



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

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

In Re: 29050355

Date: DEC. 21, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, a company operating a “quick service restaurant,” seeks to permanently employ the Beneficiary as its president in the United States 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).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue we will address is whether the Petitioner established that the Beneficiary would be employed in an executive capacity in the United States. The Petitioner does not claim on appeal that the Beneficiary would be employed in a managerial capacity in the United States. Therefore, we restrict our analysis to whether the Beneficiary would be employed in an executive capacity.

“Executive capacity” means 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.

When examining the executive capacity of a given beneficiary, we will review 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 an executive capacity. 8 C.F.R. § 204.5(j)(5).

A. Duties

To be eligible as a multinational executive, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying executive position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary will be *primarily* engaged in executive 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). In determining whether a given beneficiary’s duties will be primarily executive, we consider the petitioner’s description of the job duties, the company’s organizational structure, the duties of a beneficiary’s subordinate employees, the presence of other employees to relieve the 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 Petitioner stated that the Beneficiary would act as president overseeing an franchise it owns in Virginia, a business it acquired a controlling interest in July 2019.¹ The Petitioner indicated that the Beneficiary would “direct the overall management and work to establish the goals and policies of the organization” and “direct the company’s financial goals, objectives, and budgets by reviewing sales and activity reports, performance data, and financial statements.” The Petitioner submitted the following duty description for the Beneficiary:

¹ The petition was filed on July 28, 2022.

1. Will review the general manager's prepared financial statements such as P&L statements, sales and activity reports, and other functional performance reports to evaluate and gauge the overall performance of all the functions and ascertain company's overall performance and capacity for growth – 20% of time
 - Will develop a system that implements and enforces personnel transparency that encourages shift leads share their perspective and reasonings for failure or success in reaching assigned goals and objectives with the general manager.
 - Will oversee the execution and implementation of systematic policies that allows the general manager to collect and analyze recommendations and reasoning for failure so that [the Beneficiary] can make informed executive changes and decisions.
 - Will review the general manager's reports on the progress of each department in meeting budgetary and performance goals, targets, and metrics and will have the subordinate managers provide reports of the financial conditions of the departments to evaluate how their teams been performing, and to evaluate how certain performance-based departments have fared with tightened or looser budgets.
 - Will direct subordinate managers and accounting functions to provide detailed historical and projected performance charts with detailed accounting ratios for the entire company based on the datasets and metrics provided to [the Beneficiary] from the general manger.
2. Will establish the short-term and long-term strategic goals of the overall company; develop expansionary plans, taking into account data collected and forecasted projections and expenses; and develop department-specific or function-specific goals – 20% of time
 - When the President is fully apprised of the company's operational metrics and its ability to meet its financial objectives, as well as the ability of subordinate departments to function as required to achieve the strategic goals, [the Beneficiary] will leverage this data to design, develop, adapt, and modify the overall company's short-term and long-term strategic goals and objectives as well as expansionary plans.
3. Will develop company-wide policies, best practices, and standard operating procedures to ensure maximum operational efficiency while ensuring budgetary discipline is maintained – 20% of time
4. Will communicate overall company-wide and department-specific objectives, goals, benchmarks, and policies to subordinate managers and oversee their performance in their duties – 15% of time
5. Restructure departments and functions, shift departmental and manager responsibilities, establish and reinforce lines of communication and hierarchy, and resolve disputes amongst departments – 15% of time
 - Will develop conflict resolution procedures and best practices with Administration Department Manager, Z-H- of human resources.
6. Will hire, fire, promote, discipline, and authorize leave for subordinate managers of company – 5% of time
7. Will resolve intercompany disputes – 10% of time

8. Will oversee and direct company's organization-wide special projects and delegate responsibilities as required – 10% of time

The Petitioner provided insufficient detail and little documentary evidence to demonstrate his likely performance of qualifying executive-level tasks under an approved petition. For instance, the Petitioner did not articulate or document the operating systems and policies the Beneficiary would develop, goals he would set for his general manager, systematic changes he would implement, or how he would enforce “personnel transparency.” Likewise, the Petitioner did not detail or document the “systemic policies” the Beneficiary would implement, “incentive structures” he would create, “solutions and mechanisms” he would put in place to “overcome obstacles,” or the “creative solutions” he would develop to handle operating bottlenecks. Similarly, the Petitioner did not discuss or substantiate the strategic goals the Beneficiary would establish, expansion he would determine, company-wide policies, best practices, and operating procedures he would develop, departments he would restructure, or intracompany disputes he would resolve. The lack of detail and documentation is particularly noteworthy since the Petitioner filed an L-1A intracompany transferee petition on behalf of the Beneficiary that was approved in September 2019, while the current petition was filed in July 2022.

