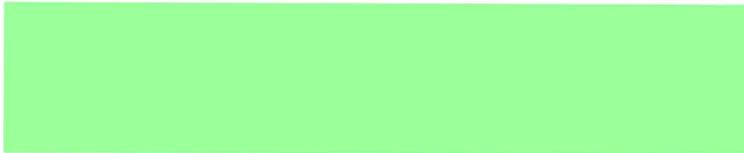


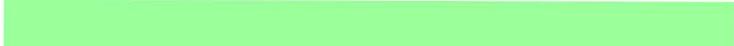
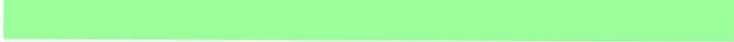


U.S. Citizenship  
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Services

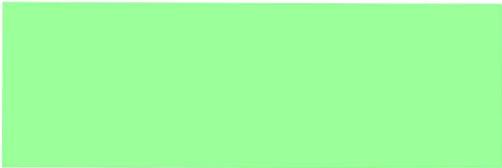
(b)(6)



DATE: **JUL 29 2013** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

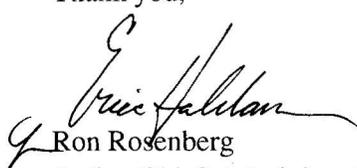
ON BEHALF OF PETITIONER:  


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, ("the director") denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Canadian corporation established in October 1995. It is registered to do business in Michigan. The petitioner states on the Form I-140, Immigrant Petition for Alien Worker, that it is a "convenience store/gas station" and employs 14 personnel. It reported a gross annual income of \$4,200,000 when the petition was filed. It seeks to employ the beneficiary as its general manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

On November 20, 2012, the director denied the petition determining that the petitioner failed to establish: (1) that the beneficiary had been employed in a managerial or executive capacity for the foreign entity; (2) that the petitioner will employ the beneficiary in a managerial or executive capacity; and (3) that the petitioner has a qualifying relationship with the beneficiary's foreign employer.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof.

To establish eligibility for the employment-based immigrant visa classification, the petitioner must meet the criteria outlined in section 203(b) of the Act. Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job

offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

## I. The Issues on Appeal

### A. *Managerial or Executive Capacity with the Foreign Entity*

The first issue in this proceeding is whether the petitioner submitted sufficient evidence to establish that the beneficiary had been employed in a primarily managerial or executive capacity by a firm or corporation or other legal entity or an affiliate or subsidiary of the petitioner in the foreign country.

#### The Law

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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), provides:

The term "executive capacity" means 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.

#### Facts and Procedural History

The petitioner initially did not provide any information regarding the beneficiary's employment with the foreign entity. In response to the director's request for evidence (RFE), the petitioner provided a letter dated November 3, 2012 from its accounting service provider. The letter-writer indicated that "[the beneficiary] has been working since 1996 to present date" and that "[the beneficiary] is an upstanding employed [*sic*] for the company." In the petitioner's November 5, 2012 letter, also submitted in response to the director's RFE, the petitioner noted that the beneficiary will spend 20 percent of his time being "responsible for developing the organization policies and goals for both the U.S. Petitioner and the Canadian Company" and that these "policies and standards include, but are not limited to, franchise operational procedures, OSHA compliance, food service regulation compliance, and customer service standards that all personnel need to comply with, to name only a few." Other than this reference to the Canadian company, the petitioner does not include information regarding the beneficiary's position and daily duties and responsibilities for the Canadian entity.

The director determined that the petitioner had not submitted the requested evidence regarding the beneficiary's job title and dates of employment, a detailed description of the beneficiary's job duties, the actual duties performed, and the number of staff supervised with a description of the subordinate staff's duties, regarding the foreign position. Accordingly, the director denied the petition.

On appeal, counsel asserts that the beneficiary worked in an executive capacity "in both Canada and in the U.S." Counsel also repeats the elements of the statutory definition of executive capacity. Counsel references the November 3, 2012 letter from the petitioner's accounting service provider and notes that the letter was sufficient to carry the petitioner's burden of proof to obtain approval of the beneficiary's L-1A nonimmigrant petition approval. Counsel asserts that the director failed to explain why the evidence submitted in support of the L-1A petition is not sufficient to establish eligibility in this matter.

