



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

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

In Re: 23947232

Date: DEC. 29, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner states that it is engaged in the provision of catering and logistics services and sales of cosmetic and restaurant products. It seeks to permanently employ the Beneficiary as its chief executive officer (CEO) 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). 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner would employ the Beneficiary in an executive capacity in the United States. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

“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, 8 U.S.C. § 1101(a)(44)(B).

II. ANALYSIS

The sole issue to be addressed is whether the Petitioner established that it would employ the Beneficiary in the United States in an executive capacity as defined at section 101(a)(44)(B) of the Act. The Petitioner does not claim that the proposed employment is in a managerial capacity.

A. Facts and Procedural History

The Petitioner seeks to employ the Beneficiary as its CEO and filed the Form I-140, Immigrant Petition for Alien Worker, in June 2020. The Petitioner indicated that it has 21 employees (including six independent contractors) and is engaged in “cosmetics, catering, logistics, etc.” with nearly \$500,000 gross annual income in the most recent fiscal year. The Petitioner’s initial evidence included a letter of support providing a brief overview of the Beneficiary’s duties as CEO, as well as a five-page chart listing his “typical executive duties.”

As evidence of its management structure, the Petitioner submitted an organizational chart dated June 2020 indicating that the Beneficiary reports to a board of directors and oversees four departments, including: (1) a spa and beauty products equipment and online sales department, staffed by a department manager and four staff (two employees and two independent contractors); (2) a restaurant furniture and equipment sales department, staffed by a department manager, a subordinate sales manager, and eight subordinate staff (four employees and four independent contractors); (3) a logistics service management department, staffed by a manager and one subordinate staff employee; and (4) a catering services and management department, staffed by a department manager and two subordinate staff employees. The Petitioner provided brief job descriptions for each department manager.

Regarding its staffing levels, the Petitioner provided recent pay statements (for the period ended on May 31, 2020) for the 15 staff identified as employees on the organizational chart. The pay statements indicate that all employees except for the Beneficiary had joined the company in May 2020.¹ The Petitioner also provided copies of its California state quarterly wage reports and IRS Forms 940, Employer’s Quarterly Federal Tax Return, for all four quarters of 2019 and the first quarter of 2020. This evidence indicates that the Petitioner consistently employed 15 to 18 employees throughout 2019 and up until March 2020, when the company reported paying only one employee. The payroll evidence therefore indicates that the Petitioner had a nearly complete turnover in its staff during the first half of 2020.

The Petitioner’s initial evidence also included: office and warehouse leases signed in February 2020 and April 2020, respectively; its latest available federal tax return; a “bill of sale and assignment and assumption agreement” indicating the Petitioner agreed to purchase the assets of a catering services business known as [REDACTED] for \$60,000 in March 2020; an agreement indicating that the Petitioner agreed to provide catering services for a customer between June and December 2020; purchase orders and invoices indicating the Petitioner’s sale of cosmetic and salon products to domestic and foreign customers in early 2020; and a print catalog for the company’s “Restaurant Furniture and Display” products.

¹ The monetary amounts provided for the “current” pay period and the “year to date” were identical for 14 employees, indicating that this was the first paycheck issued to each of them.

The Director issued a notice of intent to deny (NOID). The NOID primarily discussed a prior Form I-140 the Petitioner filed on the Beneficiary's behalf in March 2018, rather than the evidence submitted with the instant petition. The prior petition was denied, and we dismissed the Petitioner's subsequent appeal of that denial in February 2020. The Director incorporated portions of our analysis from that decision in the NOID, and apart from noting a specific change to the Petitioner's organizational chart, the Director observed that the Petitioner provided "the same evidence that was previously submitted where the AAO found that the beneficiary will not be employed in an 'executive capacity' as contemplated in section 101(a)(44)(B) of the Act." Notwithstanding the Director's determination that the Petitioner had provided the "same evidence" in support of this petition, the Director also concluded that "it appears that the petitioner made adjustments to its current filing in an attempt to obtain an immigration benefit."

In response to the NOID, the Petitioner, which had been operating a salon offering nail and facial services and related products when it filed the prior petition, explained that it had to adjust its business in early 2020 due to the COVID-19 pandemic, but was able to continue to hire and employ U.S. workers. It provided an additional letter describing the Beneficiary's duties, an updated organizational chart depicting its staffing as of January 2021, a copy of its 2020 IRS Form W-3 indicating that it paid approximately \$215,000 to 33 workers, and its 2020 IRS Forms 1096 and 1099 showing payments to six independent contractors. The Petitioner also included copies of various documents the Beneficiary signed in his capacity as CEO in 2020, including two contracts for the provision of "transportation management services" to customers.

In the decision, the Director repeated the contents of the NOID and, for the first time, addressed some of the evidence submitted in support of the instant petition. Specifically, the Director noted the Petitioner's statements that it expanded its operations to include catering and logistics/transportation management services and acknowledged the submitted service agreements but determined there was insufficient evidence that these new departments were operational at the time of filing. Rather, the Director suggested that the Petitioner included these departments "in an attempt to show they were more complex than their previous filing." The Director did not address the company's structure, organizational chart, or evidence of wages paid to employees. The Director concluded that "as was found in the previous denial" the record did not demonstrate "that it is complex enough to warrant the services of a full-time multinational executive."

B. Withdrawal of Director's Decision

On appeal, the Petitioner contends that the Director placed undue emphasis on the denial of the previous petition it filed on the Beneficiary's behalf rather than adjudicating this petition on its own merits. The Petitioner emphasizes that the prior petition was filed more than two years prior to the instant petition and should not influence the adjudication of the instant petition. The Petitioner further asserts that because of the focus on the prior petition, the Director failed to consider all the evidence submitted in support of this petition and did not issue a decision based on an analysis of the totality of the record. The Petitioner maintains that the previously submitted evidence is sufficient to establish that the Beneficiary would, more likely than not, be employed in an executive capacity as defined at section 101(a)(44)(B) of the Act.

