



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

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

MATTER OF S-A-, INC.

DATE: DEC. 17, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an architectural engineering consulting firm, seeks to employ the Beneficiary as a branch manager under the immigrant classification of a multinational executive or manager. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. LAW

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 the alien 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 Form I-140 to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The regulation at 8 C.F.R. § 204.5(j)(5) states:

No labor certification is required for this classification; however, 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 letter must clearly describe the duties to be performed by the alien.

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II. ISSUES ON APPEAL

The Director denied the petition on two grounds, finding that the Petitioner had not established (1) its ability to pay the Beneficiary's proffered wage, or (2) that it sought to employ the Beneficiary in a qualifying managerial or executive capacity.

A. Ability to Pay

The regulation at 8 C.F.R. § 204.5(g)(2) reads as follows:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

1. Facts

The Petitioner filed Form I-140 on July 31, 2013. On that form, the Petitioner indicated that it would pay the Beneficiary \$100,000 per year. The Petitioner stated its gross annual income as \$400,000, but declined to provide its net annual income, stating, instead: "Please Ask Company."

In its introductory letter dated July 25, 2013, the Petitioner referred to a July 2012 contract with [REDACTED] "for further expansion work . . . for US \$6 million." The petitioner submitted a copy of a contract which does not match the above description. The submitted contract is between [REDACTED] and the Petitioner's foreign parent company, not the Petitioner; the date on the contract is May 1, 2013, not July 2012; and Article 6 of the contract set the agreed payment at US\$1.3 million, rather than US\$6 million. The Petitioner later submitted a copy of a July 25, 2012 contract between [REDACTED] and the Petitioner, with payment fixed at US\$1 million.

The Petitioner's 2012 IRS Form 1120, U.S. Corporation Income Tax Return, showed gross receipts of \$400,000, as claimed on Form I-140. It also showed a net loss of \$336,820. Schedule L of that return showed \$63,508 in cash at the end of the year, and \$5,263 in current liabilities, leaving \$58,245 in current assets for the year. The tax return indicated that the Petitioner paid \$62,320 in wages and salaries. IRS Forms W-2, Wage and Tax Statements, show that the Beneficiary was not among the employees who received those wages. On his 2012 IRS Form 1040, U.S. Individual

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Income Tax Return, the Beneficiary did not report any income from the Petitioner. Instead, he reported \$112,743 in "Foreign Earned Income."

The Director issued a request for evidence (RFE) on January 9, 2015. The Director stated that "the submitted documentation is insufficient to establish the petitioner's ability to pay." In response, the Petitioner submitted a letter from the Petitioner's accountant, [REDACTED] who stated that "[t]he parent company . . . provides the funds necessary for [the Petitioner] . . . to meet its operating expenses," and that the Petitioner "will not have a problem paying for the salary of [the Beneficiary] should he be hired on a permanent basis in the United States." An accompanying "Comparative Balance Sheet" prepared by [REDACTED] indicated that the Petitioner's net current assets were \$76,625.18 as of December 31, 2013, and \$207,049.48 as of December 31, 2014.

The Petitioner also submitted letters from officials of [REDACTED] and [REDACTED], asserting that their contracts with the Petitioner's foreign parent company are worth millions of dollars, and that the Petitioner performs many of the contracted functions. Therefore, they contended, the parent company will ensure that the Beneficiary receives his salary, rather than place contracted projects at risk.

Korean payroll and tax documents show that the foreign parent company paid the Beneficiary and most of his claimed subordinates. The Petitioner asserted that this arrangement ensured that the individuals would be able to collect benefits that are available to employees of Korean companies but not to employees of U.S. companies.

Documentation of wire transfers and credits appears to show that [REDACTED] sent \$2,000,000 to the Petitioner between September 27, 2012, and July 25, 2014. Three of those transactions, totaling \$1,000,000, took place during the year preceding the petition's filing date on July 31, 2013.

The Director denied the petition on April 14, 2015, concluding stated that the Petitioner's 2012 income tax return did not show sufficient income or assets to cover the Beneficiary's \$100,000 salary, and that "attestation letters do not constitute evidence" sufficient to meet the requirements at 8 C.F.R. § 204.5(g)(2). The Director stated that salary payments from the parent company "cannot be considered in determining [the Petitioner's] ability to pay," and that the Petitioner's continued reliance on salary payments from the parent company "reaffirmed the USCIS view that the petitioner lacks the ability to pay."

