



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

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

MATTER OF USM-T-, INC.

DATE: NOV. 22, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a telecommunications services company, seeks to permanently employ the Beneficiary as its information technology director 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, Texas Service Center, denied the petition, concluding that the evidence of record did not establish that the Beneficiary will be employed in the United States in a managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred by misstating the nature of the Beneficiary's duties, and by imposing too high a standard of proof.

Upon *de novo* review, we will dismiss the appeal.

Before we address the merits of the case, we note the Petitioner's procedural objection on appeal. The Petitioner asserts that the Director repeatedly cited stock language without explaining how these assertions show the Beneficiary to be ineligible for the classification sought. The Petitioner noted a clear example of "cut and paste" language in the denial: "you have not established that the beneficiary [HAS BEEN / WILL BE] employed in a managerial capacity."

The Director's use of stock language is not a sign of lack of attention to detail, but rather a necessity caused by the volume of cases to be decided. The statute, regulations, and basic case law are the same for all multinational manager/executive petitions, and therefore the judicious use of prepared language is a sensible time-saving measure. The inclusion of "[HAS BEEN / WILL BE]" is an error, but it is not a substantive error such that it discredits the decision or prejudiced its outcome.

**I. LEGAL FRAMEWORK**

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. A labor certification is not required for this classification.

The regulation at 8 C.F.R. § 204.5(j)(3) states:

- (3) Initial evidence—
  - (i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:
    - (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
    - (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
    - (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

- (D) The prospective United States employer has been doing business for at least one year.

## II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity. The Petitioner does not claim that it will employ the Beneficiary in an executive capacity. Therefore, we restrict our analysis to whether the Petitioner will employ the Beneficiary in a managerial capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term “managerial capacity” as “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.

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, 8 U.S.C. § 1101(a)(44)(C).

The regulation at 8 C.F.R. § 204.5(j)(5) requires the Petitioner to submit a statement which indicates that the Beneficiary is to be employed in the United States in a managerial or executive capacity. The statement must clearly describe the duties to be performed by the Beneficiary.

The Petitioner filed Form I-140 on July 14, 2015. On the Form I-140, asked to specify its number of U.S. employees, the Petitioner answered that it had two employees in the United States and 63

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employees worldwide. The latter figure includes 61 people employed not by the Petitioner, but by the Beneficiary's former employer in Brazil [REDACTED]. The Brazilian company is not the petitioning U.S. employer, and its employees are not the Petitioner's employees. The Petitioner initially identified [REDACTED] as the Petitioner's parent company, but later changed that claim. We will discuss this issue later in this decision.

When examining the executive or managerial capacity of a given beneficiary, we will look first to the petitioner's description of the job duties. The Petitioner's description of the job duties must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *See* 8 C.F.R. § 204.5(j)(5).

The Petitioner listed the Beneficiary's duties with the petitioning company:

- Responsible for managing all aspects of information technology (IT) functions worldwide, including management of IT staff, contractors, facilities and projects;
- Manage all IT systems and supervise the implementation of Business Intelligence, BigData Solutions, Billing and Enterprise Resource Planning software;
- Manage worldwide staff by leading and influencing; encourage and develop plans for career and professional development; create opportunities for employees to gain work experience utilizing new skills.
- Manage outside contractors performing essential IT functions.
- Manage the design, installation, modification, migration and operation of information technology and/or communications equipment or services for the [Petitioner] worldwide;
- Provide project management oversight and manage all IT contractors in U.S. and worldwide: develop, maintain and communicate project plans and schedules, allocate resources, assign tasks, prioritize requirements, provide reports and communicate progress to senior management. Adjust project plans with changes in technology or environment.
- Plan and recommend purchase of information technology hardware, software, peripherals, or services.
- Evaluate vendor proposals or technology products and recommend new technologies that will achieve efficiencies, provide additional capabilities, enhance current processes, or eliminate risks. Ensure the vendor products and services meet the technical specifications and policies set by the organization.
- Coordinate and allocate staff and outside contractor resources ensuring consistent, high quality operation of the department.
- Communicate/facilitate organizational goals; apply delegation strategies to increase productivity.
- Develop and implement departmental standards, policies and procedures. Set standards and solicit feedback to ensure effective use of resources. Issues are addressed timely, competently and to the customer's satisfaction.

