



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

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

MATTER OF M-C- LLC

DATE: JAN. 18, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a product distribution and trading company, seeks to permanently employ the Beneficiary as its president and chief executive officer 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 of the Texas Service Center denied the petition on multiple grounds. First, the Director concluded that the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's foreign employer. Further, the Director concluded that the Petitioner did not demonstrate that the Beneficiary would be employed in the United States in a managerial or executive capacity. The Director also concluded that the Petitioner did not establish that the Beneficiary had been employed abroad in a managerial or executive capacity.

On appeal, the Petitioner contends that the Director erred in denying the petition and asserts that the submitted evidence demonstrates the Beneficiary's eligibility.

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

I. LEGAL FRAMEWORK

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

“Managerial capacity” means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; 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; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

The statute defines an “executive capacity” as an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

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) takes 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.

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

We will first analyze whether the Petitioner has established that the Beneficiary would be employed in a managerial or executive capacity in the United States.

In the denial decision, the Director concluded that the Beneficiary’s duty description was overly vague and did not reflect her actual day-to-day tasks. Further, the Director emphasized that the Petitioner had only two employees at the time the petition was filed, including the Beneficiary. The Director concluded that, given the Petitioner’s limited staff, the Beneficiary more likely than not will primarily perform non-qualifying operational duties. The Director also determined that the Petitioner did not demonstrate that the Beneficiary would supervise professional subordinates as asserted.

On appeal, the Petitioner asserts that the Director ignored specific job duties included in the Beneficiary’s job description and failed to consider the totality of the evidence. The Petitioner states that it plans to hire additional employees and contends that the Director failed to take this responsibility under consideration as one of the Beneficiary’s primary duties. Further, the Petitioner states that the Director erroneously concluded that the Beneficiary’s lone subordinate is not a professional.

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. Beyond the required description of the job duties, USCIS reviews the totality of the evidence 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. Accordingly, our analysis of this issue will focus on the Beneficiary's duties as well as the company's business activities and staffing levels.

A. Duties

The Petitioner must show that the Beneficiary will perform certain high-level responsibilities consistent with the statutory definitions of managerial or executive capacity. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). In addition, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. See *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

In response to a request for evidence (RFE), the Petitioner stated that the Beneficiary, as president and chief executive officer of its distribution and trading company, would be "responsible for establishing revenue goals and planning the Company's expansion" and that she would approve "budgets and ensures that resources are properly allocated." The Petitioner indicated that the Beneficiary would be tasked with implementing the "goals, mission and administrative and operative policies and procedures of the Company" and that she "updates policies and communicates to the managerial team." Further, the Petitioner stated that the Beneficiary "meets and negotiates with investors, financial institutions, and other business partners" and "coordinates implementation of strategic plans and procedures." The Petitioner also explained that the Beneficiary "decides on changes to current product lines," "decides on the implementation of business opportunities," reviews "performance indicators of each department," and develops "new marketing methods." In addition, the Petitioner stated that the Beneficiary establishes "controls to minimize risks and maximize returns of resources," "establishes cost allocation, investment, and acquisition policies," approves "commercial strategies and sales and marketing plans," and approves company purchase orders.

The Petitioner also indicated that the Beneficiary will be tasked with overseeing "activities related to human resources management, organizational structure, performance evaluation, professional development, motivation, layoff, HHRR policies, and other administrative tasks." The Petitioner explained that the Beneficiary will be responsible for approving contracts, meeting with her sales and marketing manager to expand the company "through agreements," negotiating with "the biggest prospective clients," and ensuring that "Company's policies are aligned with customers' needs."

We agree with the Director's determination that the Petitioner has provided only a broad overview of the Beneficiary's general responsibilities and level of authority without identifying the nature of her

actual day-to-day tasks. The Petitioner vaguely stated that the Beneficiary would be responsible for various general duties that could apply to any manager or executive employed by any company in any industry. The Petitioner asserts on appeal that the Director ignored specifics set forth in her duties. However, it has provided few examples and little supporting evidence to substantiate policies and procedures she has implemented, investors or business partners she has negotiated with, product lines she has changed, business opportunities she has pursued, performance indicators she has reviewed, marketing methods she has developed, financial controls she has established, sales and marketing plans she has approved, or client negotiations she has carried out. This lack of detail is particularly questionable given that the Beneficiary has been acting in her current capacity in the United States since December 2014. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). While the stated responsibilities suggest that the Beneficiary is the senior employee in the company, the provided description lacked meaningful information regarding what she would actually be doing as part of her day-to-day routine.

