



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

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

MATTER OF G-T- CORP.

DATE: OCT. 21, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a transportation business, seeks to temporarily employ the Beneficiary as the president of its new office under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 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, California Service Center, originally denied the petition, concluding that the Petitioner did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity for one year within the three years preceding the filing of the petition. We summarily dismissed the Petitioner's subsequent appeal because the record at the time of adjudication did not show that the Petitioner had submitted a brief or otherwise identified an erroneous conclusion of law or statement of fact in the Director's decision.

The matter is now before us on a combined motion to reopen and motion to reconsider. On motion, the Petitioner provides evidence that it submitted a timely brief in support of its appeal.

Upon *de novo* review, we will reopen the matter for the purpose of considering the appellate brief and the merits of the appeal. However, as the Petitioner has not overcome the original grounds for denial, we will deny the combined motion.

I. MOTION REQUIREMENTS

A. Overarching Requirement for Motions by a Petitioner

The regulations state that "the official having jurisdiction may, for proper cause shown, reopen the proceeding." 8 C.F.R. § 103.5(a)(1)(i). This provision limits our authority to reopen the proceeding to instances where "proper cause" has been shown for such action. Thus, to merit reopening, the submission must not only meet the formal requirements for filing, but the petitioner must also show proper cause for granting the motion.

B. Requirements for Motions to Reopen

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Also, the new facts must possess such significance that, “if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case.” *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

C. Requirements for Motions to Reconsider

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the prior decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new facts. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

II. DISCUSSION

The Petitioner submitted no brief or evidence with its Form I-290B, Notice of Appeal or Motion, but stated that it would submit those materials within 30 days. When we reviewed the record of proceeding several months later, it did not include any supplement to the appeal. As a result, we summarily dismissed the appeal, because the appeal, as presented to us, did not identify any erroneous conclusion of law or statement of fact in the Director’s denial of the petition. *See* 8 C.F.R. § 103.3(a)(1)(v).

On motion, the Petitioner submits a copy of an appellate brief with supporting exhibits. The Petitioner had timely submitted these materials to supplement the appeal but, for reasons the record does not explain, they did not reach the record of proceeding.

We will deny the motion to reconsider, because the Petitioner has not shown that the summary dismissal was incorrect based on the evidence of record at the time of the initial decision. The evidence of record, at that time, did not include any supplement to the appeal. Given the state of the record at the time, our summary dismissal of the appeal was consistent with USCIS regulations and policy.

We will grant the motion to reopen in part, because the recovered supplement to the appeal comprises new facts that were not available to us at the time of our prior decision. While we cannot approve the petition, the Petitioner’s timely submission of substantive appellate materials entitles the Petitioner to a decision on the merits.

III. 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.

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 (1)(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.

IV. ONE YEAR OF QUALIFYING FOREIGN EMPLOYMENT

The Director denied the petition based on a finding that the Petitioner did not establish that the Beneficiary was employed by a qualifying foreign entity in a managerial or executive capacity for one continuous year within the three year period preceding the filing of the petition, pursuant to 8 C.F.R. §§ 214.2(l)(3)(iii) and 214.2(l)(3)(v)(B).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) states:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

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
- (v) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

Further, “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.” *Id.*

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 July 16, 2015. On the L Classification Supplement to Form I-129, the Petitioner stated that the Beneficiary was employed by the qualifying foreign entity from September 8, 2008 to December 15, 2014, explaining that the “Beneficiary has been sent to the US to set up new business.” The Beneficiary was last admitted to the United States in B-2 visitor status on January 22, 2015.

In its letter of support, the Petitioner stated that the Beneficiary has been running the foreign entity abroad and has been advising and informing board members; supervising and evaluating the work performance of the managers; overseeing marketing, promotion, delivery, and quality of products and services; recommending yearly budgets; and managing the organization's resources.

The Petitioner submitted an Employment Verification letter from the foreign entity's CEO, dated March 2, 2015, certifying that the company employed the Beneficiary as an IT officer and an administration assistant between September 8, 2008 and December 15, 2014. The CEO further stated that upon the company founder's retirement, the Beneficiary inherited the company and became the sole shareholder of the foreign entity.

