



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

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

MATTER OF M-,US INC.

DATE: JUNE 1, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a software development company, seeks to permanently employ the Beneficiary as a chief operating officer 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, Nebraska Service Center, denied the petition. The Director concluded that the Petitioner did not establish the Beneficiary has been employed abroad in a managerial or executive capacity. Specifically, the Petitioner did not identify non-qualifying, operational or administrative tasks of the foreign organization nor did it describe who performed those tasks or explain the organizational structure in detail such that we were able to conclude that the Beneficiary was employed in a primarily managerial position with the foreign entity for the requisite period.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and a brief disputing the denial and addressing the Director's adverse findings.

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

On February 8, 2016, we issued a request for evidence (RFE) requesting additional evidence regarding the Beneficiary's subordinates abroad and their employment for the period in question, including tax records, employment records and/or paycheck receipts. Additionally, we requested evidence that the Petitioner has the ability to pay the proffered wage from the date of filing to present.

After reviewing the entire record of proceeding, as supplemented by the Petitioner's submission on appeal and in response to the RFE, we conclude that the record now contains sufficient evidence to overcome the basis for the Director's decision. Specifically, the totality of the evidence now establishes that the Petitioner has satisfied the legal criteria regarding the Beneficiary's qualifying employment with his former employer abroad and demonstrates the Petitioner's ability to pay the proffered wage.

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In visa petition proceedings, the burden of establishing eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has sustained that burden.

ORDER: The appeal is sustained.

Cite as *Matter of M-, US Inc.*, ID# 15529 (AAO June 1, 2016)