Moreover, the Petitioner has submitted documentary evidence indicating that the Beneficiary performs non-qualifying operational duties that it did not include in its description of her position. For instance, the Petitioner provided documentation indicating that the Beneficiary attended several trade shows and received commissions for completing sales for third party suppliers. The Petitioner submitted emails reflecting that the Beneficiary has been cold calling potential clients, arranging quotations for specific client orders, and sending a series of form emails to potential clients on behalf of a supplier. The Petitioner also provided invoices and checks indicating that the Beneficiary pays the company's rent on a monthly basis.

In sum, the submitted documentation suggests that the Beneficiary is, and will be, responsible for many operational aspects of the business, and it has provided little evidence to substantiate that she will delegate these tasks to subordinates. The evidence does not indicate, as of the date of the petition, that the Beneficiary has been removed from performing non-qualifying operational tasks and that she primarily spends her time focusing on managerial or executive level duties. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in an executive capacity. *See, e.g.*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The Petitioner also does not document what proportion of the Beneficiary's duties would be executive or managerial functions and what proportion would be non-qualifying. As noted, the vaguely stated duties make no reference to the non-qualifying operational tasks reflected in the submitted documentation. The record reflects that the Beneficiary is significantly involved in non-managerial activities consistent with a sales representative, but it does not quantify the time the Beneficiary spends on these duties. This lack of detail is important because, as we have discussed, the record includes considerable evidence reflecting the Beneficiary's performance of non-qualifying

operational tasks that do not fall directly under executive or managerial duties as defined in the statute. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of an executive. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as a multinational manager or executive. By statute, eligibility for this classification requires that the duties of a position be “primarily” executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. Even though the Beneficiary may exercise discretion over the Petitioner’s day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial in nature.

As discussed further below, the record does not support the Petitioner’s claim that it had a sufficient subordinate staff to relieve the Beneficiary from involvement in the day-to-day operations of the business at the time the petition was filed, and we cannot determine how much time the Beneficiary would reasonably devote to qualifying managerial or executive duties.

B. Staffing and Business Activities

The Petitioner stated on the Form I-140 that it had four employees at the time of filing in June 2016. A submitted organizational chart provided at this time reflected that the Beneficiary supervised a sales and marketing manager, an administrative assistant/human resources/sales personnel director, and a purchasing manager. Further, attachments to this organizational chart indicated that the sales and marketing manager oversaw six sales representatives assigned to different countries in Latin America and also reflected that a sales and marketing representative assigned to Venezuela supervised eight sales and marketing employees.

In response to the Director’s RFE in January 2017 the Petitioner provided an updated organizational chart. The chart reflected that the Beneficiary supervised an operations and purchasing manager, who in turn oversaw an administrative and human resources assistant and a logistics assistant “to be hired.” The chart also showed that the Beneficiary oversaw a sales and marketing manager who supervised two sales representatives, five “independent” sales and marketing representatives assigned to Guatemala, the Dominican Republic, Colombia, Venezuela, and Puerto Rico, and a sales and marketing assistant “to be hired.” The chart further reflected that the Beneficiary supervised an “outsourced accountant.”

The Petitioner submitted state and federal tax documentation that does not support its claimed organizational structure as of the date of filing. We note that the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). The Petitioner submitted a Florida Employer’s Quarterly Report for the first quarter of 2016 indicating that it had four employees during January, but only two by March 2016. A Florida Employer’s Quarterly Report for the second

quarter of 2016, corresponding with the petition's filing date, indicated that the Petitioner only had two employees during the entire quarter, including the Beneficiary and the administrative assistant. As such, the submitted evidence for the second quarter of 2016 indicated that the Petitioner did not employ the Beneficiary's claimed managerial and professional subordinates when the petition was filed.

