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

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

MATTER OF L-G- LLC

DATE: JULY 7, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a provider of litigation support services, seeks to employ the Beneficiary as its production manager under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director, Nebraska Service Center, denied the petition, concluding that the Petitioner had not established that the Beneficiary was employed abroad in a qualifying managerial or executive capacity. The Petitioner subsequently filed an appeal, which we dismissed. The matter is now before us on a motion to reopen.

In its motion, the Petitioner offers additional evidence addressing the main basis for denial of the petition and subsequent dismissal of the appeal. The Petitioner also offers additional evidence addressing other grounds of ineligibility that we noted and briefly discussed in our prior decision.

Upon review, we hereby grant the Petitioner's motion to reopen. Further, after considering the Petitioner's newly submitted evidence, we withdraw our prior decision to dismiss the appeal and remand the matter for further consideration.

I. GROUND FOR DENIAL

As previously stated, the Director denied the petition based on a finding that the Petitioner did not establish that the Beneficiary was employed abroad in a qualifying managerial or executive capacity. While we upheld the Director's decision, our holding was based on the duration of the Beneficiary's employment abroad, rather than the managerial nature of the job duties he performed, as we found that the Beneficiary's job duties with the foreign employer in [REDACTED] met the statutory criteria for managerial capacity.

In support of the motion to reopen, the Petitioner provides supplemental evidence demonstrating that prior to the Beneficiary's employment as production manager with [REDACTED] in [REDACTED] United Kingdom for the seven-month period from September 2008 to March 2009, he was also employed in the position of production manager at [REDACTED] in [REDACTED] United Kingdom from 2007 to

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2008, thus indicating that the Beneficiary was employed abroad for at least one year during the three-year period that preceded his transfer to the United States to work for the petitioning entity. See 8 C.F.R. § 204.5(j)(3)(i)(B). The Petitioner offers sufficient evidence to establish that the job duties the Beneficiary performed during his employment in [REDACTED] were similar in nature to those he performed in his position at the [REDACTED] office such that we can conclude that the Beneficiary was employed abroad for the requisite time period in a managerial capacity.

In view of the supporting evidence submitted in support of the instant motion, we find that the Petitioner has overcome the sole basis which was cited originally in the Director's decision and which we subsequently cited as the basis for our own decision on appeal.

II. GROUNDS FOR REMAND

Notwithstanding our withdrawal of our own adverse decision, which was based on the issue of the length of the Beneficiary's employment abroad, we find that the record does not support approval of the petition based on the evidence of record. As stated in our prior decision, while we dismissed the appeal based on a single ground of ineligibility, we noted that the record showed three additional grounds, which would preclude approval of the petition. Namely, we found that the Petitioner did not provide sufficient evidence to establish that it meets the following statutory and regulatory requirements: (1) the Petitioner has a qualifying relationship with the Beneficiary's employer abroad; (2) the Petitioner had the ability to pay the Beneficiary's proffered wage since the date the petition was filed; and (3) the Petitioner would employ the Beneficiary in a managerial capacity under an approved petition.

Upon reviewing the Petitioner's submission of additional tax returns in support of its motion to reopen, we find that the Petitioner has successfully established its ability to pay the Beneficiary's proffered wage. As such, we find that this issue need not be addressed going forward. However, the Petitioner's additional submissions on motion are still insufficient to establish that the Beneficiary would be employed in a managerial capacity under an approved petition or that the Petitioner has the requisite qualifying relationship with the Beneficiary's former employers in [REDACTED] and [REDACTED].

A. Qualifying Relationship

Although the Petitioner established that the Beneficiary was employed abroad in a managerial or executive capacity for one year in the three years preceding the filing of the petition, the Petitioner has not established that this employment was with a qualifying organization. The issue of the Petitioner's claimed qualifying relationship with the Beneficiary's foreign employer in [REDACTED] and the most recently identified foreign employer in [REDACTED] remains unresolved.

