U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-G-S-A- LTD.

DATE: APR. 27, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a shipping company, seeks to temporarily employ the Beneficiary as its operations director under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish, as required, that: (1) a qualifying foreign company had continuously employed the Beneficiary for at least one year out of the three years immediately preceding the filing of the petition; (2) the Beneficiary had been employed abroad in a managerial or executive capacity; or (3) the Petitioner would employ the Beneficiary in the United States in a managerial or executive capacity.[1]

On appeal, the Petitioner submits additional evidence and asserts that the Director erred by making incorrect assumptions about the Beneficiary's employment activity. The Petitioner contends that it has met its burden of proof. Subsequent to the appeal, we issued a notice of intent to dismiss (NOID), based on derogatory information that originated outside the record. The Petitioner has responded to the NOID, submitting new documentation and asserting that its prior evidence sufficed to establish eligibility by a preponderance of the evidence.

Upon *de novo* review, we will dismiss the appeal. We will also enter a finding of willful misrepresentation of a material fact.

[1] The Director also found that the Beneficiary violated her B-2 nonimmigrant status by engaging in unauthorized employment. This violation is not a basis to deny the petition. Rather, it is grounds for denial of the concurrent application to change the Beneficiary's nonimmigrant status. 8 C.F.R. § 248.1(b). There is no appeal from the denial of an application for change of status. 8 C.F.R. § 248.3(g). The inclusion of the issue in the petition denial notice does not make the issue subject to appeal. Because this issue lies outside our appellate jurisdiction, we will not address it in this decision.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have continuously employed the beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, for at least one year within three years preceding the beneficiary's application for admission into the United States. 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, executive, or specialized knowledge capacity. Section 101(a)(15)(L) of the Act.

An individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, must include evidence that: the petitioner and the organization which employed or will employ the beneficiary are qualifying organizations (connected by a subsidiary or affiliate relationship); the beneficiary will be employed in an executive, managerial, or specialized knowledge capacity; the beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization, in a position that was managerial, executive or involved specialized knowledge, within the three years preceding the filing of the petition. 8 C.F.R. § 214.2(l)(3).

II. EMPLOYMENT ABROAD

The Director found that the Petitioner did not submit enough evidence to show that a qualifying organization abroad continuously employed the Beneficiary for at least one year during the three years preceding the filing of the petition. On appeal, the Petitioner has submitted additional documentation relating to the Beneficiary's claimed employment abroad. We find that the Petitioner has misrepresented material facts relating to that claimed employment.

A. Record Evidence

The Beneficiary entered the United States in November 2015, and the Petitioner filed Form I-129 in May 2016. The Beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure, a classification that does not permit employment in the United States. 8 C.F.R. § 214.1(e). Therefore the qualifying, continuous year of employment must have occurred between May 2013 and November 2015. The time that the Beneficiary spent in the United States as a nonimmigrant visitor did not interrupt her employment abroad, but it also cannot count toward the one-year employment requirement. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A).

The Beneficiary's résumé indicated that she worked as deputy general manager of [redacted] from August 2009 to April 2013, and as the chief financial officer for the Petitioner's foreign subsidiary, [redacted] since May 2013. The Petitioner did not claim any qualifying relationship with [redacted]

[2] We note that the Petitioner's audited financial documentation contains a mention of [redacted] indicating some connection between the companies. Nevertheless, the Petitioner has not claimed or established a

To establish the required experience abroad with [redacted] the Petitioner submitted "wage lists" from January 2015 through February 2016. Each wage list contained the same figures, including a "performance bonus" that exceeded the base salary. A bank statement in the record reproduced a January 2016 check for a $20,000 "Travel Advance" that the petitioning U.S. company issued to the Beneficiary.

The Director issued a request for evidence (RFE), noting that the evidence indicated that the Beneficiary continued to receive her regular Chinese salary, plus the "travel advance," after she arrived in the United States. The Director concluded that that the Beneficiary either received a salary without doing any work (in which case the wage lists are not evidence of actual work performed by the Beneficiary), or worked in the United States without authorization. The Director also questioned the accuracy of the wage lists, because they showed no variation from month to month and no indication that the latest payments were for paid leave.

