



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

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

In Re: 25516566

Date: MAR. 2, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, an entity engaged in cabinet designs, sales, and installation, seeks to permanently employ the Beneficiary as its “President and General Manager” 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had the ability to pay the Beneficiary’s proffered wage at the time of filing, continues to have that ability, and that it continues to do business. The Director also concluded that the Petitioner provided foreign documents that were not accompanied by properly certified English language translations and therefore did not establish that the Beneficiary’s foreign employer was doing business at the time of filing and continues to do business. The matter is now before us on appeal.

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 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 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. BASIS FOR REMAND

First, regarding the Director's conclusion that the record does not establish that the Petitioner and its foreign parent entity have been and continue to do business, the Petitioner has provided additional evidence on appeal addressing the previously noted evidentiary deficiencies. *See* 8 C.F.R. § 204.5(j)(2) (for the definition of the term *doing business*). Namely, the Petitioner has provided business documents accompanied by properly certified foreign language translations in compliance with 8 C.F.R. § 103.2(b)(3). The new evidence includes several of the foreign entity's supply and work order contracts, VAT invoices, and tax and bank statements. Together, these documents adequately demonstrate that the foreign entity has been and continues to engage in business transactions that are consistent with an entity that is doing business. The Petitioner has also provided additional customer contracts and invoices showing that it had been doing business prior to, and has continued to do business since, the date this petition was filed. *See* 8 C.F.R. § 103.2(b)(1) (requiring that eligibility for the requested benefit be established *at the time of filing* and continuing until the final adjudication). We will therefore withdraw the Director's adverse conclusions concerning the foreign entity and the Petitioner doing business during the relevant time periods.

Next, we will discuss the issue of the Petitioner's ability to pay. The Petitioner must establish its ability to pay the Beneficiary's proffered wage from the priority date onward. The priority date in this instance is February 2, 2022. The regulatory requirements for ability to pay state that evidence must be in the form of a petitioner's annual reports, federal tax returns, or audited financial statements; consideration of additional evidence is acceptable in "appropriate cases." 8 C.F.R. § 204.5(g)(2). The Director's decision in this matter was issued in October 2022, the same year this petition was filed. As such, required evidence of the Petitioner's ability to pay the proffered wage in 2022 was not yet available, and the Director based the ability to pay determination on evidence that predates the priority date. Required evidence of the Petitioner's ability to pay after the February 2022 priority date, should now be available. We will therefore remand this matter to the Director. On remand, the Director should ask the Petitioner to submit copies of annual reports, federal tax returns, or audited financial statements covering periods after the petition's priority date. Upon receipt of a timely response, the Director should issue a new decision based upon a comprehensive review of all relevant evidence.

Finally, despite our withdrawal of the Director's decision, the record lacks sufficient evidence establishing that the Beneficiary would be employed in the United States in a managerial or executive capacity. Although the Petitioner initially claimed that the Beneficiary would "permanently serve in [a] primarily managerial capacity," the Petitioner listed two components of "executive capacity" when describing the Beneficiary's proposed job duties. Namely, the Petitioner stated that directing the management of the company and exercising wide latitude in discretionary decision-making, both components of the definition of executive capacity, will comprise 90% of the Beneficiary's proposed position. *See* section 101(a)(44)(B)(i) and (iii) of the Act. It is therefore unclear whether the Petitioner is claiming that the nature of the Beneficiary's proposed employment would be managerial or executive. We note that a petitioner claiming that the beneficiary's position will consist of a mixture of managerial and executive duties 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* section

101(a)(44)(A)-(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 set of 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.

We further note that a determination of whether the Beneficiary's U.S. employment would be in a managerial capacity hinges on a comprehensive analysis which includes consideration of the proposed job duties and the organizational hierarchy within which those duties are to be performed. The U.S. job descriptions provided in this matter lack sufficient detail about the actual job duties the Beneficiary would perform within the scope of a cabinet retail and design business. Further, the additional quarterly tax returns submitted in response to the Director's request for evidence show a significantly reduced work force. Although the Petitioner claimed to employ a six-person staff at the time of filing, it claimed four employees in its 2022 first quarterly tax return and three employees the following quarter, thus indicating that only months after filing this petition, it was operating with half of the originally claimed staff. To establish eligibility for the requested classification, the Petitioner must provide evidence that the Beneficiary would be "primarily" employed in a managerial or executive capacity. *See, e.g.*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). The significant reduction in personnel leads us to question whether the Petitioner is adequately staffed to relieve the Beneficiary from having to primarily perform operational job duties, and perform duties consistent with a primarily managerial or executive position.

Accordingly, the Director may wish to request that additional evidence be submitted to clarify the above-described ambiguities regarding the proposed employment, as well as additional evidence related to the Petitioner's ability to pay the proffered wage. The Director should consider any new evidence submitted prior to making a determination concerning the Petitioner's eligibility.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.