Despite the Petitioner's claim that it started out as the foreign employer's U.S. branch office and ultimately became the foreign entity's subsidiary, the evidence that the Petitioner submits on motion is not consistent with that claim. Rather, the Petitioner's submissions, which include Schedules E and G of its 2012 and 2013 federal tax returns, contain information that is both confusing and

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factually impossible. Namely, while Schedule E of the Petitioner's 2012 and 2013 tax returns both name [REDACTED] as the U.S. entity's officer who devotes 100% of his time to the business of the petitioning entity, neither Schedule E lists [REDACTED] as having any stock ownership in the entity where he served as an officer during the 2012 and 2013 tax years. In contrast to the information provided in Schedule E, Schedule G of both tax returns list [REDACTED] and [REDACTED] each, as owner of 100% of the Petitioner's voting stock. The Petitioner confuses matters further in the 2012 Schedule G by listing the foreign entity – [REDACTED] as a third owner, also holding 100% of the Petitioner's voting stock, while Schedule G of the 2013 tax return adds a second entity – [REDACTED] of Australia – to the list of owners holding a 100% ownership interest in the petitioning entity to show that two individuals and two entities each own 100% of its stock. As noted above, it is factually impossible for more than a single individual or entity to solely own 100% of one entity. We are therefore left with no meaningful understanding of which individual(s) or enterprise(s) actually own(s) the Petitioner's stock. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The information provided in the Petitioner's 2012 and 2013 tax returns does not establish that the Petitioner is either a branch or a subsidiary of [REDACTED] or [REDACTED] offices. Moreover, while the Petitioner claims that the [REDACTED] and [REDACTED] offices share common ownership, it does not explain or provide any substantiating evidence establishing the specific nature of the affiliation, if any, that may exist between these two offices or with the Petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (quoting *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

B. U.S. Employment in a Managerial or Executive Capacity

Next, we will address the issue of the Beneficiary's employment capacity in his proposed position as the Petitioner's production manager.

The record shows that the additional evidence on motion includes a supplemental job description and flow chart citing specific job duties that would be assigned to the Beneficiary. While we acknowledge that the Petitioner provided a more detailed job description, thus adequately addressing our concerns with regard to deficient job description that was previously submitted, we find that the additional submissions on motion do not address other deficiencies and anomalies that we previously discussed. Namely, the record continues to lack the names and job titles of all employees and contractors within the Beneficiary's immediate division, department, or team, as requested in the Director's Request for Evidence (RFE), dated June 24, 2014.

As noted in our prior decision, the organizational chart that the Petitioner provided in its RFE response did not name anyone other than the Beneficiary in the global operations department, even though the chart shows a vice president directly overseeing the Beneficiary, as well as a technical client services analyst as the Beneficiary's direct subordinate. The Petitioner's new submissions also

do not explain which employees would constitute the “operational staff” the Beneficiary is claimed to be overseeing. While the Petitioner claims that it is in search of another technical support analyst to assist the one it claims to currently employ, we note that only those facts and circumstances that existed at the time of filing will be considered in determining the Petitioner’s eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971).

We further find that the Petitioner’s latest submissions do not include the names of contractors used within the Beneficiary’s department, despite the Petitioner’s earlier reference to “a team of investigators to collect data onsite at a client’s premises.” As we noted in our prior decision, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Despite the RFE, in which the Director asked the Petitioner to submit this additional evidence, and our observations on appeal, where we noted that the Petitioner did not comply with a portion of the RFE, the evidence on motion does not address the lack of evidence demonstrating the Petitioner’s hiring of “a team of investigators” and its employment of an “operational staff.” While the Petitioner provided examples of email correspondences between the Beneficiary and various other individuals on motion, such submissions do not identify the Beneficiary’s claimed support staff or their positions within the organization

Nor does the Petitioner’s current motion resolve inconsistencies we noted between the job description that the Petitioner provided in its RFE response and the job description that the Petitioner initially provided in its supporting statement. Namely, while the initial description attributed various non-managerial and non-executive tasks – developing client relations and providing customer service, developing project enhancement tools, conducting research to improve work practices, producing employee manuals and training tools, conducting market research, providing clients with software training, and consulting clients regarding best practices and technology solutions – to the Beneficiary’s proposed position, the Petitioner removed these non-qualifying duties from the RFE description without explanation. The Petitioner’s motion does not address or resolve the inconsistencies of the submitted position descriptions.

III. CONCLUSION

In order to determine whether the Petitioner is eligible for the immigrant classification sought herein, additional evidence is required. Accordingly, the instant matter must be remanded to the Director for the purpose of allowing the Petitioner the opportunity to supplement the record with evidence that may resolve the above inconsistencies and address the deficiencies described herein.

ORDER: The motion to reopen is granted, and the matter is remanded to the Director, Nebraska Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of L-G- LLC*, ID# 17486 (AAO July 7, 2016)