



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

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

In Re: 26273974

Date: APR. 17, 2023

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, which imports, exports, and sells shoes, seeks to permanently employ the Beneficiary as its chief commercial officer 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 Petitioner has a qualifying relationship with the Beneficiary's foreign employer; the Beneficiary has been employed abroad in a managerial or executive capacity; and the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity. 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 dismiss the appeal.

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.

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. ANALYSIS

The Petitioner asserts that it is the subsidiary of a similarly-named company in Brazil, which has employed the Beneficiary as its chief commercial officer since November 2015. The Beneficiary has spent most of his time in the United States since August 2019, first as a B-2 nonimmigrant visitor and then, since November 2019, as an L-1A nonimmigrant working as the Petitioner's chief commercial officer. The Beneficiary was still in L-1A status when the Petitioner filed the present immigrant petition in August 2021.

We withdraw the Director's determination that the Petitioner has not established a qualifying relationship with the foreign company that previously employed the Beneficiary. The Director based the adverse conclusion primarily on a discrepancy on a share certificate and the lack of corroborating documentation. The record supports the Petitioner's assertion that the apparent discrepancy is the result of an error in the preparation of the share certificate, and the record is consistent as to the identities of the shareholders. Also, the Director concluded that the Petitioner did not submit a relevant tax document (Schedule G of IRS Form 1120), but that document was already in the record at the time of the Director's decision.

The remaining issue concerns the Beneficiary's claimed executive capacity in both the United States and abroad. The Petitioner does not claim that the Beneficiary will be or has been employed in a managerial capacity. Therefore, we restrict our analysis to the question of 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.

If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then 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 the beneficiary's duties will be primarily executive, we consider the description of the job duties, the company's organizational structure, the duties of the 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 the beneficiary's actual duties and role in the business. If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

In the denial decision, the Director concluded that the Petitioner had not shown that the Beneficiary's position meets all the requirements of an executive capacity. On appeal, the Petitioner asserts that it had submitted an "extensive statement describing Beneficiary's proposed position," along with "an organization chart, a description of all the positions within the company, and Employer State Quarterly Reports." The Petitioner asserts that this evidence meets its burden of proof.

As explained below, we conclude that, while the Beneficiary has discretionary authority over the petitioning U.S. employer, the Petitioner has not established that it has and will continue to employ the Beneficiary in a primarily executive capacity. Having discretionary authority and a managerial or executive title does not, in and of itself, mean a person is employed in a managerial or executive capacity. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

In a statement submitted with the petition, the Petitioner stated: “As Chief Commercial Officer, [the Beneficiary] will develop and establish the policies and objectives of our company following the general directives established by our Board of Directors and our corporate charter.” The Petitioner indicated that the Beneficiary “will spend 60% of his time” on the following:

- Handle special assignments, do an in-depth analysis, follow up on various files and work closely in concert with all members of the Senior Management Team.
- Responsible for the implementation and achievement of his Business Area’s mission, goals, and commercial objectives. Develop long-term plans and budgets for the department and its activities, monitor progress, assure adherence, and evaluate performance. Ensure systems and procedures are necessary for the smooth operation of the department.
- Maintain a climate that attracts, retains, and motivates top-quality personnel. Recruit, train, appraise, supervise, support, develop, promote, and guide qualified personnel.
- Develop strategic direction and plans for the company concerning all commercial functions including sales, marketing, business development, and customer support/customer experience.
- Manage commercial and sales operations organization, and manufacturer’s agents, distributors, and value-added-resellers to ensure sales targets are met or exceeded.

The Petitioner stated that the Beneficiary would spend the remaining 40% of his time on the following:

- Develop annual marketing plans per region and market verticals.
- Develop and maintain initiatives to achieve a to date [sic] competitive analysis portfolio.
- Develop annual and long-term budgets for revenues as well as expenses.
- Develop and monitor quality metrics to ensure outstanding service and customer support.
- Cultivate a culture of focused hard work and openness.
- Establish and monitor progress against key performance indicators.
- Identify and develop new market opportunities for the company’s product portfolio.
- Develop and drive the pricing strategy of the organization.
- Develop and administer incentive plans which entice individuals as well as teams to perform successfully against the objectives while respecting the budget.
- Accuracy – Ability to perform work accurately and thoroughly.
- Problem-solving – Brings a problem-solving mindset to any challenging situation.

Because the time percentages apply to two diverse groups of items, the percentages do not shed much light on how the Beneficiary would spend most of his time. Several of the listed items are general responsibilities that identify no specific tasks. For example, the list does not say what the Beneficiary would do to “[c]ultivate a culture of focused hard work and openness.” The last two items in the second list refer to skills rather than tasks.

One item in the first list states that the Beneficiary will “[d]evelop . . . budgets,” while an item in the second list states that he will “[d]evelop annual and long-term budgets.” The Petitioner does not explain the difference between these two apparently identical activities, or explain why the items are in separate lists.

Training and supervising personnel is not an executive-level responsibility unless the employees supervised are, themselves, managers or executives. The listed items also refer to a “Senior Management Team” and to “departments,” but the record does not establish that the Petitioner has such organizational components.

