



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 07952576

Date: NOV. 25, 2020

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, describing itself as an investment and consulting company, sought to permanently employ the Beneficiary as its “executive manager/president” 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 instant petition was approved; however, the Director of the Texas Service Center later revoked the approved petition, concluding it was approved in error. The Director determined that the evidence submitted by the Petitioner did not demonstrate that the Beneficiary was acting in a managerial or executive capacity. In addition, the Director concluded that the Petitioner willfully misrepresented material facts.

On appeal, the Petitioner contends that the Director overemphasized the fact that the Beneficiary’s asserted subordinate managers acted as officers and directors of other legal entities. The Petitioner disputes that there are discrepancies in its submitted tax documentation; and contends that its employees were compensated as contractors and that their employment is supported by IRS Forms 1099, Miscellaneous Income. Further, the Petitioner states that discrepancies in the dates of the Beneficiary’s asserted foreign employment were misconstrued by the Director and not reflective of willful misrepresentation.

Upon de novo review, we will dismiss the appeal and affirm the Director’s revocation of the petition. However, we will withdraw the Director’s conclusion that the Petitioner willfully misrepresented material facts. To make a finding of willful misrepresentation of a material fact in visa petition proceedings, an immigration officer must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. See Matter of M-, 6 I&N Dec. 149 (BIA 1954); Matter of L-L-, 9 I&N Dec. 324 (BIA 1961); Matter of Kai Hing Hui, 15 I&N Dec. 288 (BIA 1975). Here, the Director’s finding of willful misrepresentation was not supported by sufficient analysis of the critical factors listed above and we do not agree that the noted discrepancies amount to willful misrepresentation of material facts.

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).

Section 205 of the Act states: “The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (quoting Matter of Estime, 19 I&N Dec. 450 (BIA 1987)).¹

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue we will address is whether the Petitioner established that the Beneficiary was acting in an executive capacity in the United States. The Petitioner does not claim that the Beneficiary was employed in a managerial capacity.² Therefore, we restrict our analysis to whether the Beneficiary was employed in an executive capacity.

¹ A Form I-140 multinational executive or manager petition filed on behalf of the Beneficiary was approved by the Director of the Texas Service Center on May 15, 2017. The Director of the Texas Service Center later revoked this approved petition on July 30, 2019, following the issuance of a notice of intent to revoke (NOIR) on March 26, 2019. The Director of the Texas Service Center concluded that the petition had been approved in error and that the Beneficiary was not eligible for the benefit sought.

² The Beneficiary’s asserted title is “executive manager” leaving some question as to whether he acted in a managerial or an executive capacity. However, throughout the record the Petitioner asserts that he acted in an executive capacity. For

“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 for L-1A nonimmigrant visa classification as an executive, the Petitioner must show that the Beneficiary performed 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 was 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 were 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.

In a support letter provided with the petition in May 2016, the Petitioner stated it was a “diversified holding company” and that it “targets companies and invests additional capital to maintain and increase the[ir] profitability and maximize the[ir] value.” The Petitioner indicated that it provided the “service product of consulting companies” and emphasized its ownership interest in three additional limited liability companies (LLCs). The Petitioner stated that the Beneficiary helped “grow the brand [redacted] in the development and sales promotion.” It further explained that it sold these “franchises” and increased investment in a sub-company [redacted] noting “the huge growth in sales and setting [up] of two (2) more kiosk[s]” in 2014 at a mall located in Florida.

Later in April 2017, in response to the Director’s request for evidence (RFE), the Petitioner explained that it had “invested in a new enterprise...a [redacted] restaurant” operated by another LLC in which it held a 50% interest. [redacted] The Petitioner stated that the Beneficiary oversaw “4 sub-companies and ensure[d] their productivity.” It indicated that one of these affiliated LLCs did business as [redacted] and it provided a website address reflecting the sale of [redacted]

instance, on appeal, the Petitioner states that the Beneficiary “meet[s] the requirements for an I-140 Immigrant Petition for a Multinational Executive [emphasis added] under 8 C.F.R. 204.5.”

