



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

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

In Re: 28456390

Date: DEC. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a gas station and convenience store, 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 denied the petition, concluding that the Petitioner did not establish that: (1) it had a qualifying relationship with the Beneficiary's foreign employer; (2) the foreign employer continued to do business abroad; (3) the Beneficiary had been employed abroad in a managerial or executive capacity; or (4) the Beneficiary would be employed in a managerial or executive capacity in the United States. 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). In addition, a petition for a multinational manager or executive must be accompanied by evidence that the prospective United States

employer has the ability to pay the proffered wage from the time the petition is filed and continuing through adjudication. *See* 8 C.F.R. § 204.5(g)(2).

## II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

We will first address whether the Petitioner established that the Beneficiary would be employed in the United States in a managerial or executive capacity.

As a preliminary matter, the Petitioner has ambiguously discussed the Beneficiary qualifying as both a manager and an executive on the record. For instance, in support of the petition, the Petitioner included a duty description that included both managerial and executive tasks, and on appeal it states that the Beneficiary will be employed “in an executive/managerial capacity.”

“Managerial capacity” means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

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.*

A petitioner claiming that a beneficiary will perform as a “hybrid” manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* sections 101(a)(44)(A) and (B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner’s burden to establish that the beneficiary’s duties meet each criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity.

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 managerial or

executive-level 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 managerial or 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.

Although the Director evaluated the proffered position solely as that of an executive, we find that the Petitioner's lack of clarity as to the Beneficiary's proposed role in the United States leaves initial uncertainty as to his intended employment capacity. Therefore, we will analyze both capacities in this decision.

#### A. Job Duties

When examining the managerial or 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 a managerial or executive capacity. 8 C.F.R. § 204.5(j)(5).

On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner indicated that it was a "convenience store with gas station" established on [REDACTED], 2020.<sup>1</sup> It further claimed to have a gross annual income of \$105,600 and two employees at the time of filing. The Petitioner's initial supporting letter claimed that the Beneficiary will serve as its president.

In a separate statement, the Petitioner identified the Beneficiary's proposed duties as follows:

The President has the ultimate legal responsibility for everything that goes on in the store. He makes most of the final decisions with input from his managers. He is an expert at teamwork, setting financial strategies and monitoring the performance of the company.

#### **25% of time is spent:**

The President has scheduled mandated weekly meetings with the store manager to review the following business reports:

- Sales reports
- Cash flow reports
- Reconciliation of financial variances, gains or losses
- Bank reconciliation
- Inventory Control
- Contractual Agreements w/vendors

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<sup>1</sup> In contrast, corporate documentation from the State of Texas indicates that the Petitioner was incorporated on [REDACTED] 2019.

- Financial agreements with banks and various other lenders
- Inventory Control
- Loss Prevention
- Advertising & Marketing events
- Employee retention, reviews, hiring or dismissing employees
- Initiating new product line
- Future plans for growth and development of the business
- The Controller has the authority to make all final decisions on financial reporting, staffing, advertising, brand marketing, and all contractual agreements.

**25% of time is spent:**

- Manage product category and produce marketing programs that leverage consumer insights to create strategically aligned sales growth.
- Develop and build product-level expertise through industry and competitive trend analysis and by analyzing program impact.
- Identify growth opportunities within product lines by understanding consumer wants, needs and beliefs.
- Develop product-focused programs to create growth supported by a compelling business case, including sales and profit forecasts that create top line growth and franchise profitability.

**15% of time is spent:**

- Develop strategic brief for merchandising materials, and promotions of the business.
- Manage miscellaneous marketing projects.

**10% of time is spent:**

- Evaluate recommendations for promotions and PR activities for product programs.
- Evaluate the staffing levels for the operation to achieve objectives for labor efficiency.
- Oversee the personnel/HR issues including: hiring, reviews, recognition, disciplinary, attendance, and grievance.<sup>2</sup>

**Executive Decisions made by the President**

Strategizes the financial goal setting, such as reducing debt or setting revenue or profitability targets.

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<sup>2</sup> We note that the breakdown of the percentage of time the Beneficiary devotes to tasks totals only 75%.

- He makes decisions on debt reduction which can come from reduction in staff, and or initiating hiring freeze, and or freeze any increase in salaries, bonuses, etc;
- He has the discretionary authority to hire, promote and or fire any employees;
- He has established financial rewards and or other benefits for meeting sales goals;

The President monitors the business is finances and makes decisions regarding the company spending, debt service, investment strategies, and profits.

