



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

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

In Re: 25516548

Date: FEB. 27, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, an importer and wholesaler of diamonds, seeks to permanently employ the Beneficiary as its chief executive officer (CEO) under the first preference immigrant classification for multinational managers or executives. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that: (1) the Petitioner has been doing business for at least one year prior to the petition's filing date; (2) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity; and (3) the Beneficiary has been employed abroad 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. 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 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. DOING BUSINESS

The Director determined that the Petitioner did not establish that it has been doing business for at least one year prior to the date of filing the petition. *See* 8 C.F.R. § 204.5(j)(3)(i)(D). *Doing business* means an entity's regular, systematic, and continuous provision of goods, services, or both, and does not include the mere presence of an agent or office. 8 C.F.R. § 204.5(j)(2).

We withdraw the Director's determination. The record contains several sales receipts dated more than a year before the petition's September 2021 filing date, and the Director did not question the authenticity or credibility of those documents. This evidence of significant, ongoing sales activity appears to be sufficient to demonstrate by a preponderance of the evidence that the Petitioner was doing business for more than a year before the petition's filing date.

## III. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Petitioner specified that the Beneficiary worked abroad in an executive, rather than managerial, capacity. We agree with the Director's conclusion that the Petitioner did not meet its burden of proof to establish that the Beneficiary had been employed abroad 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.

A petitioner must prove that the beneficiary was *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the organization's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether the beneficiary's duties were primarily executive, we consider the description of the job duties, the company's organizational structure, the duties of the 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 the beneficiary's actual duties and role in the business.

If staffing levels are used as a factor in determining whether an individual was acting in an executive capacity, we 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.

Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the foreign entity's business and its staffing levels.

The Petitioner stated that the Beneficiary has served as CEO of [REDACTED] since 2008. The Beneficiary incorporated the petitioning U.S. entity shortly after he entered the United States in January 2020 as a B-1 nonimmigrant visitor for business. Since 2021, he has held L-1A nonimmigrant status as an intracompany transferee in a managerial or executive capacity. The Beneficiary is the sole shareholder of [REDACTED] which, in turn, wholly owns the petitioning U.S. entity.

In a June 2020 letter submitted with the petition, the Beneficiary's foreign employer in Hong Kong stated that the Beneficiary "is a full-time executive employee" who "continues to hold the highest executive position of Director/CEO since 2017." A two-page job description listed the Beneficiary's "specific executive duties," divided into four categories:

- Business Development and Growth Strategy, 30% of the Beneficiary's time;
- Developing and Executing Financial and Operational Growth Strategy, 30%;
- Brand Promotion and Building Client Relationships, 20%; and
- Staffing and Policies, 20%.

In a request for evidence, the Director asked for more details about the Beneficiary's responsibilities at the company in Hong Kong, stating that the job description "was not sufficient as the job duties were brief and described in broad, ambiguous terms. The vague and generalized descriptions are of limited evidentiary value."

In response, the Petitioner submitted a second list of duties. Although the Director had requested more details, the new job description is largely the same as the earlier version. The new description repeats or rephrases most of the elements in the original version, providing an individual time percentage for each, and deletes the remaining elements. The phrase "the general market" has been changed to "the international diamond market," but otherwise the revised job description added no details specific to the company's business activity.

In the denial notice, the Director acknowledged that the Beneficiary was the highest-ranking official of the foreign company, with discretionary authority over the business. But the Director noted that the job description included non-executive tasks, and had not established that the Beneficiary had devoted most of his time to executive-level tasks.

We agree with the Director's conclusion that the Beneficiary's job description is vague and general. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial 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). The actual duties themselves reveal the true nature of the employment. *Id.*

The individual elements in the job description include the following examples:

- Full decision-making authority in the areas of brand management and strategy as the company seeks to expand the brand in the U.S. and globally;
- Provides strategic, financial and operational leadership for the company;
- Responsible for strategic decisions impacting overall direction of the company; and
- In charge of hiring, firing, and promoting personnel.

These elements generally describe the level of the Beneficiary's authority within the foreign company, but they provide little specific information about the Beneficiary's activities there. Some appear to be generic elements of template job descriptions. For example, one element indicates that the Beneficiary "[s]erves as brand ambassador to new and existing customers by attending local and national trade

shows, special events, trunk shows, or other events featuring brand products and services.” The Petitioner did not establish that the Beneficiary attended all the events described. The reference to “brand products and services” implies that the company provides “services” to its customers, but the Petitioner does not identify those services or otherwise indicate that it provides such services.

