



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

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

In Re: 18282771

Date: AUG. 03, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, describing itself as a logistics transportation company, seeks to permanently employ the Beneficiary as its chief operating officer 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 Nebraska Service Center denied the petition, concluding the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. Further, the Director determined the Petitioner did not demonstrate that the Beneficiary was employed abroad in a managerial or executive capacity.

On appeal, the Petitioner asserts, contrary to the Director's conclusion, that the Beneficiary's U.S. and foreign duty descriptions are sufficiently detailed and the submitted evidence establishes that he would be employed in an executive capacity in the United States and was employed in this same capacity abroad.

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. The Petitioner did not sufficiently establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether Beneficiary was employed abroad in a managerial or executive capacity. *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 AN 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 that the Beneficiary would be employed in a managerial capacity. 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 did not specifically articulate the nature of the goods and services it provided in the United States in its support letters. However, it submitted supporting documentation appearing to indicate that it was engaged in exporting goods to China, including automobiles. In a request for evidence (RFE), the Director stated that the Beneficiary's duty description submitted in support of the petition lacked sufficient detail; and requested that it provide a clear description of his proposed duties and documentary evidence of his daily executive-level tasks. The Petitioner submitted some of the following duties for the Beneficiary as its proposed chief operating office (COO) in response to the RFE, and resubmits these duties on appeal:

- Direct the management of the whole organization through department managers,
- Adjust and oversee U.S. company's operation, business, management policies, activities, and strategies in order to promote company's products and services,
- Develop new business opportunities,
- Review and approve business plan by each department,
- Review and approve agreements by each department,
- Help CEO for succession and growth plans,
- Establish or adjust company's management policies, objectives, and strategies and work with CEO to establish or adjust company's development objectives,
- Oversee and implement the strategic goals and objectives of the company,
- Review and approve and seek out opportunities for investment,
- Review and approve the operating plans by the department managers,
- Assess the benefits of all prospective contracts and advise the company on programmatic design and implementation matters,
- Assist the CEO and board with the development of long range and annual plans,
- Set specific goals to fit in with the plan set by the CEO and board,
- Work with the CEO on a strategic vision as well as assisting in the development and negotiation of contracts,
- Confer with the CFO regarding income and expenses in the U.S. and recommend the investment plan,
- Work with the CEO on the strategic vision including fostering and cultivating stakeholder relationships,
- Work with department managers to ensure programmatic success through analysis support and compliance with all contractual and programmatic requirements,
- Track and solve the problems of major customers and coordinate between these major customers,
- Ensure adequate controls are installed and that substantiating documentation is approved and available,
- Develop and maintain systems of internal controls to safeguard the assets of the organization,
- Adjust the human resources policies and goals,
- Negotiate on behalf of the organization,
- Review and approve major agreements, and
- Lead public relations.

The Petitioner submitted a generic U.S. duty description for the Beneficiary that does not credibly establish he would be primarily engaged in the performance of qualifying executive-level duties as of

the date the petition was filed. The provided duty description lacks credible detail to substantiate the Beneficiary's proposed primary performance of qualifying executive-level duties. For instance, the Petitioner did not detail the "management policies" or "strategies" the Beneficiary would implement, the "products and services" he would "expand," "new business opportunities" he would pursue," or the "business plans" and "agreements" he would approve and negotiate. Likewise, The Petitioner did not specify or document the "policies" and "development objectives" the Beneficiary would set, the "potential investment projects" he would be involved with, "programmatic design and implementation matters" he would advise management on, the "long range and annual plans" he would develop, or "major customers" with which he would coordinate. The Beneficiary's duties include no specifics as to the Beneficiary's actual business or his actual role within its operations and could apply to any executive working for any company in any industry.

We acknowledge that the Petitioner also provided a "typical daily schedule" for the Beneficiary, but this was similarly generic. For example, the daily schedule stated that the Beneficiary would "check and review emails from [the] foreign company," coordinate with the chief executive officer on "important matters and issues," and "attend conferences and forums to understand the direction of business development and market dynamics." Further, it discussed "important clients," recommending "the investment plan," and working with subordinate managers on "difficulties and problems encountered, and solutions to problems." This "typical daily schedule" was very similar to the Beneficiary's vague overall duty description and provided little detail and context within its specific business or industry, such as the important issues he would handle, "business development and market dynamics" he would deal with, "important clients" he would work with, or "investment plans" he would implement.

Although we did not expect the Petitioner to articulate and document every executive-level task to be performed by the Beneficiary, it is reasonable to expect that it would provide sufficient detail and documentation to sufficiently corroborate his proposed performance of qualifying duties, particularly since it asserts he acted in this role in the United States as an L-1A nonimmigrant for approximately seventeen months with an affiliated company prior to the date this petition was filed. For example, the Petitioner provided a series of subcontractor "letter of intent" agreements executed between August 2018 and June 2019 and now provides two service agreements dating from May and December 2020 for certain "transportation" and "drayage" services. However, the Petitioner does not specifically detail the nature of these services or the Beneficiary's potential involvement in these activities, if any. 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). On appeal, the Petitioner again submits the same duties for the Beneficiary. The Beneficiary's proposed duties do not credibly demonstrate that the Beneficiary would likely devote a majority of his time to executive-level tasks.

