U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13477495

Date: DEC. 28, 2020

Appeal of California Service Center Decision

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

The Petitioner, an international trading company, seeks to continue the Beneficiary's temporary employment as its chief financial officer (CFO) under the L-1A classification for nonimmigrant intracompany transferees.[1] 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, as required, that it would employ the Beneficiary 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, the Petitioner has not met this burden. Accordingly, 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 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.*

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

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period September 27, 2018, until September 26, 2019. 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.

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 to be addressed is whether the Petitioner established that it would employ the Beneficiary in an executive capacity under the extended petition. 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.

When examining the executive capacity of a given beneficiary, we will look to the petitioner's description of the job duties. *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

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.

The Petitioner stated it was formed in 2018 and is engaged in international trade, specifically the distribution of health products. At the time of filing, the Petitioner claimed to have 10 employees and $811,860 in gross earnings, and stated that the Beneficiary would be compensated $60,000 annually. The Petitioner's organizational chart indicates that the organization is divided into three departments: sales, marketing, and purchasing, and the Beneficiary will directly supervise the three corresponding managers of each department. The Petitioner indicated that the Beneficiary has performed and will continue to perform the following duties as CFO:

- Develop the organization's overall financial accounting and financial management systems;
- [D]evelop the financial procedures and standards, and budget management;
- Establish company's financial and accounting policies, goals, and objectives;
- Develop financial business plans and forecasts;
- Oversee financing strategies and activities, as well as banking relationships;
- Prepare financial statements;
- Review financial statements to determine progress and status in attaining objectives; formulate planning recommendations to the board of directors;
- Develop and implement finance, accounting, billing, and auditing procedures;
- Oversee each department to ensure proper maintenance of all accounting systems and function; etc.

In response to the Director's request for evidence (RFE), the Petitioner provided the following expanded overview of the Beneficiary's duties, along with the percentages of time he would devote to each area of duties:

1. Develop and adjust the organization's overall financial accounting and financial management systems; Responsible for the company's present financial condition, taking into consideration risk and liquidity; Identify and report what areas of a company are most efficient and how the company can capitalize on this information; develop the financial procedures under standards, and budget management; Establish and adjust companies financial and accounting policies, goals, and objectives; Develop or adjust financial business plans and forecasts; Oversee the capital structure of the company, determining the best mix of debt, equity and internal financing; Oversee the finance function and act as the chief financial spokesperson for the organization; Oversee implementation of financing strategies and activities, as well as banking relationships; developed and utilized forward-looking, predictive models and activity-based financial analyses to provide insight into the organization's operations and business plans; Engage the finance meetings of the board to develop and/or adjust short-term, medium term, and long-term financial plans and projections;

   Percentage of time required: 30%

2. Oversee the financial statements; Present and report accurate and timely historical financial information of the company; Review financial statements to determine progress and status in attaining objectives; Formulate planning recommendations to the board; Review and approve preparation and finalization of monthly and annual financial reporting materials; Work with the CEO on the strategic vision including fostering and cultivating stakeholder relationships, as well as assisting in the development and negotiation of contracts; Assess the benefits of all perspective contracts and advise the COMPANY on programmatic design and implementation matters; Oversee cash, investment, and asset management;

   Percentage of time required: 20%

3. Evaluate potential investment projects and products; report and make financial recommendations to the board; Participate in developing new business and products, specifically: assist the Board in identifying new funding or product or project opportunities, the drafting of prospective programmatic budgets, and determining cost effectiveness of perspective service delivery; Report to the board regarding financial, investment, budget issues; Report directly to the Board and directly on all strategic and tactical matters as they relate to budget management, cost benefit analysis, forecasting needs and the securing of new funding; ensure adequate cash mode can meet the organizations need; Attend Board meetings, including being the lead staff on the audit/finance events; Monitor banking activities of the organization;

   Percentage of time required: 15%

4. Develop, adjust and oversee implementing finance, accounting, billing, and auditing procedures; Oversee each department to ensure proper maintenance of all accounting systems and functions; Ensure maintenance of appropriate internal controls and financial procedures; Oversee the management and coordination of all fiscal recording activities for the organization including, such as organizational revenue/expense and balance sheet reports; Oversee all purchasing and payroll activity for staff and participants; Oversee the production of monthly reports including reconciliation with financial statements and cash flow projections; Oversee Accounts Payable and Accounts Receivable and ensure a disaster recovery plan is in place;

   Percentage of time required: 15%

5. In charge of fund raising, revenue management, cost management, and profit management; Review and manage all costs and expenses; Analyze cash flow, cost controls, expenses, and investment proposals; implement internal audit; Oversee the implementation of financial plan; Coordinate audits and proper filing of tax returns; Provide the COMAPNY with an operating budget and work with the Board to ensure programmatic success through cost analysis support, and compliance with all contractual and programmatic requirements, such as interpreting legislative and programmatic rules and regulations to ensure compliance with all federal, state,

local and contractual guidelines, ensuring that all government regulations and requirements are disseminated to appropriate personnel, and monitoring compliance; Ensure adequate controls are installed and that substantiating documentation is approved and available such that all purchases may pass independent and governmental audits;

