



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

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

MATTER OF V-E-N-A-O-, LLC

DATE: OCT. 6, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a provider of energy solutions, seeks to permanently employ the Beneficiary as its “Manager, Finance & Treasury - North America” under the multinational manager or executive immigrant classification. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). The Director, Nebraska 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.

The language of the statute is specific in limiting this provision only to 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.

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.

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

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. Section 101(a)(44)(C) of the Act.

## II. ISSUES ON APPEAL

The Director denied the petition on two grounds. First, the Director found that the Petitioner had not established that it has a qualifying relationship with the Beneficiary’s former employer abroad. Second, the Director found that the Petitioner had not shown that the Beneficiary worked for the foreign employer in a qualifying managerial capacity.

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#### A. Qualifying Relationship

The first issue to be discussed is whether the Petitioner has established that it has a qualifying relationship with the Beneficiary's foreign employer.

To establish a "qualifying relationship" under the Act and the regulations, a 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 also 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

In a letter dated April 8, 2014, [REDACTED] the Petitioner's global mobility manager, stated that the petitioning entity "is a 100% wholly-owned and controlled subsidiary of [REDACTED]" which is the Beneficiary's former employer, based in [REDACTED] France. The Petitioner submitted documents establishing various links in the chain of ownership from the French parent company down to [REDACTED] which Illinois corporation records identify as the only member of the petitioning limited liability company.

In the denial notice, the Director noted that the record mentions a [REDACTED] corporate reorganization, and found that the Petitioner had not shown that its qualifying relationship with the foreign employer survived that reorganization. The reorganization in question, however, involved consolidation rather than divestiture. On appeal, the Petitioner states that it submitted "documentation . . . [that] clearly demonstrates the qualifying corporate relationship."

Upon review, we find that the Petitioner has established, by a preponderance of evidence, that a qualifying relationship existed, and continues to exist, between the Petitioner and the Beneficiary's former overseas employer.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *INS v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (discussing "more likely than not" as a greater than 50 percent probability of something occurring). Here, the submitted evidence is relevant, probative, and credible. There are no contradictions or discrepancies that would tend to undermine the credibility of the submitted evidence.

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For the above reasons, we will withdraw this ground for denial. Nevertheless, we cannot sustain the appeal because the Director raised an additional ground for denial that the Petitioner has not overcome.

## B. Foreign Employment in a Managerial Capacity

The second issue to be addressed is whether the Petitioner established that the Beneficiary was employed in a qualifying managerial capacity during her tenure with [REDACTED] in France. The Petitioner has consistently referred to the work as managerial and does not claim that the Beneficiary was employed abroad in an executive capacity.

### 1. Facts

The Petitioner indicated that the Beneficiary worked for [REDACTED] as a dealing room operator from 2007<sup>1</sup> to August 2010. In her April 8, 2014 introductory letter, [REDACTED] stated that this position constituted “a managerial capacity position” that “was essential to the effective financial and treasury functions within the parent company [REDACTED] and to the function of the numerous subsidiaries.” [REDACTED] provided the following description of the position:

[The Beneficiary] directed the essential finance function of overseeing and managing accounting operations for [REDACTED] . . . [The beneficiary] directed [REDACTED] accounting operations . . . and collaborated with [REDACTED] senior level executives to implement new accounting software and database systems that facilitated accurate transactional reporting within the corporate finance system.

. . . [The Beneficiary] controlled the essential accounting function she oversaw and reported directly to the Head of the Dealing Room, [REDACTED] . . .

[The Beneficiary] guided the work of senior executives . . . [and] provided direction to Treasurers of the various [REDACTED] departments and heads of subsidiaries to ensure their market plan and operations complied with the goals and policies of the Executive Finance Committee. . . . [The Beneficiary] assisted in the development of financial risk tools . . . [and] also implemented the Finance Committee’s monthly strategy for interest rates, foreign currencies, and investing.

. . . [The Beneficiary] selected products in which to invest [REDACTED] budget surplus. She also developed and implemented investment proposals in new projects. . . . She also guided the heads of [REDACTED] subsidiaries’ financial risk assessment and management strategies.

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<sup>1</sup> Sources in the record differ as to when in 2007 the beneficiary’s employment began, with various letters stating January, February, or August of that year.

