U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6945021

Date: DEC. 19, 2019

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (L-1A)

The Petitioner, a company operating convenience stores and other businesses, seeks to temporarily employ the Beneficiary in the United States as its chief executive officer (CEO) and partner 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 Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity in the United States.

On appeal, the Petitioner contends that the record demonstrates that the Beneficiary devotes a majority of his time to executive-level duties and asserts that the Director improperly denied the petition by overemphasizing its staffing levels.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The first issue we will address is whether the Petitioner established that the Beneficiary would be employed in a managerial or 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). Beyond the required description of the job duties, we examine 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. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner'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 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 explained that it purchased a convenience store in Georgia in 2016 and later invested in another convenience store in Indiana. Further, the Petitioner indicated that it had partnered with another company [redacted] to provide "service in Data Management, Accounting, Bookkeeping, and Engineering Solutions." It listing the following duties for the Beneficiary as CEO/partner:

- Directs the managers at each individual operation of the existing convenience store in accordance with established plans (10%)
  - Responsible for overseeing budgeting, budget to actual reporting by the store manager and monthly reporting to corporate in India.

- Establishing and overseeing Marketing, Accounting/Human Resources, and new store development (10%)
  - Utilize direct hires and outsource services to provide corporate level functional support for the Petitioner, and
  - Finance/accounting and human resources will be outsourced to a Bookkeeping/Accounting specialist and Human resources specialist and

eventually a Finance/Human Resources Manager that will report directly to the Beneficiary.

- Setting the agenda on how the national marketing resources are to be integrated with local marketing resources for the development of a comprehensive, focused marketing campaign. (10%)
  - The Beneficiary will train and transfer responsibility for marketing to a marketing manager by year 3, and
  - Engineering resources will be engaged on an as needed basis as they add new business.

- Implementing all strategic and important operations decisions regarding Financial Management, Purchase Management, and Information Technology. (10%)
  - The Beneficiary will work with store managers who will be responsible for budgeting for their operation and negotiating purchase agreement to set expectations and goals,
  - Review and approve all budgets and performance to ensure the manager is effective in his operational capacity and meets corporate goals and expectations, and
  - Review and approve purchase agreements.

- Overseeing Customer Relationship Management (5%)
  - The Beneficiary will conduct the search of a qualified marketing executive and initially use a combination of franchise marketing resources and local contract marketing specialists.

- Expansion of the Petitioner (10%)
  - Currently in the process of adding a second convenience store,
  - Maintain awareness of opportunities for expansion, and
  - Create policies for store managers to adjust the mix of store goods.

- Pursue new investment opportunities in the US market. (20%)
  - Responsible for locating and vetting new business opportunities, including the review, approval and oversight of new profit centers in existing locations such as U-Haul, US Postal services, in-store sandwich shops, car wash, etc.

- Expansion of the Petitioner's brand. (25%)
  - Established three successful businesses and continues to meet financial and investment goals.

The Beneficiary's duty description includes discrepancies that leave question as to whether it was sufficiently developed to primarily relieve him from performing non-qualifying operational duties as of the date the petition was filed. For instance, the Beneficiary's duty description mentions several employees required to support its operations that it does not yet employ, such as outsourced bookkeeping/accounting, human resources, and marketing specialists, as well as a marketing manager (it stated would not be added for three years), and engineering resources. The lack of these employees

emphasized in the Beneficiary's duty description leaves substantial uncertainty as to who would perform the operational aspects of the business. For example, it appears likely that without these support employees the Beneficiary would be responsible for the non-qualifying operational tasks inherent in these functions and apparent through the documentation submitted on the record, such as processing payroll, handling sales and wage tax payments, making lease payments, and maintaining and upgrading the two convenience stores it operates.

In fact, the Petitioner discusses these apparent non-qualifying aspects in the Beneficiary's duty description, noting his responsibility for adding U-Haul, postal, sandwich, and car wash services to its convenience store located in Georgia. It further emphasized that the Beneficiary was involved in adding a [redacted] to this convenience store location. The Petitioner also submitted bank records reflecting the Beneficiary signing numerous checks for day-to-day operational matters, such as regular payments for beverages and snacks for its convenience stores; while in contrast, there is no supporting documentation reflecting his delegation of non-qualifying duties to his subordinate managers.

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* section 101(a)(44)(B) of the Act. Here, the Petitioner does not sufficiently document what proportion of the Beneficiary's duties would be executive functions as opposed to non-qualifying operational tasks. The Petitioner lists the Beneficiary's duties as including both executive tasks and administrative or operational duties, but does not sufficiently quantify in detail the time the Beneficiary spends on these different duties. The Petitioner only vaguely stated that the Beneficiary devotes 25% of his time to operational tasks, but it did not specifically delineate the time he would spend on each executive-level and non-qualifying duty. In fact, the Beneficiary's duty description and the other submitted evidence indicates that he would likely spend his time primarily on these non-qualifying duties. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of an executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In contrast, the Petitioner submitted few examples and little supporting documentation to substantiate his daily qualifying executive-level duties. For instance, the Petitioner claims that the Beneficiary delegates the operation of its two convenience stores to subordinate managers; yet, there is no supporting documentation to substantiate this assertion. The Petitioner also does not detail and document the store budgets the Beneficiary set for his managers, outsourced employees he utilized, marketing resources or campaigns he deployed, strategic decisions he made, or purchase agreements he approved. Likewise, it did not sufficiently describe and document the new business opportunities he vetted and evaluated daily, store policies he created for his managers, financial and investment goals he set, consultants he appointed, or firing decisions he made. In addition, it is not clear what "strategic and important operations decisions" related to information technology the Beneficiary made, or would make, overseeing a business largely operating two gas station/convenience stores. In total, the Petitioner did not credibly establish that the Beneficiary would be primarily engaged in performing executive-level duties on a daily basis.

