



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

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

MATTER OF G-(USA) INC.

DATE: JUNE 9, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a seafood wholesaler that also owns commercial real estate and ranch land, seeks to permanently employ the Beneficiary as its vice president under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) § 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 evidence of record did not establish that the Beneficiary will be employed in the United States in a qualifying managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by disregarding relevant evidence.

We rejected the appeal as untimely, but subsequently moved to reopen the proceeding.<sup>1</sup> Upon *de novo* review, we will withdraw the Director's decision and remand the petition for a new decision.

## 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):

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<sup>1</sup> The Petitioner received a denial notice dated August 25, 2015, but the record copy of the notice is dated August 18, 2015. The record does not explain or account for the discrepancy. The Petitioner filed a timely appeal in relation to an August 25, 2015 decision date.

(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.

## II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity.

The regulation at 8 C.F.R. § 204.5(j)(5) requires the Petitioner to submit a statement which indicates that the Beneficiary is to be employed in the United States in a managerial or executive capacity.<sup>2</sup> The statement must clearly describe the duties to be performed by the Beneficiary.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.<sup>3</sup>

The Petitioner filed Form I-140 on February 25, 2015. On the Form I-140, the Petitioner indicated that it had eight current employees in the United States.

The Petitioner's initial submission included job descriptions for the Beneficiary and her subordinates and copies of the Petitioner's business plan; tax and payroll documents; documentation of the Petitioner's real estate holdings; and other materials. The record shows that the Petitioner relies heavily on contractors and on claimed affiliates for many of the company's functions. For instance, the Petitioner states that it operates, in part, as a seafood wholesaler, but the Petitioner itself does not yet directly handle seafood (although it intends to do so in the future). Instead, the Petitioner states that foreign affiliates purchase, process, package, store, and sell seafood on the Petitioner's behalf.

The Director denied the petition, stating that the Petitioner had not established that it seeks to employ the Beneficiary in a qualifying managerial or executive position. The Director cited two

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<sup>2</sup> Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A); section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B).

<sup>3</sup> See section 101(a)(44)(C) of the Act.

(b)(6)

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specific reasons for this finding. First, the Director concluded that the petitioning company lacked sufficient organizational complexity and support staff to relieve the Beneficiary from having to primarily perform non-qualifying duties. Second, the Director found that the Beneficiary's authority over contractors is non-qualifying because "only the management of *employees* may be considered a qualifying managerial duty."

The two stated grounds for denial are not adequately supported by the weight of the evidence. Although the Petitioner's staff is not large, there is no affirmative indication that the Beneficiary will primarily perform non-qualifying operational or administrative duties. Rather, the company's two principal activities (seafood processing and commercial real estate rental) occur offsite, and the Petitioner has identified the parties that perform the operational work relating to those activities. Foreign subsidiaries handle the seafood operation, while [REDACTED] provided management services for the Petitioner's commercial real estate. Invoices from these entities corroborate the assertions of the Petitioner and others with regard to these arrangements.

With respect to the Petitioner's use of contract labor for some of its functions (such as processing and shipping seafood), the workers performing these activities may be contractors rather than employees, but they still perform functions necessary for the Petitioner's operation and relieve the Beneficiary from having to perform these activities. While the Beneficiary's supervision of contractors would not be considered a qualifying personnel management duty, such tasks would not prohibit a finding that she primarily performs managerial or executive duties. Further, the Director's broad conclusion regarding supervision of contractors does not take into account that the Beneficiary supervises both employees and contractors.

The petitioner has overcome the Director's stated grounds for denial, but other issues remain which the Petitioner must resolve to establish the Beneficiary's eligibility for the benefit sought.

The Director's denial notice did not cite the Beneficiary's job description as a basis for denial, but that description appears to be deficient. Much of the job description is vague and general, and does not give an idea of the Beneficiary's specific duties. For example, the Petitioner states that the Beneficiary will "[e]nsure compliance with wage and hour laws," "promot[e] social responsibility and good public relations," and "[d]evelop employer employee relations." These phrases describe general goals without specifying what actions the Beneficiary would take to achieve those goals.

The Petitioner has provided specific examples of the Beneficiary's activities, stating, for instance, that she "led the research and negotiation for the purchase of . . . three buildings . . . to serve as the Company corporate office, and the future seafood market." But these specific examples all appear to relate to one-time startup activities, and so they do not show what the Beneficiary would be doing on a continuous, day-to-day basis once the company has fully implemented its business plan.

That business plan is mostly prospective, describing long-term plans, most of which the Petitioner has not yet implemented. The Petitioner plans to process, package, and store seafood at various facilities in Oregon, but these facilities are not yet performing those functions. The Petitioner bought over 100 acres of farm and ranch land, but production on that land appeared to be minimal at the time of filing.

The Petitioner must show that qualifying circumstances existed at the time it filed the petition, and that they continue to exist throughout the adjudication of the petition.<sup>4</sup>

The company's early stage of development is significant when considering the job descriptions of the Beneficiary's subordinates. Payroll records show that the Petitioner had a ranch manager and groundskeeper on staff at the time of filing, but their job descriptions refer to activities that they do not appear to be performing. For example, the groundskeeper's job description refers to herding livestock, shearing coats, and inspecting eggs, but the Petitioner did not indicate that it had any livestock activity on its newly purchased ranch at the time of filing.

The job descriptions appear to derive from templates or other third party sources. The groundskeeper's job description, for example, borrows heavily from the O\*NET summary report for farmworkers.<sup>5</sup> For this reason, the job description is broad and generic, rather than a case-specific document that only describes the duties the Petitioner's groundskeeper actually performs. As a result, the submitted job descriptions are of limited use because they do not describe the employee's actual duties within the context of the Petitioner's organization given the nature of the business and its current stage of development.

Because the Petitioner did not have notice of these deficiencies, we will withdraw the Director's decision and remand the matter to the Director, who should afford the Petitioner an opportunity to submit additional evidence addressing whether the Beneficiary qualifies for classification as a multinational manager or executive as of the date of filing.

### III. CONCLUSION

For the reasons discussed above, the denial of the petition is withdrawn and the petition is remanded to the Director for a new decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner.<sup>6</sup>

**ORDER:** The decision of the Director, Nebraska Service Center, is withdrawn. The matter is remanded to the Director, Nebraska Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of G-(USA) Inc.*, ID# 17064 (AAO June 9, 2016)

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<sup>4</sup> See 8 C.F.R. § 103.2(b)(1).

<sup>5</sup> Source: <http://www.onetonline.org/link/summary/45-2093.00> (last accessed June 1, 2016).

<sup>6</sup> Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013).