Even though the Beneficiary holds a senior position within the organization, the fact that he will manage or direct 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 exercise discretion over some of the Petitioner's day-to-day operations and possess the 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.*

In support of the petition, the Petitioner submitted an organizational chart reflecting that the Beneficiary would operate at the same level as a chief financial officer (CFO), with both reporting to a chief executive officer (CEO). The chart further reflected that the Beneficiary and the CFO would oversee accounting, dispatch, import and export, and business departments. In total, this chart identified only five employees by name, including the CEO, CFO, the Beneficiary (COO), an accounting manager, and an import and export manager. Further, a “safety section” within the dispatch department showed “3 to 10” independent contractor truck drivers.

Later, in response to the Director’s RFE, an organizational chart dated in November 2020 showed accounting, dispatch, and import and export departments, each consisting of a manager supervising an assistant, and with a total of three managers and two assistants identified by name, as well as the “president/CEO,” the CFO, and the Beneficiary. It also indicated that there was a “transportation department” within the dispatch department including a manager position “to be hired” overseeing five “independent contractor” truck drivers. Likewise, the import and export department was shown to include a warehouse section consisting of a manager and assistant position “to be hired.”

Now on appeal, the Petitioner provides yet another organizational chart dated in March 2021 as well payroll documentation from January 2021 through March 2021. This chart identifies eleven employees by name and refers to six other “outsourced service providers.” The Petitioner states on appeal that the Petitioner is now “grown sufficiently” to support the Beneficiary in an executive capacity. However, the Petitioner’s organizational structure as of the date of the appeal in March 2021 is not relevant to establishing the Beneficiary’s eligibility for the benefit sought. We must analyze the Petitioner’s organizational structure as of the date the petition was filed in February 2020. 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).

As noted by the Director, the Petitioner's organizational structure as of the date the petition was filed included three executive-level positions, the CEO, a CFO, and the Beneficiary's proposed COO position. Beyond these positions, the chart only identified two other employees by name, an accounting manager and an import and export manager. The chart further reflected nine positions as "to be hired," including an accounting assistant, a business department assistant, a safety manager and assistant, two warehouse assistants, and a dispatching assistant. The Petitioner also provided a state employer's quarterly wage report from the fourth quarter of 2019, just prior to the date the petition was filed, reflecting wages paid to the CEO, CFO, accounting manager, and import and export manager. As such, the organizational chart and tax documentation dating from the time the petition was filed indicated that it employed only four employees, two of which were also acting in executive-level capacities like the Beneficiary. Although two other "managers" were listed, there were no apparent employees shown to act in supporting operational level positions reporting to these claimed managers.

We acknowledge that the Petitioner also listed "3 to 10" independent contractor truck drivers within the organizational structure; however, there is no supporting documentation to substantiate the engagement of these claimed contractors on the record. In fact, a listing of deductions included in the Petitioner's 2019 IRS Form 1120 U.S Corporation Income Tax Return did not show any apparent expenses for these claimed contracted truck drivers and it otherwise submitted no other supporting evidence of their employment. This leaves substantial uncertainty as to whether the Petitioner was sufficiently developed to support the Beneficiary in an executive-level capacity as of the date the petition was filed. For instance, the Petitioner did not credibly demonstrate that it required three executive-level employees to support only two other "managers." As noted by the Director, it is not clear who performed the non-qualifying operational level duties of the business as of the date the petition was filed as necessary to support the Beneficiary's asserted executive-level role. The Petitioner must resolve discrepancies 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).

On appeal, the Petitioner does not address the Director's primary basis for denying the petition; namely, its apparent lack of operational employees as of the date the petition was filed. The Petitioner only points to its organizational structure as of the time of the appeal, with its claimed eleven employees and six other independent contractors, and indicates that it is now "grown sufficiently" to support the Beneficiary in an executive-level capacity. Similarly, the Petitioner emphasizes that the Beneficiary supervises "professional" subordinates. However, again, the Petitioner must demonstrate the Beneficiary's eligibility as of the date the petition was filed. As such, we will not consider its organizational structure and the Beneficiary's claimed subordinates as of the date the appeal was filed, more than one year after the date the petition was filed. Further, whether the Beneficiary's subordinates qualify as professionals according to the regulations, as of the date of the petition or even at the date of the appeal, is not relevant to establishing that he would have acted in an executive capacity as of the date the petition was filed.<sup>1</sup>

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<sup>1</sup> We note that whether a beneficiary's subordinates are professionals as defined by the regulations is only relevant when determining whether they qualify as a personnel manager under the regulations, which the Petitioner did not, and does not, assert on the record. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word

In conclusion, the Petitioner has submitted a generic duty description for the Beneficiary that does not credibly establish his proposed executive-level duties in the United States. Further, the supporting evidence indicates that the Petitioner had insufficient staff as of the date the petition was filed to support the Beneficiary in an executive-level role where he would be primarily focused on broad goals and policies rather than its day-to-day operations.

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.

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“manager,” the statute plainly states that a “first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor’s supervisory duties unless the employees supervised are professional.” *Id.*