[redacted] themed clothing. A submitted organizational chart indicated that the Petitioner had ownership interests in four different affiliated LLCs overseen by the Beneficiary, the first operating the aforementioned [redacted] Restaurant, another running the aforementioned ‘ [redacted] ’ a third called [redacted]’ and another described as a “cleaning company.” The Petitioner provided the following duty description for the Beneficiary in his position as its “Executive Manager”:

- ∑ Ensuring Company compliance with all State and Federal rules with regards to operational requirements (5%);
- ∑ Formulating short- and long-term policies to ensure the continuous growth and profitability of the business (10%);
- ∑ Communicating directly by telephone, email or in person with shareholders on a weekly basis to provide updates and guidance (5%);
- ∑ Exploring and identifying the need for further investment and reporting to shareholders (5%);
- ∑ Coordinating international strategic planning with the foreign affiliate company in Venezuela (10%);
- ∑ Negotiating with banks and vendors and suppliers to ensure the most favorable terms and conditions (5%);
- ∑ Coordinating the setting of accurate budgets for administration and marketing and monitoring these on a biweekly basis (10%);
- ∑ Hiring and overseeing the Company’s management team (15%);
- ∑ Legally representing the Company, having authority to bind it in contract and acting as the corporate bank account signatory (10%);
- ∑ Determining with shareholders a marketing and promotion strategy and, if necessary, entering into agreement with a marketing company (5%);
- ∑ Ensuring managers and staff members maintain high business standards (3%);
- ∑ Determining salary, wage and benefits structures at all levels with final approval of shareholders (2%); and
- ∑ Monitoring staff performance through annual evaluations and ensuring highest level of customer/client service (15%).

The Petitioner submitted substantial supporting evidence indicating that the Beneficiary was primarily engaged in the performance of non-qualifying operational duties overseeing its operations and the operations of its affiliated LLCs. For instance, the Petitioner provided a November 2014 invoice addressed to the Beneficiary for printer services and a mobile phone bill from March 2016 listing him as the contact. Likewise, the Petitioner submitted a December 2016 invoice reflecting the Beneficiary purchasing mobile phones for the company. It also provided numerous other invoices dated from May 2016 through February 2017 for unexplained “business consulting,” each listing the Beneficiary’s email address as the contact for payment. Similarly, Petitioner bank statement dating from June through December 2016 show the Beneficiary’s signature on checks related to various lower level day-to-day operational matters, such as paying a storage company approximately \$234 in August 2016 and the company’s rent in November 2016, while also issuing all of its payroll checks during this period.

In contrast, there is little supporting documentation to support the Beneficiary’s performance of executive-level duties related to setting broad goals and policies or to substantiate his delegation of

non-qualifying tasks to claimed subordinate managers within its organizational structure. Further, questionably, none of the non-qualifying duties reflected in the supporting documentation appear in the Beneficiary's generic duty description. In sum, the record includes considerable evidence reflecting the Beneficiary's engagement in non-qualifying operational duties indicating that he was primarily performing these tasks as of the date of the petition and thereafter. This evidence indicates that the petition, as the Director concluded, was approved in error.

Whether the Beneficiary is an executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" executive. See sections 101(a)(44)(B) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties were executive functions and what proportion were non-qualifying. The Petitioner submitted documentary evidence demonstrating the Beneficiary's performance in non-qualifying operational level task prior to, and after, the date the petition was filed and approved, but it does not quantify the time he spent on these different duties. For this reason, we cannot determine whether the Beneficiary primarily performed 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).

In addition, the Beneficiary's duty description is generic and includes little credible detail relating specifically to the Petitioner's claimed array of business ventures. In fact, the duty description, and record generally, do not provide a clear picture of the Beneficiary's actual day-to-day activities, his role within the business, or even the exact nature of the Petitioner's "consulting" business. The Beneficiary's duty description could apply to any executive working within any company in any industry and it provides little insight into his actual day-to-day executive-level tasks. For instance, there is little detail and no supporting documentation to substantiate the Beneficiary's performance of executive-level duties, such as "state and federal rules" he ensured compliance with, policies he formulated, or "international strategic planning" he coordinated. Likewise, there are few credible specifics and no supporting documentation to corroborate the Beneficiary's oversight of a management team, his negotiation of contracts, or his setting of marketing and promotional strategies.

Although we do not expect to the Petitioner to detail and document every executive-level task of the Beneficiary, the lack of these specifics and supporting evidence leaves substantial uncertainty as to whether he was performing executive-level duties. This lack of detail and documentation is particularly noteworthy since the Petitioner asserts that the Beneficiary was employed as an executive with the company as far back as 2014. 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). Therefore, we agree with the Director's determination that the petition was approved in error as the submitted evidence does not sufficiently demonstrate the day-to-day executive-level tasks performed by Beneficiary.