Analysis

The record in this matter does not include evidence that the beneficiary worked in a managerial or executive capacity for the foreign entity. The letter submitted by the petitioner's accounting service provider confirms the beneficiary worked in Canada but fails to provide any information regarding the beneficiary's job duties for the foreign entity while in Canada. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner's reference to the beneficiary's responsibility for developing the organizational policies and standards for the Canadian concern as well as the U.S. petitioner is insufficient to establish the beneficiary's actual duties during his period of employment in Canada. Similarly, counsel's repetition of the elements of the definition of "executive capacity" does not convey what duties the beneficiary actually performed while working for the petitioner in Canada. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

As the record includes no description of the beneficiary's actual job duties while working in Canada, the record does not support a conclusion that the beneficiary performed duties in either a managerial or executive capacity in one of the three years preceding the time of his application for classification and admission into the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Counsel's reference to United States Citizenship and Immigration Services' (USCIS) previous approval of an L-1A nonimmigrant petition filed on behalf of the beneficiary is noted. However, many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava, supra*. Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

Moreover, in making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In the present matter, the director articulated the objective statutory and regulatory requirements and applied them

to the matter at hand. If the previous nonimmigrant petition(s) was approved based on the same evidence of managerial/executive capacity as submitted in this matter, the previous approval(s) would constitute gross error on the part of the director. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

Upon review of the totality of the record, including counsel's assertions on appeal, the record does not contain evidence of the beneficiary's actual duties for the Canadian entity. Accordingly, the appeal will be dismissed.

*B. Managerial or Executive Capacity with the Petitioner*

The next issue in this matter is whether the petitioner established that the beneficiary will be employed in a primarily managerial or executive capacity for the U.S. entity.

Facts and Procedural History

The petitioner initially provided an attachment to the Form I-140 describing the nontechnical job duties of the proposed position as:

Will engage in all hiring and personnel issues, confer with subordinate staff to review activity, operation and sales reports, responsible for managing and coordinating promotion and marketing, and oversee quality control; will also oversee inventory control and reports directly to the President.

In response to the director's RFE, the petitioner listed the beneficiary's duties and allocated the beneficiary's time to each duty as follows:

- Human Resources (20% of his time)
  - Responsible for hiring, firing and training all managerial subordinate personnel;
  - Responsible for developing the organization policies and goals for both the U.S. Petitioner and the Canadian Company, including franchise operational procedures, OSHA compliance, food service regulation compliance, and customer service standards that all personnel need to comply with;
  - Oversee the daily operations of the store, and meet with the Department Managers on a weekly basis to review schedules, (i.e. vacation time, sick leave, etc.) and to address any and all concerns pertaining to staff, training procedures and changes in the store;
  - As general manager will provide final say on personnel hired by his subordinates
  - Responsible to direct Franchise annual meetings where he will meet with subordinates on a bi-weekly basis to review all staff evaluations, authorize

- salary and benefits, and monitor the job duties and responsibilities for each employee; and
- Monitor the job duties and responsibilities for each of his employees ensuring that time is a proper fit between skill and job duty.
- Fiscal Operations (20% of his time)
  - Confers with all subordinate staff to review activity, operating, and sales reports to determine any necessary changes in programs or operations that may be required;
  - Responsible to ensure that all operating statements comply with company procedures by all personnel and further ensures that they are completed in a timely manner, so that he may review the progress of the business, implement changes to reduce costs and generate more income; and
  - Meet with the Vice-President and the company accountant to review all above-stated reports, on a monthly basis.
- Marketing & Advertising (25% of his time)
  - Responsible for reviewing and authorizing all advertising layouts;
  - Negotiate all marketing related contracts and oversee the development of marketing strategies so as to establish and foster a competitive advantage in the convenient food market services market;
  - Oversee the promotion of the U.S. Petitioner's services to develop new markets, scout new locations, increase market share, and maintain competitiveness; and
  - Responsible for customer satisfaction, through quality, timeliness, cleanliness, and consistency accomplished by the Petitioner's management practices.
- Quality Control (20% of his time)
  - Responsible for developing training manuals and procedures for all subordinate staff to be trained in, in order to implement and maintain all the quality standards that are established by the Company, including hours of operation, cleanliness of store, daily inspection of all food storage equipment, the procedures for receiving food orders, and the weekly inspection of all food and supplies for expiration dates.
- Inventory Control (15% of his time)
  - Responsible for reviewing all inventory reports on a weekly basis;
  - Review these reports with the Vice-President and Company Accountant on a monthly basis and directs all subordinate staff concerning any changes;

- Responsible for contacting suppliers in order to negotiate the highest quality products at the lowest cost; and
- Confer with other managers on a monthly basis in order to assure that all supplies are ordered in a timely manner.

[Bullet points added.]

The petitioner indicated that the beneficiary will report to the vice-president on a weekly basis. The petitioner's organizational chart depicted the beneficiary as "over" the meat department manager. The organizational chart also listed three individuals who provide meat counter help. The chart further depicted a head cashier, one cashier, one stocker, and two individuals who performed the duties of a stocker and a cashier. The organizational chart does not clearly identify who supervises the meat department help or the cashiers or if any of the individuals listed have supervisory duties.

