U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7051744

Date: DEC. 30, 2019

Appeal of California Service Center Decision

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

The Petitioner, describing itself as a transportation and logistics services company, seeks to temporarily employ the Beneficiary as the general manager of its new office[1] in the United States 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 on multiple grounds, concluding that the record did not establish that: (1) the Petitioner had secured sufficient physical premises for its new office in the United States; (2) the Beneficiary was employed in a managerial or executive capacity abroad for one continuous year in the three preceding the date the petition was filed, (3) the Beneficiary was employed abroad in a managerial or executive capacity; and (4) the Beneficiary would be employed in a managerial or executive capacity in the United States within one year.

On appeal, the Petitioner asserts it rented office space sufficient to begin its initial operations during the first year. Further, the Petitioner submits foreign payroll documentation for the Beneficiary on appeal and contends that this demonstrates that he was employed as an executive overseeing subordinate managers for one continuous year in the three preceding the date the petition was filed. Lastly, the Petitioner points to a provided hiring timeline and asserts that this establishes that it would be sufficiently developed within one year to support the Beneficiary in an executive capacity.

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. We will, however, withdraw the Director's finding with respect to whether the Petitioner secured sufficient physical premises to launch its business.[2]

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[1] The term "new office" refers to an organization which has been doing business in the United States 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 no more than one year within the date of approval of the petition to support an executive or managerial position.

[2] We conclude that the Petitioner has submitted adequate evidence to demonstrate that it more likely than not acquired sufficient physical premises to begin its initial operations in the United States.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, 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 their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. EXECUTIVE CAPACITY WITH THE FOREIGN EMPLOYER

We will first analyze whether the Petitioner established that the Beneficiary is employed abroad in a managerial or executive capacity. The Petitioner does not claim that the Beneficiary has been employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary will has been employed in an executive capacity.

The statute defines an "executive capacity" as 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 foreign executive capacity of a given beneficiary, we will review the petitioner's description of the foreign job duties. The petitioner's description of the foreign 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 foreign employer's organizational structure, the duties of a beneficiary's foreign subordinates, the presence of foreign employees to relieve a beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role abroad. Accordingly, we will discuss evidence regarding the Beneficiary's foreign job duties along with evidence of the nature of the foreign employer'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 performs 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 is *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the foreign

employer's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner indicated that the Beneficiary's foreign employer "was created to meet the needs of specialized enterprises in the design, production, supply and installation of pre-fabricated and modular buildings and special modules of technical purposes" and that it had "contracted with various business entities to provide modular buildings and metal structures." The Petitioner stated that the foreign employer was also engaged in various other business activities, such as manufacturing finished metal products, construction, architecture, engineering and technical design, geological exploration, amongst others.

The Petitioner indicated that the Beneficiary, as general manager, was tasked with the following:

Direct work with the Director of the Company (15% of the time)

- Develop and submit to the Director for approval strategy and general development policy and commercial goals and objectives,
- Compile and submit to the Director information and quarterly reports, such as information on assets and authorized capital and receivables and payables,
- Forward proposals for the dismissal of managers/head of departments, and
- Develop and submit proposals and recommendations on wages and other measure of material incentives, and Introduce new lines of business development.

Economic and management activities of the Company (45% of his time):

- Supervise the implementation of the development strategy, general policy, and general goals and objectives of the company,
- Organize the work and effective interaction of the Company's structural units,
- Develop and distribute to heads of structural units of the Company (Department of Economic Planning and Finance, Technical Department, Human Resources Department) long-term and short-term goals and objectives to ensure profitability, efficiency, competitiveness and financial and economic sustainability,
- Hold weekly meetings with heads of departments in order to ensure and monitor correct and achieve the set long-term and short-term goals and objectives of the Company,
- Analyze reports and determine areas of activity that need improvement, and develop immediate goals for departments, and
- Monitor the implementation of measures to improve the efficiency of using material resources, reduce cost, and improve the system of control over their use.