In response, a legal representative of [redacted] (identified elsewhere as the Petitioner's chief operating officer), stated that the Beneficiary is on paid vacation leave while visiting family in the United States, and received the travel advance "as a company benefit and not as compensation for work services performed while she is in the United States." The representative stated that the U.S. company issued the advance on behalf of its foreign subsidiary.

The Petitioner states "there is no legal requirement for the petitioner to show that the beneficiary is receiving a salary at the foreign entity in order to prove beneficiary's one-year employment abroad." This observation, however, is beside the point. In this case, the Petitioner has claimed that the Beneficiary *did* receive a salary, in which case the evidence of that salary should be credible and verifiable. The Petitioner submitted bank documentation confirming the payment identified as a travel advance, but not the claimed salary payments. The Petitioner did not explain why the Beneficiary purportedly received a substantial "performance bonus" even while on extended leave.

The Director denied the petition, in part because the Petitioner had not submitted enough evidence to establish a year of continuous employment abroad. Specifically, the Director found that the Petitioner had not submitted any supplemental evidence to confirm the accuracy of the wage lists.

On appeal, the Petitioner submitted additional wage lists dated between May 2013 and February 2016. The Petitioner asserted that this documentation meets its burden of proof, and that there is no requirement that the Petitioner must have annotated some salary payments as "vacation pay." As with the previous submission of wage lists, there are several lists to a page, indicating that they were all printed at the same time, months or years after the fact. Therefore, the wage lists are not contemporaneous evidence of compensation, generated at the time the company issued each payment. Also, the documents are in English, and therefore they do not appear to be internal documents for use within the Chinese company.

---

qualifying relationship with [redacted] and it has not claimed that the Beneficiary's past employment with that company establishes eligibility for the classification sought in this proceeding.

The Petitioner is correct to observe that employees can continue to collect a salary while on leave. This fact, however, highlights an unresolved issue with the Beneficiary's wage lists. The wage lists dated late 2015 and early 2016, when the Beneficiary was on leave in the United States, are indistinguishable from the wage lists dated earlier in 2015. Therefore, the wage lists do not tell us when the Beneficiary was actually working abroad and when she was collecting a salary without actually performing the duties of her position.

The Petitioner's appeal also includes a translated copy of an employment contract between the Beneficiary and [redacted] The term of the contract began on June 1, 2015, and therefore it is not evidence of employment beginning in 2013. Rather, on its face, the contract indicates that the Beneficiary's employment with [redacted] began only five months before the Beneficiary arrived in the United States. There is no indication that the contract is an extension of a prior agreement. Instead, it refers to a 30-day "probationary period," consistent with initial employment. In the appellate brief, the Petitioner does not explain or even acknowledge this crucial element of the employment contract.

The Petitioner asserts that it has met its burden of proof by a preponderance of the evidence. The "preponderance of the evidence" standard requires that the evidence demonstrate that the claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). The truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, a director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

In this instance, the evidence of the Beneficiary's claimed employment abroad consists primarily of after-the-fact wage lists that do not distinguish between periods of work and periods of leave, and an employment contract that states the Beneficiary began working for [redacted] in June 2015. The evidence of record does not meet the Petitioner's burden of proof to establish the required employment abroad.

B. Willful Misrepresentation of a Material Fact

Beyond the above conclusion, routine verification efforts have yielded more grounds for concern. Government records from 2014 and 2015 conflict with the Petitioner's claim that the Beneficiary worked for [redacted] during those years.

On June 25, 2014, and again on June 10, 2015, the Beneficiary appeared at the U.S. Consulate in [redacted] China, to apply for a B-2 nonimmigrant visitor visa. Both times, when asked to identify her present employment on her visa application, the Beneficiary replied that she worked as "president of finance" for '[redacted] which appears to be the same company identified as '[redacted]' on the Beneficiary's résumé.

The Beneficiary's own contemporaneous account of her employment history contradicts the Petitioner's claim that the Beneficiary left [redacted] in April 2013, and began working for [redacted] in May 2013. The Beneficiary's statements are, however, broadly consistent with the employment contract from June 2015.

We advised the Petitioner of this derogatory evidence in a NOID. In response, the Petitioner has not directly addressed the above information. Instead, the Petitioner states that it had submitted salary documentation which "clearly shows by a preponderance standard that [the Beneficiary] had been working for [redacted] for at least one year out of the three years preceding the filing of the petition." We do not consider wage lists, prepared after the fact, to have the same evidentiary weight or probative value as the Beneficiary's own contemporaneous statements on her nonimmigrant visa applications.

