



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

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

In Re: 20060814

Date: JUNE 29, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Multinational Managers or Executives

The Petitioner, part of an international organization that provides various support services to the oil and gas industry, seeks to permanently employ the Beneficiary as its chief financial officer (CFO) 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, as required, that the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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.

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. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director found that the Petitioner did not establish that it will employ the Beneficiary in an executive capacity in the United States. The Petitioner does not claim that it will employ the Beneficiary in a managerial 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.

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 set forth in the statutory definition at section 101(a)(44)(B) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, 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.

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act. Accordingly, we will consider the Beneficiary’s job duties along with evidence of the nature of the Petitioner’s business and its staffing levels.

The Director determined that the Petitioner had not shown that the Beneficiary’s duties primarily involve establishing goals and policies, and that the company’s financial component has a sufficiently complex organizational structure to support a primarily executive position for the Beneficiary. We agree, as explained below.

The Petitioner states that its affiliate in Trinidad “provides an array of services for onshore and offshore projects,” such as staffing, supplies, and medical services. The Petitioner states that the U.S. company, which had 12 employees at the time it filed the petition, “was established to oversee the activities of the [organization’s] worldwide . . . corporate family,” which has affiliates in the Caribbean, Latin America, and South America. After working as finance director and CFO for the Petitioner’s affiliate in Trinidad from 2010 to 2019, the Beneficiary entered the United States in January 2019 as an E-2 nonimmigrant employee of a treaty investor.

On appeal, the Petitioner asserts that the size of its staff should not have significant weight in this proceeding, and that staffing considerations should take the employer’s reasonable needs into account, as required by section 101(a)(44)(C) of the Act. The Petitioner also notes that the COVID-19 pandemic had economic reverberations throughout the petroleum industry, and cites a tax preparation error which seemed, incorrectly, to indicate that the company had no employees for a time in 2020. The denial, however, did not simply rest on findings regarding the size of the Petitioner’s staff. The Director cited discrepancies and deficiencies in the record, which the Petitioner has not overcome on appeal.

An immigrant petition can be approved only upon a determination that the facts claimed in that petition are true. *See* section 204(b) of the Act, 8 U.S.C. § 1154(b). To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

An organizational chart submitted with the petition shows that the Beneficiary and the Petitioner's International Taxation and Legal Compliance Director have joint authority over a Financial Controller and two apparently vacant Finance Administrator positions. After the Director requested additional information and evidence regarding the subordinate structure that carries out activities under the Beneficiary's authority, the Petitioner submitted a new chart, indicating that the Beneficiary has eight subordinates, three of whom are in the United States:

- 4 Financial Controllers (U.S., Trinidad, Mexico, and Guyana)
- 1 Junior Accountant (U.S.);
- 1 Accounting Specialist (U.S.); and
- 2 Internal Controls and Financial Reporting (Trinidad and Guyana)

The updated organizational chart showing the above positions does not refer to any finance administrators. A job description submitted with the revised chart indicates that the Beneficiary supervises "Financial Controllers and Tax Manager," which does not fully agree with the job titles shown on the organizational chart. On the updated chart, the position formerly called International Taxation and Legal Compliance Director is now called Director, Global Taxation & Legal, and the newer chart does not show that this position has any authority over the financial controllers or other stated subordinates of the Beneficiary.

The Petitioner does not specify when the structure shown on the newer organizational chart replaced the older structure. This is significant because there are substantial differences between the two versions of the organizational chart, and the Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). Any material changes to the Petitioner's structure after the filing date cannot establish eligibility. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements).

The Director concluded that the Petitioner had not shown that any of his subordinates are managers. On appeal, the Petitioner contends that the Director has conflated the statutory definitions of "managerial capacity" and "executive capacity," because the definition of a managerial capacity specifically includes supervisory authority over managers. But the definition of an executive capacity includes "[d]irect[ing] the management of the organization or a major component or function of the organization." If the Beneficiary's subordinates are not managers, then it is reasonable to question how the Beneficiary directs the management as required. Direct supervision of non-managerial employees is not an intrinsically executive responsibility.