The Petitioner also provided a Florida Employer's Quarterly Report for the fourth quarter of 2016 reflecting that it only had two employees during October and November, and four in December 2016. As such, the Petitioner's submitted tax documentation indicated that the Beneficiary had only one subordinate as of the date of the petition and reflected that it did not hire additional employees until approximately six months after filing. Further, it is also notable that the Petitioner submits little supporting documentation to substantiate that it has five sales and marketing representatives located in different countries who work for the Beneficiary and support the Petitioner's operations. Likewise, the Petitioner provides little documentation to corroborate that the Beneficiary is primarily delegating non-qualifying duties to subordinates. In fact, as we have discussed, there is substantial evidence to indicate that the Beneficiary is primarily engaged in performing the duties attributed to her claimed subordinate sales representatives.

On appeal, the Petitioner contends that we should consider its future hiring plans and the Beneficiary's focus on this responsibility under an approved petition. As stated, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). As such, the Petitioner's future hiring plans and, the Beneficiary's prospective responsibility for hiring future employees, are not relevant to establishing her eligibility as of the date of the petition. The Petitioner must show that it was capable of supporting the Beneficiary in a qualifying managerial or executive capacity when the petition was filed.

Further, the Petitioner asserts on appeal that the Beneficiary supervises professional subordinates, specifically, it points to the claimed sales and marketing manager and indicates that she holds a degree in business administration. 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. Contrary to the common understanding of the word "manager," the statute 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." 8 C.F.R. § 204.5(j)(4)(i).

As we have discussed, the Petitioner's tax documentation reflects that it did not employ the sales and marketing manager at the time of filing, although it appears that this employee re-appeared on the company's payroll in December 2016, approximately six months later. Likewise, the tax documentation does not support that the Petitioner employed any other managerial or professional subordinates at the time of filing., nor does it show that the company employed the lower-level employees identified on the organizational charts. In short, the Petitioner has not established that the

Beneficiary would qualify as a personnel manager based on her supervision of subordinate managers or supervisors.

Moreover, even if the Petitioner had demonstrated that it employed the Beneficiary's claimed professional subordinates as of the date of the petition, it has not articulated or supported that these subordinate positions are professional. In evaluating whether a 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. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, 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."

We acknowledge that the claimed sales and marketing manager has a degree in business administration from a U.S. university. Further, the Petitioner provides an untranslated degree certificate it asserts as a degree in business administration earned by the claimed purchasing manager. However, the Petitioner does not articulate why a degree in business administration is required for these positions. The duties of these positions are vague and do not convey that a specific bachelor's degree is required. For instance, the duties submitted for the purchasing and sales and marketing managers largely overlap, leaving question as to their credibility. Further, they include few specifics. The Petitioner has not credibly demonstrated that the positions subordinate to the Beneficiary, even if filled at the time of the petition, are professional level positions. Therefore, for this additional reason, the Petitioner has not established that the Beneficiary qualifies as a personnel manager.

The Petitioner correctly observes that we must take into account the reasonable needs of the organization and that a company's size alone may not be the only factor in denying a visa petition for classification as a multinational manager or executive. *See* section 101(a)(44)(C) of the Act. However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company or a company that does not conduct business in a regular and continuous manner. *Family Inc.* at 469 F.3d 1313; *Systronics Corp.* at 153 F. Supp. 2d 7, 15. The size of a company may be especially relevant when USCIS notes discrepancies in the record. *Id.*

As discussed, there is substantial question as to whether the Petitioner was sufficiently operational as of the date of the petition to support the Beneficiary in a qualifying managerial or executive capacity. It only had two employees, including the Beneficiary, at this time. Further, the Petitioner has not clearly articulated the type of business it conducts in the United States and it has not submitted sufficient evidence to indicate that it is regularly doing business. For instance, a 2015 IRS Form 1120X Amended U.S. Corporation Income Tax Return indicates that the Petitioner earned only \$105,764 in revenue during that year, and it provides little other evidence to reflect sufficient operations to sustain the Beneficiary and her claimed subordinates in their roles. Indeed, a most recent bank account statement from January 2016 reflects a balance of only \$836. Further, support

letters provided with the petition appear to indicate that the Petitioner is a still a new venture, referring employees “to be hired” to “assist” the Beneficiary in “the sale of products.” In total, the evidence indicates that the Beneficiary was allocating her time primarily to performing non-qualifying operational tasks as of the date of the petition and that the Petitioner was not sufficiently operational to support her in a qualifying managerial or executive capacity.