On appeal, the Petitioner states that the Director should have "consider[ed] evidence beyond net income and net current assets," including copies of contracts and a description of "the business rationale for the formation and operation of Petitioner by its Foreign Parent Company."

2. Analysis

For the reasons below, we find that the Petitioner has not met its burden of proof to show that it had the ability to pay the Beneficiary's proffered wage as of the petition's filing date.

In determining a given petitioner's ability to pay the proffered wage, U.S. Citizenship and Immigration Services (USCIS) will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the Petitioner did not establish that it had previously paid the Beneficiary. Rather, the Petitioner showed that the foreign parent entity paid the Beneficiary.

As an alternate means of determining a petitioner's ability to pay, we will next examine the petitioner's net income figure as reflected on the federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). In this instance, the Petitioner's 2012 income tax return showed a substantial net loss. The Petitioner did not submit a copy of its income tax return for 2013, the year it filed the petition.

Finally, if a petitioner does not have sufficient net income to pay the proffered salary, we will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as we are satisfied that the petitioner's current assets are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage. In this instance, the 2012 income tax return showed \$58,245 in net current assets, insufficient to cover the Beneficiary's proffered wage of \$100,000 per year.

The Petitioner acknowledges that "it is a matter of discretion as to whether or not USCIS consider[s] evidence beyond net income and net current assets," but the Petitioner asserts that the Director abused this discretion by failing to consider "financial statements for Petitioner for 2013 and 2014," accompanied by letters from the Petitioner's accountant (who is "a financial professional whose job it is to understand her client's finances") and two clients (who are "in a very good position to understand whether the Petitioner has the ability to pay the proffered wage"). The structure of the regulation at 8 C.F.R. § 204.5(g)(2) allows the Director some discretion when considering secondary evidence of ability to pay, but the core requirements (annual reports, federal tax returns, or audited financial statements) are not discretionary.

An unaudited profit and loss statement showed \$140,484.36 in net income for 2013, but the regulation at 8 C.F.R. § 204.5(g)(2) requires that "[e]vidence of . . . ability [to pay] shall be either in

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the form of copies of annual reports, federal tax returns, or audited financial statements.” An unaudited profit and loss statement does not meet this requirement.

Furthermore, the regulation permits USCIS to consider an attestation letter from “a financial officer of the organization,” but only “[i]n a case where the prospective United States employer employs 100 or more workers.” The Petitioner, in contrast, claimed six workers at the time of filing, only two of whom the Petitioner directly employed. Given the regulatory restriction, the Petitioner has not established that letters from clients and an accountant, none of whom are financial officers of the petitioning organization, should have greater weight than the only piece of required evidence that the Petitioner has submitted (the 2012 income tax return). This is not “a pattern of selective acknowledgment of evidence,” as the Petitioner contends on appeal. It is, rather, adherence to binding regulations.

Furthermore, the letters did not indicate that the Petitioner is able to pay the Beneficiary’s salary. Rather, they all indicated that the Petitioner relies on infusions of capital from its foreign parent company. Accountant [REDACTED] stated that “[t]he parent company . . . provides the funds necessary for [the Petitioner] . . . to meet its operating expenses.” [REDACTED] vice president of [REDACTED] stated that “the parent company . . . will ensure that [the Beneficiary’s] salary will be paid.” [REDACTED] project engineering manager with [REDACTED] contended that the Petitioner “will be able to pay the [Beneficiary’s] salary,” but in the meantime, “the parent company will . . . mak[e] sure that their key US employee is paid.” None of these letters indicated that the Petitioner was able to pay the Beneficiary’s full salary at the time of filing. Rather, they all placed that responsibility on the foreign parent company. In this way, the letters highlight, rather than mitigate, the Petitioner’s inability to pay the proffered wage from its own resources.

The Petitioner cites *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg’l Comm’r 1967), and states:

We note the many parallels to the present case, but also that considering the circumstances, Petitioner provides . . . even more compelling evidence and circumstances. In the *Matter of Sonogawa*, the Petitioner was a dress show with a single individual owner who showed the ability to project increasing earnings into the future. In the present case, Petitioner is a much larger company . . . staffed by professional engineers with clients such as [REDACTED] and [REDACTED] and an owner which was at one point considered the #8 Architectural and Engineering firm in the world and which relies on Petitioner to generate over \$28 million dollars [*sic*] in revenue over the past five years.