Financial management of the Company (20% of his time):

- Approve financial calculations for the cost in introducing new equipment and expenditures for the production development fund,
- Implement financial and credit plan, sales plan, profit plan and other financial calculators,
- Cessation of products that did not sell, and
- Develop proposals to prevent unused inventory, increase profitability of production, reduce production costs, strengthen financial discipline and business accounting, and improve the production management apparatus.

Human resources management (15% of his time):

- In conjunction with department heads, develop and control the implementation of personnel and social policies, including motivational policies and policies for training and developing employees, Participate in decision-making on hiring, transferring, promotion and dismissal of workers,
- Supervise head of human resources related to reward and award presentations and make decisions as to the issuance of incentives, and
- Develop and submit proposals and recommendations on wages.

Marketing, PR and company face (5% of the time):

- Determine the terms of the main agreements and contracts and monitor the progress of negotiations, Set policies to restore disgruntled or lost customers,
- Research and offer additional business opportunities to the Director, and
- Approve the content of advertising brochures and flyers.

The Petitioner has not submitted a sufficiently detailed duty description that sufficiently describes the Beneficiary's day-to-day executive level duties abroad and which credibly establishes that he devotes his time primarily to qualifying tasks. The Beneficiary's duty description includes several generic duties that could apply to any executive acting in any business or industry and they provide little insight into the actual nature of his role abroad. The Petitioner provided insufficient examples and little supporting documentation to demonstrate the Beneficiary's performance of qualifying duties abroad, such as strategies and general development policies he developed, commercial goals and objectives he implemented, capital he managed, managers or heads of departments he dismissed, wage or incentive recommendations he made, or new lines of business development he introduced. Likewise, the Petitioner did not adequately detail or document long-term and short-term goals and objectives for profitability, efficiency, and competiveness the Beneficiary put in place or corrected, areas of activity he improved, material resource measures he implemented, new equipment and production development funds he controlled, and credit, sales, and profit plans he established.

In addition, the Petitioner did not articulate or substantiate with supporting documentation the unused inventory issues the Beneficiary prevented, production costs he reduced, production management he improved, personnel, social, motivational, or training policies he oversaw, decisions he made on the issuance of incentives, or recommendations on wages he made. It also did not detail or document agreements or contracts the Beneficiary negotiated, policies to restore disgruntled customers he set, additional business opportunities he recommended to the director, or advertising he approved. In fact, the record includes no supporting documentation reflecting the Beneficiary acting in his role as general manager abroad nor evidence demonstrating him delegating tasks and responsibilities to his claimed subordinate department heads. The lack of detail and documentation regarding the Beneficiary's asserted foreign capacity is particularly notable given that the Petitioner asserts that he has acted in this role since January 2016.[3] 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).

[3] The petition was filed on March 11, 2019.

Even though the Beneficiary holds a senior position within the foreign employer, the fact that he manages or directs the business does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a foreign position be "primarily" executive in nature. *Id.* The Beneficiary may exercise discretion over the foreign employer'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 abroad are 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, the reasonable needs of the organization are taken into account in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Petitioner submitted a foreign organizational chart indicating that the Beneficiary oversaw a secretary and directors of economic planning and finance, technical, and human resources departments. The director of the economic planning and finance department was shown to supervise a chief accountant, a lawyer, specialists in estimates and contract work, an IT specialist, and a sales department. Further, the chart indicated that the director of technical support oversaw a technical control department consisting of a chief engineer, a director of operations as well as several operational subordinates, and a head of material support also supervising several subordinates. Finally, the director of the human resources department was shown to supervise a human resources specialist. In total, the foreign organizational chart reflected approximately 30 employees.

