U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10373952

Date: DEC. 22, 2020

Appeal of California Service Center Decision

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

The Petitioner, a developer of robotics products and [redacted] toys, seeks to employ the Beneficiary temporarily as its director of Asia operations under the L-1A nonimmigrant classification. 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 Petitioner did not establish that: (1) the Beneficiary was employed abroad in a managerial or executive capacity; and (2) the Beneficiary's proposed position in the U.S. would be in a managerial or executive capacity. The matter is now before us on appeal.

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

I. 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 their 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 sole issue to be addressed is whether the Petitioner established that it would employ the Beneficiary in an executive capacity in the United States. Although the Director also considered whether the Beneficiary would be employed in a managerial capacity as defined at section

101(a)(44)(A) of the Act, the Petitioner has not claimed that the Beneficiary's position is managerial in nature.

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

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

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.

A. Job Duties

At the time of filing in September 2019, the Petitioner indicated that the Beneficiary will continue to serve as general manager for the Petitioner's subsidiary in China, as well as serve as director of Asia operations for the Petitioner in the United States. It stated that her duties would include establishing, developing, and overseeing implementation of its business expansion strategies in Asia. It asserted that she "will be one of the company's most senior international executives with ultimate responsibility over all aspects of [redacted]s business operations and global expansion planning for market in Asia and will have budgeting responsibility of $9 million." It stated that she would function at a senior level with regard to strategic business and operational planning, budgets development and compliance, goals establishment, overseeing implementation of corporate policies, and directing the company's senior management team in Asia. It further stated that she will exercise wide latitude in discretionary authority over the day-to-day business operations for Asia and that she will be establishing goals for Asia events. It asserted that she will lead the company's business plans to develop the infrastructure in Asia to be compliant with U.S.-based operations including standard operating procedures and business information systems; overseeing negotiations for tooling factories; managing the sourcing and procurement functions; and leading the planning for training centers in Asia.

In a request for evidence (RFE), the Director advised the Petitioner that the submitted job description did not demonstrate what the Beneficiary will do on a day-to-day basis in the U.S. operation. We agree with this assessment of the initial job description as it focuses on the Beneficiary's responsibility for company strategies, policies, objectives and oversight in Asia without providing any specific

examples or any insight into the nature of her daily tasks within the context of the Petitioner's business activities in the United States. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. 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); Avyr Assocs., Inc. v. Meissner, 1997 WL 188942 at *5 (S.D.N.Y.). The Director's RFE appropriately emphasized the need for additional details about the Beneficiary's typical duties as well as information regarding the amount of time she will allocate to specific tasks.

In its response to the RFE, the Petitioner reiterated that the Beneficiary will continue to serve as general manager for the Petitioner's subsidiary in China, as well as serve as director of Asia operations for the Petitioner in the United States. It asserted that it and its subsidiaries are [redacted] robotics products and [redacted] toys." It stated that it has several robotics brands, including [redacted]," [redacted] line of [redacted] toys, and [redacted] division. It listed the Beneficiary's duties and responsibilities as follows:

- Leading key customers relationship management and strategic partnerships development, establishing short-term and long-term objectives to meet company's business plan (20% of time);[1]
- Leading the company's business plans to develop the infrastructure in Asia to be compliant with U.S. based operations including standard operating procedures and business information systems (20% of time);
- Managing the sourcing and procurement functions (20% of time);
- Establishing, developing, and overseeing implementation of [redacted]'s business expansion and growth strategies in Asia, in order to increase the company's profitability and expand the business in the region (10% of time);[2]
- Leading the planning for training centers in Asia (10% of time);[3]
- Overseeing the implementation of corporate policies pertaining to quoting new tooling, factory compliance and alternative sourcing (10% of time);[4] and
- Establishing goals for the Asia [redacted] events (10% of time).

In the denial decision, the Director determined that the record does not demonstrate how the Beneficiary will direct and control staff located abroad while she is in the United States. She further stated that the record does not provide specifics about how the staff abroad performs functions related

[1] The company's business plan is not included in the record, and its customers and strategic partnerships have not been identified.
[2] The Petitioner lists expansion plans for [redacted] toys and [redacted] robotic products, but it is not clear where these items are produced.
[3] The Petitioner highlights the promotion of the [redacted] and its curriculum, but it is not clear where these academies operate or what they teach.
[4] The Petitioner repeatedly refers to [redacted] events," but the substance of these events is not clear.

to the U.S. entity's operations, nor does it indicate the amount of time the staff abroad would spend on duties related to the U.S. operation over the operation abroad. Thus, she determined that the Petitioner did not sufficiently demonstrate that the Beneficiary will have a staff in place that primarily focuses on the functions related to the Beneficiary's position in the United States.