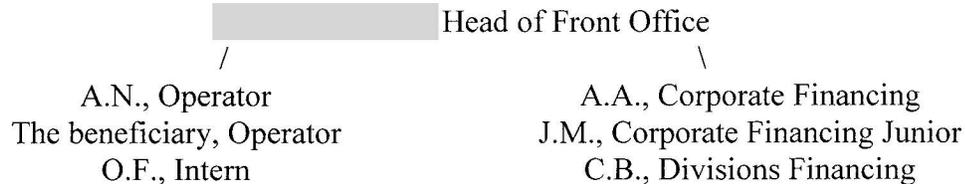
<sup>2</sup> *Sic.* Elsewhere, the record shows this name as [REDACTED]

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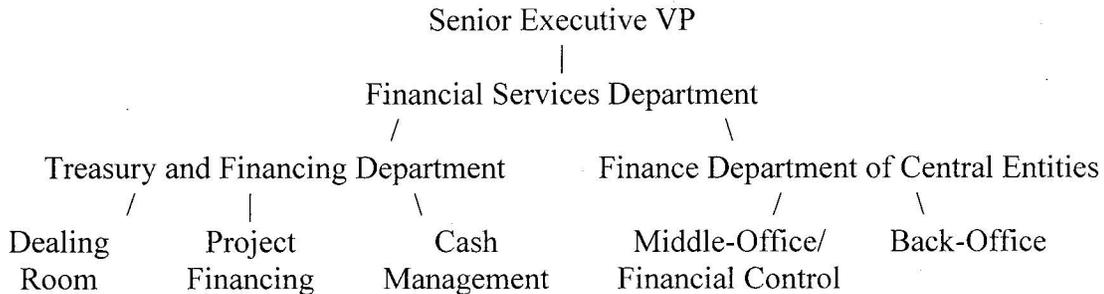
[The Beneficiary] also had several accounting responsibilities. [She] selected the information technology system used by the accounting department to track transactions . . . [and] worked closely with developers to customize [it].

An organizational chart for the French organization placed finance and treasury director [REDACTED] in charge of three departments, one of which is “Front Office/Corporate Financing.” The chart for that department identified seven individuals by name and title:



[REDACTED] description of the Beneficiary’s prior job did not mention these other individuals (including one who shared the same title as the beneficiary) or explain the Beneficiary’s relationship to them.

A document with the title “Rules governing financing/treasury management and related risks” included the following chart of “entities”:



The document indicated that “the Dealing Room acts as the Group interface vis-à-vis financial markets . . . [and generally] has sole authority to trade on the financial markets. It plays an advisory and service role for the Divisions and Subsidiaries regarding the use of financial instruments to hedge risk.” The date of the document is June 2008, which fell during the beneficiary’s tenure as a dealing room operator.

On August 21, 2014, the Director issued a request for evidence. The Director questioned whether the Beneficiary “was at the highest level of authority in regards to the accounting function,” because “the submitted organizational chart indicates that she was one of two operators and an intern” two levels of authority below the finance and treasury director. The Director instructed the Petitioner to “submit the entire Form I-129S with which [the Beneficiary] entered in 2010,” and a job description for the position of dealing room operator that has not been prepared specifically to support the present petition.

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In response, [REDACTED] stated that the Beneficiary “was responsible for the essential function of managing [REDACTED] accounting operations” and “influenced the decisions the Finance Committee made with respect to investments strategies.” [REDACTED] stated that the Beneficiary advised “senior level managers and executives” including the chief financial officer of [REDACTED] and the treasurers of several affiliated companies. Elsewhere in her letter, she stated that the Beneficiary “guided and directed the work of senior level managers and executives,” but does not elaborate, the implication being that, by advising certain high level officials, she “guided and directed [their] work.”

[REDACTED] director of management executive, compensation and social benefits at [REDACTED] [REDACTED] signed a November 10, 2014 letter stating that the Beneficiary “was responsible for managing our accounting operations for the entire [REDACTED] organization” and “operated at a senior level within the essential accounting and finance function.” [REDACTED] attested to the following breakdown of the Beneficiary’s duties as a dealing room operator:

- Managed the investment of [REDACTED] \$3 billion Euro [sic] cash surplus . . . (25% of time spent);
- Advised Treasurers . . . about country risk, foreign exchange rate, and appropriate hedging to put in place (25% of time spent);
- Provided direction to Treasurers and the heads of subsidiaries to ensure their market plan and operations complied with goals and policies of the Executive Finance Committee (10% of time spent);
- Responsible for implementing Finance Committee’s monthly strategy for interest rates, foreign currencies, and investing (10% of time spent);
- Advised and managed financial operations for the company including the implementation of a new financing software and database system (10% of time spent);
- Managed and distributed cash surpluses . . . (10% of time spent);
- Responsible for a part of the production of summaries and reports on financial markets for use by the Finance Committee (5% of time spent);
- Controlled spending of [REDACTED] \$3 billion EURO [sic] surplus on investment products by selecting products for investment or producing investment proposals in such projects (5% of time spent);
- Participated in the development of the new information technology system for [REDACTED] front office operations (5% of time spent).

