



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

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

In Re: 28804341

Date: NOV. 8, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, describing itself as an importer and exporter of plastic products, 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 Service Center denied the petition, concluding the Petitioner did not establish, as required, that: (1) it had a qualifying relationship with the Beneficiary's foreign employer, (2) the Beneficiary would be employed in the United States in a managerial or executive capacity, (3) the Beneficiary was employed abroad in a managerial or executive capacity, and (4) the Petitioner had the ability to pay the Beneficiary's proffered wage.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. Since this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the other bases of denial. *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).

## **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 A MANAGERIAL OR 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 it was formed in 2015 and engaged in recycling and reprocessing raw plastic materials in the United States, including reprocessing and manufacturing these materials into plastic granules and products for shipment abroad to India and Asia. The Petitioner explained that it been recently re-established, emphasizing its operations had been brought to “a standstill” due to tariff issues in China and India, costly rent, and the COVID-19 pandemic. The Petitioner stated that it planned on hiring new staff, establishing a new manufacturing facility, and growing over the next five

years. In support of the petition, the Petitioner indicated he would perform the following duties as its president overseeing its business operations, management, and administration:

- Establishing the company's rules, policies and business strategies;
- Setting up company's annual budgets and financial goals;
- Monitoring the financial goals to be realized;
- Presiding over the board meeting, and reporting the US business operations to the overseas Board of Directors for further instructions;
- Directing to implement the company's guidelines on day-to-day business operations;
- Directing and overseeing the work performance and schedules of the subordinate executives, managers and professional staff within the organization;
- Directing to implement the productivity as instructed by the business plans;
- Directing to manage the product quality control;
- Directing to develop and maintain relationships with business-related associations, industry, and government officials for the best interest of the company's business operations;
- Directing the company's HR matters, including organizational personnel structure, professional development, motivation, performance evaluation, discipline, compensation, personnel policies, and procedures; and
- Deciding to hire, train and/or terminate employees to meet business requirements.

The Director issued a request for evidence (RFE) stating that the duty description provided by the Petitioner was too general and vague and requested it submit additional detail as to the Beneficiary's daily duties. The Director asked the Petitioner to provide the percentages of time he would devote to each of his tasks and an explanation as to who would perform the administrative duties within the business, namely those directly related to its provision of goods and services. In response, the Petitioner submitted the same duty description provided in support of the petition and stated that his role would be "totally executive in nature." It further classified U.S. Citizenship and Immigration Services' (USCIS) effort to determine whether the Beneficiary would primarily perform executive-level tasks as "superfluous and a waste of the agency's resources." The Petitioner emphasized two prior L-1A nonimmigrant petitions that were approved by USCIS on behalf of the Beneficiary and contended that it had met its burden regarding his executive capacity in the United States with these prior approvals.<sup>1</sup>

In denying the petition, the Director again concluded that the Beneficiary's duties were insufficient to establish that he would qualify as an executive under the regulations. On appeal, the Petitioner asserts that the Director did not adequately explain why the Beneficiary's duties were inconsistent with the definition of executive capacity, again emphasizing the prior approval of two L-1A nonimmigrant petitions on behalf of the Beneficiary.

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<sup>1</sup> USCIS records reflect that the Petitioner had two L-1A nonimmigrant intracompany transferee petitions approved on behalf of the Beneficiary from December 6, 2016, to December 5, 2017, and again from December 5, 2017, to December 4, 2019. However, USCIS records also show that his request for a further extension was denied in September 2021.

As a preliminary matter, the Director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions emphasized by the Petitioner. If the previous nonimmigrant petitions were approved based on the same evidence contained in the current record, the approval would constitute an error on the part of the Director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be unreasonable for USCIS or any agency to treat acknowledged errors as binding precedent. *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center Director approved other nonimmigrant petitions on behalf of the Beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999). In addition, even if it was determined that the Director did not give proper discretion to the prior L-1A approvals, it is not clear what remedy would be applicable, other than our appellate review here.

