U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9504992

Date: DEC. 31, 2020

Appeal of California Service Center Decision

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

The Petitioner, an analytics solutions provider, seeks to temporarily employ the Beneficiary as its Director of Consumer Packaged Goods (CPG), Analytics Solutions 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 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 record did not establish that the Beneficiary will be employed in an executive capacity. On appeal, the Petitioner asserts that the Director failed to consider evidence submitted in response to her request for evidence (RFE) regarding the Beneficiary's business strategy and planning duties, as well as evidence about the importance of the consumer packaged goods (CPG) team that the Beneficiary would lead.

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 sole issue for consideration on appeal is whether the Petitioner has established that the Beneficiary's proposed employment in the United States will be in an executive capacity. The Petitioner did not claim that the Beneficiary will be employed in a managerial capacity.

The term "executive capacity" is defined 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 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. Job 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 then 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 provided a description of the Beneficiary's job duties as Director of Consumer Packaged Goods (CPG), Analytics Solutions which indicated that he would divide his time as follows:[1]

[1] Another version provided in the Petitioner's initial supporting letter stated his division of duties differently, with business

- Business strategy, planning and pricing (30%)
- Meet with existing customers for account growth (25%)
- (Manage)[2] sales conversations with new accounts (10%)
- (Spearhead) workshops and brainstorming session with customers/prospects (25%)
- Team goal setting, performance review, hiring and capability development (10%)

In her decision, the Director found that duties comprising a majority of the Beneficiary's proposed responsibilities, including meeting with existing customers, sales conversations with new clients, and workshops and brainstorming sessions, were not executive in nature but involved providing a service. In particular, the Director noted that the some of the more detailed duties included under the broader responsibilities involved direct client contact. On appeal, the Petitioner focuses on the words "manage" and "spearhead," which it asserts indicate that the Beneficiary will not be performing these duties himself, but relying upon subordinates. In addition, it asserts that these are normal executive functions, and that it would be "ludicrous to assume that an executive such as the Beneficiary would just sit in an office and not engage in any of these functions." However, as noted above, the issue is not whether the Beneficiary will perform executive tasks *exclusively*, but rather whether he will *primarily* engaged in executive duties.

Further, while the inclusion of the words "manage" and "spearhead" in one of the two initial versions of the job description suggests that the Beneficiary would rely on others to have sales conversations and conduct workshops and brainstorming sessions with clients, the differing language and percentages of time devoted to these duties presents an unresolved inconsistency. More importantly, the Petitioner's description of the daily tasks the Beneficiary would perform to carry out these duties do not support the assertion that others will be performing them. For example, in explaining his responsibility of meeting with existing customers, the Petitioner indicates that the Beneficiary would "engage with existing customers," "understand key challenges in meeting defined goals," and "finalize key focus areas for improvement." While the Petitioner added subtasks under this last task which indicate that the Beneficiary would direct others in the provision of analytics solutions, the description of this duty as a whole indicates that the Beneficiary would be primarily engaged in non-executive tasks.

Similarly, a review of the tasks listed under the "workshops and brainstorming sessions" responsibility leads to the same conclusion. Here, the Beneficiary's tasks would include working with customers to set up brainstorming sessions, facilitating these sessions, and developing a "detailed approach plan" presumably based on the results of the sessions. As with the duty discussed above, the Petitioner included additional subtasks indicating that the Beneficiary would guide his team during the brainstorming sessions, help them conduct customer interviews, and review the execution plan put

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strategy and planning at 15%, meeting with existing customers at 50%, sales conversations at 10%, workshops and brainstorming at 15%, and team goal setting and performance review at 10%. The description of the tasks involved in carrying out these duties was identical in both cases, although this alternative version stated that the Beneficiary would "manage" sales conversations and "spearhead" workshops and brainstorming, while those two words did not initially appear in the version below. The Director did not reference this version in her RFE or decision, nor did the Petitioner in responding to the RFE or on appeal.

[2] While these terms in parentheses appeared in the alternative position description described in FN 1, they did not initially appear in the job description ultimately accepted by the Director, but were added with the Petitioner's RFE response.

together by the team, but overall the tasks described under this responsibility show that he would be performing operational sales tasks.

