U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35455023

Date: DEC. 31, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner is a provider of an advertising technology platform and related products. It seeks to continue temporarily employing the Beneficiary in the United States as vice president of business development. The company requests extension of his L-1A nonimmigrant visa classification as an intracompany transferee working in an executive capacity. See Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Petitioner's proposed continued employment of the Beneficiary would be in an executive capacity as claimed. Importantly, the Director determined that "the evidence in the record does not support your [the Petitioner's] claim that the beneficiary's subordinates perform primarily managerial duties." Essentially, the Director applied elements of the term "managerial capacity" to the Beneficiary's subordinates, even though a petitioner is only required to show that the *beneficiary* of the visa petition meet the statutory criteria of managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act; *see also* 2 USCIS Policy Manual L.6(C) and (D) (stating that a petitioner must only prove that "the beneficiary will be primarily engaged in managerial duties," when claiming managerial capacity, and that "the beneficiary will be primarily engaged in executive duties," when claiming executive capacity, respectively).

Because the Petitioner claims that the Beneficiary will be employed in an executive capacity, the Petitioner must establish that the Beneficiary meets all elements of that statutory definition, which states that a beneficiary's employment in an executive capacity must "primarily" involve: (1) directing the management of an organization or a major component or function of it; (2) establishing the goals and policies of the organization, component, or function; (3) exercising wide latitude in discretionary decision-making; and (4) receiving only general supervision or direction from higher-level executives, a board of directors, or stockholders of an organization. Section 101(a)(44)(B) of the Act. There is no requirement that a beneficiary's subordinates "primarily" perform managerial duties, a requirement that applies to a petitioner seeking to employ a beneficiary in a managerial capacity. *See* section 101(a)(44)(B) of the Act. Therefore, whether the Beneficiary's subordinates are primarily performing managerial or supervisory duties is not relevant for the purpose of determining the executive nature of the Beneficiary's proposed position.

Further, on appeal, the Petitioner asserts that the Director placed undue emphasis on the Beneficiary's number of subordinates. The Petitioner highlights other relevant factors and previously submitted evidence concerning the Beneficiary's own role and duties as well as the roles and duties of his subordinates explaining how they manage the Petitioner's sales subdivisions in the eastern, south central, and western districts of the United States. The record also shows that the Petitioner adequately described the various stages of its sales process and offered an account of who assumes which roles within that process and the duties they carry out. Importantly, evidence in the record explains how the Beneficiary directs the management of the critical sales component through a subordinate staff comprised of regional sales directors, sales development representatives, a sales engineer, and an account manager, who work together in carrying out key functions within that component. In addition, the record contains the Petitioner's organizational chart which shows the company's staffing hierarchy and that of the sales division that the Beneficiary directs. The Petitioner therefore adequately illustrated the Beneficiary's role as top executive of the sales division and adequately explained how the Beneficiary directs the management of the critical sales component through employees who execute that component's key functions.

Therefore, not only did the Petitioner further expound on the Beneficiary's role and job duties within the context of its organizational hierarchy, but it also explained how the staffing of the sales division relieves the Beneficiary from having to perform primarily non-executive functions. In sum, the Petitioner provided sufficient evidence which shows that the Beneficiary will more likely than not perform duties where he will primarily: (1) direct the management of the Petitioner's sales division, a major component of the organization; (2) establish the goals and policies of that component; and (3) exercise wide latitude in discretionary decision-making; while (4) receiving only general supervision or direction from the Petitioner's top executives, i.e., its CEO/board of directors and its managing director. The Petitioner has therefore satisfied the elements of the term "executive capacity." Section 101(a)(44)(B) of the Act.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, and pursuant to the above, we conclude that the Petitioner has met its burden of proof, and we will therefore sustain the appeal.

ORDER: The appeal is sustained.