As discussed, the Petitioner asserts that the Beneficiary qualifies as an executive abroad. 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.*

The Petitioner submitted little supporting documentation to substantiate the foreign employer's asserted organizational chart. For instance, the Petitioner provided 2018 Russian Federation tax documentation reflecting that company earned 49,506,000 rubles in revenue and that it had 48,889,000 in "normal business expenses" during that year; as well as several contracts signed by its director for the provision of modular buildings and other services dating from May 2017 through the date the petition was filed. However, the Petitioner submitted no supporting evidence to substantiate the Beneficiary's asserted subordinates acting in their claimed positions, including foreign payroll documentation or other similar evidence. In addition, as mentioned, there is no supporting evidence

on the record demonstrating the Beneficiary acting in his role as general manager or reflecting his delegation of duties and responsibilities to his claimed subordinate department heads or to the company's various other asserted employees.

Similar to the Beneficiary's asserted duties, the Petitioner also provided generic duty descriptions for the Beneficiary's claimed subordinate department heads that lacked credibility. For example, the Petitioner stated that the financial director was tasked with moving financial resources, paying wages in a timely fashion, managing economic planning and negotiations with major customers, maximizing profits, implementing mechanized and automated processing of planned accounting information, developing financial strategy, forecasting budgets, and concluding and implementing contracts. However, there were no credible details to properly substantiate the financial director's position, such as an indication as to the financial resources she managed, negotiations with major customers she handled, profits she was responsible for maximizing, automated processes she established, financial strategies she put in place, or budgets she oversaw.

Likewise, the Petitioner explained that the technical support director was responsible for improving the efficiency of subordinate departments, implementing the company's strategies, long and short-term plans and objectives, improving business processes, conducting regular technical analysis, reducing production costs, controlling material resources, regulating inventories, and designing new plants, structures, and technical means. Again, these duties could apply to any manager acting in a technical capacity in any field and there were no specifics as to the foreign employer in this description or credible details to sufficiently corroborate this subordinate position. For instance, the Petitioner did not explain efficiencies the technical director implemented, plans, goals, or objectives from the Beneficiary he put in place, business processes he improved, technical analysis he conducted, production costs he reduced, material resources or inventories he managed, or new plants or structures he designed.

Furthermore, the Petitioner explained that the human resources director was tasked with creating a data bank on quantitative and qualitative composition on personnel, developing personnel, social, motivational and training policies, ensuring compliance with labor laws, preparing materials for bonuses and awards, and developing measures to strengthen labor discipline and reduce staff turnover. Again, these asserted duties include no credible details to properly corroborate this claimed role subordinate to the Beneficiary, including detailed discussion of her role in the business, such as personnel, social, motivational, or training policies she developed, labor laws she ensured compliance with, or measures she implemented to strengthen labor discipline and reduce staff turnover. In sum, the duties of the Beneficiary's asserted department heads included no credible specifics, and could apply to middle managers acting in similar roles in any company. Therefore, the submitted evidence did not sufficiently demonstrate that the Beneficiary was employed abroad within a complex organizational hierarchy where he was primarily focused on the broad goals and policies rather than the day-to-day operations.

In denying the petition on this ground, the Director further emphasized that the Beneficiary attested his foreign employer was the [redacted]" in an August 2017 DS-160 submitted to the Department of State (DOS) when applying for a B1/B2 nonimmigrant visa, despite claiming in this matter that he was employed with the foreign employer from January 2016 to the date the petition was filed in March 2019. On appeal, the Petitioner states that the "Beneficiary had been

on a business trip in [redacted] Russia at the company – [redacted] which is a branch of [the Petitioner]." In addition, the Petitioner submits translated Russian corporate document specific to [redacted] indicating that it "conducts business on behalf of the [Petitioner]" and points to foreign tax documentation it claims demonstrates that the Beneficiary was employed by this company abroad.