The claimed parallels to *Sonogawa* are not persuasive. The petitioner in *Sonogawa* was able to demonstrate that the company’s low income in 1966 was due to one-time expenses which did not affect the company’s overall profitability. *Id.* at 614. The present Petitioner has made no such showing. Furthermore, the petitioner in *Sonogawa* paid eight employees in 1966. *Id.* at 615. The Petitioner claimed six employees at the time of filing, and directly paid only three employees that year; it is not “a much larger company” than the petitioner in *Sonogawa*.

We acknowledge that the foreign parent company has paid the Beneficiary at a rate exceeding the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2), however, requires “evidence that the prospective United States employer has the ability to pay the proffered wage.” The parent company is not the prospective U.S. employer, and therefore its financial status cannot be considered. The petitioning U.S. employer has not established that it was able to pay the Beneficiary’s salary as of the petition’s filing date, and therefore we cannot approve the petition.

B. Manager or Executive in the United States

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

(A) 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.

(B) 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

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(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

1. Facts

In a letter dated July 12, 2013, [REDACTED] architectural section manager at the petitioning company, stated that the Petitioner “currently employs 6 people (4 professionals and 2 administrative staff).” [REDACTED] described the Beneficiary’s role with the company:

[The Beneficiary] will continue to directly supervise the work of the Architectural Section Manager, [REDACTED]. The Architectural Section Manager will in turn manage the Instrumentation and Control (I&C)/Electrical Design Coordinator [REDACTED] and the Process Piping Design Coordinators [REDACTED] all professional-level managers. . . .

The duties of [the Beneficiary’s] managerial position will also specifically include:

- Managing Administrative Function: establish corporate policies, procedures and enforce them through work of lower level managers under his direction; established employee remuneration procedures;
- Managing the Organizational Function: establish the flow of authority and communication between positions and levels within the organization; assign personnel duties and responsibilities for each position; determine limitations of authority for each person within the Company; create initiatives for driving efficiencies through technology adoption and identified new technological options and availabilities; approve vendors selected by lower level managers;
- Managing the Human Resources Function: motivate staff of [the company] towards successful achievement of Company’s objectives; ensure communication lines within staff; make staffing decisions, hiring, firing personnel and commence other personnel actions through the work of his subordinate managers;
- Managing the Financial Function: establish profit objectives and budget goals for [the company]; set up the financial management system; through the work of lower level managers under his direction manage budget and procurement functions; financial risk management;
- Directing and Coordinating the Enterprise: leading and influencing departments and staff members of [the company] to accomplish the goals of

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the organization and successfully complete the contracted work; regularly meet with the office staff and lower level managers to stay on top of all developments in the Company related to the work for major clients and expanding into the US market;

- Controlling and Monitoring Progress: translate organizational goals and objectives for [the company] into performance standards for each Section and individual positions; through the work of his direct management level reports, assess actual performance of the US Staff to determine whether the organization is on target to reach its goals; through the work of lower level managers, check the progress by analyzing monthly reports.

The Petitioner submitted copies of Korean-language payroll documents from the Petitioner's foreign parent company, dated January to May 2013, with uncertified English translations. The Petitioner indicated that these documents showed "salary paid to U.S. L-1 employees," as follows:

Name	Title	Team designation
The Beneficiary	director	Electrical Team
[REDACTED]	section manager	[REDACTED]
[REDACTED]	design coordinator	[REDACTED]
[REDACTED]	design coordinator	[REDACTED]
[REDACTED]	design coordinator/ associate manager	Mechanical Team

Accompanying income tax withholding receipts for 2010, 2011, and 2012 identified the Beneficiary's employer as the foreign parent company, and showed that the Beneficiary paid Korean income taxes during those years.

The Petitioner submitted copies of tax documents prepared by accountant [REDACTED] IRS Forms 941, Employer's Quarterly Federal Tax Returns, included the following information:

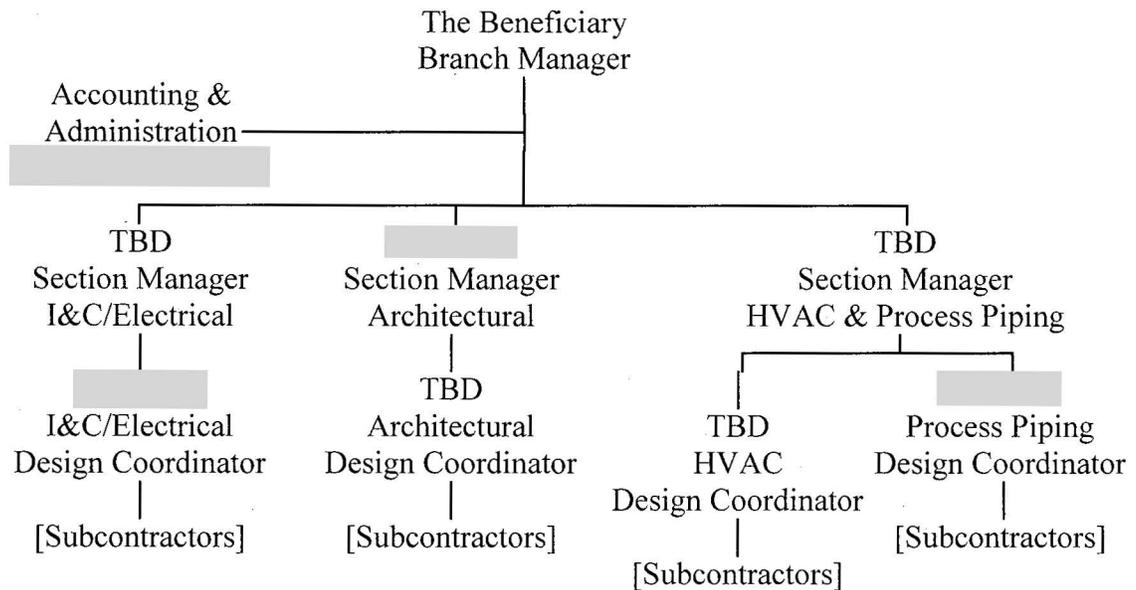
Quarter	Employees	Wages
1, 2012	1	\$11,550
2, 2012	1	12,100
3, 2012	1	13,200
4, 2012	3	25,470
1, 2013	2	18,760
2, 2013	2	20,130

The quarterly returns did not identify the employees. The total wages paid during the four quarters of 2012 are consistent with the total salary figure (\$62,320) shown on the IRS Form 1120 income tax return for that year.

An organizational chart included the following information, using the initials "TBD" to designate unfilled positions:

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The chart did not include [redacted] identified elsewhere as the Petitioner's second process piping design coordinator.

In the RFE, the Director requested a detailed statement from the Petitioner, describing the Beneficiary's specific daily duties and the amount of time spent on each duty. The Director also requested information about the duties, qualifications, and compensation of the Beneficiary's subordinates, including contractors.

In response, the Petitioner submitted copies of three IRS Forms W-2, Wage and Tax Statements:

Name	Title (from organizational chart)	2012	2013
[redacted]	Admin. Part Accounting & Admin.	\$50,050	\$52,800
[redacted]	Admin. Part Accounting & Admin.	4,570	22,260
[redacted]	[not shown]	7,700	1,488

The Petitioner stated that the "Beneficiary's other subordinate employees do not have Forms W-2 because they are L-1 intracompany transferees and are paid by the foreign parent company in South Korea." The Petitioner stated that this arrangement allows the employees to receive benefits that are available to employees of Korean companies. The Petitioner cited *Matter of Pozzoli*, 14 I&N Dec. 569 (Reg'l Comm'r 1974), to show that this compensation structure does not affect the employees' eligibility for L-1 nonimmigrant status.

IRS Forms 1040, U.S. Individual Income Tax Returns, show that the Beneficiary and his Korean-paid subordinates reported the following amounts as "Foreign Earned Income":

Name	2012	2013
[The Beneficiary]	\$112,743	\$135,987

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	79,983	94,595
	59,967	63,090
	63,383	[no return]
	[no return]	61,237

The tax returns, all prepared by [REDACTED] listed every individual's occupation as "Architect."

The Petitioner submitted a percentage breakdown of the Beneficiary's duties that filled more than two pages. The general categories were as follows:

- 22% Branch Management
- 17% Financial Management
- 25% Personnel Management
- 10% Subcontractor Management
- 15% HQ/Division Manager Interaction
- 11% Client Interaction

Due to space considerations, we will not reproduce the complete list of detailed duties, but, as an example, the list of "Branch Management" duties appears below:

- 5% Receive and review operational objective reports and assign new tasks
- 2% Review and receive progress reports from Section Managers
- 2% Deliver Company Directives to subordinate managers
- 3% Meet with Section managers and inspect manpower
- 4% Review progress of each Section
- 4% Review and Approve Design Package
- 2% Oversee Creation of Construction Management Status Reports

Other specific duties included "Establish Budget for Branch Office," "Select personnel to participate in project and approve project work scope definition," and "Submit Status Updates & Planning Reports of Contracts, Sales and Subcontract Expense Payments."

