U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12008873

Date: FEB. 12, 2021

Appeal of California Service Center Decision

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

The Petitioner seeks to continue employing the Beneficiary as its chief executive officer (CEO) under the L-1A nonimmigrant visa classification for intracompany transferee managers and executives. *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. The Director concluded that the Petitioner did not demonstrate the Beneficiary's employment abroad, or his proposed work in the United States, in the claimed executive capacity.[1]

The Petitioner bears the burden of establishing 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.

I. L-1A MANAGERS AND EXECUTIVES

An L-1A petitioner must establish a beneficiary's full-time employment abroad by the petitioner or its parent, branch, affiliate, or subsidiary in a managerial, executive, or specialized knowledge capacity for at least one continuous year during the three years before his or her application for admission to the United States. 8 C.F.R. § 214.2(l)(1)(ii)(A). An L-1A petitioner must also intend to employ a beneficiary in the United States in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii).

II. EMPLOYMENT ABROAD

The term "executive capacity" means employment that "primarily" involved: 1) directing the management of an organization or a major component or function of it; 2) establishing the goals and policies of an organization or its 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; 8 C.F.R. § 214.2(l)(1)(ii)(C).

[1] In letters supporting the petition and on appeal, the Petitioner asserts the Beneficiary's employment abroad and in the United States in an executive capacity. The Petitioner has not claimed that the Beneficiary did or would work in a managerial capacity.

The job duties of an executive must meet all four elements of the definition of the term "executive capacity." A petitioner must also demonstrate that a foreign national *primarily* performed executive duties, as opposed to operational tasks. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988) (stating that "[a]n employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity").

When determining the executive nature of a foreign position, U.S. Citizenship and Immigration Services (USCIS) examines descriptions of the job's duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring "a detailed description" of services performed). USCIS also reviews: the organizational structure and nature of the foreign business; the existence of other workers who relieved a beneficiary from performing operational duties; the duties of a beneficiary's subordinate workers; and other factors indicating the nature of a beneficiary's role abroad.

Here, the record indicates the Beneficiary's employment in Romania from his founding of the business in October 1998 until April 2017, when he transferred to work for the Petitioner in the United States in L-1A status. The record shows that the Romanian company makes and sells labels, logos, packaging, and advertising materials.

A. Job Duties

The Petitioner initially stated that, in Romania, the Beneficiary spent the following percentages of his time on the following duties:

- 60%. Oversaw all company commercial activities and accounting practices, including managerial supervision of accounting departments and preparation of budgets, financial reports, tax and audit functions. Dealt with executive functions of the business such as upper management and performed financial advisory services and presented best practices;
- 10%. Assessed monthly reporting and analyzed balance sheet, profit and loss, and bookkeeping. Directed financial strategy, planning, and forecasts. Conferred with other managers and discussed payroll best practices and analysis of financial reporting;
- 10%. Assisted in identifying and assessing new business opportunities, such as making daily business calls to potential customers and clients;
- 10%. Studied, analyzed, and reported on trends and expansion opportunities. Projected future company growth, profit and loss, net debt, and cashflow; and
- 10%. Assisted in the review, development, and negotiation of contracts, customer tenders, and procurement agreements.

In response to the Director's written request for additional evidence (RFE), an official of the foreign entity provided the following information about the Beneficiary's foreign job duties:

- 5%. Administered all public and judicial authorities, chamber and trade registrar, courts, and general directorate of public finance. Delegated judge with the trade registry and control bodies. Represented company before all individuals and legal entities;
- 10%. Made decisions within the company, on its current activity and how to accomplish them;
- 25%. Represented the company in relations with clients, suppliers, and business partners;

- 30%. Represented the company at the conclusion of commercial agreements with authorization to modify, negotiate, or terminate agreements;
- 10%. Bought movable properties for the company and registered them in the company's name in relevant records;
- 10%. Requested forms of financing and credit from banks and signed all necessary documents, including guarantees by establishing securities or real estate collateral; and
- 5%. Performed leasing operations for the company and consented to the establishment of all necessary guarantees;
- 5%. Assigned company agreements.

