U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-A-B-, INC.

DATE: DEC. 7, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a distributor of industrial hardware components, seeks to temporarily employ the Beneficiary as its vice president, operations 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 Vermont Service Center revoked the approval of the instant petition concluding that the Beneficiary was not employed abroad in an executive capacity and that she would not be employed the United States in an executive capacity.

On appeal, the Petitioner asserts that the circumstances of the Beneficiary's executive employment abroad, and her proposed executive employment in the United States, have not changed since the petition's prior approval. The Petitioner further contends that the Director did not cite a specific basis upon which the petition would be revoked in the notice of intent to revoke (NOIR).

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).

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of

intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

II. GROUNDS FOR REVOCATION

The Director revoked the approved petition on March 2, 2018, following the issuance of a NOIR on December 7, 2017. The Director stated in the NOIR that the petition was approved by U.S. Customs and Border Patrol on October 27, 2017, but it had come to the attention of USCIS that the Beneficiary may not have been employed abroad in an executive capacity. Specifically, the NOIR discussed the Beneficiary's duties abroad and noted that they overlapped and appeared to be "general 'executive' tasks. The Director further indicated that it did "not seem reasonable that the [B]eneficiary could devote this portion of time to executive duties in an organization of the nature and scope of the foreign entity." The Director also pointed to the Petitioner's statement that the Beneficiary led "management abroad" while the foreign employer did not employ any managerial employees. The NOIR also emphasized that the foreign employer only had three employees and that it did not appear that they sufficiently relieved the Beneficiary from performing non-executive duties.

Regarding the U.S. position, the NOIR also informed the Petitioner that, it, too, may not be primarily executive in nature. The NOIR discussed how the Beneficiary's duties were too general and involved her leadership of "management" despite not having any managerial subordinates. The NOIR concluded that it was "not evident how the limited scope of the U.S. entity supports a position which is primarily executive in nature." The NOIR also provided an extensive list of evidence that the Petitioner could submit to overcome the reasons for revocation.

Based on the level of detail provided in the NOIR, we find that the Petitioner was provided with a sufficiently detailed statement of the potential grounds for revocation and that the NOIR clearly articulated the time period for rebuttal in accordance with the regulation at 8 C.F.R. § 214.2(l)(9)(iii)(B). As such, we will consider whether the Beneficiary was employed in an executive capacity abroad and whether she would be employed in an executive capacity in the United States; and in turn, whether the approved petition was properly revoked.

III. FOREIGN EMPLOYMENT IN AN EXECUTIVE CAPACITY

The first issue to be addressed is whether the Petitioner has established that the Beneficiary was employed in an executive capacity abroad prior to the approval of the petition in October 2017. The Petitioner does not claim that the Beneficiary was employed abroad in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary was employed abroad in an executive capacity.

The statute defines an "executive capacity" as 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 foreign executive capacity of a given beneficiary, we will review the petitioner's description of the foreign job duties. The petitioner's description of the foreign job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were 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 foreign company's organizational structure, the duties of a beneficiary's foreign subordinate employees, the presence of other employees abroad to relieve a beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in the business abroad. Accordingly, we will discuss evidence regarding the Beneficiary's foreign job duties along with evidence of the nature of the foreign company'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 was performing certain high-level responsibilities abroad. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary was *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the foreign company's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner indicated in a submitted support letter that the Beneficiary's foreign employer was "involved in the importation and distribution of specialty industrial hardware components." The Petitioner further noted that the foreign employer "serves a wide variety of industries such as construction, automotive, mining, oil and natural gas, metal stamping, and electronics by providing high quality Disc Springs, Belleville Washers, Ball Bearing Washers, Wave Spring Washers, Serrated Washers, Lock Rite Washers and Curved Washers."

The Petitioner stated that the Beneficiary had been employed by the foreign employer in the position of vice president, operations since November 2007 until the petition was filed in January 2017. It explained that the Beneficiary was tasked with "overseeing the financial and administrative operations of the business," "ensuring the implementation of financial goals and policies," coordinating "all relationships with lending/financial institutions," "approving monthly, quarterly, and annual reports," "directing the formulation of annual budgets and forecasting," and "overseeing proper analysis of stock levels."

