



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

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

In Re: 23104155

Date: DEC. 15, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a cargo airline, seeks to permanently employ the Beneficiary as its director of infrastructure and general services under the first preference immigrant classification for multinational managers or executives. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner will employ the Beneficiary in the United States in an 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

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.

## II. ANALYSIS

The Petitioner stated that it intends to employ the Beneficiary in an executive capacity. The Director determined that the Petitioner had not met its burden of proof in this regard.

“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.

To establish that a beneficiary is eligible for immigrant classification as a multinational executive, a petitioner must show that the beneficiary will perform all four of the high-level responsibilities listed at section 101(a)(44)(B) of the Act. The petitioner must then 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 the beneficiary's duties will be primarily executive, we consider the description of the job duties, the company's organizational structure, the duties of the 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 the beneficiary's actual duties and role in the business.

The Beneficiary has held the title of director of infrastructure and general services since 2017, first with his employer in Venezuela<sup>1</sup> and then, since 2019, with the Petitioner in the United States as an L-1A nonimmigrant.<sup>2</sup> The proffered salary is \$60,000 per year. The Petitioner initially stated:

[The Beneficiary] will direct the strategic planning, provide the leadership of the project and set performance objectives, manage the construction projects and supervise the managers of the different areas the progress of the remodeling of the company and decide on commercial solutions. . . . He will direct the management of the organization and all the main components and functions of the organization.

Responding to a request for evidence, the Petitioner submitted a longer job description for the Beneficiary, including the following excerpts:

- [D]irect the Management of all activities related to the remodeling, construction and maintenance of the company's infrastructure. . . .
- [D]eveloping and managing the progress of construction projects, supervising leading and supporting all managers involved in these works. . . .
- Direct the management and personnel in charge of the general maintenance of the company's air conditioning, premises, laptops, servers, water tanks and power plants. . . .
- [D]irecting and evaluating the work of the entire organization to achieve the established objectives. . . .

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<sup>1</sup> The record is inconsistent as to whether the petitioning U.S. employer is an affiliate or a branch of the foreign entity that previously employed the Beneficiary. Affiliates are separate legal entities with shared ownership, whereas a branch is a separate office of the same legal entity. *See* 8 C.F.R. §§ 204.5(j)(2) and 214.2(l)(1)(ii). The Petitioner's share certificates state that the Petitioner was "incorporated under the laws of the State of Florida," but an organizational chart refers to the Petitioner as the "[redacted]" of the company in Venezuela, and the appellate brief calls the Petitioner "a commercial office for the Venezuelan airline," "registered in Florida as a foreign profit corporation." We need not explore this issue here because other issues decide the outcome of the appeal, but any future filings should include stronger evidence of the relationship between the Petitioner and the company in Venezuela.

<sup>2</sup> The benefits of an I-140 petition (permanent residence) are distinct from those provided by an L-1A petition (temporary non-immigrant status), such that the grant of L-1A status does not require approval of a related I-140 petition. *Mahalaxmi Amba Jewelers v. Johnson*, 652 F. App'x 612, 618 (10th Cir. 2016).

Initially, the Petitioner indicated that it relies on outside contractors for “remodeling, construction, maintenance and inspection services,” and asserted that the Beneficiary “will be directly responsible for managing the outsourced companies.” The Petitioner also specified that the Beneficiary will “[d]irect the management of the general maintenance of the company’s air conditioning, laptops, servers, water tanks and electrical plants.” But the record does not support these assertions.

The lease agreement for the Petitioner’s business location indicates that “contractors hired directly by [the] Landlord” are responsible for maintenance of air conditioning and electrical systems. The Petitioner has not established any direct contractual relationship between the Petitioner and the contractors hired by the landlord. The lease further indicates that the Petitioner “will name an employee to supervise the maintenance jobs” performed by those contractors, but the Petitioner has not established that such supervision rises to an executive level of authority, or that the “maintenance jobs” constitute a major function of the petitioning organization.

The Petitioner initially submitted copies of service agreements with five contractors who provide services not specified in the lease agreement. Two of those companies provide “consultation services related to construction projects”; a third company provides “general construction services.” A fourth company periodically maintains the Petitioner’s garage doors, and the fifth company is a janitorial service. The agreements in the record do not show that any of these companies participate in “general maintenance of the company’s air conditioning, laptops, servers, water tanks and electrical plants.” At the time of filing, the Petitioner did not identify any other contractors said to be under the Beneficiary’s supervision.

After the Director requested more information about the Beneficiary’s subordinates, the Petitioner submitted an organizational chart naming a director of operations; cargo & logistics manager; airport and commercial manager; project and purchasing manager; and sales executive. These titles are consistent with management-level positions, but the chart does not show that any of those employees are subordinate to the Beneficiary. Rather, those individuals and the Beneficiary report to the Petitioner’s legal affairs manager, who in turn reports to the president. The chart therefore does not support the assertion that the Beneficiary “direct[s] the management of the organization and all [its] main components and functions.”