As requested, the Petitioner submitted a copy of the Form I-129S, Nonimmigrant Petition Based on Blanket L Petition, which the Beneficiary submitted to the U.S. Consulate in [REDACTED] in 2010 order to obtain an L-1 visa. The Petitioner stated on the form that it was seeking to classify the Beneficiary as an L-1B specialized knowledge professional to work for the Petitioner in the position of Analyst, Finance and Treasury. The Form I-129S included the following description of the Beneficiary’s role as a Dealing Room Operator:

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[The Beneficiary] advises subsidiaries on financial risk assessment and management. She is responsible for market operations including forex and interest rates. [The Beneficiary] manages cash surpluses. . . . She participates in the development of the new information technology (IT) system for the company's front office. [The Beneficiary] is responsible for the production of documents on financial markets including market flash and market news.

An accompanying letter stated that the Beneficiary "has worked extensively with our proprietary financial reporting system," but did not indicate that she had worked in a managerial capacity in France.

The Petitioner submitted a translated copy of a letter dated July 15, 2009, and signed by the Beneficiary and by [REDACTED]. The translation indicated that the Beneficiary had "been since February 2007 a Trader at [REDACTED] . . . entrusted with assisting the Trader Manager in his duties" (emphasis in original). The trade manager's stated duties included completing financial and securities transactions, executing "decisions made by the Management," and advising management on transactions and financial products. The letter stated that the Beneficiary was authorized to "[i]nitiate any and all market transactions" and to "[c]omplete . . . any and all actions necessary to issue treasury bills, commercial papers or other instruments presenting similar characteristics." The French phrase translated as "Trader" is "*Opérateur Salle des Marchés*." The French phrase translated as "Trader Manager" is "*Responsable Salle des Marchés*."

A job description dated November 11, 2014, indicated that the dealing room operator reports to the head of the dealing room, who reports to the group treasurer, who reports to the chief financial officer. Listed duties include the following examples:

- Advise subsidiaries in financial risk assessment and management
- Produce summary document for the monthly financial meeting
- Take part in the development of financial risk tools
- Analyze and optimize the actual financial structure by geographic zone
- Take active part in the development of the new IT system for the front office
- Transactional banking with 15 key partner banks

Required skills listed on the job description include "[a]bility to work as a team across multiple departments, geographies, and functions" and "[a]bility to work independently."

The Petitioner submitted translated copies of examples of the Beneficiary's work, including reports and electronic mail messages. In several messages, addressed to [REDACTED] the Beneficiary recommended various investments. The messages indicate that the Beneficiary could propose investments, but higher officials had to approve those proposals and clear the transactions. In one message, dated May 30, 2008, the Beneficiary stated: "I don't know if the CACs will accept, but if so, we could invest 170 M€ between the 3 funds."

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In denying the petition, the Director quoted several of the various job descriptions in the record. The Director found that the earliest versions “contain absolutely no claims that [the Beneficiary’s] position abroad involved managing an essential function of her employer’s operations,” and that the Petitioner later changed that description in order to support the present petition. The Director noted that earlier descriptions indicated that “as a trader, her job was to assist the trader manager in his duties” and to “execut[e] decisions made by the management.” The Director concluded that the Petitioner had not established the presence of subordinate employees to relieve the Beneficiary from primarily performing operational functions.

The Petitioner, on appeal, asserted that the earlier letters had been written to support a nonimmigrant petition to classify the Beneficiary as an L-1B intracompany transferee with specialized knowledge, and therefore the writers of those letters emphasized the beneficiary’s specialized knowledge rather than her managerial functions.

In a subsequent brief, the Petitioner maintains that a dealing room operator meets the regulatory definition of a function manager at 8 C.F.R. § 204.5(j)(2), because “[a]s Dealing Room Operator, [the Beneficiary] managed the essential finance and accounting functions of the [redacted]” Asserting that the term “trader” mischaracterized the beneficiary’s position, the Petitioner submits a “Corrected Translation” of the letter signed by the beneficiary and [redacted]. In the new translation, “*Opérateur Salle des Marchés*” is shown as “Dealing Room Operator,” and “*Responsable Salle des Marchés*” translates to “Dealing Room Manager.”

Upon review, and for the reasons stated below, we find that the Petitioner has not established that the Beneficiary’s former position abroad with [redacted] was in a qualifying managerial capacity.

## 2. Analysis

In general, when examining the managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary’s proposed job duties with the petitioning entity. See 8 C.F.R. § 204.5(j)(5). Published case law has determined that the duties themselves will reveal the true nature of the beneficiary’s 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). We then consider a Beneficiary’s job description in the context of the employer’s organizational structure, the duties of the Beneficiary’s subordinates, and any other relevant factors that may contribute to a comprehensive understanding of the beneficiary’s actual duties and role within the company.