- He has established lines of credit with banks, and or other financial institutions;

The President oversees the advertising, and sales events to increase sales.

- He makes final decisions on the purchases of all inventory, and establishes the pricing of the goods;

The President reviews the annual budget period he monitors the financial report such as balance the sheets, cash flow statements, profit and loss statements and departmental budgets. The president reviews the tax filings and annual reports to present to lenders and bank officers.

The President is qualified to negotiate future acquisitions, and or negotiate financing with lenders for any future business transactions.

The Petitioner also submitted an organizational chart, indicating that the Beneficiary would directly supervise a store manager who in turn would oversee two cashiers.

The Director issued a request for evidence (RFE), noting that the initial description of duties and supporting evidence was insufficient to establish that the Beneficiary would be employed in a primarily managerial or executive capacity. The Director further noted that the Petitioner did not appear to have the organizational complexity to support the Beneficiary in a primarily managerial or executive capacity, highlighting the fact that despite claiming to have four employees on its organizational chart, it claimed only two employees on the Form I-140 petition.

In response, the Petitioner provided no additional description of the Beneficiary's duties or clarification regarding its staffing and organizational structure in response to the RFE.<sup>3</sup> Rather, it noted that the Beneficiary had already entered the United States and had filed the company's articles of incorporation and federal taxes, established a corporate checking account, and negotiated a business agreement.

In denying the petition, the Director determined that the Petitioner's description of the Beneficiary's duties was insufficient, noting that the duties as stated did not demonstrate that the Beneficiary would

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<sup>3</sup> Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

be employed in a primarily executive capacity. The Director further noted the petitioner's failure to resolve the noted discrepancy regarding its staffing levels. On appeal, the Petitioner asserts that the Beneficiary's position "will be in an executive/managerial capacity," stating that he will direct the management of the company, lead the company to expand its sales and implement a talent management system, establish the company's goals and policies, and exercise wide latitude in discretionary decision-making.

The Petitioner also asserts on appeal that it has satisfied the preponderance of the evidence standard and contends that "it is more likely than not that the Beneficiary is qualified for I-140 EB-1C petition through at least a 51% certainty." However, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. For the reasons outlined below, the Petitioner did not demonstrate that the Beneficiary's role will be primarily managerial or executive in nature, as the job description the Petitioner offered contains generalities that preclude a meaningful assessment of the Beneficiary's actual tasks in the course of the Petitioner's daily operations.

The Petitioner has submitted a duty description and supporting documentation indicating that the Beneficiary would be primarily engaged in non-qualifying operational-level duties in the United States. For instance, the Beneficiary's duties discuss him producing marketing programs and managing miscellaneous marketing projects. Likewise, the Beneficiary's duties also mention him overseeing advertising and sales events. Several of these duties suggest the Beneficiary's direct involvement in the sale and promotion of its products, rather than the delegation of these lower-level non-qualifying duties to his claimed subordinates.

Whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties would be managerial or executive functions and what proportion would be non-qualifying. In fact, the Petitioner provided an incongruent breakdown of the time the Beneficiary would devote to some duties, which totals only 75% and is not delegated as either managerial or executive. The Beneficiary's duties include managerial and executive tasks as well as administrative and operational tasks, and the Petitioner does not quantify the time he would spend on these different duties. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of a manager or an executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In addition, the generic descriptions of the Beneficiary's proposed U.S. duties do not credibly demonstrate that he would be primarily engaged in qualifying managerial or executive-level tasks. For instance, the Director emphasized in the RFE that the Beneficiary's duty description was vague and lacked detail. However, the Petitioner did not supplement the record with additional details regarding the proposed position or the duties the Beneficiary will perform. We agree that the provided duty description lacks credible specifics to substantiate the Beneficiary's primary performance of qualifying managerial or executive-level duties. For example, the Petitioner did not detail or provide supporting documentation to substantiate the "goals and policies" the Beneficiary will establish or explain how he will oversee "advertising and sales events." Likewise, the Petitioner did not articulate or document what a "talent management system" is, and how the Beneficiary intends to implement

such a system. In fact, the Petitioner's support letters, including the brief submitted on appeal, do not clearly articulate the specific industry that it operates in, despite identifying itself as a "gas station with convenience store" on the Form I-140 petition. The Beneficiary's stated managerial and executive duties could apply to any managerial or executive employee acting in any business or industry, as his duty description includes little detail regarding his specific daily tasks and does not include a discussion of the Petitioner's actual business.