Some elements changed somewhat between the first and second versions of the job description. The first version indicated that the Beneficiary would “[n]egotiate and execute sales proposals, promotional opportunities, and special offers.” The revised version indicated that the Beneficiary “[a]pproves” those proposals and offers. The Petitioner did not explain how a description of tasks the Beneficiary undertook in the past could change in this way.

The job description provides general information about the responsibilities of a generic CEO, but it lacks the specific information necessary to show that the Beneficiary worked in a primarily executive capacity. When the Director advised the Petitioner that the job description was deficient, and offered the Petitioner an opportunity to supplement the record, the Petitioner responded by submitting what was essentially a shortened version of the same job description. Documentation of the Beneficiary’s work product is largely limited to employment contracts and payroll records.

On appeal, the Petitioner acknowledges that the Beneficiary performed some low-level tasks, but asserts that this is normal for the CEO of a “smaller company.” The foreign entity has six employees. Regardless of the company’s size, the burden is on the Petitioner to establish that the Beneficiary’s duties were primarily those of an executive. The Petitioner has not established that the foreign entity had sufficient organizational complexity to warrant primarily executive leadership at its head.

An organizational chart shows the following hierarchy at the foreign company:

- Director/CEO [the Beneficiary]
  - Operations Director
    - Business Procurement Manager
      - Logistics and Office Clerk
    - Sales and Marketing Manager
      - Marketing Intern
  - Accountant [contractor]

The Petitioner submitted job descriptions for the subordinate employees at the foreign company. In the job description for operations director, the Beneficiary’s immediate subordinate, there is an item, “Train and Supervise Staff,” which overlaps with another item, “Ensures employee productivity, trains and supervises staff.” Several other items appear to describe the duties of a bookkeeper than an operations director, even though the organizational chart indicates that the foreign entity has an outside accountant:

- Making journal entries for all receipts, payments, and other financial transactions
- Posting journal entries to ledger accounts
- Performing bank reconciliations
- Preparing cash flow statements
- Preparing and reviewing financial reports, sales and activity statements

The operations director's two immediate subordinates have managerial titles, but the Petitioner has not established that these individuals held managerial positions. Their duties include direct involvement in purchasing and sales, and each of them has only one subordinate. For these reasons, the Petitioner has not established the existence of a significant management structure at the foreign entity, sufficient to warrant executive-level leadership.

Given the small staff and the non-managerial duties of the Beneficiary's highest-ranking subordinates, the Petitioner has not established that directing the management of the foreign entity occupied a significant proportion of the Beneficiary's time.

The Petitioner contends that the prior approval of an L-1A nonimmigrant petition establishes that "the Beneficiary has already proven he was employed in an executive capacity," and that "previously submitted evidence . . . was deemed sufficient to prove the Beneficiary was employed 'primarily' in an executive capacity." We do not owe deference to prior approvals which may have been erroneous. *See Matter of Church Scientology*, 19 I&N Dec. 593, 597 (Comm'r 1988). The record of proceeding for the approved nonimmigrant petition is not before us, and the available record does not provide enough detailed information and evidence to meet the Petitioner's burden of proof.

Furthermore, the record contains discrepancies and inconsistencies that undermine the credibility of the Petitioner's assertions. The Beneficiary's résumé, dated 2020, indicates that he has served as the foreign entity's "Director of Marketing & Sales" since 2008. The duties listed under that entry all relate to sales and marketing. The Petitioner does not address or explain this significant discrepancy.

The Beneficiary's business card for the foreign entity shows his title as "Director," and describes the company as "Diamond Importers, Manufacturers, Exporters." An introductory letter refers to the foreign entity as "a leading manufacturer, importer, and exporter of polished diamonds." But the record contains no evidence that the foreign entity has facilities, staff, or activity related to manufacturing. Its documented activity in the record is limited to purchase and resale. Likewise, the Petitioner initially stated that it has a U.S. affiliate "formed . . . for the purpose of manufacturing . . . lab grown diamonds." A printout from the affiliate's website boasts a "Top-Notch Manufacturing Process" "in our state-of-the-art manufacturing space." The record does not document that the affiliate either owns or rents "manufacturing space" or equipment, and on appeal, the Petitioner acknowledges that the affiliate "has no employees" and that the company "is not manufacturing products."

These inconsistent statements and unsupported claims raise overall questions of credibility. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

For the above reasons, we agree with the Director's determination that the Petitioner has not established, by a preponderance of the evidence, that the Beneficiary worked abroad in a primarily executive capacity.

Because the above issue decides the outcome of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's claimed qualifying capacity

in the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (holding that “courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”).

#### IV. CONCLUSION

We will dismiss the appeal, because the Petitioner has not established that the Beneficiary was employed abroad in a primarily executive capacity.

**ORDER:** The appeal is dismissed.