U.S. Citizenship and Immigration Services

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

In Re: 27490624

Date: JULY 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, which claims to operate a convenience store under the name [redacted] (LCMM), seeks to permanently employ the Beneficiary as its general manager 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 has been employed abroad in a managerial or executive capacity. 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.

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. ANALYSIS

The Director determined that the Petitioner did not meet its burden of proof to establish that the Beneficiary had been employed abroad in a managerial capacity. The Petitioner did not claim that the Beneficiary had been employed abroad in an executive capacity.

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

If a petitioner establishes that the position abroad meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether the beneficiary's duties were primarily managerial, 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 Petitioner filed the present immigrant petition in March 2021, stating that the Beneficiary "has served as the Finance and Accounts Manager for the foreign company [an aquaculture farm in India] since January 2015." At the time of filing, the Petitioner provided no further details about the Beneficiary's claimed employment abroad.

The Director requested further information "which demonstrates that the beneficiary worked abroad in a primarily managerial or executive capacity [for the foreign entity] for at least one year in the three years preceding the beneficiary's admission as a nonimmigrant." In response, the Petitioner submitted a copy of an undated organizational chart for the foreign entity. The chart, however, does not indicate that the Beneficiary was the finance and accounts manager, as the Petitioner claimed in its initial letter. Rather, the chart shows the Beneficiary's title as "account manager," subordinate to the finance and accounts manager, and with one subordinate, with the title "accounts assistant."

The Petitioner stated that its response to the request included a letter from an official of the foreign entity "regarding the beneficiary's position with the foreign company." The letter in the record from that official, however, focuses on the Beneficiary's intended U.S. position rather than his claimed employment abroad. Most of the letter describes the Beneficiary's U.S. position in the present tense. Only one sentence describes the Beneficiary's past work, indicating that he "has assisted with accounting and finance as well as maintaining contractual agreements with vendors/suppliers, wholesalers and retailers." From the context, it is not clear whether this sentence refers to work the Beneficiary performed abroad or in the United States.

The Petitioner also submitted an undated document identified as the Beneficiary's résumé. The Beneficiary did not sign or otherwise attest to this document. It shows the Beneficiary's title abroad as "accounts manager" from "January 2015 – Present." The résumé lists ten "core responsibilities," including "customs sales and tax functions," "execution of importation documentation requirements," and "planning and coordination of enterprise-wide logistics management for both import & export." The listed responsibilities include a number of apparently non-managerial tasks, such as preparing labels and paperwork and "submitting bank documents."

The résumé does not fully explain who relieved the Beneficiary from performing non-managerial tasks in the claimed position abroad. The only subordinate identified on the résumé is an "Operation supervisor," a title that does not appear on the organizational chart. The Petitioner did not resolve this inconsistency with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The Director denied the petition, stating that the Petitioner had not submitted sufficient evidence and information concerning the Beneficiary's claimed employment abroad. The Director concluded: "the petitioner failed to demonstrate that the beneficiary supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization."

On appeal, the Petitioner states: "[A]ny successful business must prepare financial reports such as financial statements. . . . The Account Manager is responsible for maintaining these financial reports. These task[s] are far beyond the duties of a manager or supervisor." The Petitioner does not elaborate or cite any source to show that the preparation of financial reports is a task typically performed by managers rather than delegated to lower-level employees. Furthermore, preparation of financial reports was not among the ten "core responsibilities" listed on the résumé submitted previously. The Petitioner's assertion does not overcome, or directly address, the stated grounds for denial.

We agree with the Director's determination. The Petitioner did not provide enough information about the Beneficiary's claimed duties abroad. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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.*

For the reasons discussed above, we agree with the Director's conclusion that the Petitioner has not established that the Beneficiary was employed abroad in a managerial capacity. Review of the record shows discrepancies that further support our determination and raise additional concerns about the Beneficiary's claimed employment abroad.

An employment-based immigrant petition cannot be properly approved without a determination that the facts claimed in that petition are true. *See* section 204(b) of the Act, 8 U.S.C. § 1154(b). Information in the record raises serious questions about the truth of key claims underlying the petition.

The Petitioner has not submitted enough evidence and information to establish that the business in India employed the Beneficiary abroad before he began working for the Petitioner in the United States.

Section 203(b)(1)(C) of the Act requires a beneficiary to have "been employed for at least 1 year" outside the United States during "the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph."

