U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF QNNS- (USA) INC.

DATE: DEC. 12, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which sells safes, seeks to extend the Beneficiary's temporary employment as its president and chief executive officer (CEO) 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 California Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred because the evidence supports a finding of eligibility.

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.*

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

The Director found that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity.

A managerial capacity is an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization,

and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. A personnel manager supervises and controls the work of other supervisory, professional, or managerial employees; the duties of a first-line supervisor are not considered managerial unless the employees supervised are professional. A personnel manager must also have the authority to execute or recommend personnel actions such as hiring, firing, and promotions. A function manager need not directly supervise other employees, but must manage an essential function within the organization, or a department or subdivision of the organization, and function at a senior level within the organizational hierarchy or with respect to the function managed. Section 101(a)(44)(A) of the Act.

An executive capacity is 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.

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 managerial or executive capacity of the Beneficiary, we will review the Petitioner's description of the Beneficiary's 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 a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

The definitions of managerial and executive capacity each have 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 managerial or 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.

As examples of the company's achievements under the Beneficiary's leadership, the Petitioner stated that the company purchased a financially troubled client company,[1] and "has been in the process of

[1] At the time of filing, the Petitioner owned a controlling interest in the subsidiary. It later became full owner.

transferring [the foreign parent company's] key, large customers in the US" to the petitioning entity. The Petitioner later stated:

> [The Beneficiary] hired appropriate staff at the managerial level . . . and continues to oversee the performance of these managers and to evaluate their reports. . . . [The Beneficiary] set out the goals for each of the departments . . . .
>
> . . . [H]e has instituted its policies, goals, and objectives. He sets the company budget, as well as the budgets for each department. He reviews reports, representations, financial statements and creates next year work plans . . . .
>
> [The Beneficiary] also looks for opportunities to extend the company's footprint in world markets. Under his leadership, [the Petitioner] has established international business connections through international industry shows and [the] parent company'[s] clientele.

The general manager of the Petitioner's newly acquired subsidiary stated:

> [The Beneficiary] establishes the goals and policies for our company, and exercises wide latitude in discretionary decision making. His directions are mainly on the following:
>
> 1. Review and approve major development and strategy objectives. . . .
>
> 2. Set guidelines on major business transactions and objectives. . . .
>
> 3. Approve organizational structure and management policies. . . .
>
> 4. [The Beneficiary] oversees the operation of [the subsidiary company]. He sets the guidelines on overall financial policies, and oversees and monitors our company's financial status. We report our operation status to [the Beneficiary] on a monthly basis.

Asked for more details, the Petitioner provided "[a] detailed description of the job duties and the percentage of time spent on each duty":

> 1. Establish the organizational structure of the company, recruit managers and oversee their performance; and make decisions on the hiring, firing, and promoting of each manager; 20%
>
> 2. Establish the company's policies, goals, and objectives; implement the strategic plans and policies, give direction and leadership toward the company's successful achievement; actively seek out opportunities for investment and further

development; review, evaluate and approve potential investment and business development projects; organize meetings with managers; 30%

3. Exercise discretionary decision power on business strategies and overall direction of the company; review reports, representation, and financial statements from each manager to determine the progress and status in attaining objectives; oversee performance of each department; revise the company's objectives and plans in accordance with current conditions; coordinate business activities to achieve the company's goals and objectives; 20%

4. Oversee budgets, investment, and operations of the company; recommend yearly budget for board approval; develop the company's overall financial policies and management systems; 15%

5. Negotiate on behalf of the company; represent the company at industry conferences and other events; approve major investment and business contracts; maintain good relationship with key customers, governments, and commercial banks; maintain positive image to the public. 15%

The Director denied the petition, stating that the "description of the beneficiary's duties is too broad and general to credibly demonstrate that the proposed position will be in a primarily managerial or executive capacity," and "too vague to convey any understanding of exactly what the beneficiary will do." The Director concluded that "the beneficiary's work will include substantial sales, marketing, and customer service duties."

On appeal, the Petitioner submits copies of sales reports, correspondence, invoices, and other documents that demonstrate that the Petitioner is an active business. The submitted materials focus heavily on the two overseas employees of the Petitioner's parent company who report to the Beneficiary, as well as on sales activity by the Petitioner's subsidiary. The Director did not question that the Petitioner does business or that the Beneficiary has authority over the subsidiary company.

