



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

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

In Re: 28841659

Date: NOV. 30, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a warehousing and logistics services company, seeks to permanently employ the Beneficiary as its general manager¹ 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary's proposed U.S. employment would be 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

Section 203(b)(1)(C) of the Act makes an immigrant visa 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.

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, a petition for a multinational manager or executive must be accompanied by evidence that the prospective United States employer has

¹ Although the Beneficiary's position is identified as "general manager" on the Form I-140 petition, the Petitioner also identifies the Beneficiary's position as CEO throughout the record.

the ability to pay the proffered wage from the time the petition is filed and continuing through adjudication. *See* 8 C.F.R. § 204.5(g)(2).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in the United States in an executive capacity.²

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.*

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.

Accordingly, we will discuss evidence regarding the Beneficiary’s job duties along with evidence of the nature of the Petitioner’s business and its staffing levels.

A. Job Duties

The Petitioner’s initial supporting letter claimed that its company, a subsidiary of [REDACTED],³ provides trucking and delivery services for U.S. based distributors. According to the Petitioner, [REDACTED] is located in the same warehouse facility as the Petitioner. The Petitioner stated that the Beneficiary “will be asked to preside over both over the operations of both [the Petitioner] and [REDACTED],” noting that the Petitioner is the sponsoring entity because it “has greater financial strength.”

² The Petitioner did not claim that it seeks to employ the Beneficiary in a managerial capacity.

³ The record demonstrates that [REDACTED] is a subsidiary of [REDACTED], the Beneficiary’s foreign employer.

The Petitioner also summarized the Beneficiary’s proposed duties as follows:

% of Time	Job Duties
25%	Upon developing the business plan, the CEO will have extensive conversations with his direct subordinates (i.e. department managers) to share his vision and the short-term and long-term target. The CEO and departmental managers together will brainstorm on what actions to take to realize these targets. For example, the CEO will prioritize the improvement of the company’s service quality. The marketing manager will then propose ways to improve customer communication, product trackability, and customs clearance so that the incremental gains result in the large jump in service quality. Subsequently, the CEO will have weekly meetings with the direct reports to follow up and the progress being made in these areas.
20%	Based on directives from the foreign parent company and [redacted] the CEO will develop strategic plans to advance [the Petitioner’s] mission to become a reliable and trusted provider of logistics and warehousing services. Initially, the CEO will have extensive conversations with his direct reports to understand the operational, financial and labor conditions of [the Petitioner]. Based on this information, the CEO will conduct SWOT analysis and leverage the company’s strength to capture greater business growth. The CEO will report back to the foreign parent company and [redacted] on his strategies and the progress that [the Petitioner] has been making.
15%	On a daily basis, the CEO will also indirectly oversee the warehousing and dispatching activities of [the Petitioner] by staying in constant contact with the operations manager through instant messaging systems. During these communications, the CEO will give inputs and directives to remediate any emerging and urgent issues. The CEO will also consider and adopt ideas submitted by subordinates that can improve the company’s bottom line.
15%	In conjunction with establishing the business plan, the CEO will also determine the annual budget of the company and regularly communicate with the Accountant to monitor any significant budget variances. The CEO will also direct the Operations Manager and Accountant to identify the bottlenecks in [the Petitioner’s] logistics operations and take proactive measures to reduce losses due to scheduling, demand, and cost fluctuations.
10%	Based on the CEO and [the Petitioner’s] foreign parent company’s professional and business relationships in Asia, the CEO will reach out to potential customers, such as vendors and manufacturers, to bring in additional business into the petitioner to boost its growth. Business development activities that the CEO would participate in include[e] personally hosting and negotiating with executives of potential customers in their visits to the petitioners offices.

10%	The CEO will evaluate the performance of management-level employees with informal job assessments and quarterly evaluation reports. During these evaluation periods, the CEO will give his direct subordinates insight on areas that the subordinates are exceeding expectations and areas that require greater effort. The CEO will also consider the direct reports' recommendations on employee hiring and promotion and give consent when merited.
5%	The CEO will work with the direct subordinates and outside consultants to develop employee policy handbooks and safety standards. In particular, the CEO will inspect the warehouse premises on a weekly basis to determine that all product handling and storage processes [are conducted] in a professional, efficient, and safe manner.

