U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35560244

Date: DEC. 12, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a distributor of transportation vehicles and related parts, seeks to extend the Beneficiary's temporary employment as its director of operations under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity under an extended petition. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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.*

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for a one-year period ending on June 11, 2024. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

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

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

When examining the executive capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in an executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

A. Duties

To be eligible for L-1A nonimmigrant visa classification as an executive, a 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.

If a petitioner establishes that the offered position meets all elements set forth in the statutory definition, it must prove that the beneficiary will be *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside its other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties will be primarily executive, we consider the petitioner's description of the job duties, the company's organizational structure, the duties of a 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 a beneficiary's actual duties and role in a business.

The Petitioner indicated that the Beneficiary was transferred to the United States to establish its operations as a manufacturer and distributor of buses and shuttles and to act as a bridge between its parent company in Brazil and the parent company's manufacturing facility in Mexico. The Petitioner indicated that as director of operations the Beneficiary was "instrumental in establishing critical

partnerships and laying the groundwork for [its] success in the competitive U.S. market" and "implementing strategic initiatives." The Petitioner stated that the Beneficiary would "continue to direct the management…from marketing strategy to finance marketing," "oversee and refine the company's operational strategies," and manage supplier relations, including "overseeing purchase orders, payments, inventory, as well as orchestrating imports and exports." The Petitioner submitted the following duty description for the Beneficiary under an extended petition:

> Directing all [Petitioner] US business activities to ensure timely product delivery by managing staff workload: It includes managing staff workload, coordinating tasks, and addressing obstacles that may hinder timely delivery. 30% of his time.
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> Managing department managers to ensure deliverables meet proposed schedules and timelines: It includes providing guidance, support and resources as needed to facilitate successful project completion. 15% of his time.
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> Directing business development, managing proposal schedules and deadlines, and reviewing proposal outlines: This involves overseeing the proposal process from start to finish. It includes managing proposal personnel, ensuring that proposal schedules and deadlines are being met, and reviewing proposal outlines to ensure accuracy and completeness. 20% of his time.
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> Directing [the Petitioner's] US goals, policies, and procedures, and overseeing their execution. This task involves setting and communicating the company's goals, policies, and procedures, and ensuring that they are effectively implemented and followed throughout the organization. 10% of his time.
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> Evaluating [the Petitioner's] US performance, policies and programs based on financial and sales reports: This task involves analyzing financial statements and sales reports to assess the performance of the company, its policies, and its programs. It includes areas for improvement and making recommendations for enhancement. 15% of his time.
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> Analyzing [the Petitioner's] US business processes through SWOT analysis and recommending improvements: It includes making recommendations for process enhancements to increase efficiency and effectiveness. 10% of his time.

The Petitioner submitted a duty description and supporting documentation indicating that the Beneficiary was primarily involved in performing non-qualifying operational duties as of the date the petition was filed. For instance, the Beneficiary's duty description reflects that he would spend 30% of his time ensuring the timely delivery of goods and overcoming obstacles hindering deliveries, 15% of his time ensuring that deliverables meet proposed schedules, and 20% on managing proposals and making sure proposal deadlines are being met. In sum, the duty description appears to reflect that the Beneficiary would be primarily devoted to performing duties related to the Petitioner's provision of goods and services.

This conclusion is further supported by submitted documentation showing the Beneficiary performing non-qualifying operational tasks just prior to and after the date the petition was filed in June 2024. For example, the Petitioner provided a document reflecting different Beneficiary action items in October 2024 indicating that he was responsible for securing state manufacturing licenses, implementing design and cost changes on a particular vehicle model, securing warranty coverage, dealing with department of transportation violations related to its vehicles, and addressing quality concerns. Likewise, the Petitioner submitted emails from August 2024 showing the Beneficiary arranging the delivery of vehicles and other emails from July 2024 discussing a change to linoleum flooring in a particular vehicle model. The Petitioner also provided additional emails dated in June 2024 reflecting the Beneficiary coordinating potential luggage space on a vehicle model and others from May 2024 showing him attending a sales meeting in Indiana, discussing electronic components on a vehicle model, and arranging the issuance of purchase orders. In addition, the Petitioner submitted emails from April 2024 reflecting the Beneficiary handling a leak defect in a vehicle and scheduling orders and deliveries. Therefore, in total, the supporting documentation on the record, dated after and near to the date the petition was filed, suggests the Beneficiary's direct involvement in nearly all the operational matters of the business.