Upon review, we find that the submitted materials do not establish that the Beneficiary's role in the United States has been *primarily* managerial or executive. Reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. The Petitioner has not provided sufficient details regarding the Beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *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). Specific details are an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.*

In this instance, the job description provides a list of general responsibilities that does not provide much information about the specific tasks that the Beneficiary would perform in order to achieve

those responsibilities. Examples include coordinating activities, implementing policies, and maintaining good relations and a positive image. These statements attest to the level of the Beneficiary's authority rather than explain how he exercises that authority. Furthermore, as we will address below, the description of the Beneficiary's general responsibilities appear to presume the availability of subordinates that the Petitioner does not actually employ.

The Petitioner's appellate brief focuses primarily on the company's staffing, discussed below.

B. Staffing

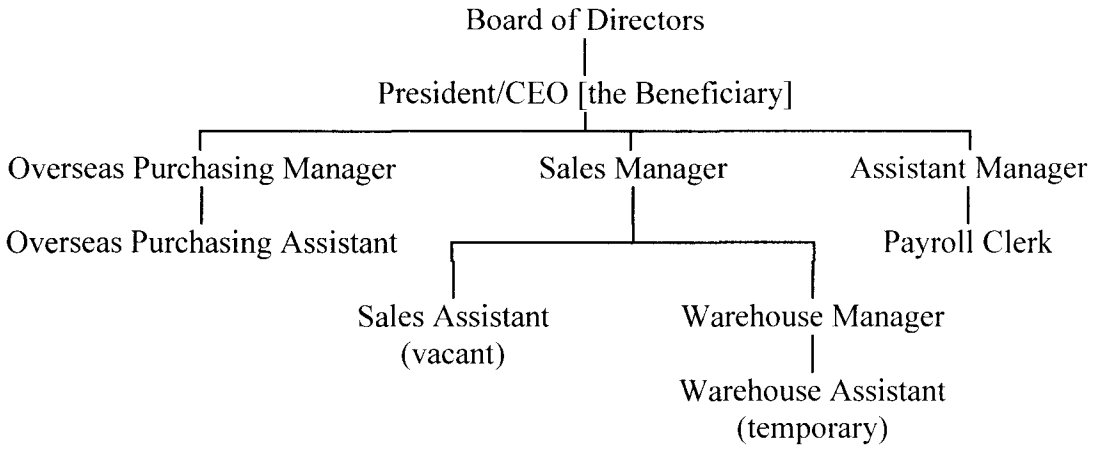
Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees 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.

At the time of filing, the Petitioner had five employees of its own, and its newly acquired subsidiary employed four more. The Petitioner stated that, in addition to its own employees, its foreign parent company "has designated two employees . . . to support the [Petitioner's] sales and marketing activities," with "a further 6 employees available . . . if the need arises." The Petitioner stated that the foreign company's overseas purchasing manager reports to the Beneficiary.

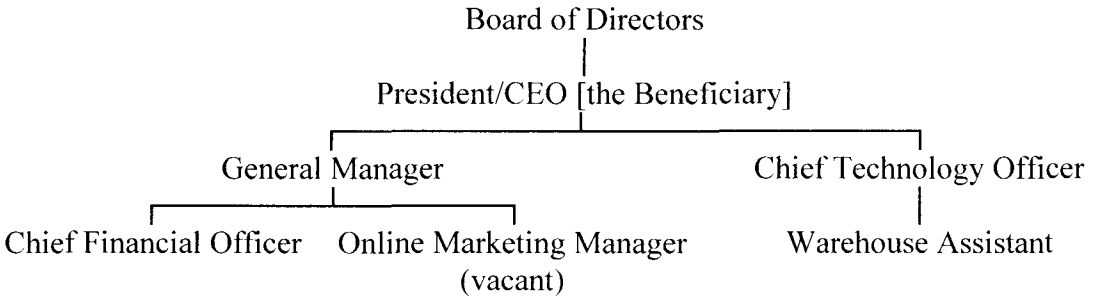
The Petitioner stated:

> As the President/CEO, [the Beneficiary] directs the management of the whole organization, including the newly acquired [subsidiary]. The managers – Sales Manager, Overseas Purchasing Manager, and [the subsidiary's] management, are under [the Beneficiary's] direction . . . .
>
> . . . He is the only person in [the petitioning company] who makes wide-latitude, discretionary decisions and now does the same for [the subsidiary].