The evidence provided by the Petitioner does not sufficiently overcome the inconsistency between the Beneficiary's foreign employment claimed in this matter and that reported to DOS in August 2017. As discussed, the Beneficiary attested to DOS that he was employed by [redacted], while the current petition states he was employed by a different foreign employer in August 2017. The Petitioner does not sufficiently explain this discrepancy and submit objective evidence to overcome it. For instance, it does not indicate what the Beneficiary did for [redacted] or if he is still currently employed by this claimed branch company. The Petitioner also did not describe how the Beneficiary divides his time between these two companies nor did it describe or document his claimed [redacted] business trip. It also did not provide sufficient objective contemporaneous documentation to substantiate his activities with [redacted] or the foreign employer. Therefore, the aforementioned material discrepancy, particularly in light of the lack of evidence of the Beneficiary's foreign employment asserted in this petition, leaves substantial uncertainty as to whether he was employed by the foreign employer as claimed. The Petitioner must resolve inconsistencies and discrepancies 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).

Therefore, in sum, the Petitioner has provided inconsistent and insufficient evidence to establish that the Beneficiary acts in an executive capacity with the foreign employer. Likewise, the Petitioner did not demonstrate that the Beneficiary was employed by the foreign employer for one continuous year in the three years preceding the date the petition was filed.

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

The next 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 within one year of an approval of the petition. Because of the dispositive effect of the above finding of ineligibility; namely, our affirmation of the Director's conclusion with respect to the Beneficiary's asserted foreign executive capacity, we will only briefly address the issue pertaining to his proposed employment in the United States.

Upon review, we find that the Beneficiary's U.S. duty description is also overly vague as it does not effectively convey his day-to-day managerial or executive duties within one year. The Beneficiary's U.S. duty description also included general tasks that could apply to any executive launching a business in any business or industry; such duties did not provide insight into the actual nature of his role. These generic duties included establishing the branch, "arrang[ing] staffing/effective management," "establish[ing] the goals and policies," "develop[ing] a market strategy," "setting strategic goal[s]," making "ultimate investment and financial decisions," directing "the development of operation system [sic]," and analyzing the work and performance of his subordinates. The Petitioner provided insufficient specifics related to how the Beneficiary's day-to-day duties would fit specifically within the company's first year business plans.

For instance, the Petitioner provided few examples of the actions the Beneficiary would take during its first year of operation to assure that the business develops as necessary to support him in a managerial or executive capacity within one year. The Petitioner did not submit a comprehensive duty description for the Beneficiary in the United States, including the percentages of time he would devote to each of his tasks. Again, specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial or 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).

In the case of a new office petition, we also review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in analyzing whether the proposed managerial or executive position is plausible based on a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

The Petitioner provided an organizational chart reflecting that it would undertake substantial hiring during the first year, including staffing a chief operating officer (COO), an administrative assistant, a transportation manager, a director of sales, and a chief technology officer subordinate to the Beneficiary. In addition, the chart indicated it would hire several other operational employees underneath these proposed managers, including another administrative assistant reporting to the COO, drivers and a dispatcher, a marketing specialist, a sales person/freight broker, and an "IT specialist." In total, the chart showed that it would hire approximately 14 employees during the first year to support its proposed trucking business.

Beyond stating it would hire the aforementioned employees, the Petitioner did not demonstrate how it would sustain this level of staffing within the first year. For instance, the asserted salaries reflected that, at minimum, the Petitioner would have over $234,000 in annual payroll by the end of the first year. However, the Petitioner stated that it planned on purchasing only two trucks during the first year and that the foreign employer was investing only $45,000 in the new venture. The Petitioner provided no credible financial projections for the first year to establish that it is more likely than not it would be able to sustain its substantial proposed organizational chart or that it would require this many employees within one year. In sum, the Petitioner has provided vague business plans and unsupported hiring projections that do not credibly establish that it would likely be adequately staffed to support the Beneficiary in an executive capacity within one year.

For the above stated reasons, the Petitioner did not establish that the Beneficiary would act in a managerial or executive capacity within the first year.

IV. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that (1) the Beneficiary was employed in an executive capacity abroad, (2) the Beneficiary was employed with the foreign employer for one continuous year in the three preceding the date the petition was filed, or (3) the

Beneficiary would be employed in a managerial or executive capacity in the United States within one year.

ORDER: The appeal is dismissed.