



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

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

MATTER OF S-USI-, LLC

DATE: MAY 24, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an investment company, seeks to temporarily employ the Beneficiary as its president under the L-1A nonimmigrant 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 Petitioner would not employ the Beneficiary in a managerial or executive capacity in the United States.

The matter is now before us on appeal. In support of its appeal, the Petitioner submits additional evidence and asserts that the Director erred in her "incorrect application of the standard and the law."

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 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 continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge 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. U.S. EMPLOYMENT IN A MANAGERIAL OR 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.

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.

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 April 10, 2015. On the Form I-129, the Petitioner indicated that it has no current employees and a net annual income of -\$28,703.

The Petitioner’s initial supporting evidence included a supporting statement, titled “Memorandum of Law,” in which the Petitioner discussed its prior unsuccessful attempt to acquire and develop a restaurant business, which resulted in the firing of business consultants. The Petitioner also discussed its participation in the formation of a partnership, which resulted in a U.S. subsidiary corporation formed for the purpose of investing in oil well drilling. The Petitioner stated that despite the partnership’s dissolution, the Petitioner acquired the partnership’s assets and continues to operate “under its own banner[.]”

With regard to the Beneficiary’s proposed U.S. employment, the Petitioner stated that the Beneficiary “will be responsible for overseeing the growth of the investments and current management of the assets and operating interests in oil wells [that are] managed by local U.S. interests[.]” The Petitioner explained that all personnel are employees of the companies that operate oil wells and that the Beneficiary would therefore not assume the role of a personnel manager, but rather that she “will guide and direct the company in its growth and further investment.” In a separate statement, the Petitioner provided the following percentage breakdown of the Beneficiary’s proposed job duties:

1. Formulate operational policies, goals, objectives and procedures for the organization
– 30%

- Creating, communicating, and implementing the organization's vision, mission, and overall direction. (2%)
 - Formulating and implementing the strategic plan that guides the direction of the business. (3%)
 - Forming, staffing, guiding, leading, and managing an organization (10%)
 - Evaluate and advise on the impact of long[-]range planning, introduction of new programs/strategies and regulatory action. (5%)
 - Enhance and/or develop, implement and enforce policies and procedures of the organization by way of systems that will improve the overall operation and effectiveness of the corporation. (8%)
 - Establish credibility throughout the organization and with the members as an effective developer of solutions to business challenges. (2%)
2. Formulate and develop strategic plans and business growth and expansion – 40%
- For the initial startup the President will work to develop and open the restaurant retail store. This will include the [sic] determining the financing, location, staffing, and the initial opening of the business. The [P]resident will be responsible for hiring the General Manager who will be responsible for the daily operation of the business after a successful launch. . . .
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3. Financial Planning – 15%
- Plan, develop, organize, implement, direct and evaluate the organization's fiscal function and performance. (5%)
 - Providing timely and accurate analysis of budgets, financial reports and financial trends. (3%)
 - Provide technical financial advice and knowledge. (2%)
 - Develop a reliable cash flow projection process and reporting mechanism, which includes minimum cash threshold to meet operating needs. (5%)
4. Personnel management/Corporate Administrative – 10%
- Evaluating the success of the organization. (3%)
 - Evaluate performance of employees (2%)
 - Conduct annual performance assessments on direct reports[.] (1%)
 - Make staffing decisions to achieve plans goals and objectives[.] (3%)
5. Miscellaneous – 5%
- It is anticipated that some unforeseen business need will arise that will need the [P]resident's attention. This may include attracting new business opportunities, entertaining, contractual obligations, etc.

(b)(6).

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The Petitioner also provided an organizational chart showing its termination of a contractual agreement with [REDACTED] on November 29, 2013, and the subsequent dissolution of a business partnership with [REDACTED] in December 2014. The chart shows the Beneficiary in her proposed position as the Petitioner's president with oil well operators subject to the Beneficiary's oversight.

