and 2013 for These documents indicate that the is doing business as

B. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has established that it has a qualifying relationship with the foreign 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). The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a

qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *See Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

Here, the Petitioner has submitted sufficient evidence to establish that the Beneficiary owns a majority interest in the U.S. company and that he is the sole owner and proprietor of doing business as in Jordan. We note that the Petitioner used both names for the foreign employer on the Form I-129, and the totality of the evidence in the record, including the Beneficiary's trade licenses, business registration, bank statements, and transactional business documents, indicate that and are one and the same entity.

For the foregoing reasons, we find that the Petitioner has established that it has a qualifying affiliate relationship with the Beneficiary's foreign employer based on common ownership and control by the same individual. This portion of the Director's decision will be withdrawn.

IV. DOING BUSINESS ABROAD

Finally, the Director denied the petition based on a finding that the Petitioner did not establish that the Beneficiary's foreign employer continues to do business in Jordan. Specifically, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines that term as:

> *Doing business* means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In the RFE, the Director noted that the Petitioner has submitted insufficient evidence that the foreign entity, continues to do business in Jordan. The Director stated that the Petitioner submitted undated invoices and invoices that do not contain the foreign affiliate's name. The Director acknowledged that the Petitioner submitted the Beneficiary's personal foreign bank statements and a letter from the Beneficiary's bank, but found that this documentation did not provide evidence that is actively doing business in Jordan.

On appeal, the Petitioner states that the foreign entity is actively engaged in the systematic and continuous provision of goods and services. The Petitioner also submits additional evidence in support of the appeal. First, the Petitioner submits the foreign entity's financial statements for the years 2012 through 2014. In addition, the Petitioner provides copies of "Merchant Statements" issued by dated July 2013 through January 2014, March 2014, March 2015 through September 2015. These statements list as the "merchant" and show daily card credit transactions processed for the foreign retail business. The Petitioner also submits copies of the Beneficiary's foreign bank statements with in which show regular deposits into the account, consistent with its claimed operation of a retail business.

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has established that the foreign entity continues to do business in Jordan. Specifically, we find that the evidence is sufficient to support the Petitioner's claims that the foreign affiliate continues to operate an active retail business in Jordan. Accordingly, the Director's decision will be withdrawn with respect to this issue.

V. CONCLUSION

The Petitioner has not established that the Beneficiary will be employed in the United States in an executive capacity. For this reason, the petition will be denied and the appeal dismissed. 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 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of D-C-, LLC*, ID# 16410 (AAO Apr. 25, 2016)