Upon review of the record, the director determined that the petitioner had not established that the beneficiary will primarily supervise or manage a subordinate staff of professional, managerial or supervisory personnel who will relieve the beneficiary from performing the non-qualifying day-to-day duties. The director also found that the petitioner had not established that the beneficiary manages an essential function or operates at a senior level within the organizational hierarchy.

On appeal, counsel asserts that the organizational chart provided shows that the beneficiary will work in a managerial or executive capacity and that the response to the RFE was sufficient to carry the petitioner's burden of proof proving that the beneficiary works in a supervisory capacity.

#### Analysis

Upon review of the petition and evidence, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity. In examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Published case law clearly supports the pivotal role of a clearly defined job description, as the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava, supra; see also* 8 C.F.R. § 204.5(j)(5). That being said, however, USCIS reviews the totality of the record, which includes not only the beneficiary's job description, but also takes into account the nature of the petitioner's business, the employment and remuneration of employees, as well as the job descriptions of the beneficiary's subordinates, if any, and any other facts contributing to a complete understanding of a beneficiary's actual role within a given entity.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise.

The petitioner in this matter has not provided evidence that the beneficiary directs a subordinate level of managerial employees. The petitioner's organizational chart lists a meat department manager and a head cashier; however, the structure of the organizational chart is insufficient to establish that either of these positions are actually managerial positions. Although requested by the director, the petitioner did not provide job descriptions for any of the subordinate employees, including the positions of meat department manager and head cashier. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Accordingly, the AAO cannot conclude that the individuals in these two positions primarily manage or supervise a department or function of the organization. The record also lacks supporting evidence that these two individuals or other subordinate personnel are employed by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner has not provided probative evidence that the beneficiary's role is to focus primarily on the petitioner's broad goals and policies, except in the most general way; rather the beneficiary is the individual who appears to perform many of the actual daily operational tasks of the petitioner's convenience store/gas station operation. The petitioner has not established the beneficiary will perform primarily in an executive capacity.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act. 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. Section 101(a)(44)(A)(iii) of the Act. The petitioner does not claim that the beneficiary is primarily a function manager.

The petitioner provided a broad overview of the beneficiary's duties and did not provide any detail regarding the employment of the individuals claimed to be subordinate to the beneficiary's position. For example, although the petitioner claims that the beneficiary will spend 25 percent of his time on

marketing and advertising duties, the petitioner does not identify any particular employee who performs the operational tasks associated with marketing and advertising duties. Accordingly, the petitioner has not identified any personnel that will relieve the beneficiary from performing the non-qualifying duties related to the actual tasks outlined in the description of the beneficiary's duties. Likewise, the petitioner states that the beneficiary will spend 20 percent of his time on quality control and an additional 15 percent of his time on inventory control. Yet the record does not include evidence that the petitioner employs individuals who perform the operational tasks associated with maintaining quality control or the operational tasks of preparing inventory reports, contacting and negotiating with suppliers, and ordering inventory. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

On appeal, counsel references the petitioner's organizational chart and asserts that the organizational chart and the description of the beneficiary's duties sufficiently establish that the beneficiary performs in a supervisory capacity. However, a managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International, Id.* In this matter, it is not clear from the petitioner's structure depicted on the organizational chart that the beneficiary is the individual who actually supervises any of the petitioner's employees.<sup>1</sup> Even if the beneficiary supervises the meat department manager and the head cashier, the petitioner's organizational chart does not depict these individuals as supervising other employees. Moreover, as observed above, the record does not include probative evidence establishing that these positions are managerial, supervisory, or professional positions and does not include probative evidence that the petitioner actually employed these individuals when the petition was filed. Without documentary evidence to support the petitioner's claim, the record is insufficient. *Matter of Soffici, supra.*

In summary, based on the record of proceeding, the petitioner has failed to establish that the beneficiary is relieved from performing non-qualifying duties associated with the day-to-day operations of the petitioner's supermarket, and the AAO cannot conclude that he will be functioning in a primarily managerial or executive role. The record does not include sufficient evidence to establish that the beneficiary primarily performs in the capacity of an executive or of a manager as those terms are defined in the statute.

Also as observed and explained above, despite any number of previously approved petitions USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

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<sup>1</sup> The petitioner does not provide a line and block organizational chart but places the names of three individuals, including the beneficiary in blocks and then lists other individuals and their job titles. Although the beneficiary's name is included at the top of the page, there is no line identifying the employee(s) he directly or indirectly supervises. Similarly, there is no line identifying the employee(s) supervised by other employees, if any.

