



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

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

In Re: 20648685

Date: MAY 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a company engaged in biofuel and renewable energy development, seeks to permanently employ the Beneficiary as its president 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 a managerial or executive capacity.

The Director of the Texas Service Center initially denied the petition for abandonment, citing the Petitioner's failure to respond to a notice of intent to deny (NOID). The Director granted the Petitioner's motion to reopen and again denied the petition, concluding that the record did not establish that (1) the Petitioner had the requisite qualifying relationship with a foreign entity; (2) the Beneficiary would be employed in the United States in a managerial or executive capacity; and (3) the Beneficiary had 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 conclude that the Director did not offer a complete and accurate analysis of the submitted evidence. We will therefore withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 Workers, 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. BASIS FOR REMAND

As noted above, the Director denied the petition on multiple grounds after granting the Petitioner's motion to reopen. On appeal, the Petitioner asserts that the Director's decision relied on evidence not submitted in support of this petition, contained erroneous conclusions of fact that adversely impacted the adjudication of the petition, and failed to address relevant evidence submitted in response to the NOID. Upon review, we agree with the Petitioner's assertions.

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). Because the Director's decision does not provide a complete analysis of the evidence submitted in support of the instant petition, we will withdraw that decision and remand for further review and entry of a new decision, consistent with our discussion below.

The Petitioner asserts that the Director relied on evidence not submitted in support of this petition in issuing the denial. The Director's decision is based, in part, on documentation submitted in support of a prior immigrant visa petition filed on behalf of the Beneficiary by the Petitioner in 2014. The instant petition was filed in June 2018. Here, the Director referenced the Petitioner's 2014 website as well as an amended federal tax return it filed in 2012, evidence previously submitted in support of the prior immigrant visa petition, in determining that it did not have the requisite qualifying relationship with the Beneficiary's foreign employer. The Petitioner, however, submitted documentation pertaining to its ownership structure in support of the instant petition, including its articles of organization, operating agreement, and membership certificates. In addition, in its response to the NOID, the Petitioner provided an explanation for the perceived discrepancies in the documents from its previous filing, while simultaneously maintaining that the Director's reliance on those documents was misplaced. The Director's determination that the Petitioner did not meet this eligibility requirement appears to have been based on a determination that the record contained unresolved inconsistencies from a prior filing. The Director relied primarily on previously submitted documents and their discrepancies in concluding that the record did not demonstrate a qualifying relationship. However, the Director did not adequately evaluate the documentary evidence submitted in support of the current record of proceeding or considering the Petitioner's explanations, submitted in response to the NOID, to resolve those discrepancies. On remand, the Director should fully evaluate the evidence submitted by the Petitioner in the current proceeding to determine whether it had the requisite qualifying relationship with a foreign entity.

The Petitioner also asserts that the Director did not properly consider all of the evidence submitted and improperly disregarded pieces of relevant documentary evidence submitted in support of the instant petition. For example, with regard to the Beneficiary's employment in an executive capacity,

both abroad and in the U.S., the Petitioner asserts that the Director did not provide an adequate analysis of the evidence submitted in response to the NOID and did not explain, for example, why supporting documentary evidence submitted in response to the NOID was given little evidentiary weight. The Petitioner contends that the Director failed to apply the preponderance of the evidence standard in evaluating the evidence of the Beneficiary's employment in the U.S. and abroad, did not address evidence submitted in response to the NOID, and ignored the detailed job descriptions submitted and improperly concluded that the enumerated duties were not executive in nature. In addition, the Petitioner asserts that the Director's discussion of the Beneficiary's employment in an executive capacity closely mirrors that provided in the NOID despite the Petitioner's submission of additional evidence with its NOID response. Given the amount and type of evidence submitted in support of the Beneficiary's employment in both the U.S. and abroad, both initially and in response to the NOID, we find the Director's brief analysis did not adequately inform the Petitioner of the reasons for concluding that the Beneficiary was not employed in a qualifying capacity either in the U.S. or abroad. On remand, the Director should fully evaluate the evidence submitted by the Petitioner to determine whether the Beneficiary was employed abroad in a managerial or executive capacity and whether he would be employed in the United States in a managerial or executive capacity.

III. CONCLUSION

For the reasons discussed, the Director's decision is withdrawn. 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 Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.