



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

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

In Re: 29044991

Date: DEC. 6, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner is a multinational entity engaged in ultrasonic inspection design, development, and application. It seeks to permanently employ the Beneficiary as its “Division Manager – Subsea and Oil & Gas” 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 an executive or managerial capacity.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that Petitioner demonstrated its required ability to pay the Beneficiary’s proffered wage. 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.

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).

In addition, per 8 C.F.R. § 204.5(g)(2), the prospective U.S. employer must meet the following provisions:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

II. BASIS FOR REMAND

The priority date for the petition in this matter is August 15, 2022, the date the petition was filed. The Petitioner listed the Beneficiary's proffered wage as \$110,000 per year and provided tax and bank documents that preceded the priority date as supporting evidence based on documentation available at that time.

In response to the Director's request for evidence, the Petitioner provided relevant documents to address the evidentiary deficiency regarding its ability to pay. Namely, the Petitioner provided the Beneficiary's 2022 Form W-2, Wage and Tax Statement, his earnings statements from August 2022 through January 2023, and bank statements for the same time period showing monthly payroll deductions. The Petitioner also provided its 2020 tax return and the Petitioner's parent entity's audited report and financial statements, including a consolidated cash flow statement, for the year ended October 31, 2021. Although the submitted documents show that the Beneficiary was compensated at or above the proffered wage from August 2022 going forward, the Petitioner did not provide copies of annual reports, federal tax returns, or audited financial statements from the priority date onward, as required by regulation. 8 C.F.R. § 204.5(g)(2).

On appeal, however, the Petitioner provided evidence showing that its latest tax return for the fiscal year from November 1, 2021, through October 31, 2022, was not available either at the time of filing or at the time of the RFE response. We further note that based on the extended filing deadline – August 15, 2023 – this tax return was also not available at the time the Petitioner filed this appeal.

Accordingly, because the relevant tax return should now be available, we will remand this matter to allow the Petitioner the opportunity to provide the previously unavailable tax return and any subsequent tax returns in support of the Petitioner's ability to pay from the priority date and going forward. On remand, the Director should notify the Petitioner of relevant evidence it may submit in support of its ability to pay the proffered wage from 2022, the year this petition was filed onward, and provide the Petitioner with a reasonable opportunity to respond to such notice.

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