U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9370988

Date: AUG. 20, 2020

Appeal of California Service Center Decision

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

The Petitioner, a nail and hair salon, seeks to temporarily employ the Beneficiary in the United States as its chief executive officer (CEO) 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 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 California Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Beneficiary will be employed in the United States in a managerial or executive capacity; and (2) the Beneficiary has been employed abroad in a capacity that is managerial, executive, or involves specialized knowledge.

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

I. LAW

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. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The Petitioner claims that the Beneficiary has been employed abroad, and will be employed in the United States, in an executive capacity. The Director determined that the Petitioner did not meet its burden of proof in this regard.

"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.

To be eligible for L-1A nonimmigrant visa classification as an executive, the petitioner must show that the beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B)(i)–(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying executive position.

A beneficiary's past employment abroad and proposed U.S. position must meet all four elements of the term's definition. If a petitioner establishes that the position meets all elements set forth in the statutory definition, the petitioner must then prove that the beneficiary was and 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). In determining whether the beneficiary's duties were, and will be, primarily executive, we consider the description of the job duties, the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding the beneficiary's actual duties and role in the business.

With respect to the Beneficiary's intended U.S. employment, the Petitioner states that three "subordinate executives and staff managers" will directly report to the Beneficiary: an accountant, a marketing/social media manager, and a salon manager. Only one of these individuals works onsite at the petitioning company. The marketing/social media manager works at the affiliated foreign entity rather than the petitioning U.S. entity. The accountant has his own accounting firm and does not appear on the Petitioner's payroll records; the record does not show that the accountant provides continuous, rather than occasional and incidental, services to the petitioning entity.

The Director concluded that the Petitioner did not consistently describe the U.S. entity's organizational structure, but this conclusion rests not on conflicting statements by the Petitioner, but on the ambiguous arrangement of the company's organizational chart (which shows the accountant and the marketing/social media manager on the same level as the salon manager, but apparently reporting to the salon manager rather than to the Beneficiary).

More significant is the issue of whether the Beneficiary will direct the management of the U.S. entity. The Petitioner has not shown that the accountant and marketing/social media manager have any subordinates, or that they delegate operational tasks to contractors. The absence of subordinates indicates that they personally perform, rather than oversee, the tasks in their respective areas of responsibility.

The key question is whether the salon manager's responsibilities truly rise to the level of a manager. The salon manager's subordinates comprise manicurists and cosmetologists. The organizational chart

shows five of the former and two of the latter, but the numbers vary from month to month. Although the Petitioner repeatedly refers to its staff as "employees," the record indicates that they are contractors. Employee wages would be reported on IRS Forms W-2, Wage and Tax Statements. Instead, the salon manager, manicurists, and cosmetologists receive "non-employee compensation" reported on IRS Forms 1099-MISC, Miscellaneous Income statements. The Beneficiary appears to be the only employee (rather than contractor) working at the petitioning U.S. entity.

In the denial notice, the Director concluded that the Petitioner had not established the degree of control and authority that one contractor (the salon manager) has over other contractors (manicurists and cosmetologists). On appeal, the Petitioner asserts that "contract labor has always been acceptable," but this general statement does not resolve the issue or establish that that the salon manager is a manager.

The salon manager's other stated responsibilities include substantial operational duties, such as the following:

- Track stocks of salon supplies and inform[] the CEO when orders are placed;
- Manage phone calls and correspondence; [and]
- Manage and ensure agendas, appointments, marketing and customer service are handled to the satisfaction of the CEO.

The record does not identify any subordinates responsible for tracking and ordering supplies, handling telephone calls and correspondence, making appointments, and customer service tasks. It therefore appears that the salon manager must personally perform those operational tasks.

The Petitioner states that the salon manager "ensures smooth running of our company's subdivisions and contributes in driving sustainable growth," but the record does not show that the company is growing, or that it has any subdivisions.

For these reasons, the Petitioner has not established that the salon manager is either a manager or executive as claimed.

The structure of the company raises questions about the Beneficiary's job description. For example, that description indicates that, for 10% of his time (four hours per week), he will "[h]ire, evaluate, promote and dismiss personnel at [the] Managerial level." It is not evident that personnel actions relating to, at most, two contractors and one offsite employee of the foreign affiliate will make significant demands on the Beneficiary's time.

As another example, the Petitioner indicates that the Beneficiary will also require four hours per week to "[r]eview financial information provided by Accountants." The organizational chart shows only one accountant, whose only documented activity in the record is the preparation of annual tax documents. The record does not show that this contracted accountant has any active role in the Petitioner's day-to-day business activities. We note that checks reproduced in bank statements in the record consistently show the Beneficiary's signature, indicating that the Beneficiary has not delegated that responsibility to any subordinate or contractor. There is a reference to "internal auditing procedures" with no indication of who would perform these audits.

The job description also indicates that the Petitioner will "[r]eview Quarterly and Annual Financial Statements in collaboration with the Administrator," but the organizational chart shows no administrator, and that title stopped appearing in the Petitioner's monthly payroll records some time before the filing of the petition.

The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. 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).

On appeal, the Petitioner contends that the Director gave undue weight to "staffing levels" without considering "the reasonable needs of the organization as a whole." The Petitioner also asserts that the subordinates' "job descriptions were detailed and not just repeating the regulations." The denial, however, did not rest on these points. The Director discussed the subordinates' job descriptions in some detail, and concluded that the duties described are not consistent with managerial or executive positions. The Petitioner has not overcome this determination.

In light of the above conclusions, the Petitioner has not established that it seeks to employ the Beneficiary in a primarily executive capacity. This determination, by itself, precludes approval of the petition. Detailed discussion of the remaining issue, regarding the Beneficiary's past employment abroad, cannot change the outcome of this appeal. Therefore, we reserve that issue.[1] We briefly note, however, that the grounds for denial relating to the Beneficiary's employment abroad are broadly similar to the issues described above in relation to his intended U.S. employment. The foreign entity's organizational structure is largely similar to that of the petitioning U.S. entity, but with the addition of two cashiers and an administrator.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[1] See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).