U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12464473

Date: FEB. 9, 2021

Appeal of California Service Center Decision

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

The Petitioner, a marketing technology company, seeks to temporarily employ the Beneficiary in the United States as its CEO 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, concluding the record did not establish that (1) the Beneficiary's employment abroad was in a managerial or executive capacity; and (2) the Beneficiary would be employed in a managerial or executive capacity in the United States. On appeal, the Petitioner contends it has provided sufficient evidence to overcome the Director's concerns.

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 because the Petitioner did not establish the Beneficiary's position in the U.S. is in a managerial or executive capacity. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding the whether the Beneficiary's position abroad was 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).

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 we will address is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity in the United States. The Petitioner does not claim that the Beneficiary would be employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in an executive capacity.

"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 review the petitioner's description of the job duties. The petitioner's description of the 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).

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 explained that it created a platform that "serves as a single global marketplace for advertising talent, providing a 'one-stop shop' for companies that want to provide culturally-relevant, localized, digital advertising to their customers in geographic locations around the world." The Beneficiary will oversee the business expansion of the U.S. operations and his focus will be on "expanding employee count, clients, and revenue in the U.S." The Petitioner provided the following duties to be performed by the Beneficiary as follows:

Planning and Strategy Leadership: 70%

- With a focus on North America, including the U.S., evaluate social media landscape, and define innovative solutions based on the vision of where social media marketing is headed; develop high-quality business strategies and plans, ensuring their alignment with short-term and long-term objectives.

- Research needs of U.S. clients, and translate current and future client digital advertising needs into an overall integrated strategic plan for the company, with service offerings and technology objectives, goals and discrete action plans, and direct company employees to achieve strategic plan; oversee all operations and business activities to ensure desired results are produced, and are consistent with the overall strategy and mission.

- Act as "face" of [the Petitioner], publicizing and promoting company and product/service offerings to public and potential customers. Represent [the Petitioner] at conferences, meetings, and similar events. Engage in media interviews, and endeavor to create positive publicity for the company. Use excellent communication skills to engage in communications with the media, public, and employees, and effectively communicate the vision for the company.

- Apply strong commercial acumen, understanding of digital creative strategy, and knowledge of [the Petitioner's] client needs to ensure the optimization of digital creative ideation and production and outcomes. Apply understanding of creative digital marketing and the creative production process together with business skills and an understanding of the value of digital marketing to drive business strategies across different verticals.

- Provide strategic business and creative oversight to ensure [the Petitioner] meets and exceeds client demands via the platform and service. Effectively guide senior executives and senior managers to ensure that the company is producing the best creative product, balancing providing solutions to clients' needs with marking strong business decisions for the company.

- Facilitates inter-departmental communication. Create departments within [the Petitioner] in the U.S. and facilitate communications between these departments and ensure that they are working well together. Ensures that the company has strong communication between departments in place.

- Build trust relationship with key partners and stakeholders, and act as the point of contact for important shareholders.

- Review financial reports and makes decisions regarding resource allocation. Oversee the budgeting process for costs and provides oversight in cost and productivity analysis.

- Maintain deep market knowledge and industry knowledge; use knowledge to identify opportunities and risks for delivering the organization's services, including identification of competitor services, opportunities for innovation, and assessment of marketplace obstacles and technical hurdles to success.

Staff Development/Management and Delivery and Implementation Oversight: 30%

- Determines what positions are needed within the company to generate revenue growth. Develop and put into place hiring and training process, and oversee high-level Human Resources/Talent Acquisition managers to ensure that hiring and training of staff are successful.

- Directly responsible for managing, leading, and developing senior managers and executives. Continually evaluate executives' and managers' organizational roles and structure to ensure the leadership team is staffed and positioned to accomplish company goals and objectives as they continue to evolve.

- Ensure appropriate capabilities exist within the leadership team to support the requirements of the company as a whole. Lease and motivate subordinates to develop a high-performing team.

- For the executives and senior managers that report directly to the CEO, [the Beneficiary] will continue to be responsible for recruiting/hiring, supervision, employee development, recognition, salary administration, and staff evaluations. He will develop the leadership team to ensure high skill levels and directs employee development planning initiatives.

