



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

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

MATTER OF I-I-, INC.

DATE: SEPT. 8, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a provider of quality control software and technical support services, 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 an executive or managerial capacity.

The Director, Texas Service Center, denied the petition. The Director concluded that the Petitioner did not establish that: (1) it had been doing business in the United States for at least one year prior to filing the petition; and (2) that it has the ability to pay the Beneficiary's proffered wage.

The matter is now before us on appeal. In its appeal, the Petitioner disputes the Director's findings and submits additional evidence.

Upon *de novo* review, we find that the Petitioner has now provided sufficient evidence to overcome both grounds cited as bases for denial. Therefore, we will withdraw the Director's decision. Notwithstanding our findings with regard to the Director's grounds for denial, we find that the Petitioner has not provided sufficient evidence to establish that the Beneficiary would be employed in the United States in a managerial or executive capacity. Therefore, we hereby remand this matter to the Director for further proceedings and entry of a new decision. A discussion of our findings is provided below.

**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. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Petitioner filed the Form I-140 on July 8, 2014. 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. The statement must clearly describe the duties to be performed by the Beneficiary. At Part 6, Item 3 of the Form I-140, the Petitioner provided a brief nontechnical description of the Beneficiary's proposed position as general manager, indicating that the Beneficiary would be responsible for operation and management of the business and development and supervision of the company's sales, marketing, and technological activities. The Petitioner did not provide a letter or statement to further expand on the Beneficiary's proposed position or her placement within its organizational hierarchy.

Accordingly, the Director issued a request for evidence (RFE) on February 11, 2015, instructing the Petitioner to provide, in part, a description of the Beneficiary's specific daily job duties and the percentage of time the Beneficiary would allocate to each of her assigned tasks. The Director also asked the Petitioner to provide its organizational chart depicting the Beneficiary's subordinates and to include the subordinates' respective job titles, brief job descriptions, educational levels, and their full- or part-time employment status. The Petitioner was advised that if the Beneficiary does not oversee other employees, it must specify what essential function the Beneficiary will manage within the organization.

Although the Petitioner provided a response addressing other issues that the Director cited in the RFE, the Petitioner did not provide any evidence or information pertaining to the Beneficiary's proposed employment within the Petitioner's organization. We note that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

As the Petitioner did not provide the required evidence pertaining to the Beneficiary's proposed employment either in support of the initial petition or in response to the Director's RFE, we find that the Petitioner has not established that it would employ the Beneficiary in a managerial or executive capacity.

### III. CONCLUSION

We will remand this matter to the Director for a new decision. The Director should request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period of time.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

*Matter of I-I, Inc.*

**ORDER:** The decision of the Director, Texas Service Center, is withdrawn. The matter is remanded to the Director, Texas Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse shall be certified to us for review.

Cite as *Matter of I-I, Inc.*, ID# 18089 (AAO Sept. 8, 2016)