



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

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

MATTER OF S-I-, INC.

DATE: JULY 18, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner is a gas station/convenience store, a wholesale beverage distributor, and an exporter of automobile parts and other goods to Angola. It seeks to permanently employ the Beneficiary as director of operations for its export division 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, Texas Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. The Petitioner filed a motion to reopen, which the Director denied.

The matter is now before us on appeal. In its appeal, the Petitioner submits copies of previously submitted materials and asserts that the Director erred by misstating the grounds for denial.

Upon *de novo* review, we will dismiss the appeal.

**I. LEGAL FRAMEWORK**

Section 203(b) of the Act states in pertinent part:

- (1) Priority Workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

....

- (C) *Certain multinational executives and managers.* An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter

the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

A United States employer may file Form I-140, Immigrant Petition for Alien Worker, to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. A labor certification is not required for this classification.

The regulation at 8 C.F.R. § 204.5(j)(3) states:

(3) Initial evidence—

(i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

(A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or

(B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

(D) The prospective United States employer has been doing business for at least one year.

## II. DENIAL OF THE MOTION TO REOPEN

The issue before us is whether the Director properly denied the Petitioner's motion to reopen. It is that decision, rather than the merits of the initial, underlying decision, that the Petitioner has appealed to us. Also, in filing an appeal, the Petitioner must identify specifically any erroneous conclusion of law or statement of fact for the appeal.<sup>1</sup> The errors that the Petitioner has identified establish the scope of this decision.

---

<sup>1</sup> See 8 C.F.R. § 103.3(a)(1)(v).

(b)(6)

*Matter of S-I, Inc.*

For context, we will briefly discuss the initial submission and the first denial notice.

#### A. Evidence of Record

The regulation at 8 C.F.R. § 204.5(j)(3)(1)(B) requires the Petitioner to attest to the Beneficiary's past employment in a qualifying managerial or executive capacity for at least a year during the three years before the Beneficiary entered the U.S. as a nonimmigrant to work for the Petitioner.

The Petitioner filed Form I-140 on May 1, 2015, represented by attorney [REDACTED] president and chief executive officer of the Petitioning company and also president of the parent company of the Beneficiary's foreign employer, signed a letter reading, in part:

[The Beneficiary] was employed by [the foreign company] as a Restaurant Operations Manager. . . . [H]is job duties were clearly executive in nature.

[The Beneficiary] was only subordinate to, and only received supervision and direction from . . . the parent-company's Store Operations Manager, and . . . the parent-company's president. . . .

Below please find a summary of [the Beneficiary's] specific daily duties for [the foreign company] . . . :

- Supervise managerial staff.
- Supervise staff scheduling.
- Supervise payroll processing.
- Supervise managers in taking inventory and supervise subordinate Supervisor . . . in placing orders with vendors for necessary food and supplies.
- Liaise with franchisor in staying current on franchisor's promotions and deals offered to customers.

An organizational chart, said to show the company as of March 7, 2007, showed the restaurant operations manager ranked equally with the general manager, and subordinate only to the president and the store operations manager, as stated above. A job description, largely similar to the one quoted above, accompanied the organizational chart and indicated that the restaurant operations manager would "[r]eport only to Store Operations Manager."

In a request for evidence, the Director stated that the Petitioner had provided "a very vague description" of the Beneficiary's foreign position, and conflicting information about the structure of the foreign company. The Director stated: "Generally, in most organizations, an operations manager will work for the general manager" rather than ranking alongside that official. The Petitioner's response to the notice (again submitted through counsel) included a letter signed by [REDACTED] which included new job descriptions. [REDACTED] stated: "That an operations

(b)(6)

*Matter of S-I, Inc.*

manager ‘[g]enerally, in most organizations . . . will work for the general manager’ is immaterial to the structure of . . . the foreign affiliate company in this matter.”

The Director denied the petition, stating that the Petitioner’s response to the request for evidence left several questions unanswered. The Director found that the Beneficiary appeared to have been primarily a first-line supervisor of non-professional staff, which is neither executive nor managerial.