Although we do not expect the Petitioner to articulate and document every managerial or executive task to be performed by the Beneficiary, it is reasonable to expect that it would provide sufficient detail and documentation to corroborate his performance of qualifying duties, particularly since it asserted the Beneficiary was already acting in his role in the United States when the petition was filed in 2021 and when it responded to the RFE in 2023. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial or 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).

Although the Beneficiary may hold a managerial or executive title and may manage or direct a portion of the business does not necessarily establish eligibility for classification as a multinational manager within the meaning of section 101(a)(44)(A) or (B) of the Act. While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, the position description alone is insufficient to establish that his actual duties would be primarily managerial or executive in nature.

## B. Staffing and Organizational Structure

Beyond the required description of the job duties, we also examine 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.

As previously discussed, the Petitioner does not clearly articulate whether the Beneficiary would be employed in a managerial or executive capacity but does vaguely indicate in the duty description that he would oversee subordinate managers. As such, we will first analyze whether the Beneficiary would be employed in a managerial capacity.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." *Id.* If a beneficiary directly

supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 204.5(j)(2).

On the Form I-140 petition, the Petitioner claimed that it was established in 2020<sup>4</sup> and had 2 employees. Its organizational chart, however, listed four employees and indicated that the Beneficiary was supported by a store manager and two cashiers.

In the denial decision, the Director pointed to the fact that the Petitioner did not resolve the discrepancy regarding its staffing levels, nor does it address this discrepancy on appeal. Although the Petitioner provided job titles and position requirements for the Beneficiary's claimed subordinates, there is no evidence in the record to demonstrate that it actually employed such individuals. The Petitioner submitted a copy of its 2021 IRS Form 1065, U.S. Return of Partnership Income reflecting that it did not pay any wages or salaries in 2021, the year the petition was filed. Similarly, the Petitioner provided no payroll records or other documentation, such as quarterly wage and tax reports, to corroborate its claimed staffing levels.

Therefore, the Petitioner has not established that it employed supervisors, managers, or professionals subordinate to the Beneficiary when the petition was filed or at any time thereafter. As such, the Petitioner has not established that the Beneficiary would be employed as a personnel manager under an approved petition.<sup>5</sup> 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). Additionally, the Petitioner must resolve inconsistencies 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).

For similar reasons, the Petitioner did not demonstrate that the Beneficiary would be employed in an executive capacity. The term "executive capacity" is defined as 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.

As discussed, the Petitioner provided a statement of duties indicating the Beneficiary's wide involvement in the provision of non-qualifying operational tasks directly related to the sale and promotion of its products. Further, as noted, the Petitioner provided no evidence to substantiate that it had sufficient employees as of the date the petition was filed to elevate the Beneficiary to an executive capacity and to primarily relieve him from non-qualifying operational tasks. The Petitioner also did not clearly articulate or document the Beneficiary's asserted executive-level duties, such as the broad goals and policies he was responsible for establishing. In fact, the evidence strongly suggests the Beneficiary's substantial engagement in non-qualifying tasks, given numerous invoices included in the record that reflect the Petitioner's acquisition of inventory in 2021, a year when it had no

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<sup>4</sup> As noted previously, the Petitioner claims on the Form I-140 that it was established on [REDACTED] 2020, but provides copies of documentation from the State of Texas indicating that it was incorporated on [REDACTED] 2019. The Petitioner has not resolved this discrepancy with independent, objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

<sup>5</sup> The Petitioner does not assert that the beneficiary would act as a function manager.



subordinate employees on staff to support the Beneficiary. Therefore, the Petitioner has not demonstrated that the Beneficiary would be employed in an executive capacity.

### III. CONCLUSION

For the foregoing reasons, the Petitioner has not established by a preponderance of the evidence that the Beneficiary would be employed in the United States in a managerial or executive capacity. Because the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether it has a qualifying relationship with the Beneficiary's foreign employer, whether the foreign employer continues to do business abroad, or whether the Beneficiary was employed abroad in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

**ORDER:** The appeal is dismissed.