



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

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

In Re: 10545987

Date: SEP. 9, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a food manufacturer, seeks to permanently employ the Beneficiary as director of finance for one of its brands within its Refrigerated Business Unit (RBU) 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).

The Director of the Nebraska 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.

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 AN EXECUTIVE CAPACITY**

The Petitioner asserts that it seeks to employ the Beneficiary in an executive capacity. It does not assert that it seeks to employ the Beneficiary in a managerial capacity. The Director found that the Petitioner did not establish that the proffered position meets the requirements of 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.

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.

When examining the managerial or executive capacity of a given beneficiary, we will look to 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 a managerial or executive capacity. *See* 8 C.F.R. § 204.5(j)(5). Beyond the required description of the job duties, we examine the company’s organizational structure, the duties of a beneficiary’s subordinate employees, the presence of other employees to relieve a 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.

Accordingly, we will discuss evidence regarding the Beneficiary’s job duties along with evidence of the nature of the Petitioner’s business and its staffing levels.

The Petitioner asserts that the Beneficiary will be “directing all financial tasks for the organization.” An organizational chart identifies the Beneficiary as the director of finance not for “the organization,” as stated, but rather for one brand within a particular subdivision, the RBU. The Petitioner provides a list of the Beneficiary’s responsibilities, with the approximate time devoted to each:

- Direct . . . financial process improvement and cost savings projects, along with the first time development of policies, procedures, reports and analysis (15%)
- Manage the development and maintenance of timely and accurate financial statements and reports . . . (15%)
- Direct the development and implementation of compliance with internal financial and accounting policies and procedures (5%)
- Oversee the preparation of all supporting financial information for the annual audit and liaise with the Board’s Audit Committee and the external auditors as necessary (15%)
- Ensure the documentation and maintenance of complete and accurate supporting information for all financial transactions . . . (10%)

- Lead the development and maintenance of financial accounting systems . . . (10%)
- Review monthly results and implement monthly variance reporting (5%)
- Oversee the development and implementation of policies and procedures to ensure that personnel and financial information is secure . . . (5%)
- Manage the acquisition of capital assets and ensure that assets are properly recorded, amortized, and disposed of, as appropriate (5%)
- Establish guidelines for budget and forecast preparation (5%)
- Liaise with other functional groups supporting the business . . . to identify issues impacting the business and develop recommendations for improvement (5%)
- Attend board meetings representing the Finance department (5%)

In a request for evidence (“RFE”), and again in the denial notice, the Director concluded that the description is “broad and ambiguous,” describing areas of responsibility rather than “the specific tasks” the Beneficiary performs in order to meet those responsibilities. On appeal, the Petitioner submits a new copy of the job description, signed by a company official. The Director had cited the lack of that signature as an issue, but not as the sole basis for denial. The job description itself has the same deficiencies the Director had previously noted of being “broad and ambiguous,” and the Petitioner does not address those material deficiencies in the job description on appeal.

Despite notice in the Director’s RFE and in the Director’s decision that the job description lacks necessary detail, the Petitioner has submitted essentially the same job description three times, with no substantive changes or required further elaboration except for the addition of time percentages as shown above.

Specifics are clearly an important indication of whether a beneficiary’s duties are primarily executive in nature. *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). Reciting the beneficiary’s vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary’s daily job duties. The actual duties themselves will reveal the true nature of the employment. *Id.*

The organizational chart indicates that the Beneficiary reports to the chief financial officer for the RBU, indicating that the Beneficiary is not the highest-ranking figure with respect to the RBU’s finances. The same chart identifies three immediate subordinates below the Beneficiary:

- Assistant Director, Finance [REDACTED]
- Manager, Finance (Cold Cuts)
- Manager, Finance (Bacon/Hot Dogs)

The chart does not show the personnel structure, if any, below those three named subordinates.

The Petitioner submits the same job descriptions for each of the three positions, listing five “Key Responsibilities”:

- Develop category financial plans and monitor delivery against objectives
- Ensure effective and efficient use of A/C/T budgets
- Commodity / Price management
- Develop and update new product propositions

- Support cross-category initiatives and productivity efforts

Because the three job descriptions are identical, each description refers to the position as “Associate Director Category Finance” although two of the three named individuals have the title “Manager” rather than “Associate Director.” Each description also includes a list of “Minimum Qualifications,” the last bullet point under the minimum qualifications section reads “Preferred Qualifications.” The presence of this unexplained phrase makes it unclear whether the minimum qualifications are all preferred qualifications, or whether the description is incomplete.

The Petitioner submits copies of three internal reports, stating they were “prepared by [the Beneficiary] with the support of his team,” but the documents themselves contain no attribution of authorship. A four-year strategic plan for the RBU includes financial figures but is not exclusively or primarily focused on finance. It also extensively addresses issues such as branding and marketing that presumably lie outside the Beneficiary’s area of responsibility. The other two documents—an annual operating plan for the RBU and a performance review for a particular brand—are more finance-focused, but they were submitted without attribution. Also, no one in a position to know the Beneficiary’s role in their preparation has explained what that role was. As noted above, the Beneficiary is director of finance for one particular brand, rather than the entire RBU which encompasses multiple brands of cold cuts, other meats, cheeses, and other dairy products, but two of the submitted reports concern the entire RBU rather than the specific brand under the Beneficiary’s authority.