As the Director found, the descriptions of the Beneficiary's foreign job duties indicate his exercise of "wide latitude in discretionary decision making" and his receipt of only "general supervision or direction" from directors or shareholders. *See* sections 101(a)(44)(B)(iii), (iv) of the Act. But the descriptions neither detail how the Beneficiary directed the company's management nor demonstrate his focus on the company's broad goals and policies. *See* sections 101(a)(44)(B)(i), (ii) of the Act.

The definition of "executive capacity" centers on a worker's elevated position in an organization. Under the definition, a beneficiary must have had the ability to "direct the management" and "establish the goals and policies" of an organization or a major component or function of it. Sections 101(a)(44)(B)(i), (ii) of the Act; 8 C.F.R. §§ 214.2(l)(1)(ii)(C)(*1*), (*2*). To show that a beneficiary "direct[ed] the management" of an organization or a major component or function of it, a petitioner must show how he or she managed the organization, component, or function and demonstrate that he or she primarily focused on its broad goals and policies, rather than on its daily operations.

The Petitioner's initial job-duty description lacks sufficient details to establish how the Beneficiary directed the Romanian company's management. Vague, conclusory statements that the Beneficiary "[o]versaw all company commercial activities' and "[d]ealt with executive functions of the business such as upper management" do not credibly establish his claimed employment as an executive. *See 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) (holding that "[s]pecifics 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").

Also, the most recent description of the Beneficiary's foreign job duties indicates that he spent most of his time concluding commercial agreements and representing the Romanian company in relations with clients, suppliers, and business partners. The Petitioner has not demonstrated that these duties involved directing the firm's management or establishing the company's goals and policies. Thus, the job-duty descriptions provided by the Petitioner do not demonstrate the claimed executive nature of the Beneficiary's employment abroad.

In addition, although unaddressed by the Director, the Petitioner has not resolved discrepancies in the Beneficiary's foreign job title and duties. The Petitioner has variously referred to the Beneficiary's position in Romania as chief operations officer, CEO, and president. The record does not indicate whether each title corresponds to different job duties and, if so, when the Beneficiary held each title. Even assuming the titles reference one position, the Petitioner initially stated duties – such as managing the accounting department, performing financial advisory services, and directing financial strategy –

that the foreign company omitted from its most recent description. The most recent description also contains duties – such as administering public and judicial authorities and consenting to the establishment of all necessary guarantees for leasing operations – that the Petitioner did not initially mention. A petitioner must resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The discrepancies in the Beneficiary's position titles and job-duty descriptions cast further doubt on his true activities abroad and his claimed employment in an executive capacity. Thus, in any future filings in this matter, the Petitioner must explain the inconsistencies and submit independent, objective evidence of the Beneficiary's position(s) and job duties abroad.

B. Staffing and Organizational Structure

The Petitioner submitted a chart placing the Beneficiary at the top of the Romanian company's organizational structure. The chart shows the Beneficiary's direct supervision of a general manager, who in turn oversaw 10 positions. Seven of those positions also purportedly supervised others.

As the Director found, however, job-duty descriptions of the Beneficiary's foreign subordinates do not support their placements on the organizational chart. For example, the chart shows the general manager's supervision of managers of customer relations, acquisitions and logistics, operations, human resources, finance, and marketing. But the description of the general manager's duties does not mention his supervision of others. Rather, the description states his involvement in "customer database management,"[2] "market studies," "business analysis," ensuring compliance with standards, "decisions concerning non-conformity in the production process and complaints, as well as technical specifications, artwork, production programming." *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record).

Moreover, as the Director also found, inconsistencies in the position titles of the Beneficiary's foreign subordinates cast further doubt on his purported employment as an executive. The foreign entity's organizational chart indicates that the Beneficiary's spouse worked in Romania simultaneously as "Finance Director," "Treasurer," and "RMC/CESP." The accompanying description sheet, however, identifies her position as "Development Manager." Also, the description sheet lists the "Acquisitions and Logistics Manager" on the organizational chart as "Production Manager;" the "Senior Accountant" as an "Economical Manager;" and the "Accountant/Quality Control Associate" as "Financial Manager." Because of these unresolved discrepancies, the record does not demonstrate that the duties on the description sheet apply to the corresponding employees on the organizational chart. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record). The record therefore does not credibly demonstrate the Beneficiary's direction of the management of the foreign entity. *See* section 101(a)(44)(B)(i) of the Act (defining the term "executive capacity" to include primarily directing the management of an organization).