Communicate administrative policies, procedures and updates to staff and ensures adherence to established organizational policies and procedures.

- Authorizes budgeted expenditures and ensure proper accounting practices to conform to organizational requirements.

In a request for evidence (RFE), the Director asked for further information about the Beneficiary's duties. In response, the Petitioner submitted a new list of the Beneficiary's duties:

- Manage and supervis[e] the outsource vendors to find solutions for managing business activities;
- Manage the outsourcing contracts. . . .
- Manage the effective delivery of networks, development, disaster recovery systems and processes;
- Oversee technical projects;
- Work with key shareholders to formulate a comprehensive technology plan;
- Facilitate communication between staff, management, vendors, and other technology resources within and outside of the organization. Shares highly complex information related to areas of expertise. Interacts with shareholders to keep abreast of objectives;
- Researching and recommending new products;
- Identifying new market opportunities;
- Leading efforts to improve IT processes;
- Utilize project management experience to lead various global and regional projects;
- Manage project planning, outsourcing of staff, schedule and expenses;
- Oversee everyday project operations to ensure timely delivery;
- Oversee the availability of application and infrastructure for project execution;
- Identify and assign resources to IT projects;
- Evaluate project proposals and change requests and make necessary recommendations for approval or rejection of proposals;
- Provide analytical directions to project team;
- Maintain[] staff by recruiting, selecting, orienting, and training employees; maintaining a safe, secure, and legal work environment; developing personal growth opportunities;
- Accomplish[] staff results by communicating job expectations; planning, monitoring, and appraising job results; coaching, counseling, and disciplining employees; developing, coordinating, and enforcing systems, policies, procedures, and productivity standards; and
- Supervis[e] and maintain[] quality service by enforcing quality and customer service standards.

The Petitioner assigned the following percentages to the time the Beneficiary spends on various responsibilities:

Outsources Management	38%
Project Management	26%
Resources Management	17%
Evaluate Project deliveries	9%
Agreements Management	5%
Research new Products	5%

Some of the tasks on the new list are non-qualifying, such as researching new products and training new employees. The Petitioner did not establish the extent to which these non-qualifying activities occupy the Beneficiary's time.

Other tasks are worded so broadly and vaguely that they do not identify the Beneficiary's actual tasks. Examples of this type include "[l]eading efforts to improve IT processes," "enforcing quality and customer service standards," and "[o]versee technical projects." The use of terms such as "leading" and "oversee" indicates a leadership role, but does not convey an idea of what specific tasks this leadership entails. "Identifying new market opportunities" and "maintaining a safe, secure, and legal work environment" are general goals rather than identifiable tasks that the Beneficiary would perform in order to reach those goals.

The record contains materials regarding various vendors, but no documentary evidence to show the nature or extent of the Beneficiary's work with those vendors. An organizational chart lists six workers in Brazil whom the Petitioner has identified as the Beneficiary's subordinates, but the record does not directly demonstrate that they report directly to the Beneficiary. We will discuss the staffing issue in greater detail further below. The Petitioner has provided details about specific projects the Beneficiary undertook in Brazil in 2011 and 2012, but no comparable evidence regarding his subsequent work in the United States.

The Director, in denying the petition, stated that the job description in the RFE response combined identifiable tasks with general categories, and that the percentage breakdown only addressed broad categories without showing how much time the Beneficiary devoted to specific tasks.

