



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

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

In Re: 34815336

Date: NOV. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a privately owned micro-school, seeks to permanently employ the Beneficiary as its president 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 Petitioner did not establish that it will employ the Beneficiary in the United States in a managerial capacity, or that the Beneficiary was employed abroad in a managerial capacity.<sup>1</sup> 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 remand the matter to the Director for further action and entry of a new decision, consistent with the following discussion.

## 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).

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<sup>1</sup> The Petitioner does not claim that the Beneficiary has been or will be employed in an executive capacity.

## II. ANALYSIS

As noted, the Director denied the petition on multiple grounds, concluding that the Petitioner did not demonstrate that the Beneficiary was employed abroad, and would be employed in the United States, in a managerial capacity as defined at section 101(a)(44)(A) of the Act; 8 U.S.C. § 1101(a)(44)(A).

On appeal, the Petitioner asserts that the Director overlooked relevant evidence, failed to provide a coherent explanation of the reasons for denial of the petition, reached erroneous conclusions of fact and law, and did not apply the preponderance of the evidence standard in adjudicating 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 consideration and entry of a new decision, in accordance with the discussion below.

### A. Beneficiary's Foreign Employment

A petition for a multinational manager or executive must be accompanied by evidence that the beneficiary has been employed outside the United States in a managerial or executive capacity by a qualifying entity within the same multinational organization for at least one year in the three years preceding the filing of the petition. *See* 8 C.F.R. § 204.5(j)(3)(i)(A).

The Petitioner initially submitted a brief description of the Beneficiary's position abroad, indicating that she served as the foreign entity's director and had two subordinate employees. In a request for evidence (RFE), the Director acknowledged the Petitioner's submission of this short paragraph but indicated it was insufficient to establish that she had been employed abroad in a managerial or executive capacity. The Director requested additional evidence, including but not limited to an explanation of her daily tasks, the foreign entity's organizational chart, and payroll records for the Beneficiary and her subordinates.

In response, the Petitioner submitted a signed statement from the foreign entity's sole director and legal representative confirming the Beneficiary's managerial duties, a list of the foreign entity's employers and contractors including their duties, salary, educational credentials, and dates of hire, a copy of the foreign entity's previously submitted organizational chart, payroll records for the period from October 2023 through February 2024, and copies of letters and documentation regarding the Beneficiary's duties that had previously been drafted in support of a nonimmigrant visa petition filed on her behalf. The Petitioner also resubmitted an expert opinion letter that had been submitted in support of the petition.

In denying the petition, the Director determined that the Petitioner did not establish that the Beneficiary was employed abroad as a manager. However, the decision does not sufficiently explain the basis for this determination. Specifically, the Director stated as follows:

USCIS requested additional evidence to explain if the [B]eneficiary performed abroad in a hybrid capacity. The [P]etitioner provided the same statement. The evidence does not show that the [B]eneficiary performed in an executive and managerial capacity

abroad because it does not follow the specific requirements that a hybrid position requires.

In reaching this determination it does not appear that the Director considered the documentation submitted in response to the RFE. Specifically, the Petitioner claims on appeal that the Director's determination is "categorically incorrect," noting that in response to the RFE, it submitted a new statement from the foreign entity's sole director and legal representative, in addition to other documentary evidence. The Petitioner further challenges the Director's determination that the Beneficiary's position "does not follow the specific requirements that a hybrid requires," maintaining that at all times throughout the record, it claimed that the Beneficiary's position was primarily managerial in nature with no reference to executive duties. Finally, the Petitioner argues that the Director erred by not considering or discussing the expert opinion letter, as well as the evidence pertaining to the foreign entity's employees and contractors, the foreign entity's organizational structure, and the Beneficiary's position therein.

Here, we agree with the Petitioner's assertions. First, the Director erroneously evaluated the Beneficiary's position abroad as a hybrid position, when at all times the Petitioner maintained that the Beneficiary's position was managerial in nature. In addition, the Petitioner provided letters of support, an expert opinion letter, an organizational chart, payroll records, and documentary evidence pertaining to the foreign entity's employees and contractors and the positions they hold, none of which was discussed or evaluated in the decision denying the petition. The Director did not clearly articulate grounds for denial and properly analyze the evidence submitted in support of the claim that the Beneficiary's foreign employment was managerial. The Director must fully explain the reasons for denying a petition 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).

On remand, the Director should analyze the evidence to determine whether the record sufficiently demonstrates the Beneficiary's foreign employment was managerial in nature as defined at section 101(a)(44)(A) of the Act; 8 U.S.C. § 1101(a)(44)(A). If the Director concludes that the Petitioner's documentation does not demonstrate that the Beneficiary was employed abroad in a managerial capacity, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

#### B. Beneficiary's U.S. Employment

A petition for a multinational manager or executive must be accompanied by evidence that the beneficiary has been employed outside the United States in a managerial or executive capacity by a qualifying entity for at least one year in the three years preceding the filing of the petition, and that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer. *See* 8 C.F.R. § 204.5(j)(3)(i)(C).

