



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

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

MATTER OF PPMO- USA, LLC

DATE: DEC. 29, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an import/management company, seeks to employ the Beneficiary as its president and chief executive officer (CEO) 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, Immigrant Petition for Alien Worker, 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.

## II. ISSUES ON APPEAL

The Director denied the petition because the Petitioner did not provide sufficient evidence and information to establish both that the Beneficiary worked in a qualifying managerial or executive capacity abroad, and that he will work in such a capacity 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
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

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Finally, 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.

The Petitioner, on appeal, does not significantly differentiate between the Beneficiary's past work abroad and his intended work in the United States, and therefore we will discuss these elements together in the analysis further below.

A. Facts

1. Managerial or Executive Capacity Abroad

The Petitioner filed Form I-140 on February 7, 2014. The petition included an undated letter from [REDACTED] the Petitioner's finance and administration manager, which reads, in part:

In his position as CEO [of the foreign parent entity], [the Beneficiary] set corporate policy and goals and identified and facilitated new business opportunities. [The Beneficiary] was responsible for developing strategic planning to enable the company to compete in the highly competitive import/export market. He evaluated national and global business environments in order to develop effective corporate strategies. . . . He was also responsible for establishing economic objectives and policies and overseeing and directing his immediate staff, which . . . included the Operations Manager, Warehouse Supervisor and Labor Supervisor, all of whom in turn supervised the personnel responsible for the various day to day operations of the company. He had the authority to hire and fire staff, set up work and vacation schedules and approve bonuses and promotions. . . .

.....

The beneficiary spent approximately 90% of his time formulating the direction of [the foreign company], setting the goals of the foreign parent, the manner in which it was to achieve those goals, devising the company's long-term strategies and strategic partnerships, deciding on staffing, and salaries, fixing budgetary constraints and allocation of resources and implementing the directives of the Board of Directors. Approximately 10% of the beneficiary's time was spent on evaluating the employees under his supervision by evaluating performance against objectives or expectations.

The Director issued a request for evidence (RFE) on September 30, 2014. The Director requested "a definitive statement from the foreign company which describes the beneficiary's job duties." In response, the Petitioner submitted a letter dated November 29, 2014 from [REDACTED] president of [REDACTED]. Portions of this letter are identical to passages from [REDACTED]

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earlier letter. [REDACTED] provided the following breakdown of the Beneficiary's duties, with the approximate percentage of time devoted to each function:

- 25% Oversaw overall business operations and developed organizational policies to coordinate functions and marketing operations, with an emphasis on sales and marketing.
- 15% Reviewed activity reports and sales and financial statements to determine progress and status in obtaining objectives and revised plans according to present conditions.
- 15% Explored opportunities to grow the company and increase profitability through new account acquisition (ie meeting and conferring with potential clients).
- 10% Coordinated and consulted with outside marketing firm to review proposed methods of marketing strategies for both the short and long term.
- 10% Coordinated and consulted with the Operations Manager to review and revise operating efficiency, product consistency, quality and on-time delivery.
- 5% Supervised and participated in trade shows.
- 10% Negotiated contract terms and conducted follow up with clients.
- 10% Formulated financial plans and oversaw preparation of the budget.

An organizational chart for the foreign entity showed the following hierarchy:

- Founder/Chairman
- CEO [the Beneficiary]
- Manager (also called Operations Manager)
- Warehouse Supervisor
- Warehouse Labor Supervisor
- 3 Labor Staff

We will discuss the Director's decision further below.

2. Managerial or Executive Capacity in the United States

In the introductory letter submitted with the petition, [REDACTED] stated:

As President/CEO, [the Beneficiary] is responsible for planning, developing and establishing the policies and objectives for the sales and distribution of our products in

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the United States and overseas [*sic*] day to day operations of all functions of the US company. He develops organizational policies and establishes responsibilities and procedures for obtaining objectives for the US operation. He is responsible for expanding our market in the United States. [The Beneficiary] has the authority to hire and fire all staff for the US operation, set up work and vacation schedules and approve bonuses and promotions. He is managing the functions which are the very essence of our business and his position is the highest level of the United States operation. The beneficiary has complete discretion to set local policy (within the guidelines with the Board of Directors).

More specifically, managerial decisions made by the beneficiary include the direction the company will take and, and [*sic*] after setting the goals of the company, the manner in which it will achieve those goals. He works on the company's long-term strategies and strategic partnerships, decides on staffing, salaries, fixes budgetary constraints and allocation of resources and implementing the directives of the Board of Directors. Approximately 85% of [the Beneficiary's] time is spent performing the following functions. In addition, the beneficiary evaluates the employees under his supervision by evaluating performance against objectives or expectations set earlier, the manner in which the employee has worked towards these objectives (ie. has he/she followed the strategy outlined by the beneficiary?), feedback from subordinate staff and external contacts and a combination of verbal and written communication. Approximately 15% of the beneficiary's time is spent on those duties.