On appeal, the Petitioner states that the Director relied on "regulatory platitudes" "without any reference to the evidence on the record." The Petitioner repeats part of the job description submitted in response to the RFE, and reproduces the percentage breakdown submitted at that time, but does not address the specific deficiencies that the Director had cited in the denial notice. The Petitioner provides no further clarification regarding the Beneficiary's duties.

The record shows that the Petitioner has provided substantially more information about the Beneficiary's former duties in Brazil than his current work in the United States. The Director found the U.S. job description to be inadequate, and the Petitioner did not remedy the problem by repeating part of that job description. Much of the job description contains highly generalized language, as

discussed above, and therefore the description provides little information about what, exactly, the Beneficiary actually does on a daily basis.

For the above reasons, we find that the Petitioner has not adequately described the Beneficiary's intended U.S. duties as required by 8 C.F.R. § 204.5(j)(5).

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Section 101(a)(44)(A)(iv) of the Act plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. See 8 C.F.R. § 204.5(j)(2).

To determine whether the Beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor.<sup>1</sup> The Petitioner stated that six workers in Brazil, with the following titles and levels of education, report directly to the Beneficiary:

- Datacenter Director (M.S., Computer Science)  
Responsible for manag[ing] all the datacenter technicians and level 3 support team in the Brazilian datacenter.
- IT Manager/Senior Systems Support Analyst (B.A., Computer Science)  
Responsible to coordinate the support level 3 to Windows Server, Linux infrastructure, network and security and manage new products.
- International Billing Analyst (B.A., International Relations; later IT-related coursework)

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<sup>1</sup> Cf. 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

Coordinate the International billing and billing analysis. Responsible for communicating with customers and suppliers at the account management level. Coordinate payments and receivables, issuing and solving disputes.

- Analyst Telecom (IT-related coursework, degree not specified)  
Responsible for incoming support requests from customers and from the company itself . . . , and the primary follow up. Manage the first level routing and the route tests.
- System Administrator (certified Network Management Technologist)  
System administrator and support level 3 for: Windows Server, Linux systems, Windows storage, Hiper-V, VMware, SQL Server, MySQL, Exchange, Postfix and ZPanel e-mail systems administration. Implement the network security incident management and the firewall administration and auditing.
- Technical Coordinator of Telecommunications and NOC Coordinator (high school)  
Coordinate technical and engineering relationship with international customers. Responsible for the level 3 support for Telecommunication issues with: Interconnections, provisioning, routing, Cisco platforms, Soft Switches (Mera MVTS II), PBX and asterisks.

The Petitioner described the first five of the above positions as professional. The capsule job descriptions for the positions listed above, but did not provide enough information to show that the positions qualify as professional. Many IT-related occupations are professional, but others are not, as the Petitioner acknowledged when it asserted that only five of the Beneficiary's six named subordinates worked in a professional occupation. Only three of the submitted résumés refer to bachelor's or master's degrees, and one of those degrees is in a field unrelated to IT.

The Petitioner indicated that the datacenter director has a managerial or at least supervisory role. The Beneficiary's authority over a manager or supervisor would fit part of the definition of a managerial capacity, but the Petitioner has not established that the Beneficiary's oversight over the datacenter director rises to a level that would make his work *primarily* managerial as the law requires.

Also, the Petitioner submitted no direct evidence to show that the foreign company currently employs the listed workers or that the Beneficiary is their manager.

The Petitioner also asserted that the Beneficiary manages several contractors in the United States and elsewhere, who are responsible for various technical issues. The Petitioner submitted a list of "Vendors Managed by [the Beneficiary]," along with various documents relating to each vendor:



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- [REDACTED] The Petitioner submitted background information about [REDACTED] of the Americas data center, but no evidence showing that any staff at the data center answer to the Beneficiary.
- [REDACTED] A “Dedicated Internet Access Customer Order Form” identified the Petitioner as a customer that had ordered [REDACTED] to be delivered via [REDACTED] of the Americas. The customer order form identifies various points of contact, but the Beneficiary is not among them. The order form shows a New York billing address for the Petitioner, but both of the Petitioner’s two employees are in Florida. The order form indicates that the Petitioner pays a \$365 monthly fee for [REDACTED] for internet access; it identifies no other service provided to the Petitioner.
- [REDACTED] An invoice shows the Petitioner’s purchase of a year’s support for the [REDACTED] monitoring suite” for \$2,070.
- [REDACTED] The Petitioner initially submitted a template contract, in which [REDACTED] agreed to the use of its proprietary software for “administrative management in the area of international traffic exchange in telecommunications.” The contract has blank lines for the name of the client, price, and other information, and therefore it is not evidence that the Petitioner has actually executed a contract with [REDACTED].
- [REDACTED] A service agreement indicates that [REDACTED] will handle “issues with VoIP traffic flow” for “20 hours per week,” at a cost of \$1,000 per month.
- [REDACTED] and [REDACTED] The Petitioner submitted printouts from these companies’ websites, but no documentation of business transactions.

The submitted evidence does not always show which of the contracted support services relate to the Petitioner’s own needs, rather than services that the Petitioner provides to its customers. The Beneficiary’s name is not on any of the vendor documents.

In the RFE, the Director asked why the Petitioner seeks to employ the Beneficiary in the United States if all of his subordinates are in Brazil. In response, the Petitioner stated that, because the Beneficiary’s subordinates are in Brazil, “the Beneficiary will be *more* of a *multinational* manager than if he were managing employees solely in the United States.” The Petitioner asserted that, with modern communication equipment, the Beneficiary’s “physical presence in Brazil is not necessary.”

The Petitioner submitted copies of invoices, dating from December 2015 and January 2016, from [REDACTED] and [REDACTED]. These materials show that the Petitioner purchases services from those vendors, but they do not support the claim that the Beneficiary has managerial authority over the vendors. Also, they do not establish the extent through which the Petitioner provides its services through those vendors.

In denying the petition, the Director stated:

The beneficiary is in the business of selling the petitioner’s product. . . . In order to market and sell a product . . . , the product or service must become known (advertising), the proper customers must be identified (marketing research), the

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product must be sold (sales), and some type of follow-up is generally performed (customer service). All these tasks are non-managerial. It was not identified who performs these tasks.

On appeal, the Petitioner states that the Director mischaracterized the Beneficiary's work as "selling the petitioner's product," and that the question of who, other than the Beneficiary, handles functions related to sales and marketing is irrelevant.

The foreign entity's organizational chart shows a five-person sales staff working under the direction of the foreign company's chief operating officer. The record contains no evidence of sales or marketing activity in the United States that could be attributed to the Beneficiary. Indeed, the record documents little activity in the United States apart from the Petitioner's payments to vendors.

The Petitioner asserts that its small staff size, and its reliance on overseas labor to perform its operational functions, do not inherently disqualify the Beneficiary for the benefit sought. The Director, however, did not base the denial solely or primarily on the size of the Petitioner's staff. The record is deficient with regard to the Beneficiary's ongoing role with the company and his relationship to his claimed subordinates.

In this respect, the Director stated: "It is uncertain how [the Beneficiary] recruited, selected[,] oriented, and trained employees in Brazil while working in the United States." The Petitioner has not addressed this issue on appeal. One of the Beneficiary's job descriptions refers to "recruiting" and "selecting . . . employees," but it does strongly establish that the Beneficiary has the authority to hire, fire, or recommend personnel actions. As the Director noted, hiring and supervising over a long distance raise challenges that high-speed communications such as videoconferencing do not solve, and the Petitioner has not addressed this issue except to state that the Beneficiary need not be in the same country as his subordinates. This is true, but the Petitioner nevertheless must establish how the Beneficiary exercises managerial authority over the subordinates.