[2] The Petitioner's evidence also states that the "CR Manager" in Romania "[m]anages and develops the database with clients." The record does not explain why both the general manager and CR manager simultaneously managed the database.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's employment abroad in the claimed executive capacity. We will therefore affirm the petition's denial.

III. PROPOSED U.S. EMPLOYMENT

A. Job Duties

The Petitioner asserts that the Beneficiary would have the same job duties in the United States as he performed in Romania. Thus, the descriptions of the proposed job duties suffer from the same defects as those regarding the Beneficiary's foreign employment. The descriptions of the proposed duties indicate that the Beneficiary would exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction" from directors or shareholders. *See* sections 101(a)(44)(B)(iii), (iv) of the Act. But the descriptions do not detail how he would direct the company's management or demonstrate his proposed focus on the firm's broad goals and policies. *See* sections 101(a)(44)(B)(i), (ii) of the Act.

As previously discussed, vague, conclusory statements that the Beneficiary would oversee all company commercial activities and deal with executive functions of the business such as upper management do not credibly establish his proposed employment as an executive. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108 (holding that "[s]pecifics 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"). Also, the most recent job-duty description indicates that the Beneficiary would spend most of his time concluding commercial agreements and representing the Petitioner in relations with clients, suppliers, and business partners. These duties do not appear to involve directing the firm's management or establishing the company's goals and policies.

In addition, although unaddressed by the Director, the Petitioner has not explained why the Beneficiary would have the same duties in the United States as he performed in Romania. The record shows the Romanian company's continuous business operations for the past 22 years and its claimed employment of about 20 people. In contrast, the Petitioner has been in business for less than five years and has few employees. Moreover, the Petitioner provides different services than the Romanian company. Although initially indicating that it would design fire sprinkler systems, the Petitioner more recently stated that it provides business management and marketing services. Considering the companies' different sizes, development stages, and services, the record does not establish the Beneficiary's proposed performance of the same duties in the United States as realistic. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record).

For the foregoing reasons, the descriptions of the Beneficiary's U.S. job duties do not establish his proposed employment in an executive capacity.

B. Staffing and Organizational Structure

The Petitioner's most recent organizational chart places the Beneficiary, as CEO, at the top of the company's structure. The chart indicates that he would supervise four managers who work at the foreign entity in Romania and an administrative assistant in the United States. The chart also shows

his proposed management of the Petitioner's payroll, which an outside contractor provides, and a chief operations officer, who has yet to be hired.

An L-1A manager or executive can manage or direct employees of foreign entities. *See Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016) (considering a beneficiary's proposed management of employees outside the United States in determining his eligibility as a function manager). But, as the Director found, the record does not demonstrate that the Beneficiary's subordinates would manage the Petitioner's operations and thus that the Beneficiary would direct the organization's management. The chart indicates that three of the four Romanian managers would not directly supervise any existing U.S. employees. Also, the Petitioner's payroll tax records show that, in the two years before the petition's filing in December 2019, the company had only one employee: the Beneficiary. In fact, the payroll tax records show that, for eight of the 24 months in that period, the Petitioner did not pay any employees. A petitioner must demonstrate eligibility for a requested benefit at the time of filing. 8 C.F.R. § 103.2(b)(1). Thus, the record does not establish that, at the time of the petition's filing, the Beneficiary's subordinate managers had any workers to manage. The record therefore indicates that the managers would primarily perform U.S. operational duties and the Beneficiary would have no management to direct in an executive capacity.

The statutory definition of the term "executive capacity" focuses on an elevated position within a complex organizational hierarchy. Section 101(a)(44)(B) of the Act. Under the Act, an executive must be able to "direct the management" and "establish the goals and policies" of the organization. *Id.* The organization therefore must have a subordinate level of managerial employees for an executive to direct, and a beneficiary must primarily focus on the broad goals and policies of the organization, rather than on the day-to-day operations of the enterprise. The Petitioner has not demonstrated that the Beneficiary's proposed employment in the United States meets all the elements of the statutory definition.