The Petitioner submits a [redacted] which shows that [redacted] began making monthly payments on the Beneficiary's behalf in June 2015. This document is entirely consistent with the employment contract, but not with the claim that the Beneficiary actually began working for [redacted] in 2013. Therefore, it does not rebut the information in the NOID.

If [redacted] did not employ the Beneficiary until June 2015, as indicated in the employment contract and the [redacted] record, then the Beneficiary cannot have accrued the required year of continuous employment with that company before she entered the United States in November 2015.

Furthermore, if [redacted] first employed the Beneficiary in June 2015, then the Petitioner's claim that the employment began in 2013 constitutes willful misrepresentation of a material fact. Any foreign person who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act is inadmissible. *See* section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

As outlined by the Board of Immigration Appeals, a material misrepresentation requires that one willfully makes a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false

representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); Matter *of Kai Hing Hui*, 15 I&N Dec. at 288.

The Petitioner made a false representation to an authorized official of the U.S. government by including false information about the Beneficiary's employment dates in the petition.

The misrepresentation was willful because the Petitioner submitted purported payroll documents showing monthly salary payments before June 2015. would not have inadvertently prepared monthly pay statements for an individual whom they did not yet employ; the Petitioner has offered no explanation for its repeated claim that employed the Beneficiary as early as 2013.

Finally, the misrepresentation was material because the Beneficiary's employment abroad relates to an eligibility requirement. If the Beneficiary's employment with began less than a year before the Beneficiary entered the United States, as the contract and the social insurance record indicate, and consistent with the Beneficiary's statements to a consular officer, then the Beneficiary is not eligible for the classification sought. False claims of an earlier employment date would conceal this basis for denial. "[A] concealment or misrepresentation is material if it 'has a natural tendency to influence or was capable of influencing, the decision of the decision-making body to which it was addressed.'" *Monter v. Gonzales*, 430 F.3d 546, 553 (2d Cir.2005) (quoting *Kungys v. U.S.*, 485 U.S. 759, 770 (1988)). We find that the Petitioner willfully misrepresented a material fact regarding the Beneficiary's dates of employment with

In the context of this visa petition, our determination is a "finding of fact" and not an admissibility determination. *Cf. Matter of O*, 8 I&N Dec. 295 (BIA 1959) (A visa petition is not the appropriate forum for finding a foreign national inadmissible.) However, we will generally enter a written decision with a statement of findings and conclusions on all material issues of law or fact, including findings of material misrepresentation. *See* 8 C.F.R. § 103.3(a)(2)(x).

III. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director found that the Petitioner did not establish that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity; and (2) the Beneficiary will be employed in a managerial or executive capacity. The Petitioner does not claim that the Beneficiary will be, or has been, employed in a managerial capacity.

Given our finding that the Petitioner misrepresented the length of the Beneficiary's employment abroad, the credibility of the Petitioner's statements regarding that employment is suspect, and we therefore reserve the question of whether the Beneficiary's employment abroad was in an executive capacity. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of*

Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Therefore, we restrict our analysis to whether the Petitioner will employ the Beneficiary in the United States in an executive capacity.

On appeal, the Petitioner states that the Director "disregard[ed] the overwhelming evidence concerning the executive nature of [the Beneficiary's] position in Petitioner's company." We find that the Petitioner's evidence is neither consistent nor sufficient to establish eligibility.

The statute defines the term "executive capacity" as "an assignment within an organization in which the employee primarily":

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) 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. 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. *See* section 101(a)(44)(C) of the Act.

A. Duties

When examining the executive capacity of the Beneficiary, we will look first to 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. *See* 8 C.F.R. § 214.2(l)(3)(ii).

The definition of executive capacity has two parts. First, the Petitioner must 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 Beneficiary, as operations director, would supervise an operations specialist, an administrative specialist, and the "US company's subsidiary operations" and would have the following duties and responsibilities at the petitioning company:

- Based on past experience and forecasting, develop annual operation plans for the US market and direct implementation.
- Develop sales plan and marketing plan for the petitioner and review the measurement and analysis of sales and marketing data, initiating discretionary corrective action.
- Develop financial strategies based on estimates of company expense, trends and variances, and monetary resources.
- Developing customer service strategies. Generate customer education plans. By forecasting trends, make inventory pooling decisions for all customers and with a balance between minimum of investment on stock and maximum satisfaction of delivery speed to customers. Direct the managers to implement these decisions.
- Management of operation. Reactions to customers' needs, [com]pliance with US regulations, labor laws and other rules.
- Optimization for the US operations. By analyzing the sales and marketing result, service speed and quality, operation efficiency, initiate corrective plans and action plans
- Regularly report back to the COO [Chief Operating Officer] on market information, financial status and operating result.

