



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

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

In Re: 33878642

Date: SEP. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a company selling cosmetic products, seeks to permanently employ the Beneficiary as its president in the United States under the first preference immigrant classification for multinational executives or managers. 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 on multiple grounds, concluding the Petitioner did not establish that: 1) it had a qualifying relationship with the Beneficiary's foreign employer, 2) the Beneficiary would be employed in the United States in a managerial or executive capacity, 3) it had the ability to pay the Beneficiary's proffered wage, and 4) it was doing business as defined by the regulations. 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 as the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. Since this issue is dispositive, we decline to reach and hereby reserve the Petitioner's arguments with respect to the Director's other grounds for denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is 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).

## I. LEGAL FRAMEWORK

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. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue we will address is whether the Petitioner established that the Beneficiary would be employed in an executive capacity in the United States. The Petitioner does not claim on appeal that the Beneficiary would be employed in a managerial capacity in the United States. Therefore, we restrict our analysis to whether the Beneficiary would be employed in an 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.

When examining the executive capacity of a given beneficiary, we will review the petitioner’s description of the job duties. The petitioner’s description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in an executive capacity. 8 C.F.R. § 204.5(j)(5).

### A. Duties

To be eligible as a multinational executive, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying executive position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, it must prove that the Beneficiary will be *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside its 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.

The Petitioner stated that it was established in 2014 to distribute and sell tanning and cosmetic products imported from Brazil. The Petitioner submitted the following duties for the Beneficiary as its president:

1. Develop and implement strategic planning for new manufacturing operations in the United States (10% of time spent);

2. Hire department managers and specialists in cosmetic industry (5% of time spent);
3. Supervise existing and newly hired management level staff (5% of time spent);
4. Conduct weekly meetings with department managers to monitor progress in operations, research and development, product expansion, digital marketing and sales (5% of time spent);
5. Attend industry conferences with key personnel (5% of time spent);
6. Prepare and attend regular meetings with Accounting and Finance professionals for weekly, monthly, and annual financial reports (5% of time spent);
7. Provide regular interface with stakeholders in Brazil and USA (10% of time spent);
8. Consult with our company in Brazil including discussions of overview of sales forecasts and affiliate growth in the U.S. including set up manufacturing operations and new product line development (10% of time spent);
9. Approve contracts negotiated and acquired by management heads including but not limited to equipment purchase, and raw materials and components, freight contractors, import processors, and advertising contracts (10% of time spent);
10. Interface with management personnel to establish long range goals, strategies, plans and policies (15% of time spent);
11. Enhance and/or develop, implement and enforce policies and procedures of the company by systems that will improve the overall operation and effectiveness of the company (5% of time spent);
12. Evaluate feasibility and cost/sales analysis of manufacturing operations with Director of Operations and Accounting including three production shifts in order to provide 24-hour production (5% of time spent);
13. Review good manufacturing processes reports from Director of Operations and/or Operations Supervisor (5% of time spent);
14. Consult with U.S. legal counsel regarding governmental compliance issues and corporate governance (5% of time spent).

The Petitioner submitted supporting documentation reflecting the Beneficiary's involvement in various non-qualifying operational duties as of the date the petition was filed in January 2018 and thereafter. For instance, the Petitioner provided an invoice from December 2018 reflecting the Beneficiary paying for a \$240 sewer permit for the company. Likewise, the Petitioner provided invoices dating as late as November 2019 showing the Beneficiary as a contact for billing. Similarly, the Petitioner submitted quotes for architectural and construction services from August 2018 listing the Beneficiary, indicating that he arranged for these quotes and was handling all operational aspects of the company's planned construction of a manufacturing facility. The Beneficiary's resume further listed several apparent operational tasks not shown in his duty description, stating that he was responsible for working on the company's website to increase traffic and sales, managing online pricing and promotions, and creating "X-marketing events." These duties suggest the Beneficiary's direct involvement in nearly all the operational aspects of the business, and at minimum, they reflect him working alongside operational employees within the business to perform ordinary non-qualifying operational tasks.