As further evidence of the Beneficiary's employment, the Petitioner submitted copies of his employment contracts and appointment letters from the foreign entity. The evidence reflects that the foreign entity hired the Beneficiary as an IT officer in September 2008 and later assumed the position of administration assistant in January 2012.

The Petitioner also submitted a Terminating Labor Contract, stating that the Beneficiary's employment contract at the foreign entity was terminated on December 15, 2014 due to his appointment to another position.

The Director issued a request for evidence (RFE), instructing the Petitioner to submit evidence that the Beneficiary was employed abroad in a managerial or executive capacity for at least one year in the three years immediately preceding the filing of the petition. The Director stated that such evidence may include pay or personnel records, a detailed organizational chart for the foreign entity, and a letter clearly describing the Beneficiary's duties and the amount of time he allocated to each duty.

In response to the RFE, the Petitioner stated that the Beneficiary "has been working for many years in the parent company and more than a year as an executive, first by assisting his parents in running and administrating the company, then fully promoted to the position of executive director in 2014."

The Petitioner submitted a Certificate of Employment from the foreign entity, dated October 25, 2015, describing the Beneficiary's position and job duties abroad as follows:

This is to certify that [the Beneficiary] has been working with [the foreign entity] as IT Officer from September 2008 to December 15, 2014. He has also been assisting the administration of his mother, the Chief Executive Director of the company. Thereafter, on December 15, 2014, [the Beneficiary] was promoted to the position of an Executive Director by the board of directors.

As an executive Director, [the Beneficiary] was responsible for the overall management of the company and his duties included:

(b)(6)

Matter of G-T- Corp.

- a. To provide agenda of the meetings and inform the Board of Directors of the internal and external issues faced by the company.
- b. To review existing policies, recommend changes, if required, draft new policies and prepare procedure to implement those policies, for the review and approval of the board.
- c. To introduce rigorous programs of evaluation, quality consistency, administration, communication and liaison between different departments of the company.
- d. To oversee the implementation of company's policies and programs.
- e. To ensure that the services offered by the company contribute to the objectives of the organization.
- f. To review and approve the contracts and services offered to the clients and vendors.
- g. To review financial reports and budget proposals prepared by the manager of the company for the final approval from the Board.

The Petitioner also provided an organizational chart for the foreign entity depicting the Beneficiary at the top tier of the hierarchy as the executive director, directly supervising a CEO, who supervises a vice president. The chart shows that the vice president directly supervises four divisions, each with at least five employees: finance, sales, production, and human resources.

The Petitioner submitted the foreign entity's payroll records for the Beneficiary for the years 2012 through 2015. The Beneficiary's position title in 2012 and 2013 was listed as "administration assistant." In 2014 and 2015, the records identify him as "executive director" earning the same monthly salary he earned as an administration assistant.

Finally, the Petitioner submitted the Beneficiary's resume listing his professional experience as follows:

- Executive Director, [the foreign entity], Mongolia, 2014-present
- Administration assistant, [the foreign entity], Mongolia, 2012-2014
- First Officer: [redacted] Mongolia 2014
- First Officer [redacted] Mongolia, 2012-2014
- Information Technology Officer, [the foreign entity], Mongolia, 2008-2012

The Beneficiary's resume lists his education as follows:

- Professional Commercial Pilot License, [redacted]
[redacted] FL, USA, 2010-2012
- [redacted] MN, USA, 2012
- [redacted]
Sweden, 2014

The Director denied the petition on January 28, 2016, concluding that the Petitioner did not establish that the Beneficiary had been employed abroad in a managerial or executive capacity for one year in the three years immediately preceding the filing of the petition. In denying the petition, the Director found that the Beneficiary was first employed as executive director on December 15, 2014, and as the petition was filed on July 16, 2015, the Beneficiary had not been employed in that position for one year prior to the filing of the petition. The Director noted that the Petitioner did not provide job descriptions for the Beneficiary's two previous positions at the foreign entity in order to establish that they were managerial or executive.