The Petitioner has acknowledged that it does not employ any of the Beneficiary's claimed subordinates. Instead, they work for a separate company, [REDACTED] and the Petitioner has not shown that the Beneficiary has the authority to make or recommend hiring or personnel decisions for the foreign company's employees.

For the above reasons, the Petitioner has not established that it seeks to employ the Beneficiary as a personnel manager.

The Petitioner has not established, in the alternative, that the Beneficiary will be employed primarily as a "function manager" whose managerial role arises not from supervising or controlling the work of a subordinate staff but instead from responsibility for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. The Petitioner has not claimed that it seeks to employ the Beneficiary as a function manager. Rather, the Petitioner has consistently linked the claim of managerial capacity to the Beneficiary's oversight of subordinates and vendors.

Deficiencies in the Beneficiary's job description, already discussed, preclude a *de novo* finding that the Beneficiary will be a function manager.

The Petitioner contends that it has met its burden to establish eligibility by a preponderance of the evidence. The "preponderance of the evidence" standard requires that the evidence demonstrate that the Petitioner's claim is "probably true," basing the determination of "truth" on the factual circumstances of each individual case. See *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)). In evaluating the evidence, we determine the truth not only by the quantity of evidence but also by its quality. Thus, in adjudicating the petition based on 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 a given claim of fact is probably true. *Id.*

In appropriate cases, the Director may request additional evidence. 8 C.F.R. § 204.5(j)(3)(ii). In this instance, the Director issued an RFE, putting the Petitioner on notice that the submitted evidence was not sufficient to meet the Petitioner's burden of proof. The Petitioner responded with a new job description and some new vendor invoices, but with respect to the Beneficiary's claimed role as the supervisor of professional subordinates, the Petitioner has provided names and titles without corroborating evidence to confirm their duties, their relationship to the Petitioner, or even their employment during the time that the Beneficiary has been in the United States. The record does not support the Petitioner's assertion that it has met its burden of proof by a preponderance of the evidence.

Based on the deficiencies discussed above, the Petitioner has not established that it will employ the Beneficiary in a managerial capacity in the United States.

### III. QUALIFYING RELATIONSHIP

Beyond the Director's decision, the record indicates that the Petitioner has not 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 section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(C).

The pertinent regulations at 8 C.F.R. § 204.5(j)(2) define the relevant terms. Generally, the term "affiliate" means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual; [or]

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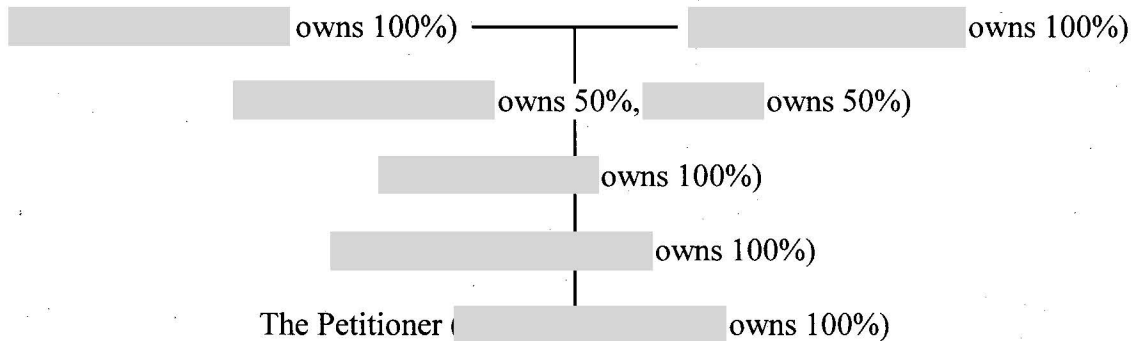
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(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. . . .