On appeal, the Petitioner asserts that the Beneficiary's proposed duties in the United States meet the four prongs of the statutory definition of executive capacity at section 101(a)(44)(B)(i)-(iv) of the Act, as follows:

(i) Directs the management of the organization or a major component or function of the organization. The Petitioner asserts that the Beneficiary will simultaneously serve as general manager for [redacted] and as director of Asia Operations for the Petitioner "in order to lead our company's regional expansion and growth." It states that she will "direct the management of our company's Asia Operations" and that she will "streamline our company's business processes and use her extensive executive experience to direct all aspect of [redacted]'s business and expansion growth plans related to the Asia market including strategic development, financial administration, business planning, budgeting, and business development."

(ii) Establishes the goals and policies of the organization, component, or function. The Petitioner asserts that as director of Asia Operations, the Beneficiary will be responsible for establishing short-term and long-term objectives to meet company's business expansion plans related to the Asian market.

(iii) Exercises wide latitude in discretionary decision-making. The Petitioner asserts that as director of Asia Operations, the Beneficiary will exercise wide latitude in discretionary decision-making over the company's Asia Operations.

(iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization. The Petitioner asserts that the Beneficiary will receive only general direction from "the company's CEO/President and VP/Asia Operations, which are the highest level executives of the company."

The Beneficiary's duties appear to mainly include her duties as general manager of the Asia offices, and the Petitioner did not quantify the time the Beneficiary spends on duties specifically related to the U.S. entity. For this reason, we cannot determine whether the Beneficiary would be primarily performing the duties of an executive in the United States. See IKEA US, Inc. v. U.S. Dept. of Justice, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Given her purported high-level and full-time responsibilities in Asia, it is not clear how she will add additional duties to her work schedule in the United States.

On appeal, the Petitioner refers to the Beneficiary's direction of its "business and expansion and growth plans related to the Asia market," but it does not clarify the scope of its U.S. operations or identify how it plans to expand its U.S. operations into Asia. The Petitioner states that teams in China and the United States will assist the Beneficiary "with projects that require cross-country cooperation including presenting initial plans to [the Beneficiary], per targets established by [the Beneficiary], providing weekly updates via weekly meetings led by [the Beneficiary], and managing and

implementing the projects directed by [the Beneficiary]." It provides examples of projects, including a "product cost reduction program," pursuant to which the Beneficiary "will direct the US engineering, warehouse, and manufacturing management teams and industrial analyst to ensure that adequate input is provided to the Asia teams to incorporate into their overall worksheet and hold weekly phone calls with the teams for issues reconciliation until all product lines are reviewed and the optimal cost targets are reached." However, it does not detail the product lines or identify the "cost targets" to be reviewed or the "US engineering, warehouse, and manufacturing management teams" that she will direct.

Another project example to be managed by the Beneficiary is "the worldwide launch of a new [redacted] robotics product line," pursuant to which the Beneficiary will "direct the cross-country efforts between US engineering, marketing, curriculum development, industrial analysis, graphics design and logistics teams and their counterparts in Asia." It further states that she will "set goals for the management teams in [redacted], the [redacted] in [redacted], and the sales and marketing teams in both [redacted] and [redacted] offices to ensure timely launch of the new line;" and that the "US teams will work to provide the content and specs of the new lines for [the Beneficiary] to review and approve." However, as noted below, the Petitioner's initial organizational chart submitted to the record does not support the existence of U.S. engineering, marketing, curriculum development, industrial analysis, graphics design and logistics teams, nor does it indicate her authority to direct and set goals for them.

The Petitioner has provided multiple job descriptions which broadly focus on the Beneficiary's discretionary authority and functions, whose relevance is unclear given the unspecified nature of the Petitioner's U.S. business, the scope and size of its U.S. operation, and the division of the Beneficiary's specific duties between the U.S. business and the organization abroad. In sum, it is unclear precisely what the Beneficiary would actually be doing for the Petitioner and how she will spend her time. The record does not demonstrate that she would be employed 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.

B. Staffing and Organizational Structure

The Petitioner indicates that it a developer of robotics products and [redacted] toys and stated on the petition that it had approximately 130 employees in the United States. With the petition, the Petitioner submitted an organizational chart identifying 14 employees of the Petitioner including the Beneficiary, and indicating that the Beneficiary would have no direct subordinates.[5] The chart shows that the Beneficiary will be directly supervised by [redacted] VP Asia Operations, and that [redacted] is supervised by [redacted] President of the Petitioner. The Petitioner stated in a support letter with the petition that the Beneficiary would receive only general supervision from [redacted] and [redacted]. The chart does not reflect all of the Petitioner's claimed 130 employees.[6]

[5] Inherent to the definition of executive capacity at section 101(a)(44)(B) of the Act, the organization must have a subordinate level of managerial employees for a beneficiary to direct and they must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise.