The Director issued a request for evidence (RFE), noting that the initial description of duties and supporting evidence was insufficient to establish that the Beneficiary would be employed in a primarily managerial or executive capacity. In response, the Petitioner provided additional documentation, including an updated description of duties, which expanded on the Beneficiary's U.S. position as follows:

% of Time	Job Duties
25%	<p>Duty: Develop high quality business strategies and plans ensuring their shipment with short-term and long-term objectives.</p> <p><u>Sample Tasks:</u></p> <ul style="list-style-type: none"> • Based on directives from the directors of the foreign parent company and [redacted] the CEO will develop strategic plans to advance [the Petitioner's mission to become a reliable and trusted provider of logistics warehousing services. • In order to come up with the plan, the CEO will have extensive conversations with his direct reports to understand the operational, financial and labor conditions of [the Petitioner], the target market, competitors offerings and pricing, and relationship with shipping partners. • Based on this information, the CEO will conduct a SWOT analysis to better assess [the Petitioner's] competitive position within the industry. • The CEO will then present to other stakeholders of the foreign parent company and [redacted] on his SWOT analysis and present his short-term and long-term goals that contain both quantitative (sales, profit margins) and qualitative (service quality, company culture) measurements. • On a quarterly basis, the CEO will have follow-up strategy sessions with the stakeholders where he reports on the major financial and operational milestones of [the Petitioner] and discusses areas for improvement.

25%	<p><u>Duty:</u> Determine strategies to achieve long term objectives and analyze short term problematic situations and occurrences and provide solutions to ensure company survival and growth.</p> <p><u>Sample Tasks:</u></p> <ul style="list-style-type: none"> • Pursuant to its business plan, the CEO will have frequent conversations with his direct subordinates (i.e. the department managers) to share his vision and the short-term and long-term expectations. • In these conversations, the CEO and his subordinates will brainstorm on ways to utilize the company’s available resources to realize these targets. For example, the CEO will prioritize the improvement of the company’s service quality. The Marketing Manager will then propose ways to improve customer communication, product trackability, and customs clearance so that the incremental gains result in the large jump in service quality. The CEO will also seek inputs from operations manager on how to increase profit margins, which may include proposals to negotiate better rates with customers through strengthening of business relationships, and better forecasting. • To measure the performance of each department, the CEO will instruct his direct subordinates to create KPIs to better assess the operational efficiencies of the business. For example, the CEO will work with the Operations Manager to monitor the company’s performance on areas of order and inventory accuracy, product defect rate, and price competitiveness. With the Marketing Manager, the CEO will track the Company’s customer order cycle and inventory turnover, the fulfillment accuracy rate. With the Accountant the CEO will track current ratio and accounts receivable turnover. • To track the company’s performance, the CEO will have weekly meetings with the director reports to follow up on the progress being made in these areas as measured by KPIs. During these in-person meetings, the direct subordinates (department managers) will summarize the notable progress within their respective departments. The CEO will then offer constructive feedbacks to empower his direct subordinates to resolve any impediments that they encounter in their daily management of their respective departments.
15%	<p><u>Duty:</u> Oversee all operations and business activities to ensure they produce the desired results and are consistent with the overall strategy and mission.</p> <p><u>Sample Tasks:</u></p> <ul style="list-style-type: none"> • The CEO will monitor the warehousing and dispatching activities of the petitioner by staying in constant contact with his

	<p>direct subordinates through instant messaging systems such as Wechat or by phone.</p> <ul style="list-style-type: none"> • During these conversations, the department managers often bring up issues encountered in their management of the department's operations and possible solutions. • Communications, the CEO will give inputs and directives to remediate any emerging and urgent issues. The CEO will also consider and adopt submitted by subordinates that can improve the company's bottom line by incorporating them in the company's business plan.
15%	<p><u>Duty:</u> Review financial and non-financial reports to devise solutions or improvements.</p> <p><u>Sample Tasks:</u></p> <ul style="list-style-type: none"> • In conjunction with establishing the business plan, the CEO will also determine the annual budget of the company based on input from key subordinates on the fiscal needs of each department and regularly communicate with the Accountant to monitor any significant budget variances. • During CEO's regular communications with department managers, he will monitor the departments financial position to ensure that it is consistent with the budget. • The CEO will weigh in on the needs to raise funds, as well as how to make the best use of the surplus capital - including making ultimate decisions on when to accelerate repayment of debt, make distribution to shareholders, or reinvest in capital projects. • The CEO will also assess market and investment opportunities, such as acquiring competitors or assets to accelerate the company's growth.
10%	<p><u>Duty:</u> Build trust relations with key partners and stakeholders and act as a point of contact for important shareholders.</p> <p><u>Sample Tasks:</u></p> <ul style="list-style-type: none"> • Based on the CEO and [the Petitioner's] foreign parent company's professional and business relationships in Asia, the CEO will reach out to potential customers, such as vendors and manufacturers, to bring in additional business into [the Petitioner] to boost its growth. • Business development activities that the CEO would participate in including personally hosting customers in their visits to [the Petitioner's] offices.
10%	<p><u>Duty:</u> Review internal reports pertaining to job performance, qualifications and contributions, the assess personnel needs.</p> <p><u>Sample Tasks:</u></p>