The above job description lists a number of goals, but provides little information about the specific tasks that the Beneficiary would perform to attain those goals. In the RFE, the Director asked for more detailed information about the Beneficiary's intended duties and the time she would devote to each. In response, the Petitioner provided a new job description, built around the statutory definition of executive capacity:

> (1) [The Beneficiary] will direct the management of our organization.
>
> . . . [O]ne of [the Beneficiary's] main duties will be leading the General Managers of our subsidiary companies. . . .
>
> - [The Beneficiary] will have regular meetings with these subordinate managers in order to guide all the managers in setting budgets and business objectives for their own subsidiary. (20% of her time)
>
> The setting of budgets and business objectives are based on the development strategy plan . . . which will be initially proposed by the COO and [the Beneficiary]. [The Beneficiary] will also have to arrange one or two visits per year to our subsidiaries.
>
> - Review monthly reports from the subordinate managers and provide feedback and direction. (10% of her time).
>
> . . . .

(2) [The Beneficiary] will take part in establishing the goals and policies of the organization.

[The Beneficiary] will . . . report to the COO and take part in determining and developing the company's expansion strategy. . . . (15% of her time).

. . . [The Beneficiary] will develop plans to use the company's funds to further expand operations, especially within the US. [The Beneficiary] will also supervise the arranging of company internal funds transfer base[d] on the updated situation of each subsidiar[y].

- . . . [The Beneficiary] will supervise the implementation of these goals and policies through determining with the subsidiary managers concrete steps to take in order to obtain the goals and policies of the organization. (15% of her time)

- [The Beneficiary] will also be responsible for supervising the completion of periodic (quarterly) reports . . . to submit to the COO and the board of directors. . . . (20% of her time)

(3) [The Beneficiary] will exercise wide latitude in discretionary decision-making.

- [The Beneficiary] will also have the authority to hire and dismiss the employees and managers of our organization using her own discretion. [The Beneficiary] will also evaluate the performance of each subsidiary's employees and . . . have the discretion to make personnel decisions. . . . (10% of her time)

- [The Beneficiary] will have discretion to allocate the company's funds in new business areas . . . [and] to develop plans for expanding our business and allocating funds for market research and new business setup. (10% of her time)

(4) [The Beneficiary] will only receive general supervision from the board of directors and the COO of our organization.

. . . Although [the Beneficiary] will report to the COO as well as the board of directors during board meetings, her supervisors will not tightly control her everyday work. They will only provide her with general directions and approve or reject any important proposals made by [the Beneficiary].

In the denial notice, the Director found that the two job descriptions do not match. Most significantly, while the first job description referred only to activity within the United States, the second version described the Beneficiary's authority over subsidiaries in several countries.

On appeal, the Petitioner asserts that "there are no inconsistencies in the description of [the Beneficiary's] potential job duties," and that the Director "focused on semantics and the language contained in various documents to wrongly conclude that [the Beneficiary's] job description was inconsistent." The Petitioner does not elaborate on this point, except to state that the Beneficiary "must oversee a number of workers, including those that work for the Petitioner's foreign subsidiaries."

The record does not support the Petitioner's assertions on appeal. The Petitioner initially specified that the Beneficiary would "develop annual operation plans for the US market" and manage "[com]pliance with US regulations" and "[o]ptimization for the US operations." The revised job description, submitted in response to the RFE, newly emphasized that the Beneficiary would "be leading the General Managers of our subsidiary companies," traveling to those companies and reviewing reports from lower levels of management.

The first job description did not mention personnel duties, but the second version indicated that the Beneficiary "will . . . have the authority to hire and dismiss the employees and managers of our organization using her own discretion. [The Beneficiary] will also evaluate the performance of each subsidiary's employees and . . . have the discretion to make personnel decisions." The Petitioner cited this as an example of the Beneficiary's wide latitude in discretionary decision-making, but personnel duties of this kind fall within the definition of managerial capacity, not executive capacity. *See* section 101(a)(44)(A) of the Act. Also, the Petitioner does not explain how the Beneficiary could feasibly handle hiring decisions and personnel evaluations for employees in several different countries.