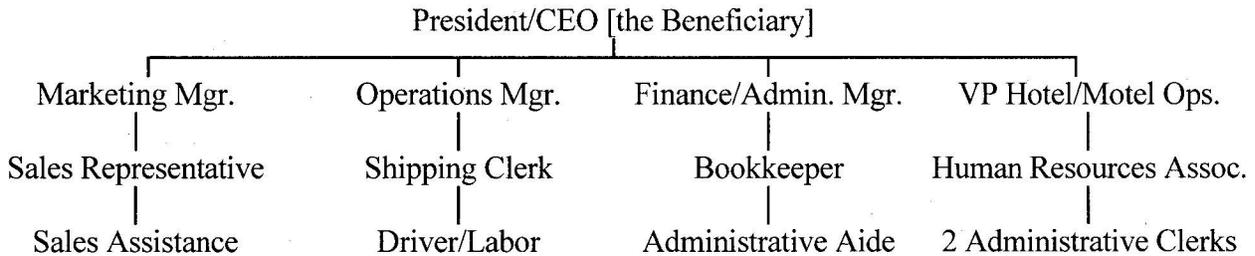
On Form I-140, the Petitioner stated that it currently employed 15 workers in the United States. [REDACTED] introductory letter listed these 15 employees by name and title. The titles are as follows:

- President/CEO
- Finance and Administration Manager
- Vice President (VP) of Operations for Hotel/Motel Management
- Operations Manager
- Marketing Manager
- Bookkeeper
- Sales Assistant
- Sales Representative
- Shipping Clerk
- Human Resource Associate
- Two Warehouse Clerks
- Secretary
- Hotel/Motel Associate
- Hotel/Motel Bookkeeper

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The Petitioner added that “[t]here are 4 subordinate supervisors and/or professional employees under the beneficiary’s management,” specifically a finance and administration manager; marketing manager; operations manager; and VP of operations for hotel/motel management.

An organizational chart showed the following 14-person hierarchy:



A copy of the Petitioner’s then most recent IRS Form 941, Employer’s Quarterly Federal Tax Return, showed 11 employees as of December 12, 2013, two months before the petition’s filing date.

In the RFE, the Director requested evidence to show that the Beneficiary will primarily perform managerial or executive duties for the Petitioner, including additional information and evidence relating to the Beneficiary’s subordinate employees.

In response, in a second undated letter, [redacted] provided the following breakdown of the Beneficiary’s duties, with the approximate percentage of time devoted to each function:

- 25% Developing, planning and implementing long term goals and plans and establishing and overseeing policies and strategies with respect to promotion, marketing and economic growth.
- 5% Training and supervising managerial and support staff in sales and marketing.
- 15% Reviewing customer relations and establishing business connections.
- 20% Reviewing activity reports and sales and financial statements to determine progress and status in attaining objectives and revising objective plans in accordance with current conditions.
- 25% Growing the company and increasing profitability through new account acquisition, horizontal integration of new businesses and improved efficiency.
- 10% Negotiation and execution of contracts.

In the RFE, the Director also instructed the Petitioner to submit IRS Forms W-2, Wage and Tax Statements, “for each employee.” The Petitioner’s response to the RFE included copies of four 2013 IRS Forms W-2. [redacted] stated that these forms correspond to the managers and supervisors

working under the Beneficiary, as shown on the organizational chart. The Petitioner did not explain why it did not submit IRS Forms W-2 for all of its employees as the Director had requested.

The Petitioner also submitted a copy of its IRS Form 941 for the second quarter of 2014, showing 10 employees as of June 12 of that year. The Petitioner also resubmitted a copy of the same organizational chart, showing 14 positions. The Petitioner did not specify which, if any, of those positions were vacant.

The Director denied the petition on April 7, 2015, stating that the Petitioner had not established that the Beneficiary had served, or will serve, in a qualifying managerial or executive capacity. The Director noted that the Petitioner “did not provide W2s for the support staff,” and submitted inconsistent information regarding the company’s staffing and the exact nature of its business.

On appeal, the Petitioner maintains that it “has demonstrated in detail that the beneficiary will manage the function rather than perform the duties related to the function.” The Petitioner submits copies of materials submitted previously, both in this proceeding and in support of other petitions that the Petitioner has filed.

#### B. Analysis

Upon review, and for the reasons stated below, we find that the Petitioner did not establish that the Beneficiary’s past or intended future work meets the requirements of a managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner’s description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Reciting the 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 did not provide any detail or explanation of the beneficiary’s 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).

