



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

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

In Re: 23103950

Date: DEC. 01, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Manager or Executive

The Petitioner, a distributor of glass products, seeks to permanently employ the Beneficiary as its chief executive officer (CEO) under the first preference immigrant classification for multinational executives or managers. 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, concluding that the record did not support the Petitioner's claim that it would employ the Beneficiary in an executive capacity in the United States. On appeal, the Petitioner asserts that the Director's decision does not reflect that he reviewed and considered its response to a request for evidence (RFE) and did not provide adequate reasoning or support for the conclusions reached.

In these proceedings, it is the petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for entry of a new decision, consistent with the following discussion.

I. LAW

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 as a manager or executive 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).

II. ANALYSIS

The primary issue to be addressed is whether the Petitioner established that it would employ the Beneficiary in the United States in an executive capacity as defined at section 101(a)(44)(B) of the Act; 8 U.S.C. § 1101(a)(44)(B). The Petitioner does not claim that the proposed employment is in a managerial capacity.

A. Facts and Procedural History

The Petitioner seeks to employ the Beneficiary as its CEO and filed the Form I-140, Immigrant Petition for Alien Worker, in March 2020. It stated on the Form I-140 that it was established in 2017 and is operating as a distributor of glass products, with one employee and gross annual income of over \$365,000 in 2019. The Petitioner's initial evidence included a letter of support which included an overview of the Beneficiary's duties as CEO as well as a chart title "Executive Duties in the United States," further describing how he would allocate his time among specific tasks within six areas of responsibility. We note that the duty description included in the chart appears to have been prepared at an earlier date as it refers to actions the Beneficiary was expected to take within "the first full year of operations."¹ The Petitioner stated in its letter that it has "seven (7) 1099 contractors that we work with on a regular basis."

As evidence of its staffing, the Petitioner submitted a copy of its IRS Form W-3, Transmittal of Wage and Tax Statements, indicating that it paid \$14,040 to two employees in 2019. It also submitted copies of seven IRS Forms 1099-MISC indicating that it paid "nonemployee compensation" to six individuals and one business in 2019. The Petitioner did not provide an organizational chart or otherwise describe its staffing or structure.

The Director issued an RFE in March 2021, in which he acknowledged the Petitioner's claim that the Beneficiary would be employed in an executive capacity, as well as its submission of the IRS Forms W-3 and 1099. The Director advised the Petitioner that "the evidence did not establish that the beneficiary will directly manage or report to the petitioning company" noting that the record did not demonstrate that "the company has any departments or employees to manage at an executive level." The Director requested that the Petitioner submit: a description of the Beneficiary's duties and the percentage of time spent on each duty; an organizational chart identifying all employees by job title, duties, and education level and whether they are full-time or part-time; evidence documenting the Petitioner's use of contractors, and IRS Forms W-2 for all employees.

In response, the Petitioner re-submitted its March 2020 letter and requested that the Director review the detailed job description included therein. The Petitioner also submitted an organizational chart indicating a total of nine staff (including the Beneficiary, three employees and five contractors); job descriptions for the individuals identified on the chart; copies of its IRS Forms 941, Employer's Quarterly Federal Tax Return, for each quarter of 2020; its IRS Form W-3 for 2020 indicating that it

¹ The record reflects that the Petitioner had filed two L-1A classification nonimmigrant petitions on the Beneficiary's behalf, including a "new office" petition approved for a one-year period from March 2018 until March 2019, and a petition extending the Beneficiary's L-1A status for a two-year period, through March 2021. The Petitioner indicates that it has been operating since September 2018.

paid three employees; copies of five IRS Forms 1099-NEC issued to four individuals and one company in 2020; and an earnings register showing wages paid to three employees in the first quarter of 2021.

The Director concluded that the Petitioner did not meet its burden to establish that the Beneficiary would be employed in an executive capacity. In reaching this conclusion, the Director quoted one paragraph from the Petitioner's March 2020 letter and determined that "[t]he petitioner's claim is primarily based on a set of broad responsibilities, which suggest a general sense of the beneficiary's heightened degree of discretionary authority, but which fail to convey an understanding of what the beneficiary would actually be doing on a daily basis." The Director did not further address the job description but noted a lack of "information on other departments" or evidence that the beneficiary is "directing the management." Finally, the Director determined that it did not appear that the Beneficiary would report to "an authorized official" of the company such as "board members or directors within the company."