If a beneficiary is already in the United States working for the same or related employer, then the petitioner must show that the entity abroad employed the beneficiary abroad as a manager or executive for at least one year during the three years before the beneficiary entered the United States as a nonimmigrant. *See* 8 C.F.R. § 204.5(j)(3)(i)(B). An interruption of more than two years in the beneficiary's qualifying employment abroad renders a beneficiary ineligible for classification under section 203(b)(1)(C) of the Act until the beneficiary accumulates another year of qualifying experience outside the United States. *See Matter of S-P-, Inc.*, Adopted Decision 2018-01 3-4, (AAO Mar. 19, 2018).

In this case, the record is inconsistent regarding the Beneficiary's employment abroad. In a letter submitted with the petition, the Petitioner asserted that the Beneficiary "has served as the Finance and Accounts Manager for the foreign company since January 2015." But other information in the record, provided by the Beneficiary and by the Petitioner, contains other information placing the Beneficiary in the United States during the time of his claimed employment abroad.

On the I-140 petition form, the Petitioner indicated that the Beneficiary last arrived in the United States in March 2008, and that he was still in the United States at the time of filing in March 2021. Other materials in the record document the Beneficiary's March 2008 arrival, and there is no comparable documentation showing any later departures from the U.S. or re-entries to the U.S. This information, on its face, places the Beneficiary continuously in the United States, not India, in 2015 and later years.

While this petition was being prepared in late 2020, the Beneficiary signed related forms, including Form I-485, Application to Register Permanent Residence or Adjust Status, and Form G-325A, Biographic Information. The Petitioner submitted these forms at the same time that it filed the immigrant petition; a cover letter mentions all the forms as enclosures. On Forms I-485 and G-325A, the Beneficiary indicated that he had resided in [redacted] Texas, from November 2015 to November 2020. Asked on both of those forms to specify his most recent address outside the United States where he had lived for at least one year, the Beneficiary indicated that he lived in [redacted] India, from May 2007 to March 2008; the end date that the Beneficiary listed on these forms coincides with the Beneficiary's documented entry into the United States. Both forms asked the Beneficiary to describe his employment history outside the United States. The Beneficiary left those sections of both forms blank.[1]

None of the information that the Beneficiary provided on his Forms I-485 and G-325A indicates a year or more of employment in India for the claimed related entity, or any other employer, in 2015 or

[1] The document identified as the Beneficiary's résumé indicates that he earned a bachelor's degree from the University of [redacted] in April 2013, but the record does not contain documentation from the university to show that he graduated as claimed, or attended the university at all. Asked to list his educational history on Form G-325A, the Beneficiary left that section of the form blank.

later. Rather, the Beneficiary's own information, submitted through the Petitioner, indicates that he has been living in the United States, not India, since 2008. The Petitioner has not submitted persuasive documentation, such as contemporaneous payroll records, to show that the Beneficiary was working in India for the related entity during the time claimed and for the required time period to meet the regulatory requirements for the classification sought.

Unresolved material inconsistencies 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. at 591. Here, the inconsistent information about the Beneficiary's whereabouts since 2015 raises serious doubts about the Petitioner's material claims.[2]

The preponderance of the submitted evidence does not indicate that the Beneficiary accumulated at least a year of qualifying employment outside the United States during the relevant statutory three-year period. Therefore, we have no basis to conclude that he is eligible for the classification sought in this proceeding. To overcome this ineligibility, the Petitioner must overcome the inconsistencies set forth above to establish that the employment abroad took place as claimed, or the Beneficiary must leave the United States and accumulate at least one year of qualifying employment abroad.

## III. ADDITIONAL ISSUES

The Petitioner states that it will pay the Beneficiary $30,000 per year. A petitioning U.S. employer must establish its ability to pay the proffered wage from the time of establishing the priority date (in this case, the petition's filing date) through the adjudication of the petition. 8 C.F.R. § 204.5(g)(2). The evidence of ability to pay must be in the form of copies of annual reports, federal tax returns, or audited financial statements. *Id.*

In the denial notice, the Director stated that the Petitioner's initial submission did not include the required evidence of its ability to pay. The Director did not elaborate, and did not specifically identify this issue as a ground for denial of the petition. Nevertheless, the Petitioner sought to address the issue on appeal, stating that the COVID-19 pandemic took an economic toll on the company but that, in 2022, the Petitioner has paid the Beneficiary at a rate higher than the proffered wage.