After reviewing the Petitioner's supporting evidence, the Director determined that the record lacked sufficient evidence to establish the Beneficiary's eligibility. Therefore, the Director issued a request for evidence (RFE), instructing the Petitioner to submit evidence that the Beneficiary will be employed in a managerial or executive capacity in the United States. The Director questioned the Petitioner's capacity to relieve the Beneficiary from having to allocate her time primarily to performing the organization's non-qualifying tasks given that the Petitioner has no employees, and noted that there is no evidence to show who provides the services to the Petitioner's customers. The Director also pointed to an inconsistency between the Petitioner's cover letter, which indicates that the Petitioner is an investment company specializing in oil wells, and the Beneficiary's job description, which refers to the Petitioner as an operator of a restaurant.

In response to the RFE, the Petitioner submitted a statement addressing the Director's concerns. The Petitioner stated that its original intent was to acquire and operate restaurants. The Petitioner stated that when its initial attempt to attain this goal was unsuccessful it embarked on what proved to be another unsuccessful business venture involving investment in oil wells. The Petitioner stated that it is no longer involved in investment in oil wells and that the income it has generated was derived "from distributions from the oil well investments" that were previously made. The Petitioner pointed out that its original intent was to create a business in the restaurant industry and claimed that it seeks to return to its original business objectives. The Petitioner explained that the Beneficiary's primary responsibility will be to generate "new business opportunities, preferably in the area of retail restaurants." The Petitioner asked the Director to take into account its previous business setbacks when considering its current lack of employees. The Petitioner stated that it had employees in the past and intends to continue to have employees in the future. The Petitioner asked that the Director not rely on its size, but rather that she consider the Petitioner's reasonable needs, which do not warrant employment of a support staff given its current stage of development.

The Director denied the petition on September 11, 2015, concluding that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity in the United States. In denying the petition, the Director found that the Petitioner did not have personnel to carry out its administrative, sales, marketing, business development, or human resources functions. The Director further observed that the Petitioner has not provided any specific plans for developing a restaurant-based business, nor has it provided evidence to establish that there are any employees available to further its business objectives in the restaurant industry.

On appeal, the Petitioner submits an appeal brief asserting that the Beneficiary meets the criteria of both the statutory definition of managerial capacity and executive capacity, despite originally claiming that the Beneficiary would be employed in a managerial capacity. First, the Petitioner

addresses the definition of executive capacity, claiming that the Beneficiary will manage its oil well assets and generate new business opportunities. The Petitioner points to the Beneficiary's sole ownership of the petitioning entity to support its claim that the Beneficiary will make executive-level decisions and establish the organization's policies and objectives at her own discretion. Next, addressing the definition of managerial capacity, the Petitioner once again focuses on the Beneficiary's authority based on her sole ownership of the company's stock.

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 a managerial or executive capacity in the United States.

When examining the executive or managerial capacity of the Beneficiary, we will look first to the Petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(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 either an executive or a managerial capacity. *Id.*

The definitions of executive and managerial 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 (9th Cir. 1991) (unpublished table decision). 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.

In the matter at hand, the Petitioner offered a deficient job description that does not establish that the Beneficiary would primarily perform tasks within a managerial or executive capacity. Namely, the job description is overly vague and thus does not convey a meaningful understanding of the actual tasks the Beneficiary would perform under an approved petition. Although the Director issued an RFE questioning the Petitioner's capability to support the Beneficiary in a managerial or executive capacity and instructing the Petitioner to supplement the record with a job description listing the Beneficiary's typical job duties, the Petitioner did not comply with the request or dispel the Director's concerns about its ability to relieve the Beneficiary from having to carry out the non-qualifying tasks of an organization that lacks employees. For instance, the Petitioner indicated that 30% of the Beneficiary's time would be allocated to formulating and implementing the Petitioner's policies, goals, and objectives, introducing programs, engaging in strategic planning, and establishing credibility by coming up with effective solutions for business challenges. However, there is little indication that these broad statements reflect the Petitioner's organizational hierarchy and its stage of development at the time of filing. In other words, it is unreasonable to claim that the Beneficiary would create and communicate the organization's vision, guide the organization, or establish credibility with the members of the organization when the Petitioner has no employees with whom the Beneficiary could communicate and whom the Beneficiary could guide.