The Petitioner initially submitted a description of the Beneficiary's position, indicating that she was responsible for reviewing and analyzing the Petitioner's general operations, overseeing and directing subordinate managerial personnel, and analyzing financial statements and operation reports to ensure

the Petitioner's organization is operating efficiently and at full capacity. The organizational chart submitted depicted the Beneficiary at the top of the organizational hierarchy, overseeing a guide manager who in turn oversaw four guides (teachers). The chart also depicted a general manager parallel to the Beneficiary, and further indicated that an administrator and administrative assistant would be hired in 2024. In addition, the Petitioner submitted details regarding the duties, salaries, and educational credentials of its employees, as well as copies of payroll and tax documentation.

In the RFE, the Director determined that the Petitioner's description of the Beneficiary's duties was insufficient to establish that she would be employed in a managerial or executive capacity. The Director requested additional evidence, including but not limited to an explanation of her daily tasks, the Petitioner's organizational chart, and payroll records and tax documents for the Beneficiary and her subordinates.

In response, the Petitioner submitted a new statement of duties for the Beneficiary's position, claiming that she devoted 15% of her time to personnel management, 20% of her time to directing the activities of the guide manager, 25% of her time to directing the financial activities of the company, 10% of her time to overseeing and approving all risk management, legal, and representation activities, 10% of her time creating and implementing marketing strategies, 15% of her time evaluating the school's administrative and operational policies, and 5% of her time collaborating with the Petitioner's owners to articulate operational strategies. In addition, the Petitioner resubmitted its organizational chart and payroll and tax documentation, noting that this documentation had been included in its initial submission but had not been considered by the Director.

In denying the petition, the Director found deficiencies in the organizational chart, noting that the chart did not depict who the Beneficiary reported to, and further contained inconsistencies regarding the Petitioner's claimed number of employees when comparing the chart to payroll records. The Director further noted that the Petitioner's assertion that the Beneficiary simultaneously manages both the Petitioner and foreign entity created unresolved discrepancies with regard to the Beneficiary's claimed U.S. duties. On appeal, the Petitioner contends that it provided sufficient explanations for the issues raised by the Director and that the Director's conclusions to the contrary were erroneous.

As noted earlier, we find that the Director's decision did not adequately explain the deficiencies in the evidence. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786. Here, the Director did not analyze the organizational chart and position descriptions for the Beneficiary's claimed subordinates and the manner in which the Beneficiary's oversight of these employees would be managerial in nature. Rather, the Director focused on the Petitioner's failure to demonstrate who the Beneficiary reported to in the Petitioner's organization, as well as discrepancies regarding its claimed number of employees. The Director also vaguely referred to the Petitioner's assertion that the Beneficiary would devote 100% of her time to managing the U.S. entity while simultaneously managing the foreign entity as a basis for denial.

Upon review, the Director's decision does not address any substantive inconsistencies, or potential overlap of duties, between the descriptions of the U.S. and foreign positions, nor does the decision evaluate the actual position descriptions at all. The Director's conclusory finding that the evidence in the record undermines the Petitioner's claim that the Beneficiary will devote all of her time to managing the U.S. entity did not provide an adequate basis for denial of the petition.

Moreover, the Director did not provide the Petitioner with adequate notice of evidentiary deficiencies that are material to the issues on appeal, particularly relating to the U.S. company's staffing and organizational structure. The Director's analysis appears to have focused on inconsistencies in the organizational chart when compared to payroll records as well as contradictory statements regarding the extent of the Beneficiary's role in the foreign entity as opposed to a review of all relevant evidence. Beyond the required description of the job duties, USCIS considers the totality of the evidence when examining whether a beneficiary has been and would be employed in a managerial capacity. This review should include evidence relating to 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.

Notwithstanding the lack of analysis, the record is currently insufficient to establish that the Beneficiary would be employed in a managerial capacity for the U.S. entity, as claimed.

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

Upon review of the description of duties, we note that many of the Beneficiary's duties do not relate to supervision but rather appear to involve performing operational and administrative tasks, such as analyzing finances and developing and overseeing marketing campaigns. The record as constituted appears insufficient to establish that the Beneficiary will be primarily engaged in managerial duties, as required, rather than the operational and administrative tasks necessary to continue the Petitioner's operations. The Petitioner does not include sufficient detail or explanation of the Beneficiary's activities in the course of her daily routine. The actual duties themselves will 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).

The Petitioner must adequately address the above issues, but the Director's decision did not give the Petitioner an adequate opportunity to do so. On remand, the Director should fully evaluate the evidence submitted by the Petitioner to date, including the Petitioner's appeal, to determine whether the Beneficiary would be employed in the United States in a managerial capacity.

### III. CONCLUSION

For the reasons discussed, the Director's decision is withdrawn. On remand, the Director may issue a new request for evidence 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 Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.