The Beneficiary's proposed duty description includes little discussion of the Petitioner's “quick-service” restaurant and repetitively discusses systems, policies, strategic goals, and other the similar generic tasks, without articulating them in detail. In sum, the Petitioner's U.S. duty description is very similar to his submitted foreign duty description, which is questionable since it claimed that he oversaw a construction and landscaping company abroad employing over 50 employees, while the Petitioner operated an apparent fast-food restaurant with only fifteen asserted employees when the petition was filed. To illustrate, the Petitioner discusses in the U.S. duty description developing conflict resolution procedures and best practices with an administration department manager of human resources, an employee and department not listed in the U.S. organizational chart, but an employee and department of the foreign employer. Further, the duty description conveys that the Beneficiary would devote 15% of his time communicating company-wide and department specific objectives, 15% to restructuring departments, and 10% to resolving “interdepartmental disputes.” However, the U.S. organizational chart includes no apparent departments or functions, but only two managers subordinate to the Beneficiary, shift managers, and operational employees running the Petitioner's fast-food restaurant. In addition, the Beneficiary's duty description discussed an accounting function, which was also not included in its organizational chart. In total, the duties submitted for the Beneficiary do not credibly correspond to the Petitioner's proposed operations and could apply to any executive overseeing any company in any industry. The Petitioner must resolve discrepancies and ambiguities 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).

Although we do not expect the Petitioner to articulate and document every executive-level task to be performed by the Beneficiary, it is reasonable to require that it would provide sufficient detail and documentation to sufficiently corroborate his likely performance of qualifying duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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).

Even though the Beneficiary holds a valuable position within the organization, the fact that he will manage or direct the business does not necessarily establish eligibility for classification as a multinational executive within the meaning of section 101(a)(44)(B) of the Act. The Beneficiary may exercise discretion over some of the Petitioner's day-to-day operations and possess some requisite level of authority with respect to discretionary decision-making; however, the position description alone is insufficient to establish that his actual duties would be primarily executive in nature.

B. Staffing and Executive Capacity

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we take into account the reasonable needs of the organization, in light of its overall purpose and stage of development. *See* section 101(a)(44)(C) of the Act.

The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the organization, major component, or function as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

In support of the petition, the Petitioner provided an organizational chart reflecting that the Beneficiary would supervise a general manager who would in turn oversee an assistant manager. The assistant manager was shown to supervise five shift managers overseeing eight "team members" responsible for providing goods and services at the fast-food restaurant.

As a preliminary matter, the Petitioner submitted another organizational chart in response to the Director's request for evidence (RFE) in April 2023 showing numerous differences from that provided in support of the petition. However, our focus must be on the Petitioner's organizational structure as of the date the petition was filed, namely that explained above. The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also* Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.").

In the RFE, the Director emphasized that the record included an August 2019 internal payroll summary and IRS Forms 941, Employer's Quarterly Federal Tax Returns from the first and second quarters of 2019, and therefore, did not substantiate its asserted organizational structure when the petition was filed in July 2022. As such, the Director requested that the Petitioner submit payroll documentation, IRS Forms W-2, Wage and Tax Statements, IRS Forms W-3 Transmittal of Wage and Tax Statements,

IRS Forms 1099, Miscellaneous Income, and/or IRS Forms 941 for the four quarters prior to the date the petition was filed. In response, the Petitioner only provided two internal payroll lists from August 2, and August 30, 2019. In denying the petition, the Director directly discussed this deficiency, noting that the Petitioner did not provide payroll and tax documentation corresponding with the date the petition was filed, and emphasizing that it had submitted an updated organizational chart from April 2023. On appeal, the Petitioner again does not address this material deficiency, nor does it submit additional evidence to address this issue, but only discusses the asserted organizational structure from April 2023 and contends that this demonstrates the Beneficiary's eligibility.

However, the Petitioner's asserted organizational structure from April 2023 is not probative in demonstrating the Beneficiary's eligibility as of the date the petition was filed, even if it had provided supporting tax documentation to substantiate the 2023 organizational structure, which it also did not. As such, the Petitioner has not provided sufficient objective documentary evidence to corroborate those employed in its organizational structure as of the date the petition was filed. The Petitioner's refusal to submit this requested evidence both in response to the Director's RFE and in support of this appeal leaves significant uncertainty as to whether its organizational structure was sufficient to support the Beneficiary in an executive capacity when the petition was filed. For instance, the organizational structure provided in support of the petition appeared unreasonably management heavy, including the Beneficiary, two higher level managers, five shift managers; or a total of eight executives and managers, but only eight operational employees to provide goods and services at the fast-food restaurant. As discussed, in determining whether a given beneficiary's duties will be primarily executive, we not only consider the petitioner's description of the job duties, but the company's organizational structure, the presence of other employees to relieve the 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.

Here, the submitted evidence does not establish that the Petitioner had sufficient operations or employees to support the Beneficiary in an executive position when the petition was filed, where he would act in an elevated position and be primarily relieved from performing non-qualifying operational duties. The immigrant classification for multinational executives is not a prospective petition where a beneficiary's eligibility may be established at a date following the date the petition was filed through future business or hiring plans. Again, the affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also* Matter of Katigbak, 14 I&N Dec. at 45, 49 (Comm'r 1971). Further, as discussed, the Petitioner submitted a generic U.S. duty description that did not credibly corroborate his actual day-to-day tasks, and which included several material discrepancies.

For the foregoing reasons, the appeal must be dismissed, as the Petitioner has not demonstrated that the Beneficiary would act in an executive capacity in the United States.

ORDER: The appeal is dismissed.