The Petitioner has submitted two job descriptions for the Beneficiary, each of which lists responsibilities that are facially consistent with an executive level of responsibility, but here again there are discrepancies. One description, marked "PREPARED BY: Chief Financial Officer,"

indicating the Beneficiary wrote it himself, indicates that the Beneficiary will “[m]anage the accounting, human resources, investor relations, legal, tax, and treasury departments.” This item is inconsistent with the Petitioner’s updated organizational chart, which shows a Director of Global Taxation and Legal and a Director of Global Human Resources, both at the same organizational level as the Beneficiary. The Petitioner does not explain why the Beneficiary would have authority over legal, tax, and human resources issues, when those areas fall under separate directorates that are not under the Beneficiary’s authority.

The job description prepared by the Beneficiary also refers to “the financial operations of subsidiary companies,” but there is no indication that the petitioning entity has any subsidiaries. Rather, the Petitioner is, itself, an affiliate within a larger organization that conducts most of its business abroad.

The job description prepared by the Beneficiary is largely vague and general when compared to the other submitted job description, and there are several areas that do not overlap. For example, the job description prepared by the Beneficiary includes the following elements that have no analogous provisions on the other version of the job description:

- Supervise acquisition due diligence and negotiate acquisitions
- Arrange for debt and equity financing
- Manage any third parties to which accounting or finance functions have been outsourced

The other version of the job description includes several elements not found in the version prepared by the Beneficiary, including the following examples:

- Sage 50 Software Blueprinting to allow for harmonious implementation in and throughout the Group
- Visiting of all [the Group’s] worldwide operations, once per year
- ISO 9001:2015 Quality Management Certification for the Corporate Arm of the Group in the capacity of Management Representative

The Petitioner must clearly describe the duties to be performed by the Beneficiary. 8 C.F.R. § 204.5(l)(5). We cannot conclude that the Petitioner has met this fundamental requirement, given the lack of agreement between the two descriptions of the same position. Because the Petitioner has submitted what amount to conflicting job descriptions for the Beneficiary, we agree with the Director’s core finding that the Petitioner has not shown that establishing policies and goals for the organization or a major component or function thereof is one of the Beneficiary’s primary responsibilities. Material inconsistencies, not resolved with independent, objective evidence, may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The job descriptions for the three claimed subordinate U.S. positions each raise further questions. The job description for the junior accountant lists assisting with “training and management of accounting staff,” but the junior accountant is one of two employees at the lowest apparent level of the Petitioner’s finance department. Therefore, it is not evident whom the junior accountant trains and manages.

Another job description indicates that the accounting specialist “recommend[s] actions to a senior financial analyst,” but the organizational chart does not show any financial analysts.

A third job description indicates that the financial controller “[a]ssists Marketing in establishing and maintaining product pricing policies,” but the Petitioner’s organizational chart does not show a Marketing Department, and the Petitioner does not explain the role of “product pricing” in a company that provides services rather than goods. The second version of the Petitioner’s organizational chart places the U.S. financial controller in a position superior to the Beneficiary’s other seven identified subordinates, including the five who are outside the United States, but the U.S. financial controller’s job description does not reflect managerial or supervisory authority over these other employees.

The general wording and occasional references of doubtful relevance, such as the examples shown above, suggest that the subordinates’ position descriptions more closely resemble generic or template job descriptions than the actual, specific duties of the positions involved. The Petitioner has not established that the junior accountant, accounting specialist, and financial controllers constitute the management of a major component or function of the petitioning organization, such that the Beneficiary directs the management of that component or function through his authority over those employees.

For the reasons discussed above, we conclude that the Petitioner has not established that it seeks to employ the Beneficiary in a primarily executive capacity. The conflicting information about the Beneficiary’s duties and subordinate staff prevents the conclusion that the Beneficiary primarily directs the management, and establishes the goals and policies, of the organization or a major component or function thereof.

We will dismiss the appeal for the above stated reasons.

ORDER: The appeal is dismissed.