U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34287264

Date: OCT. 02, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a biogas engineering company, seeks to permanently employ the Beneficiary as its director of technology 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 Nebraska Service Center denied the petition, concluding the record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity. The matter is now before us on appeal under 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 sustain the appeal.

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 Workers, 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 his entry into the United States as a nonimmigrant, 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).

The Petitioner stated that it is a [redacted] and indicated it "has built over 400 bioenergy systems in more than 40 countries." The Petitioner asserted that the Beneficiary was employed as an engineering manager abroad from May 2019 until his entry into the United States as

a L-1A intracompany transferee in March 2023. The Petitioner asserted that the Beneficiary was employed in an executive capacity abroad.

As discussed, the Director denied the petition, concluding the Petitioner did not establish that the Beneficiary was employed abroad in an executive capacity as asserted. More specifically, the Director concluded the Petitioner did not establish that the Beneficiary exercised wide latitude in discretionary decision making and received only general supervision or direction from higher level executives, a board of directors, or stockholders of the foreign employer.

On appeal, the Petitioner again contends it has demonstrated that the Beneficiary was employed abroad as an executive. 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.*

Upon de novo review, we conclude the Petitioner established by a preponderance of the evidence that the Beneficiary was employed abroad as an executive. The Petitioner submitted sufficient evidence to establish that the Beneficiary directed a major component of the foreign employer, its engineering department, and was primarily tasked with establishing its goals and policies. The Petitioner provided a detailed duty description for the Beneficiary sufficiently demonstrating that the Beneficiary was more likely than not primarily relieved from the non-qualifying operational duties of the engineering department by subordinate engineers. In addition, the Petitioner provided evidence to establish he had wide discretionary authority over the engineering department and that he only received general direction from the foreign employer's chief technology officer. The Petitioner sufficiently established the Beneficiary was employed abroad as an executive and that he is eligible for the benefit sought.

ORDER: The appeal is sustained.