We agree with the Petitioner's assertion that the Director's decision contains an insufficient analysis of the totality of the submitted evidence. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director's focus on the prior petition and its denial resulted in an incomplete review of the evidence submitted with the instant petition, and an inadequate explanation for its denial.

The regulation at 8 C.F.R. § 204.5(j)(5) requires a petitioner seeking to classify a beneficiary as a multinational executive to submit a statement which clearly describes the duties to be performed by the beneficiary. Further, beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) must review the totality of the evidence when examining a beneficiary's claimed executive capacity, including the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a 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 Director's decision does not reflect that these factors were adequately considered in the adjudication of the petition.

While we cannot sustain the appeal based on the record as presently constituted, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision.

C. Basis for Remand

The Petitioner emphasizes that it provided a detailed description of the Beneficiary's duties. The Petitioner provided an especially lengthy list of duties with the petition and in response to the NOID, but the description, despite its length, was general, repetitious, and consisted primarily of duties that paraphrase the statutory definition of executive capacity at section 101(a)(44)(B) of the Act, with most duties focusing on the Beneficiary's responsibility for establishing strategies, goals, and policies, overseeing subordinate managers, and directing the company's financial matters. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 905 F. 2d 41 (2d. Cir. 1990). The description does not provide a meaningful explanation of the types of tasks the Beneficiary would perform within the context of the nature and scope of the Petitioner's business and is therefore insufficient to establish that his actual duties would be primarily executive in nature. As noted, the Director did not adequately address these deficiencies in the NOID or in the denial.

The record also lacks sufficient evidence of the Petitioner's staffing and organizational structure at the time the petition was filed. The evidence submitted at the time of filing indicated that the company paid 15 employees, including the Beneficiary, for the pay period ended on May 31, 2020. However, the evidence submitted in response to the NOID indicated that three of the four department managers resigned as of May 31, 2020, a few weeks after being hired. It is unclear why the Petitioner included these managers on its organizational chart dated June 2, 2020, and the record raises questions as to whether any other newly hired staff also left the company prior to the filing of the petition. Although the NOID response included internal documents indicating that the three department managers

identified on the initial organizational chart were eventually replaced in September and October 2020, it appears these positions (the Beneficiary's direct reports) were in fact vacant at the time of filing and for several months thereafter, and that the stated number of employees at the time of filing was likely inaccurate. This evidence undermines the Petitioner's claim that the Beneficiary would rely significantly on subordinate managers in performing his claimed executive functions.

Therefore, additional evidence would be required to provide a clear picture of the company's staffing and structure from the date of filing onward. Although the Petitioner submitted an IRS Form W-3 indicating that it paid a total of 33 employees in 2020, this figure appears to include the salon employees who were employed for only the first two months of 2020, as well as all the new staff hired in May 2020 and beyond. The record does not include copies of state quarterly wage reports for the last three quarters of 2020 or the Petitioner's 2020 IRS Forms W-2 to corroborate the staffing illustrated on the submitted organizational charts.

As noted in the Director's decision, the record also lacks evidence to demonstrate the nature and scope of the Petitioner's business activities as of the date of filing. The Petitioner's explanation that the COVID-19 pandemic forced it to undergo changes to its business model is reasonable, given that the company had been operating a salon offering nail and facial services. The record supports the Petitioner's claim that it was engaged in the sales of cosmetics and salon products and equipment in 2020, but it is unclear whether or to what extent the company was operating as a catering services provider, transportation management services provider, or distributor of restaurant furniture and equipment, as of June 2020. The Petitioner submitted a catalog for its restaurant-related products and a total of three contracts related to the catering and transportation services businesses but did not provide evidence of completed transactions or income derived from any of these lines of business as of the date of filing.² The record also does not contain evidence of the Petitioner's financial status in 2020, other than a copy of its 2019 tax return for the fiscal year ended on April 30, 2020. Although the Director briefly addressed these issues in the decision, the NOID did not put the Petitioner on notice of any deficiencies in its initial evidence with respect to its business activities.

Finally, we observe that an inspection of publicly available information indicates that the Petitioner's business entity status is presently listed as "suspended" by California's Secretary of State and Franchise Tax Board, and it is unclear whether the company remains active and in good standing. *See* California Secretary of State, Business Search, <https://bizfileonline.sos.ca.gov/search/business>. 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).

Based on these deficiencies, the record as presently constituted does not sufficiently establish the Beneficiary's duties, the nature and scope of the Petitioner's business, or the ability of the company's staff to relieve the Beneficiary from involvement in non-executive duties as of the date of filing. As the matter will be remanded, the Director may request any additional evidence deemed warranted based on the foregoing discussion and allow the Petitioner to submit such evidence within a reasonable period. In addition, the Petitioner may be requested to submit evidence showing the scope of its

² The catering services contract indicates the Petitioner would begin providing services in June 2020, while the contracts related to transportation management services were set to begin in September 2020 and November 2020, respectively.

ongoing business activities, its current staffing, and its continuing ability to pay the Beneficiary's proffered wage.

III. CONCLUSION

As the Director did not sufficiently address the Petitioner's claims and supporting evidence or provide notice of the evidentiary deficiencies addressed herein, the matter will be remanded for further review and entry of a new decision. On remand, the Director may issue a new request for evidence or NOID allowing the Petitioner an opportunity to provide additional evidence relevant to the issues discussed above, and any other evidence deemed necessary to demonstrate eligibility for the classification sought, before issuing a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.