	<ul style="list-style-type: none"> • The CEO will evaluate the performance of management-level employees with job assessments and quarterly evaluation reports. During normal business operations, the CEO will note particular contributions made historic subordinates. During quarterly evaluation, the CEO will spend time with his direct subordinates to commend on areas where they are exceeding expectations and the areas that require greater effort. • When the department’s performance exceeds the goals previous established, the CEO will be at discretion to offer performance bonuses to both the department managers and allocate bonus pool for the departments’ employees. • The CEO also will consider the direct reports’ recommendations on employee hiring and promotion and give consent when merited.
5%	<p><u>Duty:</u> Establish, update and enforce adherence to legal guidelines and in-house policies to maintain the company’s legality and business ethics.</p> <p><u>Sample Tasks:</u></p> <ul style="list-style-type: none"> • The CEO will work with the direct subordinates and outside consultants to develop employee policy handbooks and safety standards and instruct his department managers to disseminate these materials to employees. • The CEO will inspect the warehouse premises on a weekly basis to determine that all product handling and storage processes [are conducted] in a professional, efficient, and safe manner. When the warehouse operations do not meet such standards, the CEO will give instructions to the Warehouse Manager to take immediate corrective actions.

In denying the petition, the Director determined that the Petitioner’s description of the Beneficiary’s duties was insufficient, noting that the duties as stated were general and vague and did not convey the true nature of the Beneficiary’s position. On appeal, the Petitioner asserts that Director’s decision was arbitrary and capricious, and again emphasizes that the duty description was sufficient.

The Petitioner also claims on appeal that the Director failed to apply the preponderance of the evidence standard and contends that it is clear that the Beneficiary will be employed in a primarily executive capacity. However, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. For the reasons outlined below, the Petitioner did not demonstrate that the Beneficiary’s role will be primarily executive in nature, as the job description the Petitioner offered contains generalities that preclude a meaningful assessment of the Beneficiary’s actual tasks in the course of the Petitioner’s daily operation.

Whether the Beneficiary is an executive employee turns on whether the Petitioner has sustained its burden of proving that his duties are “primarily” executive. *See* section 101(a)(44)(B) of the Act. Here, the Petitioner provided job descriptions for the Beneficiary’s proposed U.S. position,

highlighting his top-level placement within both the Petitioner's and [redacted] organizational hierarchies and underscoring his discretionary authority over each entity's operations, personnel, and finances. The information pertaining to the Beneficiary's role within the petitioning entity, however, failed to distinguish the job duties the Beneficiary intends to perform in his position with the Petitioner from those he plans to perform in his position with [redacted] the Petitioner's U.S.-based parent entity.

The Petitioner indicated that the Beneficiary would develop business strategies and plans for and in conjunction with [redacted] and claimed that the Beneficiary will preside over the operations of both companies simultaneously. The Form I-140 petition, however, clearly names [redacted] [redacted] as the petitioning entity. A corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980). Here, the Petitioner is the intended permanent U.S. employer and it must show that it can support an executive position independent from [redacted]. The Beneficiary may intend to perform duties for both entities, but cannot rely on his duties for [redacted] to establish his qualifying employment with the Petitioner. As constituted, the record is unclear with regard to what percentage of time will be devoted to the direction and management of [redacted] and what percentage of time will be performed in directing and managing the Petitioner. Given the lack of a detailed account of the Beneficiary's job duties and oversight of subordinates within the context of the Petitioner's business, we cannot conclude that the petitioning entity has either the need or the capability to employ the Beneficiary in a capacity that is executive such that the primary portion of his time would be spent performing tasks of a qualifying nature.