In addition, in describing the tasks involved in managing sales conversations with new accounts, the Petitioner states that the Beneficiary would define "go to market strategy" for the CPG business unit, and guide its development. But he would also engage with prospective customers and articulate how the company's analytics solutions could add value for them, which would include providing demonstrations of the company's products. Additional subtasks indicate that the Beneficiary would train and mentor sales teams and review their presentations. The daily tasks described here are almost entirely hands-on operational sales activities, and the Petitioner has not established that the duties of mentoring and reviewing work meet one of the high-level executive responsibilities set forth in the Act. We further note that in its initial filing, the Petitioner stated that the Beneficiary would have "frequent interaction with existing and prospective customers engaging in in-depth discussions..." which indicates that managing sales conversations and meeting with existing customers would comprise a greater proportion of his work hours than is indicated by the percentages provided.

Also, the daily tasks described under the "Team goal setting, performance review, hiring and capability development" responsibility also do not reflect the sort of high-level responsibilities spelled out in the four elements of the statutory of "executive capacity." Although these tasks show that the Beneficiary would be relieved of operational duties to some extent, several of them, such as "define goals for all team leads, optimally allocate responsibilities aligned to organization needs and individual strengths" and "periodically review progress on defined goals, provide feedback and guidance to help team meet required objectives" are limited to the setting of individual rather than broader component or organizational goals. This is also shown in the Petitioner's statement in responding to the Director's RFE that the Beneficiary "will be responsible for training the team on [redacted]s products and services..." [3]

The tasks identified under the "Business strategy, planning and pricing" responsibility involve setting goals for the CPG solutions component, including budget and sales targets, and designing its organizational structure. Whether these duties will comprise 15% or 30% of the Beneficiary's working time, however, the overall proposed duties and daily tasks for the proposed position do not show that the Beneficiary would primarily direct the management of the CPG solutions component of the Petitioner's organization, and thus that he would serve in an executive capacity.

[3] We note that in responding to the Director's RFE, the Petitioner asserts that his authority to hire and fire personnel shows the Beneficiary's wide latitude in discretionary decision-making and his receipt of only general supervision or direction. However, the authority over personnel actions is an element in the definition of a managerial position per section 101(a)(44)(A) of the Act. A petitioner claiming that a beneficiary will perform as a "hybrid" manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity.

B. Organizational Structure

The statutory definition of the term "executive capacity" focuses on an employee's elevated position within an organizational structure. Under the statute, such an employee 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 of one of its major components or functions, a petitioner must show how the organization, component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than its day-to-day operations.

Here, the Petitioner indicates that in the role of Director of CPG Analytics Solutions, the Beneficiary would have three direct reports, and would "continue to have oversight of his current India team from the U.S." As in his current role, he would report directly to the company's chief technology officer. The organization chart initially submitted supports these statements, but does not provide a view of the proposed position within the Petitioner's overall organization.

In addition to the organizational descriptions and charts, the Petitioner also submitted job descriptions for his three direct reports, one of whom is currently located in the United States. Two of these positions, despite having "Director" titles, clearly involve primarily operational duties such as "own client acquisitions and revenue from sales of the solutions portfolio" and "conduct solution presentations and participate in solution discovery workshops." The job description for the other position, a manager, includes both operational and supervisory duties, such as acting as a "bridge between delivery and client teams to ensure smooth delivery of services" and "lead(ing) client site teams in terms of mentorship, project oversight, support, client interaction and effective bridge with project managers." Although the Petitioner states that each of these subordinates are managers with a team that reports to them, this is not reflected in the organizational chart, and is only suggested in one of the job descriptions. This evidence, together with the analysis of the proposed job description above, shows that while the Beneficiary would be freed from performing some operational tasks, he would not be primarily focused on the broad goals and policies of the CPG component, but rather direct oversight of those performing operational duties.

The Petitioner asserts on appeal that the Beneficiary's duties "will be significantly higher and more managerial than those of his subordinates" and "would be focused on developing and directing the growth of this unit." However, the Petitioner has clearly stated that the Beneficiary would be an executive and not a manager, so having a higher percentage of managerial-level duties than his subordinates does not show that he would perform in an executive capacity.

III. CONCLUSION

The appeal is dismissed because the Petitioner has not established that the Beneficiary will be employed in the United States in an executive capacity.

ORDER: The appeal is dismissed.