Percentage of time required: 10%

6. Oversee budgets and financial management of organization; Supervise investment and raising of funds for business; Recommend yearly budget for board approval; Prepare financial analysis for contract negotiations and product investment decisions: Oversee budgeting, and the implementation of budget, so as to monitor progress and present operational metrics both internally and externally; Train the relevant staff on raising awareness and knowledge of financial management matters; Develop and maintain systems of internal controls to safeguard financial assets of the organization; Investigate cost effective benefit plans and other fringe benefits which the organization may offer employees and potential employees with the goal of attracting and retaining qualified individuals; assist in the design, implementation, and timely calculations of wage incentives, commissions, and salaries for the staff; overseas business insurance plans and health care coverage announced it;

   Percentage of time required: 10%

While these detailed overviews of duties suggest that the Beneficiary holds a heightened degree of authority within the organization, the Petitioner did not explain how the stated duties fall within the definition of "executive capacity."

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. To show that a beneficiary will "direct the management" of an organization, a petitioner must show how the organization is managed and demonstrate that the beneficiary will 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.

Here, the Petitioner stated that the majority of the Beneficiary's time will be devoted to the "finance function," indicating that he will be responsible for developing, adjusting, and overseeing the organization's financial accounting and financial management systems. Specifically, the Petitioner claimed that the Beneficiary is responsible for overseeing the company's accounting, billing, and auditing procedures, analyzing cash flows, implementing internal audits, filing tax returns, and ensuring compliance with federal, state, local and contractual guidelines. While we observe that a company's CFO is generally tasked with the financial planning and forecasting functions of a company, the duties attributed to the Beneficiary appear to involve numerous non-qualifying, day-to-day duties that are not executive in nature. For example, the Petitioner claims that the

Beneficiary will file tax returns, monitor the organization's banking activities, oversee purchasing and payroll activity for staff and participants, reconcile financial statements and cash flow projection, and oversee accounts payable and accounts receivable. Based on these statements, it appears that the Beneficiary is directly involved in general accounting and bookkeeping duties, and will have substantial involvement in non-qualifying operational duties.

Moreover, although the Petitioner maintains that the Beneficiary will oversee the organization's financial activities, it does not explain who, aside from the Beneficiary, will carry out these activities. While we acknowledge the Petitioner's claim that the Beneficiary will "train the relevant staff on raising awareness and knowledge of financial management matters," there is no indication that such personnel had been newly hired at the time of filing. As noted above, the Petitioner had only three departments at the time of filing: sales, marketing, and purchasing. Although the Petitioner claims that the Beneficiary "will direct the management of each department through department managers," there is no evidence demonstrating the existence of a finance or accounting department, nor is there any claim or indication that the Petitioner employs a subordinate staff tasked with accounting, bookkeeping, or other related financial tasks. Although the Petitioner vaguely stated that it relies on outside contractors for many operational functions, it has provided no evidence that an external (or internal) financial or accounting department was accessible to relieve the Beneficiary from performing non-qualifying financial activities at the time of filing. An employee who primarily performs the tasks necessary to produce a product or to provide services, such as financial and accounting functions described herein, is not considered to be "primarily" employed in a managerial or executive capacity. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). Based on these observations, it is unclear how the Beneficiary would be able to "direct the management" of the organization as claimed by the Petitioner.

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." Section 101(a)(44)(B) of the Act. In response to the RFE, the Petitioner stated that the Beneficiary "will establish and adjust company's management policies, objectives, and strategies, esp. on finance, [and] formulate the company's financial strategic planning to achieve the objectives of the business plan with the aim of maximizing return and minimizing risk for the company." It also stated that as one of the company's two top executives, the Beneficiary "will only determine the important issues." However, these vague phrases do not explain the actual underlying tasks that the Beneficiary would carry out on a daily basis. Aside from establishing that the Beneficiary has discretion over operational and policy matters, it is unclear precisely what the Beneficiary would actually be doing.

On appeal, the Petitioner asserts that the Director's decision did not contain a full analysis of the evidence presented, and maintains that its description of duties was sufficient to establish that the Beneficiary will be employed in a primarily executive capacity. We acknowledge that the Director provided an alternative analysis on several elements of managerial capacity when evaluating the evidence, despite the Petitioner's specific contention that the proffered position is primarily executive in nature. Nevertheless, we conduct review on a *de novo* basis, and have thoroughly reviewed the submitted evidence and the Petitioner's claims with regard to the Beneficiary's executive capacity. For the reasons discussed above, however, we are not persuaded that the Beneficiary will be employed in a capacity that is primarily executive in nature.

