



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

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

In Re: 26352227

Date: OCT. 26, 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 the research, development, and distribution of pharmaceutical products, seeks to permanently employ the Beneficiary as its associate director for HCP engagement 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 Beneficiary was employed abroad in a managerial or executive capacity prior to his entry to the United States as a nonimmigrant. The Director further concluded that the Beneficiary would not be employed in the United States in a managerial or executive capacity. The matter is now before us on appeal.¹ 8 C.F.R. § 103.3. On appeal, the Petitioner maintains that the Director's decision contains erroneous conclusions of both fact and law, mischaracterizes the nature of the submitted job descriptions for the Beneficiary, makes unfounded assumptions regarding the company's organizational structure, does not acknowledge or address all evidence submitted in response to a request for evidence (RFE) and, as such, did not provide a sufficient explanation for the denial of the petition.

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 sustain the appeal.

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

¹ The Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that it would submit a brief and/or evidence to our office within 30 days of filing the appeal. However, the record indicates that no supplement to the appeal was submitted. While this appeal was pending, U.S. Citizenship and Immigration Services (USCIS) approved a Form I-140 filed by the Petitioner in February 2023, granting the Beneficiary classification as a multinational manager or executive under section 203(b)(1)(C) of the Act.

capacity, and seeks to enter the United States 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.

We agree that the Director's decision contains factual errors and insufficient reasoning and analysis to support the conclusions reached. First, with respect to the Beneficiary's proposed U.S. employment, the decision contains no analysis of the specific evidence the Petitioner submitted in support of its claim that it will employ the Beneficiary in a managerial capacity. Rather, the Director concluded, without further explanation or discussion of the facts presented, that "a majority of the beneficiary's proposed duties . . . will involve the operational activities of the petitioning company due to the nature of the business and the description of the beneficiary's duties."

Regarding the Beneficiary's employment abroad, the decision misstates what was requested in the Director's request for evidence (RFE) and does not acknowledge or address most of the evidence provided in the Petitioner's response to that request. In addition, the decision repeatedly refers to the Beneficiary's former position as that of "an engagement manager who managed client engagements" and as a "sales manager of an engagement for an end client of the organization," characterizations of the position that are not supported by the record. Finally, the Director dismissed, without sufficient basis, the probative value of the foreign entity's organizational chart, noting that "in actuality" the company's managers and executives are "higher up in the hierarchy and not the individuals shown on the evidence provided."

Upon de novo review, we conclude that the Petitioner met its burden to establish that the Beneficiary, more likely than not, was employed abroad and will be employed in the United States, in a managerial capacity as defined at section 101(a)(44)(A) of the Act. The Petitioner has consistently indicated that the Beneficiary was employed abroad as a function manager and would serve as a function manager in the United States. The term "function manager" applies generally when a beneficiary may not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. 1101(a)(44)(ii).

If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

In his U.S. role, the Beneficiary is responsible for overseeing the brand strategy function for two of the company's multiple sclerosis treatments. The Petitioner provided a detailed description of his duties, explained how product brand strategy is an essential and clearly defined activity within the organization and how the Beneficiary will primarily perform managerial duties related to this function, with discretion over the day-to-day operations of the function assigned to him. The Petitioner's letters were supported by evidence of the Beneficiary's work product, organizational charts showing his senior placement within his function, and explanations as to how he relies on the support of cross-functional teams to assist him with non-managerial duties associated with the function he manages.

The record shows that he served in a similar position as a product manager for the Petitioner's foreign affiliate in the year immediately preceding his transfer to the United States in L-1A nonimmigrant status, where he was responsible for overseeing the marketing strategy and operations function for the launch of a new migraine treatment product in the French market.

While the Petitioner's detailed description and breakdown of the Beneficiary's duties indicates that he is called on to apply his business and technical expertise in performing some of his responsibilities, the record establishes that both the foreign and U.S. positions primarily involve the performance of higher-level duties that are consistent with the definition of managerial capacity at section 101(a)(44)(A) of the Act.

In sum, the Petitioner has met its burden to establish, by a preponderance of the evidence, that the Beneficiary was employed abroad, and will be employed in the United States, in a managerial capacity.

ORDER: The appeal is sustained.