USCIS cannot approve a petition without a clear explanation of the job duties the Beneficiary would be expected to perform. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient. The actual duties themselves reveal the true nature of the employment. *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). While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possesses decision-making authority, the position description does not establish that his day-to-day duties would be primarily executive in nature.

B. Staffing and Organizational Structure

Beyond the required description of the job duties, we also examine 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.

On the Form I-140 petition, the Petitioner claimed that it was established in 2019 and had 10 employees. The Petitioner provided a general overview of its staffing, and in its organizational chart it indicated that the Beneficiary was supported by an accountant, a marketing manager, an operations manager, a dispatcher, a warehouse supervisor, two customer service representatives, and two warehouse operators. The Petitioner also claimed that it outsourced drivers.

Again, 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 on its day-to-day operations. An individual will not be deemed an executive under the statute simply because they have an executive title or because they “direct” the organization as the owner or sole managerial or executive employee.

The Petitioner provided a copy of its IRS Forms 941, Employer’s Quarterly Tax Returns, for the first and second quarters of 2021, indicating that the Petitioner employed only four people during the first quarter and five people during the second quarter. Although copies of paystubs for July 2021 were also submitted, the Petitioner submitted no additional Form 941 records for the third and fourth quarters of 2021. The Petitioner also submitted copies of IRS Forms W-2, Wage and Tax Statements, for 2021, demonstrating that through the course of the year it employed 15 people. The Petitioner also submitted copies of Forms W-2 for [] employees, indicating that the company employed 10 individuals in 2021.

It is unclear how many individuals were employed by the Petitioner at the time the petition was filed. While the record contains quarterly tax returns and payroll records through July 2021, the Petitioner did not submit pay stubs or payroll records demonstrating how many individuals it employed at the time this petition was filed in January 2022. Moreover, the organizational chart submitted indicates that four of the Petitioner’s claimed employees were actually employees of [] as evidenced by their Forms W-2 for 2021. Therefore, although the Petitioner claimed to employ 10 individuals at the time of filing, the record contains contradictions and insufficient evidence to support this assertion. The Petitioner must resolve this discrepancy 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, counsel contests the Director’s determination that its claimed staffing of 10 individuals “cannot support any position that can satisfy the EB1C regulatory requirements.”⁴ We acknowledge the Director’s conclusory statement and agree with the Petitioner that such a conclusion was misplaced. However, we exercise de novo review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). This means that we look at the record anew and are not required to defer to findings made in the initial decision.

With respect to the size of the company, section 101(a)(44)(C) of the Act permits “staffing levels [to be] used as a factor in determining whether an individual is acting in a managerial or executive capacity,” so long as we “take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function.” In this instance, the Petitioner has not established that the company, at the time it filed the petition, had a sufficiently complex organizational structure to have a reasonable need for an executive position in which the Beneficiary would direct the management of all or part of the organization.

⁴ The Petitioner also asserts that the Director’s conclusion that the Petitioner operates as a de facto remote worksite for a predominantly foreign based production entity is misplaced. While the Director’s conclusion may be improper, the record as constituted does not establish that the Petitioner possessed the organizational complexity at the time of filing to employ the Beneficiary in an executive capacity.

Here, despite claiming to employ at least 10 employees, the Petitioner did not submit evidence establishing its actual employment of these individuals at the time of filing, and in fact submits evidence that at least four of these claimed employees were employees of [redacted] not the Petitioner. Again, in this matter we examine the organizational structure of the Petitioner, not [redacted]. In the absence of evidence such as pay stubs and payroll records, the Petitioner has not corroborated its claimed organizational structure, nor has it established that it employed a subordinate staff that would relieve the Beneficiary from performing non-qualifying duties. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

While the definition of “executive capacity” does not require the Petitioner to establish that the Beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the Petitioner’s burden to establish that someone other than the Beneficiary carries out the day-to-day, non-executive functions of the organization. Here, the Petitioner did not demonstrate that a subordinate staff was available at the time of filing to perform the non-qualifying operational and administrative duties of the business, nor does the submitted position description establish that his duties are primarily executive in nature. Accordingly, the Petitioner has not established that the Beneficiary would be employed in the United States in an executive capacity as defined at section 101(a)(44)(B) of the Act.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established by a preponderance of the evidence that the Beneficiary would be employed in the United States in an executive capacity. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.