The same regulation defines a “subsidiary” as:

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

Initially, the Petitioner claimed to be a wholly owned subsidiary of [redacted] in Brazil. In his initial letter, [redacted] chief executive officer of both the Petitioner and the foreign company, [redacted] stated that on December 14, 2011, “companies owned by [redacted] and [redacted] jointly purchased all shares of [redacted] “the parent company of [redacted] The Petitioner submitted a chart of the claimed ownership structure:



The Petitioner’s articles of incorporation, dated November 27, 2006, show [redacted] as the sole shareholder. The Petitioner’s initial submission, however, did not document any of the other links shown in the above chart.

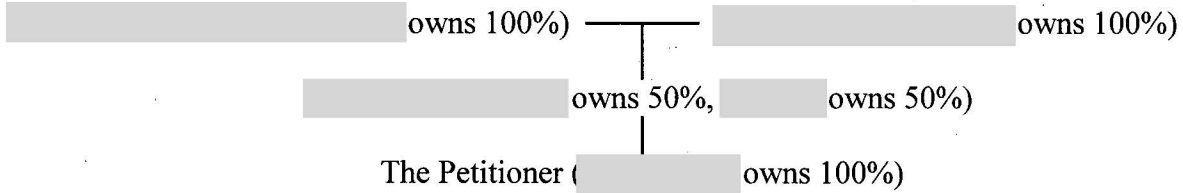
In the RFE, the Director requested additional evidence of the Petitioner’s ownership and its qualifying relationship with the Beneficiary’s former foreign employer, such as copies of the Petitioner’s stock certificates, stock ledger, and proof of stock purchase. In response, the Petitioner stated that [redacted] is the Petitioner’s affiliate, rather than its parent company as previously claimed.

[redacted] owns 100% of the shares of [redacted] according to the latter company’s articles of incorporation. Earlier, the Petitioner had identified [redacted] as the sole owner of [redacted] without specifying whether this referred to [redacted] or [redacted] Copies of share certificates, dated November 30, 2011, indicate that [redacted]

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[redacted] and [redacted] (not [redacted] as previously spelled) [redacted] each own 50% of [redacted]

The Petitioner submitted a copy of its share certificate #001, issued on April 28, 2012, showing that [redacted] owns all 1000 of the Petitioner's issued shares. This is consistent with Federal Communications Commission documents from July 23, 2015, which show the following chain of ownership, as reported by the Petitioner in a license application:



The above evidence contradicts the prior claim that [redacted] owned the Petitioner indirectly through [redacted] and [redacted]

[redacted] signed a letter dated February 26, 2016, asserting that [redacted] is the Petitioner's "90% Brazilian affiliate," rather than its owner as the Petitioner had previously claimed. [redacted] stated that [redacted] owns 90% of [redacted] which, in turn, owns 90% of [redacted] [redacted] acknowledged that the new description of the companies' ownership structure does not match the original description, but he called the discrepancy "a minor, nonsubstantive error."

The Petitioner has not documented the foreign company's revised chain of ownership: A resolution dated November 30, 2011, and a purchase agreement dated December 5, 2011, authorized [redacted] "to acquire . . . the quotas of [redacted] . . . which in turn owns 90% of the capital stock of [redacted] . . . , which in turn owns 100% of [the petitioning] corporation." The documents do not establish that the purchase occurred; only that the parties agreed to the purchase. The purchase agreement specified the prices to be paid, but the Petitioner did not document any corresponding transfer of funds. Furthermore, a purchase agreement executed by [redacted] is not first-hand evidence that [redacted] actually owned a controlling interest in [redacted]

The Petitioner has not submitted any stock certificates, stock ledger, or comparable documentation to show, first-hand, who owns [redacted] or [redacted] These gaps in the evidence are particularly significant because the Petitioner had previously claimed a different ownership structure, until the Director asked for documentary proof of that structure.

The Petitioner has not established that [redacted] is the ultimate parent entity of both the Petitioner and [redacted] Therefore, the Petitioner has not established that a qualifying relationship existed between the companies at the time of filing, and continues to exist today.

#### IV. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of USM-T-, Inc.*, ID# 99078 (AAO Nov. 22, 2016)