In addition, while performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify a beneficiary as long as those tasks are not the majority of the beneficiary’s duties, the Petitioner still has the burden of establishing that the beneficiary is “primarily” performing managerial or executive duties. See Section 101(a)(44) of the Act. Whether a beneficiary is an “activity” or “function” manager turns in part on whether the petitioner has sustained its burden of proving that her/his duties are “primarily” managerial.

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The Petitioner has acknowledged that there are differences in the various job descriptions submitted, but the Petitioner contends that this is because the Beneficiary's specialized knowledge was more relevant to an L-1B nonimmigrant petition, and not because the Beneficiary had no managerial duties abroad. The Petitioner does not support this assertion with new statements from the writers of the documents submitted in support of the Form I-129S, affirming their earlier intentions. 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)).

A shift in emphasis does not account for the differences between the older and newer job descriptions. The earlier descriptions indicated that the Beneficiary assisted a manager, and made recommendations for approval by higher officials. The Beneficiary herself signed a letter indicating that, as a dealing room operator, she reported to the dealing room manager. To say, now, that the Beneficiary "guided and directed the work of senior level managers and executives" is not simply a difference of perspective or emphasis, but rather a change in the fundamental nature of the position.

The Petitioner observes that it had previously "provided . . . [a] detailed percentage breakdown" of the Beneficiary's duties. The Petitioner repeats this list on appeal. The claimed percentages add up to 110% of the beneficiary's time, which suggests some inaccuracy in the assignment of percentages to specific tasks. More importantly, the Petitioner has not shown that the listed duties meet the statutory and regulatory definition of managerial capacity.

One element of that definition requires that the Beneficiary manages the organization, or a department, subdivision, function, or component of the organization. The Petitioner contends that the Beneficiary "was responsible for managing the essential finance and accounting function for the [redacted] organization," and "oversaw the critical accounting and treasury function." See 101(a)(44)(A)(i) and (ii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(1) and (2). However, the record does not support these claims. The Beneficiary was one of two dealing room operators who reported to [redacted] variously identified as "Head of Front Office" and "Dealing Room Manager." The company's "Rules governing financing/treasury management and related risks" indicate that the Dealing Room is one of three divisions of the Treasury and Financing Department, which is one of two divisions of the Financial Services Department. The Beneficiary's own communications indicate that she performed operational functions relating to those finances, obtaining higher-level clearance before making the proposed investments.

The Petitioner has not claimed that the Beneficiary supervised other employees, but rather that she functioned at a senior level within the organizational hierarchy or with respect to the function managed. See section 101(a)(44)(A)(iii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(3). The structure of the Financial Services Department does not support this characterization of her work or her level of authority. The Beneficiary prepared reports for review by higher-level officials, but this does not mean that she "guided and directed the work of senior level managers and executives."

The remaining element of the definition of “managerial capacity” is that the employee exercises direction over the day-to-day operations of the activity or function for which the employee has authority. See section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(4). The record does not show that the Beneficiary had such discretion. The job description which she personally signed indicated that she could “[i]nitiate . . . market transactions” and “issue . . . [financial] instruments,” but only “within the limits assigned” and “authorized by the corporate bodies.” The July 15, 2009 letter indicated that organizational changes had led to a redefinition of the Beneficiary’s duties and powers, but that letter stated that the Beneficiary’s duties primarily involved “assisting the Dealing Room Manager in his duties,” which the letter then discussed in greater detail than the Beneficiary’s own duties. This letter, on its face, demonstrates that the Beneficiary performed operational tasks under the direction of a manager.

Accordingly, we find that the Petitioner did not provide reliable, probative evidence sufficient to establish that the Beneficiary was employed abroad in a qualifying managerial capacity. For this reason, the appeal will be dismissed.

### III. ADDITIONAL ISSUE

Review of the record reveals another ground for denial of the petition. Because we review the record on a *de novo* basis, we may identify additional grounds for denial beyond what the Service Center identified in the initial decision. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Here, the record as presently constituted does not contain evidence of the Petitioner’s ability to pay the Beneficiary’s offered salary.

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.

The Petitioner, on Form I-140, claimed to have 20 employees in the United States, and therefore it cannot rely solely on a statement from a financial officer of the organization.

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The Petitioner submitted a copy of the 2012 “Annual and Sustainability Report” annual report for [REDACTED]. This report does not pertain specifically to the limited liability company that filed the petition. Rather, it is the annual report for the multinational organization headquartered in France. This document does not show that the Petitioner is able to pay the Beneficiary’s intended salary of \$90,000 per year.

In the request for evidence, the Director instructed the Petitioner to “submit the [Petitioner’s] 2012 and 2013 tax returns.” The Petitioner has twice acknowledged that the Director made this request, but has neither submitted the returns nor explained why it has not done so. 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)).

For this additional reason, the petition cannot be approved.

#### IV. 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 V-E-N-A-O-, LLC*, ID# 13723 (AAO Oct. 6, 2015)