U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30166348

Date: FEB. 23, 2024

Appeal of California Service Center Decision

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

The Petitioner, a distributor of agricultural equipment and parts, seeks to continue employing the Beneficiary as its president. It requests an extension of his L-1A nonimmigrant visa status as an intracompany transferee who would temporarily work in the United States 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 Petitioner did not demonstrate its proposed employment of the Beneficiary in the claimed executive capacity. On appeal, because the Director's decision contained factual errors and inadequately supported conclusions, we withdrew it and remanded the matter. *See In Re: 25690692* (AAO Mar. 22, 2023). On remand, the Director again denied the petition on the same grounds.[1]

The matter returns to us on the Petitioner's second appeal. The company contends that the Director disregarded evidence and misstated facts.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the company has not established that, at the time of the petition's filing, the Beneficiary primarily performed executive duties and directed the company's management. We will therefore dismiss the appeal.

I. LAW

An intracompany transferee is a noncitizen who - for at least one continuous year in the three years before their initial U.S. admission in nonimmigrant status - worked abroad and seeks to enter the country to temporarily work for a branch, parent, affiliate, or subsidiary of their foreign employer in a capacity that is managerial, executive, or involves "specialized knowledge." Section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(A).

[1] The record indicates that, before issuing the new decision, the Director "reopened" these proceedings. Because we previously remanded this matter, the proceedings before the Director remained open and did not require reopening. *See* 8 C.F.R. § 103.5.

The Petitioner's prior approved L-1A petition for the Beneficiary was a "new office" petition, as the company had been doing business in the United States at that time for less than one year. *See* 8 C.F.R. § 214.2(l)(ii)(F) (defining the term "new office"). A petitioner seeking to extend a new office petition must submit:

- Evidence that the U.S. and foreign entities continue to have a qualifying relationship;
- Evidence that the U.S. entity has been doing business for the prior year;
- A statement regarding the beneficiary's duties for the prior year and their proposed duties under an extended petition;
- A statement describing the U.S. operation's staffing, including its number of employees and types of positions held accompanied by evidence of wages paid to employees; and
- Evidence of the U.S. business's financial status.

8 C.F.R. § 214.2(l)(14)(ii)(A-E).

II. ANALYSIS

A. The Beneficiary

The record shows that the Beneficiary, a Venezuelan national and citizen, has worked for the Petitioner's affiliate in Venezuela as president since it commenced business in 2011. The record shows that he and his spouse co-own the Petitioner and his foreign employer, which both distribute agricultural equipment and parts.

The Beneficiary established the petitioning U.S. limited liability company in 2018. Later that year, the Petitioner successfully petitioned for him to work as its president in the United States in an executive capacity. The company states that the Beneficiary also serves as president of his foreign employer and as president or vice president of four related companies in Venezuela and the United States.

The Beneficiary's initial L-1A petition ran from November 2018 to November 2019. *See* 8 C.F.R. § 214.2(l)(7)(A)(*3*) (limiting the validity period of a new office petition to one year). Before the petition's expiration, the Petitioner filed this extension petition. In 2020, the company also successfully petitioned for the Beneficiary to receive an immigrant visa as a multinational executive. *See* section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C).[2]

B. Deference to Prior Petition Approvals

On appeal, the Petitioner notes that USCIS has approved the company's two prior filings for the Beneficiary: the initial L-1A petition; and the multinational executive immigrant visa petition. Both filings offered him the same job of president in the same executive capacity.

Despite the filings' similarities, USCIS need not defer to its prior petition approvals. The Petitioner's initial L-1A filing for the Beneficiary had different requirements than this petition. Unlike the

[2] The immigrant visa filing for the Beneficiary does not prevent him from maintaining L-1A nonimmigrant visa status. *See* 8 C.F.R. § 214.2(l)(16).

company's initial filing, this petition must demonstrate the Beneficiary's ability to immediately perform executive duties in the United States. *Cf.* 8 C.F.R. § 214.2(l)(3)(v)(C) (requiring evidence that a new U.S. office would support an executive or managerial position within one year of a petition's approval); *see also* 2 *USCIS Policy Manual* A.(4)(B)(1), www.uscis.gov/policy-manual (discussing the significance of prior petition approvals).

Regarding the immigrant visa petition for the Beneficiary, prior approvals - which may have been erroneous - do not require USCIS to approve later petitions. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988) (citations omitted). Thus, we need not defer to the prior approved L-1A petition or the multinational executive petition.

C. The Proposed U.S. Job

The Petitioner seeks to continue employing the Beneficiary as its president in an executive capacity. The term "executive capacity" means work where a beneficiary "primarily:"

- Directs the management of an organization or a major component or function of it;
- 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, a board of directors, or stockholders of the organization.

Section 101(a)(44)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(C).