The Petitioner has submitted vague and incomplete information about the Beneficiary’s actual duties, and the subordinate personnel structure that exists. Without an adequate job description, we are unable to accurately determine whether the Beneficiary, “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.” We also cannot determine that there is sufficient staffing to relieve him from having to primarily perform non-qualifying tasks, and that he would primarily perform in an executive capacity as requested. The Petitioner has not overcome the stated ground for denial of the petition, and therefore we will dismiss the appeal.

### III. ADDITIONAL ISSUE

Beyond the Director’s decision, the Petitioner has not established that it has a qualifying relationship with the Beneficiary’s former foreign employer.

To establish a “qualifying relationship” under the Act and the regulations, a petitioner must show that the beneficiary’s foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a “parent and subsidiary” or as “affiliates.” *See generally* section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(C).

The regulation at 8 C.F.R. § 204.5(j)(2) defines a “subsidiary” as:

a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-

50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The regulation and case law confirm that ownership and control are the factors that determine whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification.<sup>1</sup> In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity.<sup>2</sup>

The record indicates that the Beneficiary's former foreign employer, [REDACTED] is a subsidiary of [REDACTED]. The petitioning U.S. employer is a subsidiary of the [REDACTED]. Therefore, the Petitioner must establish a qualifying relationship between [REDACTED]. Initially, the Petitioner stated that "[b]oth the petitioner . . . and the beneficiary's prior foreign employer abroad . . . are owned and controlled by [REDACTED] . . . and, therefore, are affiliated companies." The initial submission established that [REDACTED] has an ownership stake in [REDACTED] but not control.

Responding to a request for evidence of a qualifying relationship, the Petitioner contends that "[REDACTED] *in fact*, has full control over management and executive decisions for [REDACTED] as well as actual, substantial control of [REDACTED] Board of Directors." The record, however, does not support this assertion.

The Petitioner submits documentation from the Securities and Exchange Commission (SEC) showing that, as of February 2018, [REDACTED] owned 23.9% of [REDACTED], while [REDACTED] owned 26.7%, with no other major shareholders. These figures are outdated. In its most recent Form 10-K Annual Report, filed in February 2022, [REDACTED] stated: "As of December 25, 2021, [REDACTED] own approximately 42% of our common stock."<sup>3</sup> Even taken together, [REDACTED] now own a plurality of shares, but not a majority.

Documents in the record show that [REDACTED] has an 11-member board of directors, with three of those members "selected by [REDACTED]"; three "selected by [REDACTED]"; and the remaining five "selected by [REDACTED]". The chief executive officer of [REDACTED] is also chairman of the board of [REDACTED] but this is not *prima facie* evidence that [REDACTED] controls [REDACTED] because the eight other board members can outvote the three members from [REDACTED]. The Petitioner has not established that [REDACTED] controls the votes of any of the other eight board members, or that the chairman of the board has the authority to veto measures favored by the majority of the board but opposed by [REDACTED].

The Petitioner submits SEC documents referring to a "shareholders' agreement" between [REDACTED] and [REDACTED] but this agreement is limited to each company agreeing to "vote their shares . . . in favor of [each other's] nominees" for board positions. The agreement does not compel [REDACTED] three board members to vote in concert with the three board members from [REDACTED] on other matters.

<sup>1</sup> See *Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (BIA 1988); see also *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

<sup>2</sup> *Matter of Church Scientology Int'l*, 19 I&N Dec. at 595.

<sup>3</sup> [https://www.sec.gov/Archives/edgar/data/\[REDACTED\].htm](https://www.sec.gov/Archives/edgar/data/[REDACTED].htm) (last accessed Sept. 9, 2021).

The Petitioner contends that [ ] controls [ ] because “four (4) of the most senior executive positions at [ ] are held by Partners of [ ], including [the chief executive officer]. As such, [ ] has full control over management and executive decisions for [ ]. The Petitioner has not, however, established that the [ ] partners in high-ranking positions at [ ] are independent of the authority of [ ] board of directors.<sup>4</sup> The Petitioner submits no first-hand evidence to show that [ ] has yielded “full control” of [ ] to [ ] even though [ ] owns more shares.

For these reasons, the Petitioner has not established that it has a qualifying relationship with the Beneficiary’s former foreign employer.

#### IV. CONCLUSION

The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.

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<sup>4</sup> [ ] bylaws, available via the SEC’s website, state: “The Chief Executive Officer shall be responsible to the Board of Directors and shall perform such other duties as shall be assigned to him or her by the Board of Directors.” [https://www.sec.gov/Archives/edgar/data/\[ \]/\[ \]htm](https://www.sec.gov/Archives/edgar/data/[ ]/[ ]htm) (last visited Sept. 9, 2022).