



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

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

In Re: 22794573

Date: NOV. 2, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a foreign trade and investment company, seeks to permanently employ the Beneficiary as its “CFO” 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 an executive or managerial capacity.

The Director of the Nebraska Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner disputes the denial, claiming that the denial notice was “vague and confusingly worded.” The Petitioner further argues that the Director did not properly apply the law to the facts presented and did not correctly assess previously submitted evidence, including evidence that was submitted in response to the request for evidence (RFE).

Upon *de novo* review, we find that the Director did not offer a complete and accurate analysis of the submitted evidence; therefore, we will remand the matter for further proceedings consistent with our discussion below.

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. BASIS FOR REMAND

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 (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).

In the matter at hand, the Director determined that the Petitioner did not submit "a statement of capacity" with respect to the Beneficiary's proposed position and "never states the capacity of the [B]eneficiary with the foreign entity," thus indicating that it was unclear whether the Beneficiary's employment capacity is that of a manager or executive. The record shows, however, that the Petitioner incorporated the definition of executive capacity in its RFE response letter, which also contained multiple references to the Beneficiary as a "top executive." Furthermore, the Petitioner clearly stated that the Beneficiary "has been performing the duties of top executive with the foreign company for at least one continuous year" and claimed that the proposed U.S. position would also entail "responsibilities [that] are primarily executive in nature."

The Director also determined that the foreign entity's organizational chart "was vague and not detailed." However, the record shows that the Petitioner previously submitted the foreign entity's organizational chart, complete with employee names, position titles, and headings of the departments that comprised the foreign entity. Regarding the U.S. entity, the Director determined that the Petitioner has "few employees actually working at the U.S. entity and has several positions needing to be filled." However, the Director did not discuss how the Petitioner's staffing size would impact the Beneficiary's proposed position, nor does the Petitioner's organizational chart corroborate the Director's determination that the U.S. organization has several positions needing to be filled," as the chart shows no vacant positions.

Further, although the Director found that the Petitioner's RFE response concerning the foreign entity was "vague and lacking evidence to establish the [B]eneficiary's capacity as manager or executive," the denial notice does not include a discussion of the Petitioner's submissions to explain how the Director arrived at this conclusion. Likewise, the Director did not discuss the Beneficiary's job descriptions or those of her subordinates, even though such evidence was provided in support of the petition and later in response to the RFE. Thus, although the Director questioned whether the Beneficiary's subordinates in her respective positions with the foreign and U.S. entities "meet the criteria of their positions," it does not appear that the questions arose from a review of the previously submitted evidence, as the Director did not acknowledge or discuss the evidence pertaining to the Beneficiary's subordinates.

Lastly, the Director vaguely determined that the Petitioner "lacks staffing necessary to carry out lesser job duties" and concluded that the Beneficiary therefore "appears to perform the majority of duties for the U.S. organization." However, because the Director did not discuss the Beneficiary's or her subordinates' job descriptions, the decision does not provide an adequate basis for this conclusion.

Notwithstanding the lack of analysis, the record is currently insufficient to establish that the Beneficiary was employed abroad and would be employed in the United States in an executive capacity, as claimed.

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.*

Although the Petitioner provided several lengthy job descriptions for the Beneficiary, the content was vague, focusing primarily on the Beneficiary’s discretionary authority over each entity’s goals and policies, finances, and business strategy, yet failing to convey a meaningful understanding of the Beneficiary’s job duties in the course of each entity’s daily operations and within the scope of each organizational hierarchy.

Regardless, because the Director’s decision did not adequately analyze the facts of the matter and apply the law, we will remand the matter for entry of a new decision. The Director should request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period of time.

ORDER: The Director’s decision is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.