



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

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

In Re: 28567566

Date: OCT. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a real estate investment company, 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 record did not establish that the Petitioner would employ the Beneficiary in the United States in a primarily managerial 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. ANALYSIS

The Petitioner did not claim that it seeks to employ the Beneficiary in an executive capacity. The Director determined that the Petitioner did not establish that it will employ the Beneficiary in a primarily 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).

If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary will be *primarily* engaged in managerial 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 the beneficiary’s duties will be primarily managerial, 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.

We agree with the Director’s determination that the Petitioner has not established that the Beneficiary will primarily manage the organization.

The Beneficiary worked as deputy director general of the Petitioner’s foreign parent company from 2013 until he arrived in the United States in 2019 as an L-1A nonimmigrant. Like the Petitioner, the foreign company buys and sells real estate properties.

The Petitioner listed the Beneficiary’s claimed duties as president of the petitioning U.S. company, with the approximate percentage of time devoted to each:

1. Review and approve contracts, proposed construction or renovation project costs and project budgets or other documentations pertaining to the company’s current and prospective projects. 20%
2. Review and analyze sales and activity reports, potential sales, and performance data to measure productivity and goal achievement and to determine potential areas of cost reduction. 20%
3. Monitor construction and renovation progress by reviewing activity and progress reports from the project manager or independent contractors. 15%
4. Ensure that suitable properties are being acquired and renovated by doing site visits and inspection. 10%

5. Develop, implement and if necessary, update and revise policies, strategies, plans and procedures aimed at increasing the company's profitability and progress. On a day to day basis, he will instruct the managing director to perform his duties according to the standard procedures and policies of the company; he will request . . . feedback and suggestion[s] from the managing director and independent contractors and consider[] any suggestions that he think[s] can help improve the company's policies, strategies, plans and procedures. 10%
6. Direct and oversee the performance of the managing director. 10%
7. Establish and manage relationships with all existing and prospective business partners. On a daily basis represent the company in meetings, negotiations and networking events. 10%
8. Track industry trends and analyze the local real estate markets. On a day to day basis he reads and reviews existing and emerging real estate and construction[] regulations, standards, or guidance documents. 5%

In the denial notice, the Director stated that the Petitioner had not shown "who would perform the non-managerial duties that are necessary to run a business, such as marketing, bookkeeping, budgeting, customer service etc." The Director added that the Beneficiary appears to be "deeply involved in the operational tasks of the business as the evidence shows the beneficiary reaches out directly to property owners for possible sales, negotiates contracts, completes site inspections etc." The Director stated that, apart from contracts for renovation work, the Petitioner had not documented the engagement of contractors to perform operational tasks.

The Petitioner employs one individual subordinate to the Beneficiary, with the title "managing director," but the Director concluded that the Petitioner had not shown that the managing director sufficiently relieves the Beneficiary from performing non-qualifying activities.

On appeal, the Petitioner states that it had submitted "contracts with [the] independent contractor" that performed the renovation work. The Director acknowledged those contracts in the denial notice, but noted that the Petitioner did not report any contractor expenses on its income tax returns. The Petitioner previously submitted an April 2021 agreement indicating that the Petitioner would pay \$117,000 to renovate a property in Maryland, but the highest non-salary expense reported on the Petitioner's 2021 income tax return is \$12,702 in "Auto & Truck" expenses. The Petitioner does not address this issue on appeal.

We agree with the Director that the Petitioner has not adequately shown who performs the operational tasks relating to a number of the Beneficiary's identified areas of responsibility. For example, the job description refers to sales, but the Beneficiary's only subordinate has no identified sales duties.

Several of the items listed in the job description represent broad areas of responsibility rather than specific tasks. 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.*

Relating to this lack of detail, the Petitioner's documented business activity does not appear to justify the percentage figures assigned to many of the Beneficiary's claimed responsibilities. For example, the Petitioner claims that the Beneficiary spends 20% of his time reviewing sales data and related information, and 20% of his time reviewing documentation relating to the company's projects. The record does not indicate that the Petitioner has sufficient sales and project activity to occupy so much of the Beneficiary's time.

In a statement submitted at the time of filing, the Petitioner indicated that the company "was established in [REDACTED] 2018. . . . Since it started its operations, Petitioner has already completed (purchased, renovated and sold) four projects. It also has one ongoing project and two projects under negotiations." The Petitioner filed the petition in November 2021, meaning that the Petitioner had undertaken five projects in its first three years of operations.¹ Documents in the record show that each project involved a single house. The Petitioner stated that "each project of the company usually lasts for six to eight months," but the Petitioner did not establish that each project entails continuous managerial responsibilities for the Beneficiary throughout those months.

For each project, the Petitioner executed a two-page agreement with a construction contractor, detailing the work to be performed and the cost for that work. Some tasks, such as plumbing and electrical work, are delegated to subcontractors. Materials in the record show that the construction contractor directly engages the subcontractors; there is no indication that the Petitioner is involved in these transactions. The record does not document ongoing involvement by the Beneficiary or his lone subordinate employee in the renovation process.

The Petitioner's tax return for 2021, the year the Petitioner filed the petition, does not show any income from any source. When the Petitioner responded to a request for evidence in January 2023, the submitted evidence did not show that the Petitioner sold any properties in 2021 or 2022. The record shows that the Petitioner had to pursue legal action regarding one of its properties in 2021-22, but this does not explain the lack of evidence of other business activity at the time.²

The Petitioner has not shown that its volume of business at the time of filing, averaging less than two projects per year, required the Beneficiary to spend significant amounts of time reviewing contracts, approving budgets, and performing other managerial tasks. The Petitioner also has not shown that the Beneficiary spends a significant amount of time developing and updating "policies, strategies, plans and procedures" on an ongoing basis, and the record contains little information about those policies, strategies, plans, and procedures.

¹ At the time of filing, the Petitioner had put out inquiries about purchasing two houses in the [REDACTED] area and an apartment building in [REDACTED] but the Petitioner's subsequent submission in 2023 did not show that it had acquired those properties or any others.

² Tax returns in the record show that the Petitioner's gross profit in 2020 was not sufficient to cover the salaries of its two employees, and the Petitioner reported no income from any source in 2021. Instead, the company drew from capital invested by its foreign parent company. Because the record does not indicate that the Petitioner sold any properties during the year that preceded the petition's November 2021 filing date, the question arises as to whether the Petitioner was doing business during that time as required by 8 C.F.R. § 204.5(j)(3)(i)(D). "Doing business" means he regular, systematic, and continuous provision of goods and/or services and does not include the mere presence of an agent or office. 8 C.F.R. § 204.5(j)(2). The Petitioner has not identified any goods or services that it regularly, systematically, and continuously provided during the year preceding the filing date. We need not explore this issue in greater depth, because we are dismissing the appeal on other grounds.

For the above reasons, we agree with the Director that the Petitioner has not met its burden of proof to establish that the Beneficiary will primarily manage the organization.

III. CONCLUSION

The Petitioner has not established that it seeks to employ the Beneficiary in a primarily managerial capacity. Therefore, we will dismiss the appeal.

ORDER: The appeal is dismissed.