- Assigns large-scale organizational projects to executives and senior managerial staff and defines goals based on key business priorities (followed by periodic reviews).

- Ensure that executives and senior managers are directing and controlling the product and services specialists in a manner that objectives are achieved, risks are managed appropriately, and the organization's resources are used fairly.

The Petitioner has provided few details and little supporting evidence to support that the Beneficiary would likely be primarily engaged in executive-level tasks. Whether the Beneficiary is an executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" executive. *See* sections 101(a)(44)(B) of the Act. Here, the Petitioner does not sufficiently document what proportion of the Beneficiary's duties would be executive functions and what proportion would be non-qualifying. The Petitioner lists the Beneficiary's duties as including several administrative or operational tasks. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of an executive under an approved petition. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The Petitioner submitted duty descriptions for the Beneficiary that do not credibly demonstrate that he would primarily perform executive tasks. The Beneficiary's duties include several general duties

that can be performed for any company such as develop high-quality business strategies and plans, ensuring their alignment with short-term and long-term objectives; oversee all operations and business activities to ensure desired results are produced, and are consistent with the overall strategy and mission; build trust relationship with key partners and stakeholders; and, provide strategic business and creative oversight to ensure [the Petitioner] meets and exceeds client demands via the platform and service. The Petitioner does not explain the business strategies and methodologies the Petitioner will develop, or the objectives and goals of the company, or the impact of the working relationships. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial 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 addition, several of the duties appear to be non-qualifying operational duties such as evaluate social media landscape and define innovative solutions based on the vision of where social media marketing is headed; research needs of U.S. clients; act as "face" of [the Petitioner], publicizing and promoting company and product/service offerings to public and potential customers; provide strategic business and creative oversight to ensure [the Petitioner] meets and exceeds client demands via the platform and service; create departments within [the Petitioner] in the U.S. and facilitate communications between these departments and ensure that they are working well together; and develop and put into place hiring and training process. Many of these duties involve the day to day operations of running a business such as research, marketing, client relations, customer service, and employee development and training. In addition, the Petitioner does not explain the role of the staff to determine if they will relieve the Beneficiary from performing the operational duties. Without more information, it appears that the Beneficiary will perform several operational duties and will not perform duties that are primarily executive in nature.

Further, several of the job duties involve hiring employees, determining the positions needed in the company, developing and implementing a hiring and training process, and review employee performance. These tasks involve human resources operations and it does not appear that the Beneficiary will oversee a human resources department and thus, these duties are not primarily executive in nature.

The prevalence of the non-qualifying duties throughout the Beneficiary's duty description indicates that it is more likely he would be directly engaged in these tasks alongside with the staff rather than primarily delegating these functions.

Even though 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

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

As noted, the Petitioner claims the Beneficiary would act in an executive capacity in the United States. 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.*

At the time of filing the instant petition, the Petitioner submitted a list of the U.S. employees the Beneficiary would supervise which included a customer success manager, a head of creative strategy, four client partners, and a creative operations manager. The Petitioner also explained that these positions did not supervise any subordinates. The Petitioner did not provide a detailed description of the duties to be performed by the subordinate staff and therefore it is not clear how the staff would relieve the Beneficiary from performing the day-to-day operational duties. In light of the other documentary evidence also reflecting that the Beneficiary was performing various other non-qualifying operational tasks for the Petitioner, it is likely that he would have been engaged as a first line supervisor of the subordinates, rather than as an executive primarily performing higher-level tasks related to goals and policies.

On appeal, the Petitioner also stated that the Beneficiary "still manages high-level managers and executives (both in Singapore and the U.S.)." However, the Petitioner has not presented sufficient evidence demonstrating how the Beneficiary will continue to manage the foreign managers and executives while working in the U.S. In addition, the Petitioner did not provide a description of the services these foreign positions will provide to the U.S. office, and whether they will relieve the Beneficiary from performing non-qualifying duties related to the provision of services. A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof, particularly when supporting documentary evidence would reasonably be available. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For the foregoing reasons, the Petitioner has not established that the Beneficiary would act in an executive capacity in the United States.

III. CONCLUSION

In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.