



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

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

In Re: 19804759

Date: MAR. 10, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Manager or Executive

The Petitioner is engaged in the distribution and installation of windows and doors. At the time of filing, it claimed 15 employees and sought to permanently employ the Beneficiary in an executive capacity as its 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 concluding that the Petitioner did not establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity. The Director discussed the job duties of several of the Beneficiary's subordinates noting that "[t]he description of the Office Manager does not establish that [she] manages office operations, but that she performs the activity or function of office operations." The Director made similarly adverse findings regarding the job descriptions of the Petitioner's VP of sales and chief operating officer. Namely, the Director stated that the latter "spends less than a primary portion of [his] time managing and supervising the work of others" and that the job description for the VP of sales "does not include him supervising and controlling the work of other personnel but involves him doing the hands-on work of the [P]etitioner's business." The matter is now before us on appeal.

On appeal, the Petitioner argues that the Director did not correctly assess the evidence, which thereby resulted in an unwarranted adverse decision. The Petitioner points to previously submitted evidence, including employee job descriptions, payroll records, and an organizational chart containing the photographic images, names, and position titles of the Petitioner's 15-person staff at the time of filing. The Petitioner contends that the evidence it previously provided adequately demonstrates its eligibility at the time of filing.

Upon *de novo* review, we find that the record as presently constituted does not support the Director's conclusion and we will therefore remand the matter for further consideration. First, we note that the Director offered a deficient analysis of the relevant facts. Namely, the Director incorrectly relied on the Florida Secretary of State's website to determine that there were inconsistencies regarding several of the employees' position titles. The Director also incorrectly assigned elements of the definition of

managerial capacity to the Beneficiary's subordinates in the proposed position.<sup>1</sup> In order to demonstrate eligibility the Petitioner must show that the Beneficiary meets the four statutory elements comprising the definition of executive capacity.<sup>2</sup> Further, as noted by the Petitioner on appeal, the record contains employee job descriptions, payroll records, and the Petitioner's 2018 organizational chart. It is unclear whether the Director properly considered this evidence.

In light of the above, we hereby withdraw the Director's decision and remand the matter for further consideration of the Petitioner's eligibility.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

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<sup>1</sup> See sections 101(a)(44)(A) and (B) of the Act, which require a petitioner to establish that the *beneficiary* of the visa petition meet the statutory criteria of managerial or executive capacity.

<sup>2</sup> The Petitioner does not claim that the Beneficiary would be employed in a managerial capacity, and therefore it would not have to demonstrate that the Beneficiary meets the elements comprising that statutory definition.