Separate but identical schedules for [REDACTED] and [REDACTED] included three broad categories:

- 75% Section/Subcontractor Management
- 17% Branch Manager Interaction
- 8% Owner/General Contractor Interaction

The third section manager, [REDACTED] had a slightly different schedule, reducing "Section/Subcontractor Management" from 75% to 66%, with the remaining 9% devoted instead to "Personnel Management."

For each of these individuals, the "Branch Manager Interaction" category broke down as follows:

- 2% Report weekend overtime work hours to Branch Manager

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- 3% Create and submit progress and other reports to Branch Manager
- 3% Report major issues with Branch Manager
- 3% Obtain and review Subcontractor cost estimates and discuss with Branch Manager
- 4% Provide detailed progress reports of group and get new objectives assigned
- 2% Report progression rate of group

A new organizational chart showed essentially the same structure as the earlier chart, with three significant changes:

- [REDACTED] became the I&C/Electrical Section Manager; his former position of Design Coordinator in the same branch does not appear on the new chart;
- [REDACTED] became the Section Manager of HVAC & Process Piping; the new chart listed his prior position, Process Piping Design Coordinator, as “TBD” (vacant); and
- [REDACTED] filled the previously vacant HVAC Design Coordinator position.

The Petitioner submitted additional copies of the bachelor of engineering degrees submitted previously, with similar documentation for [REDACTED]

In the denial notice, the Director found that the Petitioner had not established that the Beneficiary would serve in a qualifying managerial or executive capacity. The Director found that the Petitioner did not provide enough details about the Beneficiary’s intended duties.

The Director also found that “the petitioner has not established that the beneficiary will manage a subordinate staff of professional, managerial or supervisory personnel who will relieve the beneficiary from performing the day-to-day duties required to operate the business.” The Director stated that the IRS Forms W-2 documented only one year-round, full-time employee in 2013. The Director acknowledged the Petitioner’s assertion that the Beneficiary’s other claimed subordinates were paid by the foreign parent company, but the Director found that “the petitioner has not provided any other evidence to show that the individuals paid by a foreign organization were actually employees of the petitioner.” The Director also stated that the Petitioner had not submitted translations of the Korean-language payroll documentation that meet all the requirements listed at 8 C.F.R. § 103.2(b)(3).

On appeal, the Petitioner asserts that “the Denial Notice repeatedly fails to account for all of the evidence submitted by Petitioner. . . . the Director of the Texas Service Center failed to review or ignored critical, relevant and probative evidence provided by Petitioner in response to the RFE.”

2. Analysis

For the reasons discussed below, we find that the Petitioner has not met its burden of proof to show that it intends to employ the Beneficiary in a qualifying managerial or executive capacity.

The record supports certain assertions that the Petitioner makes on appeal. The Petitioner asserts that the evidence has consistently shown that the Petitioner had six employees at the time it filed the

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petition. Regarding the low wages paid to support staff, the Petitioner asserts that [REDACTED] “is a part-time employee who started work[ing] for Petitioner in October of 2012,” and that [REDACTED] “only worked for the company from November 2012 to January 2013 and was not an employee at the time of the filing of the petition.”

The IRS Form 941 quarterly returns are consistent with the Petitioner’s assertion that two of the support staff employees worked for only part of 2012-2013, and therefore earned less during those years. The Petitioner has not claimed that these employees were professionals, supervisors, or managers, and therefore the Beneficiary’s supervision of these support workers cannot demonstrate the managerial or executive nature of the Beneficiary’s position. Regarding the Beneficiary’s other claimed subordinates, the Director found that, because the Petitioner did not pay the workers, there is insufficient evidence that they work for the Petitioner in the United States.

The Petitioner’s RFE response included “Certificates of Income” which included all relevant text in both Korean and English. Therefore, there is no need for a certified translation of the Korean portions of the text. This evidence is consistent with the Petitioner’s assertion that the Beneficiary and several of his subordinates worked in the United States while receiving payment from overseas.