The Petitioner's organizational chart showed the following structure (including the two dedicated foreign employees) at the time of filing:



The Petitioner's subsidiary had the following structure:



The Petitioner submitted capsule descriptions of the subordinate positions:

> Overseas Purchasing Manager: support all . . . sales and marketing activities.
>
> Overseas Purchasing Assistant: assist manager in sales and marketing activities, process all the paperwork.
>
> Sales Manager: manage and coordinate marketing and sales activities, establish sales strategies, evaluate customer and market reports, and implement sales plan.
>
> Warehouse Manager: manage the warehouse, liaise with customers, suppliers and transportation companies, oversee delivery quality, assist the sales manager in sales activitgies, and act as sales manager when sales manager is absent
>
> Sales Assistant/E-Commerce Coordinator: conduct customer and market research, collect competitor data, conduct online transactions, and prepare reports.
>
> Assistant Manager: prepare and monitor budget, work with clients to resolve issues, and undertake human resource responsibilities.

Payroll Clerk: maintain payroll records, contribute to team effort by accomplishing other office work when needed.

The Petitioner stated that "the duties of the vacant positions are covered by the remaining employees," but did not elaborate as to who performed which duties and how much time those duties consumed. The point is significant because, for instance, if the sales manager spends most of his time performing the duties of a sales associate, then the sales manager is performing rather than managing the sales function, in which case the Beneficiary would be, in effect, the first-line supervisor of a sales associate. The organizational chart showed only one administrative staffer (the payroll clerk), which leaves open the question of who performed routine administrative and secretarial tasks for the company at the time of filing.

Three months after filing the petition, the Petitioner submitted supplemental documentation reflecting the company's recent growth and activities. The Petitioner later indicated that, after it obtained full ownership of its subsidiary, that company effectively became "a Sales Department." These later developments cannot establish that the Petitioner was eligible as of the petition's filing date, as required by the regulation at 8 C.F.R. § 103.2(b)(1). *See also Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

The Petitioner later submitted more detailed job descriptions for the Beneficiary's subordinates. The following descriptions pertain to the positions listed as reporting directly to the Beneficiary at the time of filing:

Sales Manager:

- In charge of sales of [identified merchandise] . . .
- Supervise the warehouse . . .
- Develop and follow up business leads
- Cold call, direct email, and perform other lead generation activities
- Manage team of sales staff
- Advise the sales representatives on ways to improve their sales performance
- Maintain contact with dealers and distributors
- Analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and to monitor customer[s]' preferences
- Ensure customer satisfaction
- Keeping up to date with products and competitors
- Maintains sales volume, product mix, and selling price by keeping current with supply and demand, changing trends, economic indicators, and competitors
- Completes national sales operational requirements by scheduling and assigning employees; following up on work results

- Maintains national sales staff job results by counseling and disciplining employees; planning, monitoring, and appraising job results
- Contributes to team effort by accomplishing related results as needed

Assistant Manager:

- Prepares and monitors budget by gathering and organizing financial information; scheduling expenditures; analyzing variances; implementing corrective actions
- Maintains records by defining procedures for retention, protection, retrieval, transfer and disposal of records
- Accomplishes project results by communicating and coordinating requirements: expediting fulfillment; evaluating optional courses of action; changing assumptions and direction
- Prepares reports by collecting, analyzing, and summarizing operational data and trends
- Enhances department reputation by accepting ownership for accomplishing new and different requests; exploring opportunities to add value to job accomplishments
- Working directly with clients to resolve issues
- Training staff using company provided training materials and reviewing performance of existing staff
- Contributes to team effort by accomplishing related results as needed

Overseas Purchasing and Sales Manager:

- Forecasting levels of demand for services and products to meet the business needs and keeping a constant check on stock levels
- Conducting research to ascertain the best products and suppliers in terms of best value, delivery schedules and quality
- Liaising between suppliers, manufacturers, relevant internal departments and customers
- Identifying potential suppliers, visiting existing suppliers, and building and maintaining good relationships with them
- Negotiating and agreeing contracts and monitoring their progress, checking the quality of service provided
- Processing payments and invoices
- Keeping contract files and using them as reference for the future
- Forecasting price trends and their impact on future activities
- Attending meetings and trade conferences
- Training and supervising the work of other members of staff
- Contributes to team effort by accomplishing related results as needed

By the time the Petitioner submitted the longer job descriptions, the company had hired several more employees and created a new logistics department. The duties may have changed as the company hired additional lower-level workers. For instance, at the time of filing, the assistant manager's only subordinate was the payroll clerk.