### C. Qualifying Relationship

The next issue to be discussed in this matter is whether the petitioner submitted sufficient evidence to establish that it has a qualifying relationship with the beneficiary's foreign employer. 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. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see below* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate," "multinational," and "subsidiary").

#### The Law

The regulation at 8 C.F.R. § 204.5(j)(2) provides in pertinent part:

*Affiliate* means:

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

*Multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

#### Facts and Procedural History

In this matter, the petitioner claims it is a Canadian corporation registered to do business in the State of Michigan. In a Request for Evidence (RFE), the director instructed the petitioner to submit documentary evidence to establish a qualifying relationship between the petitioner and the beneficiary's prior foreign employer. The director noted that evidence of a qualifying relationship may include annual reports, articles of incorporation, financial statements, and/or evidence of

ownership of all outstanding stock for both entities. The director further noted that the initial evidence failed to identify the beneficiary's foreign employer or the dates of his employment abroad.

The petitioner's response to the RFE included copies of two stock certificates: (1) stock certificate number one issued to the beneficiary for one share of the petitioner, a corporation established under the laws of the Province of Ontario, Canada; and (2) stock certificate number two issued to [REDACTED] for one share of the petitioner, a corporation established under the laws of the Province of Ontario, Canada. The petitioner also submitted a Michigan Department of Licensing and Regulatory Affairs (LARA) Foreign Corporation Information Update, filed on April 25, 2012, and indicating that there were no changes since the previous filing. Finally, the petitioner provided a screenshot from the LARA website indicating that the company has registered the following assumed names in Michigan: [REDACTED] a name created September 11, 2002 with an expiry date of December 31, 2007; and, [REDACTED] a name created February 13, 2009 with an expiry date of December 31, 2014. Finally, the petitioner submitted a letter from a Toronto-based accountant who stated that the beneficiary has been employed by the petitioner since 1996.

The record also includes the petitioner's Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, for the 2010 and 2011 years showing the beneficiary and [REDACTED] as citizens of Canada each holding 50 percent of the petitioner's voting stock. The petitioner also submitted a copy of its Canadian Revenue Agency T2 Corporation Income Tax Return with schedules for the 2010 tax year, and a partial copy of its 2011 T2 Corporation Income Tax Return, which included the company's General Index of Financial Information (GIFI). These documents reflect that the company reported \$1,068,075 in sales in 2010 and \$995,641 in sales in 2011 to Canadian tax authorities, and that it is engaged in retail sales.

Upon review of the information in the record, the director determined that the record did not include evidence of the ownership of the foreign entity which had employed the beneficiary abroad.

On appeal, counsel for the petitioner asserts that the petitioner provided evidence showing the beneficiary owned 50 percent of the Canadian company which in turn owned the U.S. concern. Counsel references the definition of an "affiliate" company.

#### Analysis

To establish that the foreign entity and the petitioner enjoy a qualifying relationship, the petitioner must provide probative consistent evidence establishing the relationship. The record in this matter does not support a determination that the petitioner and the foreign entity are either affiliates or enjoy a parent/subsidiary relationship. The petitioner has not been incorporated in the United States; thus the petitioner has not been established as a separate entity. Rather, it is a Canadian company that is registered to do business in the United States. It does not have a corporate identity separate from the incorporated Canadian company. To establish an affiliate or a parent/subsidiary relationship the foreign entity and the petitioner must be separate incorporated entities. In this matter, the petitioner may qualify only as a "multinational" company. As defined above, multinational means that the

qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

Upon review of the totality of the record, the petitioner submitted copies of Canadian tax returns showing the company reported \$1,068,075 in sales in 2010 and \$995,641 in sales in 2011 to Canadian tax authorities, and that it is engaged in retail sales. However, the tax returns are not signed and there is no evidence that these documents were filed with the Canadian tax authorities. Other than the two tax returns, the petitioner does not provide evidence or otherwise discuss the nature of its business in Canada. Although the petitioner provided a November 3, 2012 letter from its accounting service indicating "[the beneficiary] has been working since 1996 to present date" and that "[the beneficiary] is an upstanding employed [sic] for the company," the record contains limited information regarding the ongoing practices of the Canadian entity. The unsigned, uncertified Canadian tax returns are insufficient to establish that the Canadian entity continues to be actively engaged in the regular, systematic, and continuous provision of goods or services as an employer in Canada or any other foreign country. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. The petitioner must provide some evidence that the Canadian entity continues to provide goods or services in Canada. As the record does not include sufficient probative evidence of the Canadian entity's business and its current activity, we cannot conclude that the petitioner has established that the petitioner is a multinational organization which conducts business in two or more countries, one of which is the United States, as required by the regulation at 8 C.F.R. § 204.5(j)(2).

## II. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate 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, that burden has not been met.

**ORDER:** The appeal is dismissed.