Because the workers received payment from overseas, the payroll records and income tax returns do not provide any direct evidence that the individuals work, or have worked, for the Petitioner in the United States. The Petitioner asserts that the Korean certificates show that the Petitioner employed these workers, but the certificates identify the employer as the Korean parent company, not the Petitioner in the United States. Furthermore, the certificates show addresses in Korea, not the United States, for each employee (including the Beneficiary). Therefore, the certificates cannot serve as primary evidence that the individuals work for the Petitioner in the United States, under the Beneficiary’s authority or supervision.

The Petitioner asserts that the Beneficiary’s stated subordinates are engineers holding bachelor’s degrees, and therefore professionals under the statutory definition at section 101(a)(32) of the Act. The job descriptions submitted in response to the RFE, however, do not include any engineering duties. Status as a professional derives from the actual occupation, rather than from past academic training or title alone.

The record offers insufficient evidence regarding the claimed supervisory or managerial positions held by the Beneficiary’s subordinates. The record contains only a few examples of work product from the petitioning entity. Printouts of electronic slides labeled “S2-R Project Weekly Meeting” show various tables and schedules, and the legend “Prepare & Presented by [REDACTED]” at the lower left corner of each slide. The slides date from January 2015, a year and a half after the filing date. [REDACTED] name appears on a commercial lease, and (with the title “Managing Director”) on copies of the Petitioner’s IRS Form 941 quarterly returns.

The Petitioner submitted copies of several invoices issued to various [REDACTED] subsidiaries between 2011 and 2014. Some invoices identify the vendor as the Petitioner, others as the parent entity, but both types of invoice use the same basic format. The Beneficiary’s name appears on several

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invoices, with the title “project manager.” The same title appears below the Beneficiary’s name on a July 25, 2012 contract with [REDACTED]

Organizational charts identify several subcontractors, but the record does not include contracts, invoices, or other documentation to establish that the Petitioner used their services, or that the Beneficiary, through his subordinates, directs their work. Therefore, the record does not establish that the Beneficiary’s claimed subordinates are, themselves, managers or supervisors.

We turn now to the Beneficiary’s job description. 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 Beneficiary’s discretionary authority over the petitioning entity would fulfill the first part of this definition, but not the second. An individual can have broad authority even when his or her duties are mostly operational rather than managerial or executive.

As noted previously, the percentage breakdown in the RFE response included 51 duties, divided into six broad categories. On appeal, the Petitioner notes that the Director, in the denial decision, quoted the six section headings in the detailed job duties list, but did not discuss the specific elements within the sections. The Petitioner states that these individual elements “are highly detailed managerial duties which call for review and supervision of the work product of lower level managers, interaction with clients and executives among other duties and . . . a clear majority of these duties are managerial in nature.”

The 51 individual duties are not always as specific as the Petitioner asserts on appeal. The Petitioner stated that the Beneficiary devotes 15% of his time to “HQ/Division Manager Interaction.” About half of that time consists of “Obtain[ing] final approval” with respect to estimates, plans, and other issues. Also, several items appear to overlap or describe the same function. For example:

- “Establish Budget for Branch Office” and “Establish budget plans on a monthly basis”
- “Issue Sales Invoices” and “Issue invoices to clients”
- “Approve employee OT” and “Approve weekend OT plans”
- “Approve Weekly Man-Hours” and “Coordinate & approve man-hours of project staff”

These redundant entries, set forth as separate duties, cast doubt on the accuracy and reliability of the chart. Therefore, the list of duties, despite its length, is not strong or persuasive evidence that the Beneficiary primarily performs managerial or executive functions. Furthermore, other ambiguities in the record prevent a definitive finding regarding the relationship between the Beneficiary and his claimed subordinates. As noted above, some documents identify [REDACTED] as the Petitioner’s “managing director,” while the Beneficiary has signed his name on invoices and contracts above the title “project manager”; both titles differ from what the Petitioner has claimed. The best evidence of the claimed subordinates’ employment, pay receipts from the foreign parent company, place all the

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employees (including the Beneficiary) at addresses in Korea, introducing further discrepancies into a record already lacking clarity on important points.

For the above reasons, we find that the Petitioner has not established, by a preponderance of the evidence, that the Beneficiary meets the requirements of a manager or executive.

III. CONCLUSION

We will dismiss the appeal 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-A-, Inc.*, ID# 14767 (AAO Dec. 17, 2015)