The organizational chart limits the Beneficiary’s authority to seven newly named contractors. The chart does not show any of the contractors previously named in the initial submission. Agreements with the newly named contractors specify functions such as “Sales, Cargo and Logistics Management,” “sales,” and “accounting and taxes.” These functions are not among the responsibilities listed in the Beneficiary’s own job description. Three of the contracts date from after the petition’s October 2019 filing date, and therefore do not reflect the Beneficiary’s responsibilities at the time of filing. *See* 8 C.F.R. § 103.2(b)(1) (requiring eligibility at the time of filing). The Petitioner does not explain why a contractor in charge of “Sales, Cargo and Logistics Management” would report to the Beneficiary, rather than to the sales executive and the cargo and logistics manager named on the Petitioner’s organizational chart.

Most of the submitted agreements specify that the contractors’ employees “will at all times be under the control and supervision of the Independent Contractor.” The agreement with one contractor indicates that the “Chairman of the Board of Directors or Area Manager” may assign “other activities”

to the contractor. The Beneficiary holds neither of these titles. The Petitioner did not cite any clause in the agreements to show that the Beneficiary has, or will have, executive authority over the contractors' management. All the contractor agreements were signed by either the Petitioner's president or its legal affairs manager, both of whom rank higher than the Beneficiary on the organizational chart. Because the Beneficiary already holds the position named in the petition, evidence of past activities is relevant to the nature of his duties and responsibilities.

The Director denied the petition, stating that the submitted evidence does not show that the Beneficiary directs the management of the petitioning organization or any of its major components or functions.

The Petitioner's appeal repeats the descriptions of the responsibilities of the second group of contractors, but the Petitioner does not explain why the initial submission referred to an entirely different group of contractors. Also, the Petitioner does not establish that the responsibilities of the second group of contractors relates to the Beneficiary's stated areas of responsibility.

Counsel for the Petitioner states:

[The Beneficiary] will continue to establish the goals and policies of the organization by having constant and direct management of the activities ranging from:

- Cargo handling
- Compliance with the safety parameters dictated by TSA
- Suspension and rescheduling of flights according to scheduled itineraries and emergency loads
- Compliance with stipulated delivery times up to the coordination of the correct functioning of the equipment of the equipment and machinery
- The aircraft
- The infrastructure of the headquarters
- The personnel working in each of these areas.

The assertion that the Beneficiary "will continue" to perform the listed tasks indicates that he already performs them, but the list submitted on appeal differs significantly from the previous versions of the Beneficiary's job description, and no official of the petitioning company has attested to the new list. Counsel's unsupported assertions are not evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

Specifics are an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. *See generally* 6 *USCIS Policy Manual* F.4(C)(4), <https://www.uscis.gov/policy-manual>. Here, some of the Beneficiary's stated duties lack specific detail, such as "the responsibility of directing and evaluating the work of the entire organization to achieve the established objectives."

Other duties and responsibilities have more detail, but are not consistent with the evidence provided. The Petitioner has stated that the bulk of the Beneficiary's duties relate to "construction and maintenance of the company's infrastructure" and its "expansion," but he has no identified subordinates within the company, and the two non-overlapping sets of identified contractors do not appear to be involved in such construction and expansion. The Petitioner has not established the connection between the contractors and the Beneficiary's stated responsibilities.

Also, the Petitioner has not established the nature or extent of the Beneficiary's authority over the contractors, or shown that such authority rises to the level of an executive capacity, which entails "directing the management" rather than simple oversight or supervision. While the Petitioner may rely on contractors to perform some tasks on behalf of the company, the Petitioner has not established that the tasks delegated to contractors under the Beneficiary's authority amount to a major function of the petitioning organization.

### III. CONCLUSION

The submitted descriptions of the Beneficiary's duties lack detail and consistency, and the Petitioner has submitted conflicting, changing accounts of who works under the Beneficiary's authority. The Petitioner's assertion that the Beneficiary "will direct the management of the organization and all the main components and functions of the organization" is not consistent with the organizational structure described in the record, and the Petitioner has not submitted sufficient evidence to establish that the Beneficiary will direct the management of any major function of the organization through contractors. We conclude that the Petitioner has not met its burden of proof to establish that it seeks to employ the Beneficiary in a primarily executive capacity. Therefore, the Petitioner has not shown that the Beneficiary is eligible for the immigrant classification sought in this proceeding.

We will therefore dismiss the appeal.

**ORDER:** The appeal is dismissed.