In this light, it was entirely proper for the Director to have requested additional information and evidence specific to the Beneficiary's proposed U.S. duties. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). Further, the Director was justified in requesting the percentage of time the Beneficiary would spend on his different duties. The Petitioner submitted substantial evidence reflecting the Beneficiary's apparent involvement in the performance of many non-qualifying operational duties while employed in the United States under the previously approved L-1A nonimmigrant petitions. For instance, the Petitioner submitted invoices from September and October 2017 reflecting his purchase of boxes, pallets, and shrink wrap in amounts ranging from \$1215 to \$1925. Similarly, the Petitioner submitted other invoices from August 2017 showing the Beneficiary renting a truck on three different occasions. Likewise, the Petitioner provided bank records reflecting his involvement in numerous operational-level tasks while it claimed he was employed as an executive in the United States during 2017, including paying for forklift repairs, rent, electrical work, machine parts, pallets, carrier charges, amongst other supplies and services. The foreign employer also stated in a letter that the Beneficiary would be tasked with purchasing equipment to reestablish the Petitioner's plastic processing business, and given the Petitioner's lack of personnel, it is not clear who would perform the operational tasks required in completing this objective other than the Beneficiary.

In contrast, the Petitioner provided little documentary evidence demonstrating his performance of qualifying executive-level tasks while employed in the United States, such as the rules, policies, or business strategies he established, the annual budgets or financial goals he set up, or company guidelines he implemented. The Petitioner also did not specify or document the subordinates he would oversee as of the date the petition was filed, the productivity he would implement, product quality control he would manage, or the relationships he would develop and maintain with other businesses and government officials. In fact, the Beneficiary's proposed duty description includes little discussion of the Petitioner's specific plastics import business, and his duty description could apply to any executive acting in a business or industry.

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 performance of qualifying duties, particularly since it asserts that he acted in this role in the United States as an L-1A nonimmigrant for approximately three years from 2016 to 2019. As such, it would be reasonable to expect that there would be sufficient details and supporting documentation to substantiate the Beneficiary's executive-level tasks during this time, and thereafter. 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).

Contrary to the Petitioner's assertions otherwise, whether the Beneficiary is an executive employee turns on whether the Petitioner has sustained its burden of proving that his duties would be "primarily" executive. *See* sections 101(a)(44)(B) of the Act. Here, the Petitioner does not credibly articulate and document what proportion of the Beneficiary's duties would be executive functions and what proportion would be non-qualifying. The Petitioner submitted evidence indicating the Beneficiary's prior involvement in numerous administrative or operational tasks, but it did not quantify the time he would spend on these duties as compared to executive-level tasks. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of an executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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.*

The Petitioner provided an organizational chart reflecting that the Beneficiary supervised a vice president. The vice president was shown to oversee numerous unfilled positions, including a purchasing and business development manager, an accounting and finance manager, a production and maintenance manager, and an export/import manager. Beyond this, the chart reflected two other levels of employee positions shown as unfilled, including a business development representative, an accounts receivable/payable clerk, an assistant production manager (overseeing twelve machine/production workers), and an assistant import/export manager.

The Petitioner has not demonstrated that its operations were sufficiently developed to support him in a qualifying executive capacity at the time the petition was filed or thereafter. As noted, the submitted organizational chart reflected that the company had only one other subordinate, the vice president, whose employment is notably left uncorroborated with supporting documentation. Further, the Petitioner appears to acknowledge that the company stopped operating after its establishment in 2015, indicating that it been recently “re-established,” and emphasizing that its operations had been brought to “a standstill” due to tariff issues in China and India, costly rent, and the COVID-19 pandemic. For instance, the Petitioner submitted IRS Forms 1040, U.S. Individual Tax Returns for the Beneficiary reflecting in schedule C that the company earned only \$18,500 during 2019, 2020, and 2021. Given that the petition was filed in November 2021, it does not appear the Petitioner was sufficiently operational to support employees when the petition was filed. In fact, the 2019, 2020, and 2021 IRS Forms 1040 show that the Petitioner had no costs during each of these years, indicating it had no employees and minimal operations during this time. The Petitioner’s business plan also reflects entirely prospective hiring plans, showing plans to hire five employees during the 2023/2024 fiscal year, more than two years after the date the petition was filed.

As such, the submitted evidence clearly reflects that the Petitioner did not have 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. In fact, as we discussed, the record shows the Beneficiary performing numerous non-qualifying operational tasks, such as purchasing shipping supplies, handling invoices, paying for rent and repairs, purchasing parts and equipment, among other similar tasks. In addition, it is not clear who, other than the Beneficiary, would perform the non-qualifying operational tasks necessary to re-establish the Petitioner’s business operations as indicated in support letters, such as purchasing new equipment and processing new hires. 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. 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).

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

**ORDER:** The appeal is dismissed.