The Petitioner has not established that the Beneficiary would act in a managerial or executive capacity in the United States.

III. FOREIGN EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

We will now determine whether the Petitioner has demonstrated that the Beneficiary was employed abroad in a managerial or executive capacity.

In the denial decision, the Director determined that the Beneficiary’s foreign duty description was vague and did not reflect her actual day-to-day tasks. Further, the Director pointed to the Beneficiary’s claimed immediate subordinate, the foreign employer’s vice president, and concluded that the evidence did not support that this employee was a professional acting in a position requiring a bachelor’s degree. The Director determined that the foreign employer did not have sufficient staff to relieve the Beneficiary from primarily performing non-qualifying operational tasks.

On appeal, the Petitioner states that the Director ignored the Beneficiary’s specific duties and the submitted evidence relevant to her previous foreign employment. The Petitioner asserts that the foreign employer had sufficient subordinates to relieve the Beneficiary from performing operational level tasks and contends that she oversaw a substantial organization and a subordinate with professional qualifications.

As with the Beneficiary’s U.S. employment, our analysis of the Beneficiary’s employment capacity abroad will focus on the Beneficiary’s duties as well as the foreign entity’s business activities and staffing levels.

A. Duties

The Petitioner indicated that the foreign employer was established in 2012 and that the Beneficiary was employed as its president from April 2012 until her transfer to the United States in December 2014. The Petitioner referred to the foreign employer as an “important trading company,” involved in “purchasing, selling, importing, exporting, manufacturing, marketing, distribution, and transportation of all kinds of food for human and animal consumption.”

The Petitioner submitted a foreign duty description that was similar to the Beneficiary’s proposed U.S. duty description. However, the foreign duty description did provide certain other specifics, noting that the Beneficiary oversaw an “accounting and logistics department” to ensure that products arrived timely and fulfilled orders, established limits for manager approval on “contracts, sales,

discounts, and negotiations,” received “weekly sales reports,” reviewed “performance indicators” such as the number of orders, delays, or sales, approved “new business ventures” and “purchases,” increased “e-commerce” and “participation in social media,” and approved “financial statements and management formatted reports.”

Similar to her proposed U.S. duties, the Petitioner has provided only a broad overview of the Beneficiary’s general responsibilities and levels of authority with the foreign employer but has not identified the nature of her actual day-to-day tasks. The Petitioner vaguely stated that the Beneficiary was responsible for various general duties that could apply to any manager or executive employed by any company abroad in any industry. The Petitioner has provided few examples and little supporting evidence to substantiate goals, policies and procedures she implemented, product lines she has changed, prices she set, strategic guidance she provided to her departments, issues she solved or new projects she proposed, financial institutions or investors she met with, investment she oversaw, purchases she approved, sales and marketing plans she approved, e-commerce or social media initiatives she implemented, human resources policies she established, or negotiations she managed.

This lack of detail is particularly questionable given that the Beneficiary is asserted to have acted in her capacity as president of the foreign employer from April 2012 until December 2014, or for approximately two and a half years. Despite this, we are provided with little detail or documentation as to her accomplishments or evidence reflecting her performance of daily managerial or executive level tasks. In fact, the Petitioner has provided nearly identical duty descriptions for the Beneficiary in her former capacity abroad and with respect to her proposed U.S. capacity, despite these companies being in completely different stages of development and operating in separate markets. Further, the Beneficiary’s foreign duties reference her oversight of an “accounting and logistics department,” which is not reflected in its submitted organizational charts from this period. Conclusory assertions regarding the Beneficiary’s foreign employment are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner’s burden of proof. *Fedin Bros. Co., Ltd.* at 724 F. Supp. 1103, 1108; *Avyr Assocs.* at 1997 WL 188942 at *5. While the stated responsibilities suggest that the Beneficiary may have been a senior employee for the foreign employer, the provided description lacked meaningful information regarding what she actually did as part of her day-to-day routine.

