



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

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

In Re: 26400443

Date: APR. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a software and payments solutions provider for gyms and health clubs, seeks to permanently employ the Beneficiary in the position of chief executive officer (CEO) 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 a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary was employed abroad, or would be employed 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 sustain the appeal.

An immigrant visa is available to a noncitizen who, in the three years preceding the filing of a Form I-140, Immigrant Petition for Alien Worker, 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; *see also* 8 C.F.R. § 204.5(j).

“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, 8 U.S.C. § 1101(a)(44)(B).

As noted, the Director concluded that the record did not establish that the Beneficiary had been employed abroad, or would be employed in the United States, in an executive capacity. On appeal,

the Petitioner asserts that the Director failed to consider all relevant evidence and contends that it met its burden to establish the Beneficiary's eligibility for classification as a multinational executive.

With respect to the proposed U.S. employment, the Director emphasized that the Beneficiary's direct manager and many of his subordinates are not employees of the petitioning company. As a result, the Director determined that the Petitioner did not meet its burden to establish that the Beneficiary would be directing the management of the organization through the Petitioner's employees, developing goals and policies specifically for the Petitioner, or reporting to the Petitioner's higher-level executives or board of directors. The Director therefore concluded that the offered position did not satisfy all four prongs of the statutory definition of "executive capacity" at section 101(a)(44)(B)(i)-(iv) of the Act.

The Petitioner established that its multinational organization has a complex global corporate and management structure that includes six separate operating groups, with all group entities ultimately owned by the same parent, a publicly traded Canadian corporation. The record further shows that the Petitioner and some of its U.S. and foreign affiliates are all part of the [REDACTED], which is further divided into five operational portfolios, each with its own CEO and central financial team. The record reflects that the Beneficiary has been offered one of these CEO positions, specifically the position of Group CEO for the [REDACTED]. The Petitioner, one of many businesses within this division, serves as the Beneficiary's payroll employer, but it is not the sole entity that falls under his responsibility as Group CEO. The Director's decision does not reflect consideration of the Petitioner's evidence and explanations regarding this corporate structure or the scope and nature of the Beneficiary's responsibility within the larger organization.

The Petitioner submitted an organizational chart that illustrates the operating structure described above and the Beneficiary's high-level position within that structure. The chart depicts the Beneficiary as "Group CEO for Fitness," reporting to the CEO of the [REDACTED]. The Petitioner explained that the Beneficiary is responsible for providing strategic and operational direction to multiple business portfolios within the Fitness division and the respective company leaders within those business units. The chart illustrates the Beneficiary's authority over these executive and managerial staff, which include portfolio managers (who supervise company presidents for businesses within their respective portfolios), as well as a chief information security officer, a director of mergers and acquisitions, and other senior staff. The organizational chart is supported by resumes, job descriptions, proof of employment, and copies of performance reviews that the Beneficiary completed for his direct subordinates, who collectively supervise over 300 employees. The Petitioner indicates that in addition to providing executive direction to the [REDACTED] the Beneficiary is responsible for pursuing acquisition opportunities relevant to each business unit, the Fitness Division, and the overall operating group. The record contains evidence documenting his performance of these high-level responsibilities.

Based on a review of the totality of the evidence and considering the Beneficiary's role within the larger multinational organization, we conclude that the Petitioner established that he will be employed in an executive capacity as defined at section 101(a)(44)(B) of the Act. Specifically, the record reflects that he will, more likely than not, primarily direct the management of a major component of the organization (the [REDACTED]) establish goals and policies for this component, exercise wide latitude in discretionary decision-making, and receive only general supervision from a higher-

level executive and the parent company's board of directors. Accordingly, the Director's decision with respect to this issue is withdrawn.

The Director also concluded that the record did not establish that the Beneficiary was employed in an executive capacity abroad in the three years preceding his transfer to the United States in L-1A nonimmigrant status in June 2018, as required by 8 C.F.R. § 204.5(j)(3)(1)(B). In this regard, the Director found that there were inconsistencies in the record regarding which company served as his payroll employer between 2015 and 2018. Therefore, the Director concluded it could not be determined "who employed the beneficiary abroad and in what capacity."

The record reflects that the Petitioner served as managing director of its United Kingdom affiliate, [REDACTED] from 2011 until July 2015, and then received a promotion to the position of portfolio manager for the [REDACTED], also an affiliate of the petitioning company. In that position, which he held up until his transfer to the United States, the Beneficiary directed a portfolio of several related businesses (including [REDACTED] and their senior leadership teams. However, as noted by the Director, his paystubs for 2017 and 2018, during his tenure as portfolio manager, identify his employer as [REDACTED]. The Petitioner explains on appeal that he remained on [REDACTED] payroll following the promotion and emphasizes that the companies' senior personnel and operations are closely intertwined. The Petitioner's explanation, which is accompanied by additional evidence, resolves the inconsistency that led the Director to deny the petition and corroborates the Beneficiary's portfolio manager position in the United Kingdom for the 2015 to 2018 period.

Further, the evidence in its totality, which includes the job description for the Beneficiary's portfolio manager position, an organizational chart for the business component he directed, and evidence related to his subordinate staff abroad, is sufficient to establish that his duties were similar to those that he performs in the United States and were primarily at an executive level. Accordingly, the Petitioner has established by a preponderance of the evidence that the Beneficiary was employed abroad in an executive capacity.

Based on the foregoing discussion, the record establishes the Beneficiary's eligibility for classification as a multinational executive under section 203(b)(1)(C) of the Act. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.