The Petitioner did not show how much time the subordinates devote to specific tasks. This is significant because of the presence of non-qualifying duties (such as cold calling potential clients). Furthermore, the job descriptions appear to be generic templates rather than specific to the individual positions. For example, the sales manager's job description refers to "national sales staff," whereas the Petitioner, which operates from a single location, is not a national organization. At the time of filing, the company had no sales staff other than the sales manager. The assertion that the assistant manager prepares the budget appears to conflict with the claim that the Beneficiary himself sets the budget. The job descriptions refer to materials not documented in the record, such as "company provided training materials." The Petitioner has not established that the submitted job descriptions accurately reflect the activities at the company, at the time of filing or later.

We note that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa petition for classification as a multinational manager or executive. *See* section 101(a)(44)(C) of the Act. However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company. *See, e.g., Family Inc.*, 469 F.3d 1313; *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In this case, the company's size at the time of filing raises legitimate and unanswered questions about the actual roles of its employees, including the Beneficiary.

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. 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 an 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 initially claimed that it would employ the Beneficiary as an executive. However, the Petitioner has not presented a coherent picture of the Beneficiary's claimed executive role, except to assert that the Beneficiary has authority over the entire company. On appeal, the Petitioner states that "the Beneficiary is performing in an Executive Management function," but the Petitioner's

specific arguments on appeal relate to the role of a personnel manager rather than that of an executive. The Petitioner claimed that the Beneficiary supervised managers at the time of filing, but the Petitioner has not established that those employees served primarily in managerial capacities.

In response to a request for evidence, the Petitioner asserted that the Beneficiary's position has the traits of a personnel manager. The Petitioner, on appeal, states that the Beneficiary "supervises and controls other supervisory, managerial and professional employees," but elaborates only as to professional subordinates. To determine whether the Beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The Petitioner stated that four of the Beneficiary's subordinates as of the time of filing (the overseas purchasing manager, sales manager, assistant manager, and payroll clerk) hold bachelor's degrees. The Petitioner documented only one of the degrees (for the sales manager). The Director asked the Petitioner to establish that the *positions require* bachelor's degrees(which is a separate question from whether the employees have such degrees). The Petitioner's response did not address that issue. Therefore, the Director correctly concluded that the Petitioner had not shown that any of the Beneficiary's subordinates are professionals.

On appeal, the Petitioner submits third-party materials to support the assertion that "International Business jobs usually require a bachelor's degree in a Business related major." The submitted evidence relates to international trade specialists and international sales managers. The information relating to the latter position appears to have some relevance to some of the subordinate positions. It does not, however, show that the Beneficiary's oversight over the specified subordinates is a primary responsibility. Also, as we have already discussed, the Petitioner has not established that the Beneficiary's immediate subordinates primarily performed duties commensurate with their titles at the time of filing.

In the denial notice, the Director found that the Petitioner had not shown that its organizational structure at the time of filing relieved the Beneficiary from primarily performing non-qualifying tasks. The Director acknowledged that the Petitioner had hired several employees after the petition's filing date, and planned to hire more in the future, but found that the newly hired workers cannot establish eligibility as of the filing date. The Petitioner does not substantively address these findings on appeal. Instead, the Petitioner summarily asserts that, even with the smaller staff at the time of filing, "the beneficiary has been relieved from performing operational duties" and "[t]he totality of the record shows that the beneficiary does not need to spend the majority of his time on day-to-day operational or administrative functions."

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that:

> (1) the function is a clearly defined activity; (2) the function is "essential," i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations.

Matter of G- Inc., Adopted Decision 2017-05 (AAO Nov. 8, 2017). In this matter, the Petitioner has not described or provided evidence that the Beneficiary manages an essential function, or articulated a specific function that the Beneficiary will manage.

III. CONCLUSION

The Petitioner has not established that it will employ the Beneficiary in a managerial or executive capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of QNNS- (USA) Inc.*, ID# 757110 (AAO Dec. 12, 2017)