B. Withdrawal of Director's Decision

On appeal, the Petitioner asserts that it appears that the Director did not review all the evidence of record, specifically the entirety of the job description submitted in support of the petition. The Petitioner also expresses confusion regarding the Director's brief discussion of the basis for denial, noting that "it is entirely unclear as to what USCIS is implying/referencing in its Denial of this case." In this regard, the Petitioner notes that the Director referenced case law without explaining how it applies to the facts presented here and suggested that there were unresolved inconsistencies in the record, without identifying any inconsistencies in either the RFE or the denial letter. The Petitioner maintains that the previously submitted evidence was sufficient to establish that the Beneficiary would be employed in an executive capacity as defined at section 101(a)(44)(B) of the Act.

We agree with the Petitioner's assertion that the Director's decision contains an insufficient analysis of the totality of the submitted evidence to support the denial on the stated grounds. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

The regulation at 8 C.F.R. § 204.5(j)(5) requires the petitioner to submit a statement which clearly describes the duties to be performed by the beneficiary. Here, the Director dismissed the submitted duty description as "broad" without discussing any specific deficiencies in either the RFE or the denial letter, and does not appear to have considered the description in its entirety. Further, beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) must review the totality of the evidence when examining a beneficiary's claimed executive capacity, 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 Director's decision does not reflect that these factors were considered in the adjudication of the petition.

For these reasons, we conclude that the Director did not adequately analyze the evidence submitted in support of the Petitioner's claims that the Beneficiary would be employed in the United States in an executive capacity. While we cannot sustain the appeal based on the record as presently constituted, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision.

C. Basis for Remand

The Petitioner emphasizes that it provided a detailed description of the Beneficiary's duties; however, the description, which contains references to the company's initial hiring plans during its first year of operations, appears to have been prepared in support of a prior nonimmigrant petition, filed at an earlier stage of the company's staffing and development. As such, we cannot determine whether or to what extent the description accurately reflects the Beneficiary's actual duties as of the date this petition was filed. 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 noted, the Director did not specifically identify this or any other deficiencies in the provided description in either the RFE or the denial.

The record also lacks evidence of the Petitioner's staffing and organizational structure at the time the petition was filed, as the initial evidence did not include an organizational chart or evidence supporting the number of employees and contractors working for the company and the nature of the services they provide. Therefore, additional evidence would be required to provide a clear picture of the company's staffing and structure from March 2020 onward. The Petitioner claimed to have one employee at the time of filing in March 2020 and three employees when it responded to the RFE. While the organizational chart submitted in response to the RFE in May 2021 indicates that the Beneficiary was responsible for overseeing three subordinate managers (responsible for operations, sales/marketing and dispatch/warehouse), there is no evidence that this structure was in place when the petition was filed. The latest evidence of wages paid to the claimed managerial employees indicates that they were employed on a part-time basis in the first quarter of 2021, earning as little as \$540 per month. Further, the record reflects that the Petitioner paid less than \$28,000 in total to three employees in 2020.

While the Petitioner has documented its total annual payments to contractors and provided job duties for those contractors engaged by the company at the time of the RFE response, it is similarly lacking evidence of payments to contractors as of the date of filing, the dates of service for each contractor hired, and whether they were hired on a full-time, part-time, or other basis.

Based on these deficiencies, the record as presently constituted does not sufficiently establish the Beneficiary's duties or the ability of the company's staff to relieve the Beneficiary from involvement in non-executive duties as of the date of filing. As the matter will be remanded, the Director may request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period. As noted, the Petitioner must demonstrate its eligibility for the benefit sought from the date of filing continuing through adjudication, and as such, may be requested to submit evidence showing the scope of its ongoing business activities, its current staffing, and its continuing ability to pay the Beneficiary's proffered wage.

III. CONCLUSION

As the Director did not sufficiently address the Petitioner's claims and supporting evidence or provide notice of the evidentiary deficiencies addressed herein, the matter will be remanded for further review and entry of a new decision. On remand, the Director may issue a new request for evidence or notice of intent to deny allowing the Petitioner an opportunity to provide additional evidence relevant to the issues discussed above, and any other evidence deemed necessary to demonstrate eligibility for the classification sought, before issuing a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.