In its motion to reopen, filed without the assistance of counsel, the Petitioner stated that the denial “was clearly and rightfully based on the **improper handling of the case by the counsel who represented the Petitioner**. . . . The Decision was solely based on confusion and misconception created by the representing Counsel through **no fault of the Petitioner and the Beneficiary**.”

The Petitioner answered three of the eight questions the Director had asked in the denial notice, and submitted what the Petitioner called “the correct organizational chart and the description of the duties of the employees.” The new organizational chart, like the earlier version, was said to show the foreign company’s structure as of March 2007. The new chart showed the Beneficiary as being subordinate to the general manager, even though [REDACTED] had previously protested the Director’s observation that an operations manager is generally subordinate to a general manager. The chart did not show any store operations manager, whom the Petitioner had previously identified, several times, as the Beneficiary’s immediate superior.

The Director found that the Petitioner’s motion did not meet the requirements of a motion to reopen, as set forth in the regulations at 8 C.F.R. § 103.5(a)(2), which the Director quoted in full. The Director stated that the Petitioner had revised its prior claims but submitted no new evidence and set forth no new facts.

Concerning the Petitioner’s claims regarding counsel, the Director stated: “It is uncertain how and what evidence the petitioner’s counsel improperly handled. Specific examples of improper handling of evidence [were] not identified in the motion.” The Director noted that the Petitioner had not shown that it had filed “any complaints or legal actions against the attorney.” The Director added that [REDACTED] had signed both prior versions of the Beneficiary’s job description, and therefore knew, or should have known, the contents of those documents.

On appeal, the Petitioner states that the Director erred by stating that the petition had originally been denied due to abandonment.

#### B. Analysis

On appeal, the Petitioner states that it “filed the **Motion to Reopen due to new facts** . . . and **NOT due to abandonment of the petition as described in the denial of the motion to reopen**. . . .” The Director, however, did not deny the motion due to abandonment. The decision’s only reference to abandonment appeared in the quoted language of the regulations. The Director’s accurate quotation of the regulations in this way does not constitute an error of fact or law.

(b)(6)

*Matter of S-I, Inc.*

The Petitioner states that its motion “clearly resolved the issues of the beneficiary’s foreign employment,” but the Petitioner does not address any of the specific points the Director made in the decision denying that motion. The Petitioner’s assertion that it has already overcome the grounds for denial does not constitute a substantive basis for appeal.

The key finding in the Director’s denial of the Petitioner’s motion is that [REDACTED] had signed documents, such as job descriptions, that the Petitioner then attempted to disavow on motion. By signing the documents, [REDACTED] took responsibility for their contents. [REDACTED] also signed Part 8 of the Form I-140 petition, which reads, in part: “I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct.” The Director correctly held that the Petitioner cannot avoid responsibility for its own evidence simply by accusing its former attorney of wrongdoing.<sup>2</sup> The original signatures on the various documents refute the possibility that former counsel submitted those documents to USCIS without the Petitioner’s prior knowledge or consent.

As explained above, the Director stated specific grounds for denying the Petitioner’s motion to reopen. The Petitioner, on appeal, has not addressed these specific grounds. Instead, the Petitioner claims that the Director erred by referring to an earlier denial for abandonment. The Director made no such finding, and therefore the record does not support the Petitioner’s allegation of error.

### III. CONCLUSION

The petition will be denied and the appeal dismissed for the above reason. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-I, Inc.*, ID# 17767 (AAO July 18, 2016)

---

<sup>2</sup> Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) an affidavit from the Petitioner describing, in detail, the agreement between the Petitioner and counsel, and explaining how counsel did not meet the terms of that agreement; (2) that counsel be notified of the accusations and given an opportunity to respond; and (3) that the appeal or motion reflect whether the Petitioner has filed a complaint with appropriate disciplinary authorities, and if not, why not. See *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff’d*, 857 F.2d 10 (1st Cir. 1988).