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).

On appeal, the Petitioner states that it had already met its burden of proof, both through its initial submission and its responses to “three repetitive RFEs dated as December 17, 2012, September 30, 2014 and then October 2, 2014.”<sup>1</sup> For the most part, the appellate brief does not distinguish between

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<sup>1</sup> USCIS issued only one RFE in this proceeding, on September 30, 2014. The other identified RFEs pertain to

the Beneficiary's employment abroad and his later employment in the United States, and when it does, it is with regard to the Beneficiary's present duties with the Petitioner in the United States.

The Petitioner states: "almost all portions of the beneficiary's duties meet the requirements of the 'managerial capacity' and for some of them 'executive capacity' definitions of the requirements for multinational executives and managers." The Petitioner does not state any specific claim that the Beneficiary primarily performed executive duties. Instead, the Petitioner states that it has established the Beneficiary's "managerial capacity," and that the Beneficiary "is therefore qualified to be accepted as a multinational manager." The statute and regulations do not provide for hybrid "executive/managers," and therefore we need not consider the claim that the Beneficiary partially satisfies the requirements for an executive.

The Petitioner states: "The beneficiary . . . has been employed . . . by the petitioner since 1995 to date which is more than enough time to establish one in his/her managerial and executive capacities." At issue here is what the Beneficiary has been doing, rather than how long he has been doing it. Length of experience does not establish or imply eligibility.

The Petitioner contends that it has provided sufficient details about the Beneficiary's duties, but offers no specific rebuttals within this general assertion. In a new affidavit, the Beneficiary stated:

In the capacity of CEO, I set corporate policy and goals; exercised discretion over the day-to-day operations of the company's activities; identified and facilitated new business opportunities and reviewed activity reports produced by other staff members of the company to verify progress and status in attaining the objectives; supervised and controlled the work of other supervisory, professional, or managerial employees engaged in market studies of competitive companies; managed the company's essential functions by supervising and managing the activities of Operations Manager, Warehouse Supervisor, Labor Supervisor who, in their turn, were responsible for supervising and overseeing day-to-day activities of immediate staff members[.]

Portions of the above paragraph derive directly from the statutory definition of "managerial capacity." 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. 1108. Apart from the passages that quote or paraphrase the statute, the Beneficiary states that he "identified and facilitated new business opportunities and reviewed activity reports." This does not provide a sufficient level of detail to allow a finding in the Petitioner's favor.

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nonimmigrant petitions filed by this same Petitioner. This proceeding does not concern those nonimmigrant petitions, and therefore we need not address materials related to those petitions that the Petitioner has submitted on appeal. The 2012 RFE predates the filing of the present petition by more than a year. The other two RFEs were issued within days of one another, but by two different Service Centers; the RFEs do not represent redundant requests by the same adjudicator. The nonimmigrant filings are not part of the record of proceeding now before us at the AAO.

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In the same way, the job descriptions provided by [REDACTED] and [REDACTED] include broad assertions such as “developing, planning and implementing long term goals and plans” and “establishing business connections” that shed little light on what, exactly, the Beneficiary does for the company. [REDACTED] stated that the Beneficiary devotes 25% of his time to “new account acquisition and horizontal integration of new businesses,” but the record does not document the company’s growth in this way.

The Petitioner has provided inconsistent information regarding its staffing. The titles shown on the organizational chart do not fully match the job titles listed by [REDACTED]. The appeal includes tax and payroll documentation from late 2013 and early 2014, possibly submitted in response to the October 2014 RFE issued with regard to another nonimmigrant petition filed by the Petitioner. A quarterly payroll report for the fourth quarter of 2013 listed 14 active employees. Two of the listed names do not appear on [REDACTED] list of 15 employees. [REDACTED] had stated that all 15 employees work full-time, but six of the employees earned less than \$14,000 in 2013. An “Employee Earnings Record” for the first six months of 2014 lists 17 names. Twelve of those names also appeared on [REDACTED] list of employees.

Of the 17 names shown on the employee earnings record, only five are listed as the Petitioner’s employees. The other 12 names are shown as employees of [REDACTED] (discussed further below), although individuals identified as [REDACTED] employees received IRS Forms W-2 from the Petitioner for 2013. The five names listed as the Petitioner’s employees correspond to the president/CEO, operations manager, finance and administration manager, bookkeeper, and sales manager on [REDACTED] original list.

The names [REDACTED] appear in the 2013 and 2014 payroll records, but not on [REDACTED] list. Three names on [REDACTED] list – [REDACTED] – do not appear in the payroll documents for 2013 or 2014. These discrepancies cast doubt on the reliability of [REDACTED] statements. This issue is significant because [REDACTED] also provided the Beneficiary’s job description. Doubt cast on any aspect of the petitioner’s proof may 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). We are under no obligation to consider [REDACTED] description of the Beneficiary’s job to be more reliable than his list of the Petitioner’s employees as of early 2014.