The Petitioner also listed the following duties for the Beneficiary, amongst others:

- lead and manage strategic planning of personnel, processes, productivity, safety, and quality customer satisfaction– 15% of his time,

- create strategic long and short-term plans making operational decisions– 10%,
- set and clarify goals and objectives for sourcing and distribution– 7%,
- create smaller goals in different areas such as finance, sales, and operations– 5%,
- oversee implementation of new methods to improve productivity, quality, cost, and safety of operations– 5%,
- develop and oversee implementation of effective quality control processes– 5%,
- direct shipping/receiving operations through establishment and implementation of best practice policies and procedures– 3%,
- proactively identify opportunities to streamline client orders– 5%,
- keep company personnel at the most efficient level while maintaining effective shipping and receiving and customer service– 3%,
- direct order to shipment cycle and resolve operational issues– 3%,
- direct, review, and approve existing sourcing and distribution methods– 4%,
- approve and sign financial documents and handle banking decisions– 5%,
- oversee business costs, such as payroll, equipment, and other major corporate expenditures– 3%,
- oversee and approve annual budget and determine operational expenditures– 2%,
- develop and coordinate all relationships with lending/financial institutions– 2%,
- oversee company's financials– 2%,
- oversee and approve monthly, quarterly, and annual reports– 1%,
- direct and oversee personnel– 10%,
- communicate policies and set tone of the company– 5%, and
- oversee proper analysis of stock levels and stream lined purchases to reduce inventory costs– 5 %.

The Petitioner also stated that the Beneficiary was responsible for establishing the foreign employer's vacation policies, its privacy policy, and "the application for credit approval" for determining whether potential customers would be approved for credit.

As discussed above, after approving the petition in October 2017 the Director later issued a NOIR in December 2017. In addition to what was noted above, the Director acknowledged in the NOIR that the Petitioner provided evidence of the Beneficiary signing checks and tax documentation, but indicated that it did not appear likely that executive tasks constituted a majority of her time. Further, the Director pointed to the fact that the Petitioner provided evidence of only two basic policies the Beneficiary had put in place in 2013, while the petition was filed several years later in October 2017. As such, the Director requested that the Petitioner submit a letter more thoroughly describing the Beneficiary's typical executive duties.

In response, the Petitioner only provided a brief letter stating that the Beneficiary's petition had been approved after an interview and a careful review by a U.S. Customs and Border Protection Officer. The Petitioner further stated that "we would request that [USCIS] not revoke [the Beneficiary's] L-1A visa."

In the revocation decision, the Director concluded that the Petitioner did not overcome the proposed grounds for revocation expressed in the NOIR. Again, the Director determined that the Beneficiary's stated foreign duties were overly vague and noted that it only submitted two brief examples of policies created by the Beneficiary in 2013. The Director concluded that it was likely that the Beneficiary was primarily engaged in non-qualifying operational duties abroad rather than executive-level tasks. On appeal, the Petitioner again states that the Beneficiary's foreign duties have not changed since the date the petition was approved in October 2017.

Upon review, we concur with the Director's conclusion that the Beneficiary's foreign duties are overly generic and that they do not sufficiently set forth her day-to-day executive level tasks abroad. The Petitioner did not submit a sufficiently detailed duty description describing the Beneficiary's day-to-day executive-level duties to credibly establish that she devoted her time primarily to qualifying tasks. The Beneficiary's duty description includes several generic duties that could apply to any executive acting in any business or industry and they do not provide insight into the actual nature of her role. The Petitioner provided insufficient examples and supporting documentation to demonstrate the Beneficiary's performance of qualifying duties abroad, such as strategic planning of personnel or processes she conducted, long or short term plans she put in place, operational decisions she made, logistics goals and objectives she set, new methods to improve productivity she implemented, quality control processes she established, or best practice policies and procedures she directed. Likewise, the Petitioner did not articulate or document opportunities to streamline client orders she identified, personnel decisions she made, sourcing and distribution methods she approved, financial documents she signed, banking decisions she made, or relationships with lending and financial institutions she developed. This lack of detail and documentation is particularly noteworthy since the Petitioner states that the Beneficiary acted in her role as far back as 2007.

In addition, the Petitioner submits little documentation substantiating the Beneficiary's performance of qualifying executive level duties abroad; in fact, it only provided two policy documents from 2013 reflecting one-time decisions to let foreign employees accumulate leave and another instructing them not to discuss the company's "confidential business or proprietary business matters." As noted by the Director, these asserted policy documents are brief and dated several years prior to the date the petition was filed in January 2017. This evidence does not sufficiently substantiate the Beneficiary's primary performance of qualifying executive duties abroad for one year in the three prior to the date the petition was filed. Further, despite the Director clearly pointing to this lack of specificity and documentation, the Petitioner submitted no further details or evidence regarding the Beneficiary's executive level duties abroad in response to the NOIR and again does not provide any additional evidence to remedy this deficiency on appeal. 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).