The first job description indicated that the Beneficiary would develop sales, marketing, and customer education plans and financial and customer service strategies for the Petitioner. None of these elements appeared in the second job description, which instead discussed "the company's expansion strategy," "internal funds transfer," and "allocating funds for market research." The Petitioner did not specify who would actually perform this market research.

The two job descriptions are demonstrably very different from one another. The Petitioner's only response, on appeal, is to say that they are not actually different. The Petitioner has not overcome the Director's finding in this regard. We agree with the Director that the Petitioner has not consistently described the Beneficiary's duties or shown them to meet the requirements of an executive capacity.

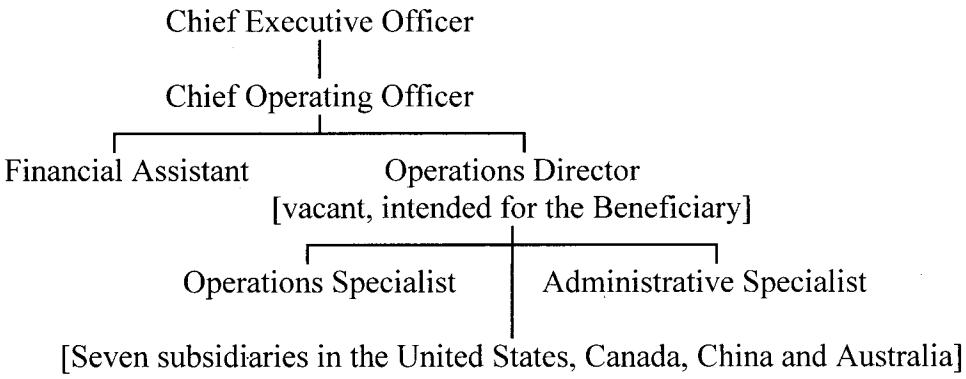
B. Staffing

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including 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.

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 organization must have a subordinate level of managerial employees for a beneficiary to direct and a beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. 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 has five employees in the United States. The Petitioner's organizational chart showed the following positions:



The layout of the organizational chart indicates that the Beneficiary has authority over the Petitioner's subsidiaries, but the Petitioner did not initially describe or explain the nature or extent of that authority. As noted above, the Beneficiary's initial job description did not mention the subsidiaries, and referred specifically to "US operations" rather than operations abroad.

In the RFE, the Director questioned whether a company with only five employees could support an executive position for the Beneficiary. In response, the Petitioner stated that its subsidiaries perform many operational functions, and observed that the company's financial success demonstrates that it is adequately staffed. The question, however, is not whether the Petitioner is fully staffed. Rather, the question is whether the Beneficiary's intended responsibilities rise to the level of executive authority. The company's viability does not imply that the Beneficiary will be an executive.

The Petitioner also asserted that the Beneficiary "will supervise lower level employees of the US parent company as well as the operations of the organization's Hong Kong, Australia, and China subsidiaries." The Petitioner did not provide any information about the management or personnel

structures of most of the subsidiaries. With respect to its own employees, the Petitioner did not show that the operations specialist or administrative specialist is a manager or executive, and therefore the Petitioner has not established that the Beneficiary has executive authority over those two employees.

The Director did not discuss the staffing issue in the denial notice except to find, as described above, that the Petitioner has provided inconsistent information about the Beneficiary's authority over the management of subsidiary companies in the United States and abroad. Therefore, the Petitioner's appeal does not include new information in this regard.

The Petitioner has not provided enough information about the larger organization to support the claim that the Beneficiary would direct the management of the subsidiaries and establish their goals and policies.

IV. CONCLUSION

We will dismiss the appeal as the Petitioner has not established that it seeks to employ the Beneficiary in an executive capacity in the United States. We further find that the Beneficiary appears to have begun working for the Petitioner's foreign subsidiary less than a year before the filing date, and that the Petitioner willfully misrepresented a material fact by claiming an earlier hiring date.

ORDER: The appeal is dismissed.

Cite as *Matter of S-G-S-A- Ltd.*, ID# 188293 (AAO Apr. 27, 2017)