On appeal, the Petitioner submitted a brief stating that the Beneficiary was employed abroad in a managerial position and described this employment as follows:

[T]he beneficiary has been working in the parent company in various positions prior to being elevated to the position of Executive after the retirement of his father. The Beneficiary . . . has been responsible for the success of the parent company. The foreign company provided a letter stating the job duties performed by the beneficiary. He has been advising and informing board members, besides supervising and evaluating the work performance on the managers. He has been overseeing marketing, promotion, delivery and quality of products and services. He would recommend yearly budgets and manage [*sic*] organization's resources.

In its combined motion, the Petitioner submits a brief and states the following about the Beneficiary's position abroad:

The Beneficiary has a long career with the parent foreign company. He started with a lower position but with the passage of time and experience he, passing through the managerial positions was elevated to the position of Executive Director. . . . Therefore, the Beneficiary has been on the pay role [*sic*] of the company from 2008 to 2014 in IT and Managerial positions. He worked as Manager from 2010 to 2014 and afterwards elevated to the position of Executive Director before coming to the U.S. This 2010 to 2014 period of continuous full time employment in the qualifying foreign company makes him eligible for L-1 visa.

B. Analysis

Upon review of the petition and the evidence of record, we conclude that the Petitioner has not established that the Beneficiary was employed by the foreign entity in a full-time managerial or executive position for one continuous year within the three year period preceding the filing of the petition.

The Petitioner filed the Form I-129 on July 16, 2015; therefore, the Petitioner must show that the Beneficiary was employed full-time by the foreign entity for one continuous year, in a managerial or executive position, between July 16, 2012, and July 16, 2015. Further, the record shows that the

Beneficiary was admitted to the United States on January 22, 2015. The Petitioner must establish that the Beneficiary's qualifying year of employment occurred prior to this admission as a B-2 visitor, as this time spent in the United States does not count towards his one year of foreign employment. *See* 8 C.F.R. 214.2(l)(1)(ii)(A).

The Petitioner initially stated and provided evidence that the Beneficiary commenced his employment with the foreign entity in September 2008 as an IT officer, held the position of administration assistant from 2012 to 2014, and was promoted to the executive director position on December 15, 2014, seven months prior to the filing of the instant petition, and just one month before he entered the United States. The Petitioner claimed that the Beneficiary's qualifying managerial or executive employment was in the executive director position and, as noted by the Director, did not provide detailed descriptions of the duties he performed in his two prior positions. As such, the evidence of record does not support a finding that the Beneficiary was employed abroad in a qualifying capacity abroad for a full year, as he held the claimed qualifying position for only one month prior to coming to the United States.

Rather than submitting additional evidence of the job duties the Beneficiary performed between 2012 and 2014 as an administration assistant, the Petitioner now states for the first time on motion that the Beneficiary held a "manager" position from 2010 until his promotion to the executive director position in 2014. However, the Petitioner does not address the fact that it previously submitted employment contracts and appointment letters indicating that the Beneficiary held the position of IT officer from 2008 until 2012, and later held the position of administration assistant through most of 2013 and 2014. Further, the Petitioner does not submit any employment records, a position description, or any other evidence in support of its new claim that the Beneficiary was a manager between 2010 and 2014. 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 Cal*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Further, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Therefore, our assessment of the Beneficiary's claimed employment capacity is based on the evidence in the record at the time of the Director's decision.

Moreover, even if the Beneficiary had held the claimed executive director position for a period of one year, we note that the Petitioner provided only a brief list of vague job duties for this position which did not provide a clear picture of what he actually did on a day-to-day basis, and thus the evidence is insufficient to establish that this was a qualifying managerial or executive position. The Petitioner also did not provide any information about his subordinates abroad or their duties to demonstrate that they relieved the Beneficiary from performing administrative and operational duties, such as sales, finance, and human resource tasks. In fact, the Petitioner did not provide any evidence to corroborate the staffing levels illustrated in the foreign entity's organizational chart. Again, 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.

Matter of G-T- Corp.