To the extent that the Beneficiary submitted specifics and documentation regarding the Beneficiary's daily duties, this evidence indicates her involvement in non-qualifying operational tasks. For instance, the Petitioner submitted an invoice bearing the Beneficiary's name from May 2017, foreign

bank statements reflecting the Beneficiary's signature on checks for the payment of low value invoices, and documents showing her coordinating wire transfers of an unknown purpose. In addition, the Beneficiary's duties also suggest her involvement in the non-qualifying operational duties of the business, including directing sourcing and distribution, implementing quality control related to customer service, streamlining client orders for "quick turnaround," maintaining shipping and receiving, determining and approving operational expenditures, and analyzing stock levels. On whole, to the extent the Petitioner provides details regarding the Beneficiary's duties abroad, these tasks are suggestive of her wide involvement in all of the operational matters of the business and they do not indicate she primarily delegated these tasks to her subordinates. Whether a 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. Here, the Petitioner does not sufficiently document that the Beneficiary's duties were primarily executive.

Even though the Beneficiary held a senior position within the foreign organization, the fact that she managed or directed 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 the foreign position be "primarily" executive in nature. *Id.* The Beneficiary may have exercised discretion over the foreign employer's day-to-day operations and possessed the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that her actual foreign duties were primarily executive in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual was 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 above, the Petitioner asserts that the Beneficiary qualified as an executive. 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. 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.*

In support of the petition, the Petitioner submitted an organizational chart indicating that the Beneficiary was overseen by a president and that she supervised a "shipping/receiver" employee, an office administrator, and an "outsourced accounting/payroll" company. In the NOIR, the Director

stated that given the limited amount of employees abroad it appeared likely that the Beneficiary was primarily involved in the non-qualifying operational matters of the business. In response, the Petitioner did not provide additional evidence regarding the foreign employer's organizational structure, nor does it provide additional evidence with respect to this noted deficiency on appeal.

The regulatory definition of an executive indicates that in order to qualify as an executive, a beneficiary must have acted in an elevated position within a complex organizational hierarchy and primarily focus on directing the management and establishing the goals and policies of the foreign employer. In the current matter, the Petitioner has not submitted sufficient evidence to demonstrate that the foreign employer's staff relieved the Beneficiary from the day-to-day operations of the company. For example, the foreign employer's tax returns submitted by the Petitioner indicated that it paid only $25,000 Canadian dollars in wages and salaries beyond the Beneficiary's salary through July 2016 and it submitted no other evidence to substantiate the additional payment of wages when the petition was filed in January 2017. This evidence does not suggest that the foreign employer had an organizational structure in place that would allow the Beneficiary to primarily perform higher level duties.

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 as a managerial employee. The Petitioner submitted evidence indicating that the Beneficiary acted as no more than a first line supervisor abroad and it did not submit evidence in response to the NOIR or on appeal to overcome this deficiency. Therefore, the Director properly revoked the previously approved petition, as the Petitioner did not establish that the Beneficiary acted in an executive capacity abroad.

IV. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The next issue we will address is whether the Petitioner established that the Beneficiary would be employed in an 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; as such, we will only analyze whether she would be employed in an executive capacity. In addition, because of the dispositive effect of the above finding of ineligibility; namely, our affirmation of the Director's conclusion with respect to the Beneficiary's asserted foreign executive capacity, we will only briefly address the remaining issue pertaining to her proposed employment in the United States.

In the NOIR, the Director indicated that the Beneficiary's U.S. duties were generic and that they did not provide sufficient detail as to her daily duties in the United States. Again, the Director requested that the Petitioner submit a letter detailing the Beneficiary's typical executive duties in the United States. However, the Petitioner did not submit additional U.S. duties for the Beneficiary in response to the NOIR nor does it provide additional U.S. tasks on appeal. Upon review, we concur with the Director's determination that the Beneficiary's proposed U.S. duties are overly vague. Indeed, the Petitioner's U.S. duties are identical to the Beneficiary's asserted foreign duties; which as we have discussed, are overly vague and provide few specifics as to her actual day-to-day executive-level tasks. As noted, the petition was approved in October 2017 and not revoked until approximately five

months later, but the Petitioner submits no details or documentation to substantiate the Beneficiary's executive tasks during this time. 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.

Furthermore, the Petitioner's asserted U.S. organizational structure does not reflect that the Beneficiary would act in an executive capacity supervising subordinate managers. For instance, even if we are to accept that the Petitioner properly substantiated its claimed U.S. organizational structure, the provided organizational chart reflects that the Beneficiary would oversee an accounting clerk, a shipper/receiver employee, an inside sales representative, a payroll accounting firm, and two outsourced sales representatives. Therefore, the evidence does not demonstrate that the Beneficiary would act in an executive capacity in the United States supervisinga complex organizational hierarchy and that she would be primarily focus on directing the management and establishing the goals and policies of the Petitioner.

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

V. CONCLUSION

The Petitioner has not established that the Beneficiary was employed in an executive capacity abroad or that she would be employed in an executive capacity in the United States; therefore, the revocation of the approved petition will not be disturbed.

ORDER: The appeal is dismissed.

Cite as *Matter of D-A-B-, Inc.*, ID# 1812790 (AAO Dec. 7, 2018)