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* sections 101(a)(44)(B) of the Act. Here, the Petitioner does not credibly document what proportion of the Beneficiary's duties would be

executive functions and what proportion would be non-qualifying. The Beneficiary's duties reflected on the record are largely administrative or operational, but the Petitioner does not sufficiently quantify the time he would spend on these duties as opposed to qualifying executive-level tasks. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of an executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In contrast, the Petitioner provided insufficient detail and little documentary evidence to demonstrate his primary performance of qualifying executive-level tasks. For instance, the Petitioner did not sufficiently articulate or document the strategic plans he implemented, the department managers and specialists he hired, the stakeholders he interfaced with, or the long-range goals, strategies, plans, and policies he established. This lack of detail and documentation is particularly noteworthy since the Petitioner filed an L-1A intracompany transferee petition on behalf of the Beneficiary that was approved in August 2016, and later extended through August 2019. Although we do not expect the Petitioner to articulate and document every executive-level task performed by the Beneficiary, it is reasonable to require that it would provide sufficient detail and documentation to sufficiently corroborate his primary performance of qualifying duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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).

Even though the Beneficiary holds a valuable position within the organization, the fact that he will manage or direct the business does not necessarily establish eligibility for classification as a multinational executive within the meaning of section 101(a)(44)(B) of the Act. The Beneficiary may exercise discretion over some of the Petitioner's day-to-day operations and possess some requisite level of authority with respect to discretionary decision-making; however, the position description alone is insufficient to establish that his actual duties would be primarily executive in nature.

## B. Staffing and Executive Capacity

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we take into account the reasonable needs of the organization, in light of its overall purpose and stage of development. *See* section 101(a)(44)(C) of the Act.

As discussed, the Petitioner contends that the Beneficiary would be employed in an executive capacity. 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.*

In support of the petition, the Petitioner provided an organizational chart reflecting that the Beneficiary would supervise a sales manager, an accountant/CPA, a “sales rep kiosk 1,” a “marketing/CRM” employee, a logistics manager, and a research and development employee. As discussed by the Director, the Petitioner submitted another organizational chart in response to the Director’s request for evidence (RFE) in November 2018 showing numerous differences from the chart provided in support of the petition. However, our focus must be on the Petitioner’s organizational structure as of the date the petition was filed, namely that explained above. The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also* Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm’r 1971) (providing that “Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.”).

The Petitioner submitted conflicting evidence with respect to its claimed organizational structure when the petition was filed leaving uncertainty as to whether it was sufficiently staffed to support the Beneficiary in an executive capacity at that time. For instance, the organizational chart submitted with the petition showed that the Beneficiary oversaw six filled positions, or positions with employees identified by name. In contrast, the petition stated that the Petitioner had nine employees, while a support letter stated that it had “hired three U.S. citizens as key personnel” as of the date the petition was filed. Still further, the Petitioner provided state employer’s quarterly wage reports from the fourth quarter of 2017, dated just before the petition was filed in January 2018, reflecting that the Petitioner had only two employees, the Beneficiary and the claimed research and development employee. As such, the Petitioner did not submit a clear picture of its organizational structure as of the date the petition filed or sufficiently substantiate that it was properly developed to support the Beneficiary in an executive-level role. The Petitioner must resolve discrepancies and ambiguities 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).

As discussed, in determining whether a given beneficiary’s duties will be primarily executive, we not only consider the petitioner’s description of the job duties, but the company’s organizational structure, 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. Here, the submitted evidence does not establish that the Petitioner had sufficient operations or employees to support the Beneficiary in an executive position when the petition was filed, where he would act in an elevated position and be primarily relieved from performing non-qualifying operational duties.

In fact, as addressed previously in this decision, the Petitioner provided little supporting evidence to substantiate the Beneficiary’s performance of executive-level duties consistent with setting goals and policies, but in contrast submitted substantial supporting documentation reflecting his performance of non-qualifying operational duties at the time the petition was filed and for over a year following this time. The Beneficiary’s duties also discuss his supervision and direction of various subordinate managers, including weekly meetings with department managers, approving contracts negotiated and acquired by management heads, and evaluating feasibility and cost/sales analysis of manufacturing operations with the director of operations. However, tax documentation submitted near to the date the

petition was filed does not support a conclusion that the Petitioner employed department managers, management heads, or a director of operations. Again, the Petitioner must resolve discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582, 591-92. The immigrant classification for multinational executives is not a prospective petition where a beneficiary's eligibility may be established at a date following the date the petition was filed through future business or hiring plans. Again, the affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also* *Matter of Katigbak*, 14 I&N Dec. at 45, 49.

For the foregoing reasons, the appeal must be dismissed, as the Petitioner did not demonstrate that the Beneficiary would act in an executive capacity in the United States.

**ORDER:** The appeal is dismissed.