The Petitioner also claimed that 40% of the Beneficiary's time would be allocated to formulating and developing strategic plans and growing and expanding the business. However, in discussing this aspect of the Beneficiary's job, the Petitioner referred to the initial start-up phase of its development and indicated that the Beneficiary would work with the goal of opening a restaurant retail operation. These claims indicate that the Petitioner did not have an established business at the time of filing and that the Beneficiary would not be able to assume the role of evaluating the impact of long-range planning, providing strategic financial input and leadership, providing advice concerning contracts, analyzing the external and internal competitive landscape, and seeking out opportunities for business expansion until sometime in the future, once the Petitioner moves beyond its initial stage of operation. However, the Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after a petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

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 "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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)(4). 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).

In its Memorandum of Law, the Petitioner stated that the Beneficiary "will not manage front line employ[ees] as these are employed by the oil well operating companies." In response to the RFE, the Petitioner confirmed that it had no current employees. On appeal, the Petitioner claims that it "does not need any further employees at this time and will add employees as necessary." In light of these prior assertions, we find that the record does not establish that the Beneficiary would assume the role of a personnel manager, given the Petitioner's overall lack of any personnel for the Beneficiary to manage or oversee.

The Petitioner has not established, in the alternative, that the Beneficiary will be employed primarily as a "function manager." The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for

managing an “essential function” within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term “essential function” is not defined by statute or regulation. If a petitioner claims that a beneficiary will manage an essential function, a petitioner must clearly describe the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary’s daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, a petitioner’s description of a beneficiary’s daily duties must demonstrate that the Beneficiary will manage the function rather than perform the duties related to the function.

Here, the Petitioner has not provided a job description that clearly describes the job duties to be performed under an approved petition. Moreover, the Petitioner did not specify a function for the Beneficiary to manage or explain how the Beneficiary could focus on managing a specific function when the Petitioner lacked an existing business operation or employees to carry out the underlying operational tasks associated with an essential function. While the record indicates that the Petitioner is determined to set up a business operation in the restaurant industry, there is no evidence that a business was actually operational at the time of filing. Moreover, the Petitioner confirms that it is no longer investing in oil wells as claimed at the time of filing, noting that “this business venture was not as expected.” It is therefore unclear what the Beneficiary would be doing, besides carrying out tasks that are necessary to set up a business operation. The Petitioner has not established that the Beneficiary will manage an essential function; rather, the Petitioner demonstrates that the Beneficiary will be engaged in the pursuit of investment opportunities. 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 also* sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm’r 1988).

The Petitioner further refers to an unpublished decision in which we determined that a beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. The Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. As discussed above, the Petitioner has neither provided an adequate job description clearly delineating the Beneficiary’s job duties, nor has the Petitioner specified an essential function for the Beneficiary to manage or provided evidence to clarify who would carry out the underlying duties associated with an essential function. Moreover, while 8 C.F.R. § 103.3(c) provides that our office’s precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Next, we will contemplate the Beneficiary’s proposed employment within the context of the statutory criteria of executive capacity. 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 a beneficiary to direct and a 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 an owner or sole managerial employee. A 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.*

Although we do not dispute that the Beneficiary would assume the top-most position and exercise discretionary authority within the petitioning organization, we cannot overlook the overall absence of support personnel for the Beneficiary to direct and the general lack of an organizational complexity capable of supporting the Beneficiary in an executive capacity. Despite the Petitioner’s focus on the Beneficiary’s sole ownership of the petitioning organization, the Petitioner has not provided sufficient supporting evidence to establish that the Beneficiary would function in a primarily executive capacity. Given the Petitioner’s lack of support personnel, we find that the Beneficiary would have no choice but to perform any and all tasks necessary, including all administrative and operational tasks, to ensure that the Petitioner commences and continues to carry on business activity on a daily basis.

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 (9th Cir. 2006); *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.

While the Petitioner focuses heavily on its reasonable needs, which are based on its phase of operation and lack of organizational complexity, the Petitioner’s reasonable needs cannot supersede statutory and regulatory requirements. As stated previously, 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); *Matter of Church Scientology Int’l*, 19 I&N Dec. at 604. In the present matter, despite the Petitioner’s broad description of the Beneficiary’s proposed employment, it would be unrealistic for us to conclude that an organization with no support personnel to carry out the daily operational tasks would have the ability to employ the Beneficiary in a primarily managerial or executive capacity.