In a request for evidence (RFE), the Director asked for more information about the Beneficiary’s duties. In response, the Petitioner submitted a two-page list of items, divided into seven sections:

- Planning;
- Management;
- Financial management;
- Oversee the HR management by Carefully reviewing and guiding the General Manager / Sales Manager;
- Marketing and PR [public relations];
- General Administrative; and
- Programmatic Effectiveness.

Within those sections, the Petitioner listed a number of items, some more specific than others. Many of these items refer to activities not supported by the record. For example, there are references to “technology implementation,” “[e]mployee development and training,” and “media/PR events,” but the record does not describe these activities in any detail or show that they take place. The Petitioner stated that the Beneficiary “[b]uilt a corporate network of the industries executives” (sic), but provides no further information or evidence about the “corporate network.”

An accompanying organizational chart, to be discussed below in more detail, does not indicate that the Petitioner has a “General Manager / Sales Manager” or any dedicated “Marketing and PR” staff, although those terms both appear in the revised job description. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These discrepancies add gravity to the observation that, while the Petitioner has listed the Beneficiary’s claimed duties, the record contains little evidence that the Beneficiary has performed those duties.

The record does not establish that the Petitioner’s organizational structure is sufficiently complex to warrant an executive position for the Beneficiary. An executive directs the management of the organization, major component, or essential function of a given organization by controlling the work

of managerial or lower-level executive employees. This control could either take the form of direct supervision of those managers or executives or could be more indirect under some circumstances. *See generally 2 USCIS Policy Manual L.6(D)*, <https://www.uscis.gov/policy-manual>. *See also BlueStar Cabinets, Inc. v. Jaddou*, No. 21-10116, 2022 WL 4364734, at *7 (5th Cir. Sept. 21, 2022) (holding that “[d]irect[ing] the management of the organization’ necessarily includes directing managers of the organization.”) The Petitioner has not shown that the company has lower-level managers under the Beneficiary’s authority.

On the petition form, the Petitioner claimed five employees in the United States. In an accompanying letter, the Petitioner claimed “15 direct and outsourced employees,” but did not list their titles or duties or provide evidence that the company employed them or otherwise engaged their services. In the RFE, the Director asked for more information about the Beneficiary’s duties and subordinate staff.

The RFE response includes an organizational chart indicates that the Beneficiary’s parents serve as president and vice president, with a “Board Committee” on the same level as the Beneficiary. Below the Beneficiary, the chart shows two “Store Sellers,” two “Wholesale Sales” workers, and three “Sales Representatives.” The chart does not distinguish between contractors and employees, but it names fewer than 15 individuals.

The record does not support the Petitioner’s staffing claims. Tax and payroll documents show that, in 2019 and 2020, the Petitioner paid wages to only one employee, who earned \$1,544 in 2019 and \$5,310 in 2020. That individual’s name does not appear on the organizational chart or payroll records from 2022, and the record does not reveal the individual’s title. We acknowledge the Petitioner’s claim to rely on “outsourced employees,” but this assertion is not sufficient to meet the Petitioner’s burden of proof. The Petitioner did not explain the roles of the outsourced individuals or submit documentary evidence such as contracts to show that it actually engages their services.

The Petitioner’s tax return for 2021, the year the Petitioner filed the petition, shows \$18,522 in salaries paid for the year, but the record only partially accounts for that amount, showing that one employee received \$3,624. A payroll ledger for the first five months of 2022, after the filing date, shows the names of the two “Store Sellers,” who work, on average, about 30 hours per week, and an outside company that provides unspecified services to the Petitioner. The contracted company named on the payroll records received, on average, less than \$100 per week. Other than the two “Store Sellers,” the record does not corroborate the employment of the subordinates claimed on the organizational chart. Quarterly tax reports from early 2022 confirm that the Petitioner had two employees at the time. The record does not show that the Beneficiary has any full-time subordinates.¹

The company’s minimal staffing does not corroborate the organizational chart or show that the Beneficiary is consistently able to delegate non-executive tasks to subordinates.

For the above reasons, the record demonstrates that the Beneficiary has authority over the petitioning U.S. company, but does not show that this authority rises to the level of an executive capacity in which the Beneficiary *primarily* directs the management of the organization or a major component or

¹ The tax and payroll documents in the record indicate that the Petitioner did not start paying the Beneficiary until after the Director issued the RFE in July 2022, although the Beneficiary has purportedly been working for the Petitioner as an executive in L-1A nonimmigrant status since November 2019.

function thereof; establishes the goals and policies of the organization, component, or function; and exercises wide latitude in discretionary decision-making. The Petitioner has not established that the Beneficiary will be employed in an executive capacity in the United States.

The above conclusion is sufficient to determine the outcome of the appeal. Therefore, we reserve the remaining issue regarding the Beneficiary's prior employment abroad.²

III. CONCLUSION

The Petitioner has established a qualifying relationship with the Beneficiary's former employer, but has not shown that it seeks to employ the Beneficiary in an executive capacity in the United States. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.

² See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).