This lack of detail and documentation is particularly notable since the Petitioner asserts that the Beneficiary has been acting in his capacity as CEO and partner for several years since 2015.[1] We acknowledge that the Beneficiary made the decision to operate a second convenience store and decided to begin a potential partnership with a consulting company based in India; however, these decisions did not credibly establish that he would devote a majority of his time to executive-level tasks. 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 they 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. Staffing

If staffing levels are used as a factor in determining whether an individual is 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, the Petitioner claims that the Beneficiary has, and would, act in an executive capacity in the United States. 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 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.*

On appeal, the Petitioner states that "the number of employees is, in most regards, an unnecessary part of the analysis" when assessing the Beneficiary's eligibility. While we agree there is no required amount of employees within a business to establish that a beneficiary acts in an executive capacity, we disagree that a close analysis of the Petitioner's staffing levels is not required when assessing a beneficiary's eligibility. We have long looked to and analyzed staffing when assessing whether a beneficiary qualifies as an executive. For instance, this is relevant in determining whether the

[1] The petition was filed on March 29, 2018.

petitioner is sufficiently developed to support a beneficiary within a complex organizational hierarchy where they will primarily focus on the broad goals and policies of the organization rather than day-to-day operations.

The Petitioner correctly observes that we must take into account the reasonable needs of the organization and that a company's size alone may not be the only factor in determining whether the Beneficiary is or would be employed in an executive capacity. S*ee* section 101(a)(44)(C) of the Act. However, it is appropriate for United States Citizenship and Immigration Service (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-executive operations of the company. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record. *See Systronics*, 153 F. Supp. 2d at 15.

The Petitioner submitted an organizational chart indicating that the Beneficiary supervised two managers of its two convenience stores, the first manager assigned to the Georgia location overseeing four cashiers and a "deli handling" employee, and a second manager at the Indiana store supervising three cashiers. Further, the chart reflected that the Beneficiary supervised a "CEO & technical head" working for its claimed consulting business who was shown to oversee an administrative employee and a marketing executive.

The evidence indicates that the Petitioner was not sufficiently developed as of the date the petition was filed to support the Beneficiary within a complex organizational hierarchy. First, as we have discussed, the Beneficiary's duty description indicated that he would oversee several subordinates not listed in its organizational chart, including outsourced human resources, finance/bookkeeping, marketing, and engineering subordinates. It is also noteworthy that the Petitioner's organizational chart reflects that it already employed a marketing manager, while the Beneficiary's duty description states that this employee would not be added for three years. In addition, the Petitioner provides little supporting evidence that it was operating a consulting and outsourcing business as of the date the petition was filed and a submitted partnership agreement with a claimed Indian consulting company was executed only two months prior to the date the petition was filed. In sum, there is little evidence to substantiate that the asserted consulting and outsourcing was a functioning part of its business as of the date the petition 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).

Beyond this, the Petitioner asserts that the Beneficiary oversees two managers to whom he delegates the non-qualifying operational aspects of running its two convenience store/gas stations. However, the Petitioner did not submit supporting evidence to substantiate that the Beneficiary oversees a subordinate store manager at its Indiana convenience store location. For instance, a state quarterly payroll report from the fourth quarter of 2017 reflected that the claimed Indiana store manager earned only $800 during this period, compared to a cashier in the same report earning $1200 and another cashier making the same salary as the claimed store manager. Therefore, the submitted documentation did not substantiate that the Petitioner employed a store manager at its Indiana store location subordinate to the Beneficiary as of the date the petition was filed as claimed.

In addition, with respect to the Beneficiary's claimed supervision of a store manager at its location in Georgia, it is noteworthy that his duties suggest his wide involvement in the non-qualifying aspects of this business, such as expanding its offerings to include rental trucks, postal services, a fried chicken franchise, a car wash, and other such amenities. However, the Petitioner submits no supporting documentation to corroborate that the Beneficiary was primarily relieved from the non-qualifying aspects of these operational matters by the claimed store manager at this location. In fact, there is no supporting documentation on the record reflecting the Beneficiary delegating non-qualifying duties to his claimed store managers, whereas there is substantial evidence of him paying beverage and food invoices prior to the date the petition was filed. The Petitioner also emphasized the Beneficiary's decision to add a [redacted] franchise to its convenience store in Georgia and noted that he "invested $3500 in the same for furniture, equipment's [*sic*] franchisee fee etc." However, there is little indication or evidence to substantiate that the Beneficiary would primarily delegate the non-qualifying operational tasks inherent in these duties, such as buying furniture and equipment.

Therefore, in sum, the Petitioner has not submitted sufficient evidence to demonstrate that the Beneficiary was acting within a complex organizational hierarchy and primarily performing qualifying executive level tasks of the date the petition was filed. In fact, the preponderance of the evidence indicates that the Beneficiary's was more likely engaged in non-qualifying operational tasks specific to the operation of its two convenience store locations.

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

ORDER: The appeal is dismissed.