(b)(6)

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Therefore, while the Petitioner urges USCIS to consider the business setbacks it experienced and its reasonable needs within the startup scope of its organization, the record shows that the Petitioner was two years old at the time the petition was filed and was operating with no employees and a negative net income. Based on the Petitioner's representations, it does not appear that its reasonable needs might plausibly be met by the services of the Beneficiary as president. Regardless, the reasonable needs of a 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 is to 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.

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a primarily managerial or executive capacity.

III. U.S. COMPANY DOING BUSINESS

Beyond the Director's decision, we find that the Petitioner did not establish that it is or will be doing business in the United States. 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.

A. Evidence of Record

On the Form I-129, where asked to describe its "type of business," the Petitioner indicated, "investment (oil well)." The Petitioner listed its company address as [REDACTED] TX [REDACTED] and indicated that the Beneficiary's work location would be the same.

As previously stated, in its initial supporting statement the Petitioner explained that it had experienced business setbacks due to its prior failed attempts to establish a restaurant business and an oil well investment business. The Petitioner claimed that, despite the dissolution of a subsidiary that was created through its partnership with another entity, it was in "its second year of operation under its own banner," thus indicating that it continued some form of business associated with investment in oil wells. However, in the Beneficiary's corresponding job description, which included a percentage breakdown of the Beneficiary's proposed job duties, the Petitioner stated that the Beneficiary would "work to develop and open the restaurant retail store."

In the RFE, the Director pointed to the inconsistency with regard to the type of business the Petitioner claims to be operating in the United States.

In the Petitioner's RFE response statement, the Petitioner objected to the Director's reference to its

business operation as one that “specializes in oil wells” and stated that it initially intended to make an investment for the purpose of purchasing a restaurant, which resulted in the Petitioner retaining a consultant to help meet this business objective. The Petitioner claimed that it embarked on a partnership to invest in oil wells only after its initial investment attempt in the restaurant business was unsuccessful.

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 it was doing business at the time of filing the instant petition or will be doing business.

As discussed previously, the Petitioner repeatedly described the events that led up to the filing of the Petition, indicating that it had two failed business attempts and is currently seeking to embark on a new business venture in the restaurant industry. However, the evidence of record does not establish that the Petitioner was operating a business with ongoing and continuous business transactions at the time the petition was filed. Rather, based on the Petitioner’s own account, its only remaining business activity was directly associated with investments that had been made prior to filing the petition. The Petitioner expressly stated in its RFE response that “no further investment in oil wells has been transacted.” Further, while the Petitioner has repeatedly expressed an interest in investing in a restaurant business, the record contains no evidence that it had actually acquired such a business and that such a business was operational at the time the petition was filed. 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) (quoting *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The Petitioner also has not provided sufficient evidence to resolve the inconsistency between the claims it made in its supporting statement regarding its intent to own and operate a restaurant and the information provided in the Form I-129, where the Petitioner stated that it operates an oil well investment business. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the deficiencies and inconsistencies discussed above the Petitioner has not established that it is or will be doing business as defined in the regulations.

VI. TEMPORARY EMPLOYMENT OF THE BENEFICIARY

In addition, while not addressed by the Director, a remaining issue to be examined is whether the Petitioner has established that the Beneficiary’s services are for a temporary period. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary’s services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the present matter, the Petitioner indicates that the Beneficiary is the direct sole owner of the foreign entity and that she also

solely owns the petitioning entity indirectly by virtue of the parent-subsidary relationship, which was created through the foreign entity's ownership of the Petitioner. While the Petitioner indicated at Part 5, No. 10 of the petition that the Beneficiary's services would be required for a finite period of three years, the record contains no evidence to support this claim. As stated above, 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. In the absence of persuasive evidence, it cannot be concluded that the Beneficiary's services are to be used temporarily or that she will be transferred to an assignment abroad upon completion of the position in the United States. Therefore, the petition may not be approved on this basis as well.

V. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, 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 S-USI, LLC*, ID# 16574 (AAO May 24, 2016)