In addition, although not addressed by the Director, the information provided in the Beneficiary's resume raises questions as to whether he was a full-time employee of the foreign entity during the relevant three-year period. Specifically, the Beneficiary's resume indicates that, during the time the Petitioner claims he was employed at the foreign entity, he was simultaneously employed as a pilot at [REDACTED] in Mongolia, from 2012 to 2014, as well as attending piloting courses at [REDACTED] in Florida, from 2010-2012, at [REDACTED] in Minnesota, and at [REDACTED] in Sweden in 2014.¹

Although the Petitioner submitted the internally prepared foreign payroll records for the period 2012 to 2015, the Petitioner has not submitted an explanation for the Beneficiary's simultaneous employment at an unrelated entity listed on the Beneficiary's resume. Additionally, his simultaneous employment and his enrollment and attendance at educational institutions in the United States and Sweden, for an unrelated trade, raise concerns about the Beneficiary's full-time employment at the foreign entity at the time in which in the Petitioner claims he was continuously employed. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *Id.* at 591-92.

Based on the deficiencies and inconsistencies addressed above, we conclude that the Petitioner has not established that the Beneficiary has one year of full-time continuous employment abroad in a managerial or executive capacity.

V. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY IN THE UNITED STATES

Beyond the Director's decision, the Petitioner has not established that the Beneficiary would be employed in a managerial or executive capacity within one year of the approval of this new office petition.

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by U.S. Citizenship and Immigration Services (USCIS) regulation. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations may be engaged in a variety of low-level

¹ Further, in reviewing the motion, we reviewed the record of proceeding, as well as USCIS and U.S. Department of State records. On his nonimmigrant visa applications (Form DS-160), submitted to the U.S. Consulate in [REDACTED] Mongolia on December 16, 2014, the Beneficiary identified the Petitioner's parent company as his current employer. However, he stated that he had previously worked as a co-pilot for [REDACTED] from January 1, 2009 to May 22, 2014. He did not identify the foreign entity as his employer in prior Forms DS-160 filed with the U.S. Consulate in [REDACTED] in August 2010, September 2011, or February 2012.

activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of a beneficiary in a qualifying managerial or executive position.

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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, 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.*

Here, the Petitioner briefly described the Beneficiary's proposed position in the United States as follows:

Chief Executive Officer will be responsible for overall strategic and operational responsibility of [the Petitioner's] staff, programs, expansion, and execution of business.

1. He will initially develop deep knowledge of field, core programs, operations, and business plans.
2. He will be responsible to:
3. Ensure the maintenance of excellent quality of production and services to the local and international market.
4. Introduce rigorous programs of evaluation, quality consistency, administration, communication and liaison between different departments of the company.
5. Ensure the filing of all legal and regulatory documents and monitor compliance with relevant laws and regulations.
6. Keep the Board fully informed of the condition of [the Petitioner] and on all the important factors influencing it.
7. Actively engage and energize board members, company staff and partnering organizations.
8. Monitor earnings and financial requirements to help shape the timely delivery of products and services.

The Petitioner did not provide any additional information describing the Beneficiary's proposed position or outlining what he will do on a routine day-to-day basis, although the RFE had requested this information. All of the listed proposed duties are vague and do not impart any insight on what he will actually do in relation to these duties; the Petitioner did not articulate what any of these

duties mean, how he will carry them out, or how they qualify as managerial or executive. The Petitioner did not provide any clarification as to how any of these routine duties qualify as managerial or executive, especially in relation to the Petitioner's stated business purpose as a trucking company. Therefore, this sole description is insufficient to show that the Beneficiary will primarily perform qualifying duties within one year of approval of the petition. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The Petitioner has not provided any detail or explanation of the Beneficiary's proposed activities in the course of his daily routine. The actual duties themselves will 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).

Further, the Petitioner did not provide sufficient information to demonstrate that the Beneficiary would be relieved from performing non-qualifying operational and administrative duties within one year. The Petitioner's business plan outlines its personnel plan and states that it will hire a president, executive vice president, operations manager, and three drivers in its first year, and then hire an additional three drivers each year for four more years, for a total of 18 employees at the end of its fifth year in operation. However, the Petitioner did not submit a proposed organizational chart or information pertaining to the Beneficiary's proposed subordinates, their positions, or job duties, to demonstrate that they will relieve him from performing non-qualifying operational and administrative duties. Again, 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 Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity in the United States. For this additional reason, the petition cannot be approved.

VI. CONCLUSION

The petition will be denied for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of G-T- Corp.*, ID# 44569 (AAO Oct. 21, 2016)