Compounding the lack of detail about the Beneficiary’s actual duties and responsibilities, the record creates some confusion regarding the nature of the business. The Petitioner’s printed letterhead stationery showed two addresses: [REDACTED] and the other on [REDACTED]. The Petitioner’s initial submission included copies of utility, tax, and insurance documents, showing the [REDACTED] and various documents relating to shipments of spices and other goods to [REDACTED]. The Petitioner has not explained its relationship with [REDACTED]. There is no evidence that the two names belong to the same company, with one being its legal name and the other its “doing business as” name.

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In the RFE, the Director requested further evidence “to confirm [the] company/organization’s official name and address.” In response, the Petitioner submitted a copy of a lease for the [REDACTED] property effective from March 1, 2009 through May 31, 2014, and a lease extension effective through May 31, 2019. Paragraph 6 of the lease, “Use of Property,” stated that the “Tenant may use the Property as a medical office for the provision of radiology and nuclear medicine services and for no other purpose, and shall use the Property on a regular basis for such purpose.” The Director mentioned this in the denial notice, but the Petitioner has not addressed it on appeal.

[REDACTED] stated that the Petitioner “maintains a warehouse location on [REDACTED] which appears to be a reference to the [REDACTED] property, but the Petitioner submitted no direct evidence to show that it controls or occupies the property.

With respect to hotel management, [REDACTED] letter in response to the RFE included the following job description for the VP of hotel and motel operations:

Directs and coordinates our newly developing hotel/motel management operation. Duties include, but are not limited to: recruitment and retention, analyzing and deploying staff, ensuring competency of staff through regular evaluation; implement and oversee human resource issues and financial goals and objectives consistent with corporate strategies; develop and promote measures to stay within budget; oversee marketing and day-to-day center operations to maximize revenues and ensure franchise compliance. The Site Manager operates runs [sic] the motel we have purchased, with the assistance of 3 clerical/support staff, and reports to the beneficiary.

It is not clear whether the “Site Manager” and the VP of hotel and motel operations are one and the same, but the Petitioner’s organizational chart does not show a site manager.

The Director, in the denial notice, noted that the Petitioner claims to employ hotel management and staff, but the Petitioner’s initial submission and RFE response did not contain any information showing the Petitioner’s management of any hotel, or identifying the hotel. On appeal, the Petitioner submits a copy of a September 22, 2010 contract between the Petitioner and [REDACTED]”<sup>2</sup> The contract stated that the Petitioner “shall provide management services and shall be responsibility [sic] for the day to day operations of the [REDACTED] located at [REDACTED] Missouri.”

The 2010 contract with [REDACTED] does not show that the Petitioner continued to manage the [REDACTED] in 2014. The contract specified that “the General Manager and all other personnel [at the hotel] shall be employees of [the Petitioner] and [the Petitioner] shall be responsible for payroll and all tax and withholding requirements,” but there is no evidence that the Petitioner had

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<sup>2</sup> We note that the 2010 management contract identifies the president of [REDACTED] as [REDACTED] whom the record also identifies as the president of the Petitioner’s foreign parent entity.

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any employees in or near [REDACTED] at the time of filing. The 2013 IRS Forms W-2 show residential addresses in or near [REDACTED] for all of the Petitioner's employees, including the three employees for whom [REDACTED] had specified hotel-related job duties. Therefore, the Petitioner's own evidence suggests that the 2010 hotel management contract was no longer in effect in 2013.

Also, the 2010 contract does not indicate that the Petitioner owns the [REDACTED] it is a contract "to provide management and personnel services in the hotels operated by [REDACTED]" Therefore, the [REDACTED] does not appear to be what [REDACTED] called "the motel we have purchased." The Petitioner has not identified any other hotel or motel under its control, or documented its purchase of any hotel or motel. Therefore, the Petitioner has not shown that it was actively engaged in hotel management at the time of filing in 2014, such that the Petitioner would have the need to employ management and support personnel for that purpose.

As the above discussion shows, the Beneficiary's past and present job descriptions lack critical details. Where the Petitioner has made specific claims, the record often lacks important evidence that would support those claims. 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'l Comm'r 1972)).

For the above reasons, we find that the Petitioner has not met its burden of proof to establish that the Beneficiary has worked, or will work, in a qualifying managerial or executive capacity. Therefore, USCIS cannot approve this petition.

### 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 PPMO- USA, LLC*, ID# 15149 (AAO Dec. 29, 2015)