The fact that the Beneficiary managed or directed the foreign employer does not necessarily establish eligibility for classification as a multinational manager or executive. By statute, eligibility for this classification requires that the duties of the foreign position were “primarily” executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act.

B. Staffing and Business Activities

In support of the petition, the Petitioner did not provide a complete foreign employer organizational chart, but appeared to indicate that there was a network of sales and marketing representatives operating in several different Latin American countries, including Venezuela, the location of the

foreign employer. In response to the RFE, the Petitioner provided two foreign organizational charts applicable to the Beneficiary's asserted foreign employment from 2012 to 2014. Both indicated that the Beneficiary supervised a vice president, who in turn oversaw a sales manager and a marketing manager. However, one chart reflected that the marketing manager supervised two administrative assistants and that the sales manager oversaw a sales representative. The other provided organizational chart indicated that the sales manager oversaw an administrative assistant and a sales associate and that the marketing manager supervised an administrative assistant only. Further, two asserted administrative assistants in one chart were shown as acting as marketing managers in the other provided foreign employer organizational chart. The Petitioner provided no explanation for these discrepancies. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the Petitioner has submitted vague duty descriptions for the Beneficiary's former subordinates abroad. First, the duties of the subordinate executive vice president, marketing manager, and sales manager largely overlap. In addition, the Petitioner provides little indication what "operational and financial goals, policies, objectives, and procedures" the executive vice president set, marketing strategies or logistics processes the marketing manager implemented, or specific duties the sales manager performed. Again, although the Petitioner contends that the executive vice president position requires a bachelor's degree, it does not explain why this position requires a specific degree nor provided duties that indicate it is a professional level position. In addition, we acknowledge that the Petitioner has submitted payroll documentation specific to its current foreign organization, but it does not provide relevant supporting documentation to substantiate the organizational structure of the foreign employer and the Beneficiary's claimed subordinates during her asserted foreign employment from 2012 to 2014.

In sum, the Petitioner has not submitted sufficient support evidence to demonstrate that the Beneficiary acted in a managerial or executive capacity with the foreign employer. For this additional reason, the appeal must be dismissed.

IV. QUALIFYING RELATIONSHIP

Lastly, the Director denied the petition concluding that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer. The Director determined that the Petitioner did not demonstrate that the companies share common ownership, noting that the Petitioner was wholly owned by one individual, the Beneficiary, and that the foreign employer was jointly owned by the Beneficiary and another individual.

On appeal, the Petitioner asserts that the foreign employer's joint ownership is sufficient to establish common ownership between it and the foreign employer.

To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (a U.S. entity with a foreign

office) or related as a “parent and subsidiary” or as “affiliates.” See § 203(b)(1)(C) of the Act; see also 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms “affiliate” and “subsidiary”).

The pertinent part of the regulation at 8 C.F.R. § 204.5(j)(2) defines “affiliate” as follows:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (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 Petitioner stated that it is wholly owned by the Beneficiary. The Petitioner also indicated that fifty percent of the foreign employer’s shares are owned by the Beneficiary and that the other fifty percent are held by another individual. Generally, provided that this ownership was properly corroborated in the record, we would find it sufficient to demonstrate an affiliate relationship between the entities.

However, the Petitioner has not submitted sufficient evidence to corroborate its asserted ownership. As general evidence of a petitioner’s claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership, and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC’s operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member’s ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting control of the entity. *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm’r 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

Here, the Petitioner only submitted a membership certificate and its claimed “articles of incorporation,” the latter document being only a printout from the Florida Department of State reflecting the company’s registration, but not its actual ownership. As discussed above, the Petitioner does not provide sufficient documentation to corroborate its ownership, such as articles of organization, meeting minutes, evidence of membership contributions, or other such documentation. For this reason, we cannot determine the Petitioner’s actual ownership.

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The Petitioner has not established with sufficient evidence that it has a qualifying relationship with the foreign employer. For this additional reason, the petition cannot be approved.

V. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that the Beneficiary will be employed in the United States in a managerial or executive capacity, that she was employed abroad in a managerial or executive capacity, or that it has a qualifying relationship with the foreign employer.

ORDER: The appeal is dismissed.

Cite as *Matter of M-C- LLC*, ID# 835274 (AAO Jan. 18, 2018)