Although 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. Staffing and Organizational Structure

As noted, the Petitioner indicates that it operates an international trading company specializing in health products, and claims that it had 10 employees when it filed the petition in September 2019. The Petitioner submitted an organizational chart, indicating that the beneficiary reports directly to the CEO, and identifying the Beneficiary's direct subordinates as a sales manager, a marketing manager, and a purchasing manager. The chart further depicted a total of six sales representatives reporting to the sales manager; an assistant, a software engineer, and a designer reporting to the marketing manager; and four purchasing agents reporting to the purchasing manager. According to the chart, half of the sales representatives, the designer, and all of the purchasing agents are based abroad. In response to the RFE, the Petitioner submitted an updated organizational chart showing some turnover among its lower-level staff and indicating that the initial sales manager had been replaced.

The Petitioner also submitted evidence of wages paid to staff in the second half of 2018, January to August 2019, and the first four months of 2020, along with copies of W-2 forms for its employees for 2019. However, the record contains no evidence, such as quarterly tax returns or pay stubs, for the period from September to December 2019. Although the Petitioner claimed to employ 10 individuals at the time of filing, the lack of payroll documentation for September 2019 raises questions regarding the actual staffing of the organization at the time of filing. At best, we can determine from the documentation submitted that, as of August 31, 2019, the Petitioner employed eight of the ten U.S.-based individuals listed on the organizational chart (excluding the sales manager and the software engineer).

Upon review, the record does not clearly establish the management structure in place at the Petitioner's organization. The Petitioner has stated that the Beneficiary "directs the management of the whole U.S. entity through department managers." However, there is no evidence that a sales manager was actually employed by the Petitioner at the time the petition was filed, raising questions regarding the nature of the oversight and supervision of the Petitioner's sales representatives and the sales department in general.[2] For example, the overview of the sales manager's position provided by the Petitioner states that he will establish sales strategies to meet objectives, direct department staff to complete daily tasks, determine and manage the department budget and develop pricing strategy, evaluate customer and market research reports and competitor data and implement a sales plan,

[2] The record contains a W-2 form for [redacted], the claimed sales manager at the time of filing, indicating that he earned $2,540.08 in 2019. However, the record contains no information regarding his date of hire, and he is not on any quarterly tax returns or pay stubs prior to August 31, 2019. While it appears he was hired in the latter months of 2019, the evidence in insufficient to establish that he was employed by the Petitioner on the date the petition was filed.

oversee employee performance, liaise with media and advertising, and be responsible for managing the company's full range of products. The lack of evidence demonstrating the employment of a sales manager at the time of filing raises significant questions regarding whether the Beneficiary's employment is primarily executive in nature, as it appears that the Beneficiary would be responsible for assuming the duties of the sales manager in his absence.

Further, as discussed above, the record contains no evidence that the organization has a finance or accounting department, or subordinate staff on the payroll, to relieve the Beneficiary from performing non-qualifying accounting and financial tasks. Although the Petitioner claims that the Beneficiary will direct the management of the entire organization through subordinate department managers, the obvious lack of a finance or accounting manager and lower-level personnel who would absolve the Beneficiary from the responsibility of performing day-to-day, non-qualifying financial activities undermines the Petitioner's claim that the Beneficiary's employment is in a primarily executive capacity.

In addition, we note the Petitioner's submission of a list of accomplishments of the Beneficiary during his first year of employment with the company, which included his approval of budgets for the administrative and human resources departments that were proposed by the department managers. Again, referring back to the organizational chart, there is neither an administrative department nor a human resources department within the Petitioner's organization, and there is no indication that any of the department managers or lower-level staff are tasked with these basic administrative and operational functions. Based on this additional deficiency, we cannot determine who performs the essential administrative and operational tasks of the company, or the extent to which the Beneficiary is relieved from engaging in such non-executive duties.

Overall, the evidence does not adequately document the Petitioner's employment of critical staff who would relieve the Beneficiary from involvement in the day-to-day financial management, supervision and other operational and administrative aspects of the organization. Again, while the Petitioner vaguely indicates that it has relied on independent contractors for assistance with various operational matters, it has not documented its use of such services.

On appeal, the Petitioner asserts that the Director did not consider the reasonable needs of the organization. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), 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. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS 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) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the Beneficiary from primarily performing operational and administrative tasks, the Petitioner is ineligible by regulation for an extension. In the instant matter, the Petitioner has not reached the point that it can employ the Beneficiary in a predominantly executive position.

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 an owner or sole managerial employee.

Here, the Petitioner has not sufficiently documented its claimed employment of the sales manager who is claimed to support the Beneficiary's executive position. Nor has it demonstrated that it employs a subordinate staff of individuals tasked to perform financial, accounting, human resources, or general administrative tasks, such that the Beneficiary would be relieved from performing such non-qualifying tasks. Accordingly, the Petitioner has not established how the organization is managed, nor has it supported its claim that the Beneficiary is primarily focused on its broad goals and policies or that he is relieved from involvement in non-executive tasks necessary for its day-to-day operations.

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 under the extended petition. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.