The Petitioner did not establish that it has submitted the evidence required by 8 C.F.R. § 204.5(g)(2). The Petitioner has submitted copies of LCMM's bank statements and an unaudited profit and loss statement, but these documents are not annual reports, federal tax returns, or audited financial statements. Because the Petitioner did not submit the required materials when requested, the Petitioner's partial response to the request for evidence is considered to be a request for a decision based on the available evidence. *See* 8 C.F.R. § 103.2(b)(11). The Petitioner's response to the request

[2] We acknowledge the filing of an earlier nonimmigrant petition in August 2019, the approval of which granted the Beneficiary L-1A nonimmigrant status starting in early 2020. The discrepancies described above suggest that the earlier nonimmigrant petition was approved in error, because a beneficiary who has been in the United States since 2008 would not qualify for L-1A status in 2019, but the record of proceeding of the nonimmigrant petition is not before us. Furthermore, we note that the Forms G-325A and I-485 are not fully consistent with one another. On Form G-325A, the Beneficiary indicated that he was born in [redacted] India. On Form I-485, he claimed to have been born in [redacted] Canada. The Beneficiary signed both forms, thereby attesting to their accuracy.

for evidence did include documentation of the foreign company's finances, which the Petitioner stated showed the foreign company's ability to pay the Beneficiary, but the regulations require the U.S. employer to be able to pay the proffered wage. The record lacks proper documentation of the U.S. employer's ability to pay the proffered wage.

The Petitioner's refusal or inability to submit its federal tax returns relates to another question raised by the record. The Petitioner must have been doing business for at least one year before the petition's filing date, as required by 8 C.F.R. § 204.5(j)(3)(i)(D). "Doing business" means the regular, systematic, and continuous provision of goods and/or services and does not include the mere presence of an agent or office. 8 C.F.R. § 204.5(j)(2).

Much of the documentation of the Petitioner's claimed business activity consists of copies of invoices, bills, and bank statements in LCMM's name. But the record contains conflicting evidence as to whether the entity doing business as LCMM is the same entity that filed the Form I-140 petition.

The Form I-140 petition identifies the Petitioner as [redacted] But the petition form shows the federal Employer Identification Number for [redacted] is the name on the Certificate of Formation, Bylaws, and other foundational documents submitted with the petition. The record, therefore, associates two different businesses with LCMM.

[redacted] are not the same legal entity. Documents in the record show that each company has a different Texas Identification Number (TIN). Also, several documents in the record relating to [redacted] are dated months or years before May 2019, when [redacted] first incorporated. Many documents, including several permits issued by state and county authorities, also associate [redacted] with LCMM. But the letters and statements submitted in support of the petition are signed by officials of [redacted] The 2019 nonimmigrant petition filed on the Beneficiary's behalf identified the petitioning employer as [redacted]

A number of documents in the record appear to indicate that [redacted] is the business entity that operates LCMM. Some permits and other documents refer only to LCMM; those that identify the underlying legal name consistently refer to [redacted] either by name or by TIN. A copy of a lease agreement in the record indicates that [redacted] has leased the location of LCMM since May 2019, but government permits issued to LCMM after May 2019 continue to refer to [redacted] This discrepancy raises significant questions, particularly in light of the several other irregularities described above. This issue also gives greater significance to the Petitioner's failure to submit a copy of its federal tax return when the Director requested it. The tax return could have documented the extent, or lack, of the Petitioner's business activity. The Petitioner must resolve this inconsistency in any further filings in order to establish its true identity and establish whether it has been doing business, either as LCMM or in any other capacity.

Likewise, the Petitioner must establish that it has a qualifying relationship with the Beneficiary's claimed employer abroad. *See* 8 C.F.R. § 204.5(j)(3)(i)(C). The Petitioner submitted evidence of shared ownership and control to link the claimed foreign employer with [redacted] but the record does not document the ownership and control of [redacted]

## IV. CONCLUSION

The Petitioner has not established that the Beneficiary was employed abroad in a managerial or executive capacity before the filing of the immigrant petition.[3] We will therefore dismiss the appeal.

**ORDER:** The appeal is dismissed.

[3] The record also does not establish the Petitioner's ability to pay the Beneficiary's proffered wage. Inconsistent information about the Petitioner's identity raise questions as to whether the Petitioner has been doing business, and has a qualifying relationship with the Beneficiary's claimed foreign employer, as required. Although these additional issues do not form the basis of the present denial, the Petitioner must address and resolve them in any further filings.