Even though the Beneficiary held a senior position within the organization, the fact that he managed or directed a portion of 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 have exercised discretion over the Petitioner's day-to-day operations and possessed the requisite level of authority with respect to discretionary decision-making; however, the position description alone is insufficient to establish that his actual duties were primarily executive in nature.

B. Staffing and Executive Capacity

If staffing levels are used as a factor in determining whether an individual acted 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.

As discussed, the Petitioner contends that the Beneficiary acted in an executive capacity in the United States. 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.

As a preliminary matter, prior to analyzing its claimed organizational structure and subordinates, it is significant that the Petitioner has provided an ambiguous picture of its business operations and the Beneficiary’s place within its organizational structure throughout the record. To illustrate, in a support letter submitted in response to the Director’s RFE in April 2017, the Beneficiary stated the following with respect to the Petitioner’s operations:

In 2013 and 2014, the company primarily focused on [redacted] and [redacted] projects. Therefore, in 2014 there were a total of 9 employees because of the two sub-companies demanded attention. However, in the year 2015, decisions were made that significantly impacted the Company. It was a year of rebuilding and growth. We abandon[ed] one venture, only to start another business. The Company did so with long-term objectives in mind. So, during our reconstruction in 2015, there were only 3 employees. In 2016, the Company began a larger investment, one that we hope will be a long-term success. The company employed 5 employees that were instrumental to our growth after our rebuilding process. This the reason why the variation in the number of employees from these past years and will more than likely increase in years to come.

Later, in response to the Director’s notice of intent to deny (NOID) in April 2019, the Petitioner provided various revenue levels for its affiliated LLCs, the businesses it asserts it and the Beneficiary manage. For instance, it stated that the Petitioner earned approximately \$207,000 in 2016, \$141,000 in 2017, and \$232,000 in 2018. In addition, it stated the affiliated LLC operating its “cleaning company” earned around \$67,000 in 2017 and nearly \$68,000 in 2018, while the other affiliated LLC operating its “[redacted] Restaurant” had earned approximately \$195,000 in 2017 and nearly \$99,000 in

2018. Lastly, the Petitioner indicated that the other affiliated LLC named [redacted] earned a little less than \$12,000 in 2017 and only around \$1400 in 2018.

Despite its assertions with respect to its operations through its various affiliated LLCs, the Petitioner has provided no objective evidence to substantiate any of its claimed revenue levels or operations leaving uncertainty as to whether its operations were ever sufficient to support the Beneficiary in a qualifying executive-level capacity. The Petitioner provided no tax documentation, audited financial statements, or other credible evidence to substantiate its revenue or the revenue earned by its affiliated LLCs. In fact, the only corporate tax document submitted by the Petitioner was a 2014 IRS Form 1120, U.S. Corporation Income Tax Return reflecting that it earned just under \$70,000 during that year, approximately two years prior to the date the petition was filed. Further, it is not clear how the Petitioner earned its stated levels of revenue, as it only vaguely mentioned [redacted] services, an affiliated business selling [redacted] clothing, and unexplained “consulting services,” for which there is little explanation or evidence. At no point on the record does the Petitioner clearly describe its operations, the Beneficiary’s place within these various businesses, or how it shares revenue with its claimed affiliates.

In support of the petition, the Petitioner emphasized “kiosks” in a mall selling [redacted] clothing, while in response to the RFE it pointed to the purchase of a [redacted] restaurant.” However, the record includes no evidence of the Petitioner or an affiliated LLC operating or earning revenue from the sale of [redacted] clothing business, nor documentation substantiating that it operates a restaurant through another affiliated LLC. In fact, a support letter submitted in response to the NOIR stated that the affiliated LLC operating its restaurant business was “inactive 07/2018” and that the unexplained [redacted] was inactive as of May 2018, leaving uncertainty as to whether these businesses are still in operation. Likewise, the Petitioner provided no explanation as to what business its other discussed LLC conducted, as it only vaguely described it as a “cleaning company.” However, the record includes no documentation to substantiate the operation of this cleaning business or its asserted revenues. Therefore, in sum, the Petitioner has offered ambiguous assertions as to its business operations and those of its affiliated LLCs, leaving no clear substantiated picture as to whether its staffing and operations were sufficient to support the Beneficiary in a qualifying executive-level capacity. 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).