Whether the Beneficiary is an executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" executive. *See* sections 101(a)(44)(B) of the Act. Here, the Petitioner does not sufficiently document what proportion of the Beneficiary's duties were executive-level functions when the petition was filed and what proportion were non-qualifying operational tasks. The Petitioner submitted duties for the Beneficiary and supporting evidence indicating his direct involvement in numerous administrative or operational tasks, but it did not sufficiently quantify the time he spent on these duties as compared to qualifying executive-level duties. For this reason, we cannot determine whether the Beneficiary was primarily performing the duties of an executive as of the date the petition was filed. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In contrast, the Petitioner did not sufficiently articulate or document what executive-level tasks he was performing when the petition was filed. The submitted evidence reflects that the Petitioner was not sufficiently operational to allow the Beneficiary to perform several of the asserted executive-level tasks included in his duty description, such as managing department managers, directing goals, policies, and procedures, or implementing process enhancements to increase efficiency and effectiveness. The Petitioner also did not sufficiently detail and document the departments he was overseeing or the goals, policies, and procedures he had set. The Petitioner further provided minimal supporting evidence to substantiate that he was primarily delegating operational tasks to subordinates when the petition was filed, as his duty description suggests. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Even though the Beneficiary holds a senior position within the organization, the fact that he will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(44)(B) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive in nature. *Id.* The Beneficiary may exercise discretion over the Petitioner's day-to-day

operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily executive in nature.

B. Operations and Staffing

Pursuant to section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in an 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.

In the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner indicated it had three employees as of the date the petition was filed and a most recent IRS Form 941, Employer's Quarterly Federal Tax Return from the first quarter of 2024 reflected it had two employees. The Petitioner submitted an organizational chart showing that it employed a business development manager and a mechanic subordinate to the Beneficiary. The Petitioner also provided a projected organizational chart for its second year of operations showing that it planned on hiring a sales representative, another mechanic, and an after sales engineer.

On appeal, the Petitioner contends the Director erred by focusing on its staffing, suggesting that this is not required when asserting eligibility in an executive capacity. We disagree. The regulations provide strict evidentiary requirements for the extension of a "new office" petition and require us to examine the organizational structure and staffing levels of the Petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the "new office" operation one year within the date of approval of the petition to support an executive position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If a business does not have the necessary staffing after one year to sufficiently relieve the beneficiary from performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

As discussed, the Petitioner asserts that the Beneficiary would have qualified as an executive under an approved extension. The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the organization, major component, or function as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The submitted evidence and statements of the Petitioner reflect that it had limited operations as of the time the petition was filed leaving substantial uncertainty as to whether it was supporting the

Beneficiary in an executive capacity at this time. As discussed, the Petitioner provided an organizational chart indicating that the Beneficiary had only two subordinates when the petition was filed, neither of whom worked in a management capacity. As we discussed at length, the Petitioner submitted substantial supporting documentation reflecting the Beneficiary's involvement in nearly all the operational aspects of the business, such as securing state manufacturing licenses, implementing design and cost changes, securing warranty coverage, dealing with department of transportation violations, addressing quality concerns, arranging the delivery of vehicles, coordinating designs on vehicles, attending sales meetings, amongst other non-qualifying tasks. There is little evidence to support a conclusion that the Beneficiary was primarily delegating these non-qualifying tasks to his two subordinates when the petition was filed in June 2024.

The Petitioner had yet to hire subordinates to perform these duties reflected in the supporting evidence, such as the sales representatives and sales engineers it planned to hire during its second year of operations, and there is little supporting evidence to substantiate that the newly hired business development manager was primarily relieving the Beneficiary of operational tasks when the petition was filed. There is also little evidence reflecting the Beneficiary's direction of his subordinates or his oversight of subordinate managers and departments, as discussed in his duty description. Further, the Petitioner submitted few specifics and little documentation to support the Beneficiary's primary performance of qualifying executive-level duties, such as his implementation of goals, policies, and procedures. Therefore, the Petitioner did not sufficiently establish that the Beneficiary was directing the management of the Petitioner and primarily focused on its broad goals and policies when the petition was filed, rather than the day-to-day operations.

In addition, supporting emails on the record leave further question as to the Beneficiary's claimed executive-level role. For instance, an email from June 2024 lists the Beneficiary's title as "Commercial Operations Consultant for the External Market- USA Division" and does not show his claimed title of director of operations. Likewise, the Beneficiary's 2023 performance review, issued in June 2024, discusses "limited staff resources" and his "sales targets," indicating that he was acting in more of a sales role in the United States when the petition was filed. The Beneficiary also stated in the performance review that he was "ready to take on a coordination position," "aiming for a management position," and that "in the future" he would be ready for an "executive management position." This evidence along with the documentation reflecting his wide performance of operational tasks when, and after, the petition was filed indicates he was not likely acting in an executive-level position when extension was filed. The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

For the foregoing reasons, the Petitioner has not sufficiently established that the Beneficiary would be employed in an executive capacity under an extended petition.

ORDER: The appeal is dismissed.