[6] The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

In the RFE, the Director advised the Petitioner that it did not provide sufficient information about the duties of the Beneficiary's subordinate staff and the "senior functional managers." Thus, the Director noted that the authority that the Beneficiary will have in the U.S. organization in unclear, and that the Petitioner had not demonstrated that she will have a staff that will perform the day-to-day, non-qualifying duties of the organization.

In response to the RFE, the Petitioner submitted a different organizational chart. It also shows that the Beneficiary will be directly supervised by [redacted] VP Asia Operations, and that [redacted] is supervised by [redacted] "CEO/President and Co-Founder" of the Petitioner. However, next to [redacted] on the chart is [redacted], "Co-Founder and Chief Technology Officer" of the Petitioner.[7] This chart lists two direct and one indirect subordinates for the Beneficiary, and lists significantly more employees of the Petitioner than the previous chart submitted with the petition. It also lists teams based in China. The Petitioner did not explain the discrepancies between the chart it submitted with the petition and the chart it submitted in response to the RFE.[8] A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See Matter of Izummi, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

As previously noted, in the denial decision, the Director stated that the record does not demonstrate how the Beneficiary will direct and control staff located abroad while she is in the United States. She further stated that the record does not provide specifics about how the staff abroad performs functions related to the U.S. entity's operations. She noted that we are unable to determine the amount of time the staff abroad would spend on duties related to the U.S. operation over the operation abroad. Thus, she determined that the Petitioner did not sufficiently demonstrate that the Beneficiary will have a staff in place that primarily focuses on the functions related to the Beneficiary's position in the United States.

On appeal, the Petitioner asserts that the Beneficiary will oversee seven managers that she currently manages in China, as well as an industrial engineering analyst in the United States.[9] It also asserts that she will receive support from the company's U.S. marketing team. It states that she will remotely supervise the managers in China via email and telephone, and "bi-monthly in-person meetings in P.R. China." As noted above, it states that the teams in China and the United States will assist the Beneficiary with projects that require cross-country cooperation, including a product cost reduction program pursuant to which the Beneficiary "will direct the US engineering, warehouse, and manufacturing management teams and industrial analyst to ensure that adequate input is provided to the Asia teams," and the "the worldwide launch of a new [redacted] robotics product line" pursuant to which the Beneficiary will "direct the cross-country efforts between US engineering,

[7] [redacted] does not appear to have any direct subordinates.

[8] The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, a petitioner cannot offer a new position to a beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position. See 8 C.F.R. § 103.2(b)(1). If significant changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the Petitioner in its response to the Director's RFE changed the organizational hierarchy of the Petitioner rather than clarifying it.

[9] The analyst's duties include "monitoring regulatory requirements, component sourcing and quoting, and factory workflows."

marketing, curriculum development, industrial analysis, graphics design and logistics teams and their counterparts in Asia."

Upon review, the record does not clearly establish the management structure in place at the Petitioner's U.S. operation. The first organizational chart indicates that the Beneficiary will be directly supervised by [redacted] VP Asia Operations, and that [redacted] will be supervised by [redacted] President of the Petitioner. However, there are ambiguities in the record surrounding the employment of each of these key employees. The Petitioner did not submit a position description for either position. Thus, we cannot determine how much time either man devotes to the management of the company, what duties he performs, or the extent to which he relieves the Beneficiary from engaging in non-executive duties. The second organizational chart shows [redacted] "Co-Founder and Chief Technology Officer," at the top of the hierarchy next to [redacted] but his role is also unclear. Section 101(a)(44)(B)(iv) requires that the Beneficiary receive only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization. Although the Petitioner asserts that the Beneficiary will receive only general direction from the company's CEO/President and VP/Asia Operations, this assertion is not supported by the record. The Petitioner must support its assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010).

Additionally, we note the discrepancies in the Petitioner's representations of its U.S. workforce. Although it stated on the petition that it had approximately 130 employees in the United States, its initial organizational chart showed only 14 employees. See Matter of Ho, 19 I&N Dec. at 591-92. The record contains no evidence of the Petitioner's payroll. The Petitioner's 2018 tax return includes the results of eight other separate corporations included in a controlled group, so the salaries and wages paid solely by the Petitioner are unclear. Overall, the evidence does not adequately document the Petitioner's staffing.

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 or a major component.

While we may consider the Beneficiary's role in the larger qualifying organization,[10] the Petitioner here has not sufficiently documented the responsibilities of her superiors or of the employees who are claimed to support the Beneficiary's executive position. Accordingly, it has not established how the organization is managed, or supported its claim that the Beneficiary is primarily focused on its broad goals and policies. Based on the evidence submitted with the instant petition, the Petitioner has not met its burden to establish that it would employ the Beneficiary in an executive capacity. Accordingly, the appeal will be dismissed.

[10] See Matter of Z-A-, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016).

III. EMPLOYMENT ABROAD

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its arguments regarding whether the Beneficiary was employed abroad in a managerial or executive capacity. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.