



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 9822231

Date: SEPT. 03, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Multinational Manager or Executive

The Petitioner seeks to employ the Beneficiary as its president under the first-preference, immigrant classification for multinational managers or executives. See 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 Center denied the petition. The Director concluded that, contrary to Department of Homeland Security regulations, the Petitioner did not establish that it had been “doing business” for at least one year before the petition’s filing.

The Petitioner bears the burden of establishing eligibility for the requested benefit. See section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. MULTINATIONAL MANAGERS AND EXECUTIVES

A petitioner for a multinational manager or executive must demonstrate that, for at least one of the three years before a beneficiary’s entry into the United States as a nonimmigrant, the petitioner, a subsidiary, or an affiliate employed him or her abroad in a managerial or executive capacity. 8 C.F.R. §§ 204.5(j)(3)(i)(B), (C). A petitioner must also establish that it would employ the beneficiary in a managerial or executive role in the United States. 8 C.F.R. §§ 204.5(j)(5).

II. DOING BUSINESS FOR AT LEAST ONE YEAR

In addition, a petitioner for a multinational manager or executive must demonstrate that it “has been doing business for at least one year.” 8 C.F.R. § 204.5(j)(3)(i)(D). The term “doing business” means “the regular, systematic, and continuous provision of goods or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.” 8 C.F.R. § 204.5(j)(2).

A petitioner must demonstrate its eligibility for a requested benefit at the time of a petition’s filing. 8 C.F.R. § 103.2(b)(1). The Petitioner here filed the petition on November 6, 2017. Thus, under 8 C.F.R. § 204.5(j)(2), the company must demonstrate that it has been doing business since at least November 6, 2016.

The Petitioner submitted copies of six invoices it issued for its trucking services. The earliest invoice, for \$250, bears the date of December 26, 2016. This date does not fall on or before November 6, 2016. The invoices therefore do not establish the Petitioner's provision of goods or services for at least one year before the petition's filing. Also, the Petitioner did not provide copies of any invoices for between December 26, 2016, and September 12, 2017, a substantial part of the one-year period before the petition's filing. The invoices therefore do not document the Petitioner's provision of goods or services before the petition's filing on a "regular, systematic, and continuous" basis.

A copy of a federal income tax return for calendar year 2016 indicates the Petitioner's generation of about \$100,000 in revenues. The return, however, does not indicate when the company began generating revenue that year. The return therefore also does not establish that the Petitioner began doing business at least one year before the petition's filing.

On appeal, the Petitioner argues that an October 4, 2016, certificate of use demonstrates its business activities more than one year before the petition's filing. The certificate authorizes the Petitioner to use its property for business warehouse and office purposes. The certificate, however, does not indicate the company's provision of goods or services at the time of the document's issuance. The Petitioner also points to a copy of an insurance policy listing coverages for workers compensation and employer's liability, effective July 29, 2016. Like the business use certificate, however, the insurance certificate does not document the Petitioner's regular provision of goods or services at the time of the effective dates. Moreover, the certificate lists the insured party as a company other than the Petitioner. The record does not explain how the insurance certificate relates to the Petitioner's operations. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record).

The Petitioner submits additional evidence on appeal. The Director's written request for evidence, however, notified the Petitioner of its need to document its business activities as of November 6, 2016, and provided it with a reasonable opportunity to do so. We therefore decline to consider the Petitioner's evidence on appeal. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (barring consideration of appellate evidence where a party received prior notice of the required materials and a reasonable opportunity to provide them). Even if we considered the evidence, it would not establish that the Petitioner has been "doing business" for the relevant period. The earliest sales invoice is dated November 14, 2016, less than one year before the petition's filing. As the Petitioner previously submitted other invoices, it is unclear why the company did not submit this invoice earlier. The Petitioner also submitted copies of its federal payroll taxes for the second, third, and fourth quarters of 2016. The returns show the Petitioner's employment of the Beneficiary in the second and third quarters, and, beginning in the fourth quarter, two additional employees. But the returns do not indicate when the Petitioner began providing goods or services to clients or customers. The evidence on appeal therefore would not establish that the Petitioner has been doing business for the required period.

For the foregoing reasons, the Petitioner has not demonstrated that it has been "doing business" for at least one year before the petition's filing. We will therefore affirm the petition's denial.