On appeal, the Petitioner argues that USCIS should approve the petition because the Agency granted the company's two prior L-1A petitions for the Beneficiary as an executive. But USCIS need not follow prior, non-precedent approvals that were potentially erroneous. *Matter of Church Scientology Int'l*, 19 I&N Dec. at 597. Agencies need not treat acknowledged errors as binding precedent. *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Thus, USCIS' approval of the Petitioner's prior two L-1A petitions for the Beneficiary does not require the Agency to grant this petition.

The Petitioner also submits additional evidence in support of the Beneficiary's claimed executive roles in Romania and the United States. The Director's RFE, however, informed the Petitioner of the material issues in the case and provided the company with a reasonable opportunity to respond. We therefore decline to consider the Petitioner's evidence on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (barring appellate evidence where a petitioner was previously put on notice and received a reasonable opportunity to respond).

IV. QUALIFYING RELATIONSHIP

Although unaddressed by the Director, the record also does not establish a qualifying relationship between the Petitioner and the Beneficiary's foreign employer. An L-1A petitioner must demonstrate

that it and a beneficiary's foreign employer are "qualifying organizations." 8 C.F.R. § 214.2(l)(3)(i). A "qualifying organization" must meet the regulatory definition of a parent, branch, affiliate, or subsidiary. 8 C.F.R. § 214.2(l)(1)(ii)(G)(*1*).

The Petitioner identifies itself as a subsidiary of the Beneficiary's Romanian employer. A "subsidiary" is a legal entity owned and controlled by a parent entity. 8 C.F.R. § 214.2(l)(1)(ii)(K).[3] The Petitioner, however, claims that the Beneficiary owns majorities of both it and the Romanian company. Thus, the Petitioner effectively asserts that it and the Beneficiary's foreign employer are affiliates. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*) (defining the term "affiliate" to include "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual").

Documentation shows the Beneficiary's ownership of 61% of the Romanian company. Regarding the petitioning limited liability company (LLC), the Petitioner initially submitted a February 2016 "Stock Certificate" stating the Beneficiary's possession of a 51% ownership interest in the LLC. In response to the Director's RFE, however, the Petitioner submitted an "LLC Membership Certificate" showing the Beneficiary's possession of a 51% ownership interest in the Petitioner. The stock and LLC certificates share the same date but have different titles. The record does not explain why the Petitioner issued the Beneficiary two different ownership certificates on the same day. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record).

The Petitioner's RFE response also included a copy of another "LLC Membership Certificate" in the name of the Beneficiary's spouse and issued on the same day as his certificates. The Petitioner claims that the Beneficiary and his spouse jointly own the Petitioner. The spouse's certificate, however, states her ownership of only 44% of the company, less than the 49% portion unowned by the Beneficiary. In addition, all the certificates state that the Petitioner has three owners. The Petitioner did not present evidence of an additional owner.

The discrepancies in the certificates cast doubt on the Petitioner's claim that the Beneficiary and his spouse jointly own the company in a 51%-49% ratio. The discrepancies also cast doubt on the authenticity of the certificates. *See Matter of Ho*, 19 I&N Dec. at 591 (stating that doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence).

The record lacks reliable evidence showing who owns and controls the Petitioner. The Petitioner therefore has not demonstrated the claimed qualifying relationship between the U.S. company and the Beneficiary's foreign employer. In any future filings in this matter, the Petitioner must resolve the inconsistencies in the stock and LLC certificates and submit independent, objective evidence of a qualifying relationship between the entities.

[3] Ownership means the direct or indirect legal right of possession of an entity's assets with full power and authority to control. *Matter of Church Scientology*, 19 I&N Dec. at 595. Control means the direct or indirect legal right and authority to direct the establishment, management, and legal operations of an entity. *Id.*

V. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's employment abroad, or his proposed work in the United States, in the claimed executive capacity. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.