U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8088883

Date: APR. 17, 2020

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, describing itself as a transportation company, seeks to temporarily employ the Beneficiary in the United States as its chief financial officer (CFO) under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary was employed abroad in a managerial or executive capacity. Further, the Director also determined that the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial or executive capacity in the United States.

On appeal, the Petitioner contends the Director erred by not considering evidence of its U.S. employees submitted in response to a request for evidence (RFE). In addition, the Petitioner asserts that the Beneficiary's foreign duty description is sufficiently detailed to establish that she acts in an executive capacity abroad.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The first issue we will address is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity in the United States. The Petitioner does not claim that the Beneficiary would be employed in a managerial capacity in the United States. Therefore, we restrict our analysis to whether the Beneficiary would be employed in an executive capacity.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

When examining the executive capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in an executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

Based on the definition of executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner stated that "the core of the company is long-distance commercial transportation." In denying the petition, the Director emphasized that in an RFE she requested the Petitioner submit more information about the Beneficiary's proposed position in the United States and that it had not provided an updated or detailed list of duties for her U.S. position. On appeal, the Petitioner does not address or remedy this material discrepancy, but only reiterates the Beneficiary's claimed foreign duties. Therefore, without a comprehensive and detailed U.S. duty description for the Beneficiary we cannot determine whether she would act primarily in an executive capacity in the United States. Whether the Beneficiary is an executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" executive. *See* section 101(a)(44)(B) of the Act. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive 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).

Even though the Beneficiary holds a senior position within the organization, the fact that they will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(44)(B) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive in nature. *Id.* The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily executive in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

As noted, the Petitioner claims the Beneficiary has, and would, act in an executive capacity in the United States. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The Petitioner provided a "proposed" organizational chart in support of the petition reflecting that as CFO the Beneficiary would report to a president overseen by a "Board" member. The chart indicated the Beneficiary would supervise an "Auditor (future)" and another untranslated position also identified as "future." In addition, the chart reflected that the board member would further supervise a secretary and a vice president and that the aforementioned president supervising the Beneficiary would oversee a manager, a human resources employee, a transportation manager, an accounting manager "(future)," and an investment manager "(future)." Lastly, the transportation manager was shown to supervise 16 employees identified by name, but whose position titles were not provided. In total, the U.S. organizational chart identified 24 employees by name, suggesting they were already employed by the Petitioner as of the date the petition was filed.

The Petitioner provided conflicting evidence on the record leaving substantial uncertainty as to its claimed organizational chart. First, in a submitted business plan the Petitioner provided a completely different U.S. organizational chart showing a chief operating officer overseeing operations, finance, marketing, and customer services departments in apparent conflict with the organizational chart provided in support of the petition. The Petitioner further provided a 2017 IRS Form 1120, U.S. Corporation Income Tax Return indicating it paid only $28,000 as "compensation of officers" to the claimed "manager" in its asserted organizational chart and only $18,000 in other wages and salaries

during that year.[1] Likewise, the most recent state quarterly wage form from the fourth quarter of 2017 reflected that the Petitioner paid wages to only one employee, the aforementioned manager, who was also referred to in invoices elsewhere on the record as the "owner" of the company.

Later in response to the RFE, the Petitioner provided IRS Forms 1099, Miscellaneous Income specific to 14 individuals and one transportation company. On appeal, the Petitioner emphasizes the aforementioned IRS Forms 1099 and asserts these employees were added after the date the petition was filed. It further notes that it did not respond to the RFE until May 2019, nearly one year after the date the petition was filed. First, we note that the Petitioner must demonstrate the Beneficiary's eligibility as of the date the petition was filed; as such, even if we accept that it added 14 employees after the date the petition was filed this is not relevant to establishing her eligibility. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Regardless, it is questionable that out of the 14 IRS Form 1099 contractors provided in response to the RFE, only four are listed on the Petitioner's U.S. organizational chart and it otherwise provided no comprehensive organizational chart in response to the RFE with titles, duty descriptions, or other information related to these claimed employees. Further, the Petitioner also submitted numerous trucking invoices from throughout 2017 and up past the date the petition was filed; however, several of these listed an [redacted] dispatcher, an employee or contractor not listed in its organizational chart or included in its state quarterly wage forms or IRS Forms 1099. In addition, as we noted, the trucking invoices also listed the claimed "manager" from the organizational chart, but questionably identified this claimed manager as the "owner." The claimed organizational chart provided in support of the petition also did not reflect that the Beneficiary would have any subordinates in the United States, but indicated she would only two proposed "future" employees.

These numerous discrepancies leave substantial uncertainty as to whether the Petitioner had, or has, a sufficient organizational structure to support the Beneficiary within a complex organizational hierarchy where she would be primarily focused on the broad goals and policies of the organization rather than its day-to-day operations. The Petitioner must resolve this inconsistencies and discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Lastly, as previously discussed, without a comprehensive duty description specific to the Beneficiary's proposed U.S. employment it has not established that the Beneficiary would primarily perform executive-level duties in the United States. Again, 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 Skirball Cultural Ctr.*, 25 I&N Dec. at 799, 806.

For the foregoing reasons, the Petitioner has not established that the Beneficiary would act in an executive capacity in the United States.

III. FOREIGN EMPLOYMENT IN AN EXECUTIVE CAPACITY

As we have discussed, the Director also denied the petition concluding that the Petitioner did not establish that the Beneficiary was employed in a managerial or executive capacity abroad. Because

[1] The petition was filed on June 15, 2018.

of the dispositive effect of the above finding of ineligibility, we will only briefly address whether the Beneficiary acted in a managerial or executive capacity abroad. The Petitioner does not claim that the Beneficiary was employed in a managerial capacity abroad. Therefore, we restrict our analysis to whether the Beneficiary was employed in an executive capacity.

In denying the petition on these grounds, the Director determined that the submitted evidence did not substantiate the Beneficiary's foreign position and duties, emphasizing that the provided supporting documentation did not mention her or demonstrate her involvement in tasks or projects abroad. On appeal, the Petitioner does not sufficiently address this conclusion, but only reiterates the Beneficiary's generic foreign duties and generically references one office building construction project she "led" while employed in China. However, as noted by the Director, the Petitioner submits no supporting documentation to substantiate the Beneficiary's involvement in this project or her performance of any other executive-level duties abroad.

The Petitioner also submitted a vague foreign duty description that did not credibly convey the Beneficiary's actual day-to-day executive-level duties within the context of the foreign employer's asserted construction business. For instance, the duty description generically indicated that the Beneficiary is tasked with "continuously improv[ing] the company's financial management system," "coordinating, supervising and tracking the company's main customers and key projects," and managing "internal procurement bidding approval." It also ambiguously stated that the Beneficiary was tasked with overseeing the "company's spending, debt service, investment strategies, and profits" and noted that she establishes "lines of credit with banks." However, as discussed by the Director, the Petitioner provides no credible details and supporting documentation to substantiate the financial management systems the Beneficiary improved, main customers or key projects she supervised, budgets she compiled, bidding approvals she was involved with, or investment or financial decisions that she made. The Petitioner's vague statements and the lack of documentation relative to the Beneficiary's asserted role abroad did not sufficiently substantiate her actual day-to-day executive-level tasks. Again, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1103, 1108.

For the foregoing reasons, we affirm the Director's conclusion that the Petitioner did not establish that the Beneficiary acts in an executive capacity abroad.

ORDER: The appeal is dismissed.