III. THE NATURE OF THE PROPOSED EMPLOYMENT

Although unaddressed by the Director, the record also does not establish the Petitioner's proposed employment of the Beneficiary in the claimed executive capacity. The term "executive capacity" means employment that would primarily involve: 1) directing the management of an organization or a major component or function of it; 2) establishing goals and policies of the organization, component, or function; 3) exercising wide latitude in discretionary decision-making; and 4) receiving only general supervision or direction from higher-level executives, directors, or stockholders of an organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B); 8 C.F.R. § 204.5(j)(2).

The Petitioner must show that the Beneficiary's proposed employment meets all four elements of the definition of the term "executive capacity." The Petitioner must also demonstrate that the Beneficiary would primarily engage in executive duties, as opposed to ordinary operational activities. See *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining the executive nature of proposed employment, we consider: a petitioner's description of the job duties; the company's organizational structure and the nature of its business; the presence of other employees to relieve the beneficiary from performing operational duties; the duties of a beneficiary's subordinate employees, and other factors affecting a beneficiary's business role.

Here, the Petitioner proposes to continue employing the Beneficiary as president of the trucking company, directing its transportation of materials such as mulch, straw, grass, waste, and debris. The Petitioner's organizational chart shows the Beneficiary at the top of a six-person organization. The chart reflects the Beneficiary's direct supervision of a business operations manager and an outsourced accountant. The business operations manager supervises a logistics manager, who in turn purportedly oversees three drivers.

The Petitioner states that the business operations manager prepares reports for the Beneficiary's review, and reviews and coordinates financial matters, legal affairs, and government obligations. The business operations manager also purportedly manages daily sales and marketing operations. The logistics manager, the Beneficiary's spouse, oversees logistics of trucking services, manages drivers, and provides customer service to clients and vendors.

The record does not establish the Petitioner's ability to support the Beneficiary in an executive-level capacity at the time of the petition's filing in November 2017. See 8 C.F.R. § 103.2(b)(1). The Petitioner claims to employ six people, including the Beneficiary. But copies of a federal payroll tax return for the third quarter of 2017 and IRS Forms W-2, Wage and Tax Statements, for 2017 - the most recent of record - indicate the company's employment of only four people: the Beneficiary; the business operations manager; the Beneficiary's spouse; and one driver. See *Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record). Also, the wage amounts on the Forms W-2 cast doubt on whether the Beneficiary's subordinates work on full-time bases. The Forms W-2 indicate that, in 2017, the business operations manager received \$19,900; the Beneficiary's spouse \$17,158.30; and the driver \$8,050. At that time, the minimum wage at the Petitioner's location in Florida was \$8.10 an hour, or \$16,848 a year for a 40-hour, work week. See U.S. Dept. of Labor, "State Minimum Wage Laws," <https://www.dol.gov/agencies/whd/minimum-wage/state> (last visited Aug. 25, 2020). The record therefore indicates that at least one of the Petitioner's four employees did not work on a full-time basis.

The term “executive capacity” describes an elevated position in an organizational hierarchy. Under Section 101(a)(44)(B) of the Act, a beneficiary must have the ability to “direct the management” and “establish the goals and policies” of an organization or a major component or function of it. A petitioner must demonstrate that a beneficiary would primarily focus on broad goals and policies, rather than day-to-day operations. Here, the small number of employees and the part-time nature of at least one of their positions cast doubts on the sufficiency of the Petitioner’s resources to relieve the Beneficiary from primarily performing operational duties. The record therefore does not establish the Petitioner’s proposed employment of the Beneficiary in an executive capacity.¹

In any future filings in this matter, the Petitioner must explain the inconsistencies of record and submit independent, objective evidence that the Beneficiary would work in the claimed executive capacity.

IV. CONCLUSION

The Petitioner has not demonstrated that it has been “doing business” for at least one year before the petition’s filing. We will therefore affirm the petition’s denial.

ORDER: The appeal is dismissed.

¹ In determining the executive nature of a position, USCIS cannot rely solely on the number of employees directed. Section 101(a)(44)(C) of the Act. But USCIS may consider a company’s size in conjunction with other relevant factors. See, e.g., Family Inc. v. USCIS, 469 F.3d at 1316. Here, we considered not only the Petitioner’s number of employees, but also the job duties of the Beneficiary’s subordinates and the existence of workers to relieve him from performing operational duties. Pursuant to section 101(a)(44)(C) of the Act, we therefore did not rely solely on the Petitioner’s size.