Further, in revoking the petition, the Director pointed to the Petitioner’s claimed organizational chart listing five employees, noting that state quarterly wage forms reflected that it did not pay wages to four of these five employees. Based on these discrepancies, the Director stated that “it can be reasonably concluded that the beneficiary is not acting as an executive or manager.” On appeal, the Petitioner contends that provided IRS Forms 1099 demonstrate payments to independent contractor employees sufficient to support the Beneficiary in an executive capacity and it contends that the Director misunderstood its organizational structure.

In support of the petition filed in May 2016, the Petitioner asserted that it had five employees. A corresponding organizational chart reflected that the Beneficiary supervised a finance manager who oversaw a finance assistant and “Specialist Internet Marketing and Sales.” The chart further indicated that the Beneficiary also oversaw an executive assistant. Later, in response to the Director’s RFE in

April 2017, the Petitioner provided an expanded organizational structure reflecting the Beneficiary and one other employee, an executive assistant, working for the Petitioner. The chart also showed that the Beneficiary oversaw the affiliated LLC operating its claimed restaurant business, including a manager, chef, chef assistant, kitchen assistant, and a server. The chart also indicated that the Petitioner, and Beneficiary, oversaw an internet marketing specialist working for its [redacted] clothing LLC and a handyman working for its cleaning LLC.

In response to the Director's NOID, the Petitioner provided an additional listing of its staff indicating that during 2017 the Petitioner employed the Beneficiary, an executive assistant, and an operational manager as IRS Form 1099 contractors. The 2017 staff listing also showed a manager working for the cleaning company LLC, and a manager, assistant, and twelve "staff" working for the LLC operating its claimed restaurant. Lastly, another 2018 staff listing indicated that at this time the Petitioner engaged the Beneficiary, an executive assistant, an operational manager, and a marketing company as IRS Form 1099 contractors; a manager and cleaning and pool contractors working for its cleaning LLC; and a manager and five staff working for its restaurant LLC.

The Petitioner has not submitted sufficient evidence to demonstrate that it had a sufficient organizational structure to support the Beneficiary in an executive capacity where he primarily focused on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. First, the Petitioner provided 2017 IRS Forms 1099 indicating that it paid wages to only three individuals during that entire year, the Beneficiary, the claimed operational manager, and another individual not identified in any of its staff lists. Beyond this, the 2017 Forms 1099 showed that the asserted cleaning LLC issued payments to a [redacted] for \$7775 and \$1405 to a claimed manager of this business. Twelve of the 2017 IRS Forms 1099 reflected payments made to restaurant "staff" by [redacted] the affiliated LLC operating its claimed [redacted] Restaurant." These IRS Forms 1099 also showed payment of approximately \$42,600 to a claimed manager and nominal payments to the remaining restaurant "staff" ranging from around \$1240 to approximately \$11,019.

The submitted evidence does not support that the Petitioner had sufficient staffing to support the Beneficiary in an executive capacity as of the date the petition was approved in May 2017. For instance, the 2017 IRS Forms 1099 reflect that the Petitioner only compensated the Beneficiary and one other asserted "operational manager" for whom it has submitted no duties. Likewise, even if we were to consider the Petitioner's affiliated LLCs as part of its organizational structure, it has also not submitted duties for the asserted employees working for these entities as necessary to substantiate these subordinate positions. For example, the Petitioner submitted no duties for the claimed managers of its restaurant or cleaning businesses, nor did it explain the generic restaurant "staff" and their duties. In fact, as we have noted, in response to the NOID, the Petitioner provided a staff listing indicating that the affiliated LLC operating its restaurant business was "inactive" as of July 2018, while the LLC running its [redacted] clothing business had no employees in 2018.

In sum, the Petitioner provided an ambiguous array of organizational structures and potential businesses from the time the petition was filed, when it was approved, and when the NOID was issued. At no time does this evidence sufficiently demonstrate that the Beneficiary acted in an executive capacity. In fact, the Petitioner did not even clearly establish what business the Petitioner conducts, beyond holding claimed ownership interests in other businesses, and the connection between these affiliated LLCs and businesses to the Petitioner and its operations remains unclear. As we discussed,

there is no direct supporting evidence of the Beneficiary acting in an executive capacity for the Petitioner, primarily setting goals and policies for the organization, and delegating duties to its claimed managerial subordinates.

Therefore, the Petitioner did not sufficiently demonstrate that the Beneficiary was acting in an executive capacity when the petition was approved, or at any time thereafter. As such, we conclude that the Director was correct in revoking the petition as the evidence reflects that it was approved in error.

ORDER: The appeal is dismissed.