The term's statutory definition describes an elevated position. An executive must be able to "direct[] the management" and "establish the goals and policies" of an organization or a major component or function of it. Section 101(a)(44)(B) of the Act. The phrase "directs the management" requires an executive to exercise control over a subordinate level of managerial employees. *VHV Jewelers, LLC v. Wolf*, 17 F.4th 109, 114 (11th Cir. 2021). To demonstrate these abilities, a petitioner must explain the management of the organization, component, or function and establish a beneficiary's primary focus on its goals and policies, rather than its daily operations. *See Matter of Church Scientology Int'l*, 19 I&N Dec. at 604 ("An 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 considering the executive nature of an offered position, USCIS examines a petitioner's job duty descriptions. The descriptions must clearly describe a beneficiary's proposed duties and indicate whether the noncitizen would perform the elements comprising the "executive capacity" definition. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring "a detailed description of the services to be performed"). USCIS also considers: a petitioner's organizational structure; the presence of other employees to relieve a beneficiary from performing non-executive duties; the duties of a beneficiary's subordinate employees; the nature of the business; and other factors potentially affecting a beneficiary's duties and role.

The Director concluded that the Petitioner did not demonstrate a "sufficiently complex organizational structure" at the time of the petition's filing to employ the Beneficiary in an executive capacity. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility "at the time of filing the benefit

request"). The Director found that the company did not establish how the Beneficiary would direct its management. *See* 101(a)(44)(B)(i) (requiring an executive to "direct[] the management of an organization").

The record supports the Director's findings. The Petitioner has not demonstrated who, at the time of the petition's filing, performed the company's operational duties, thereby freeing the Beneficiary to "primarily" focus on executive-level tasks. *See* section 101(a)(44)(B) of the Act.

On appeal, the Petitioner notes that the Director misstated the company's number of employees at the time of the petition's filing in November 2019. The company claims that, at that time, it had four employees, not two as the Director found.

The record, however, shows that, at the time of the petition's filing, the Petitioner employed three people. The company's initial filing included a Form I-140, Petition for Alien Workers, a company letter, and the company's initial organizational chart, all indicating that three people worked for the Petitioner. The company submitted copies of five IRS Forms W-2, Wage and Tax Statements, that it issued to employees in 2019. But payroll records and a "timeline" submitted by the Petitioner indicate that two Form W-2 recipients worked as the company's operations manager that year for only brief periods. The company hired its first operations manager in February 2019, and payroll records show that she stopped working the following month. In April 2019, the Petitioner hired a worker to fill her position. But payroll records show that he stopped working in June 2019. Payroll records and the timeline show that the company did not hire another operations manager until June 2020, when the operations manager listed on its second organizational chart began work. Thus, evidence demonstrates that, at the time of the petition's filing in November 2019, the Petitioner employed three people: the Beneficiary as president; his spouse as vice president; and a sales manager.

Descriptions of these three employees' job duties omit daily operational tasks, such as selling agricultural equipment to customers. As president, the Beneficiary's duties included developing business strategies and determining the company's operating procedures and policies. The vice president, among other things, purportedly developed sales and marketing strategies. The sales manager's duties included developing and managing a sales team. The record does not indicate, that at the time of the petition's filing, any of the Petitioner's employees performed daily operational duties, relieving the Beneficiary of such tasks and allowing him to "primarily" perform executive-level duties.

The Petitioner states that "subcontractors" also assisted with its operations. The record indicates that, at the time of the petition's filing, outside businesses provided the Petitioner with accounting, marketing, website development, and shipping services. The company, however, has not explained who, at that time, performed its administrative tasks, such as answering the phone, and who sold its equipment to customers.

The Petitioner also has not demonstrated that, at the time of the petition's filing, the Beneficiary directed a subordinate level of managerial employees. *See VHV Jewelers*, 17 F.4th at 114 (holding that the phrase "directs the management" in the statutory definition of "executive capacity" requires a noncitizen to exercise control over a subordinate level of managerial employees). The company's organizational charts place the Beneficiary at the top of its organizational structure, above the vice president and sales manager. But the record does not establish either of the lower positions as

managerial in nature. The vice president's job duties do not indicate that she supervised subordinates. The sales manager's duties stated that he supervised sales representatives. But the Petitioner's organizational charts and payroll records indicate that, at that time, the company did not employ sales representatives. Also, the Petitioner has not otherwise asserted that the vice president and sales manager positions involved managing essential functions of the company. *See* section 101(a)(44)(A) of the Act (indicating that the term "managerial capacity" encompasses managers of both personnel and functions).

The Petitioner contends that all the companies in its organization help each other and that workers from the Beneficiary's former employer and three related companies in Venezuela have performed operational duties for the Petitioner "on a regular basis." Workers within an international organization may support an L-1A beneficiary from abroad. *See Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

As the Director found, however, job-duty descriptions do not indicate that the Venezuelan positions involved assisting the Petitioner on a regular basis. In response, the company states:

> The employees' job descriptions are shown for each company independently. They cannot include all special tasks/duties performed by employees of one company to the other. Same goes for the organizational chart. This would only make those documents, not only extremely long, but totally confusing.

As previously indicated, however, the Petitioner bears the burden of demonstrating eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To support the company's claim that foreign workers assisted it, it had to provide independent, objective evidence that Venezuelan workers in its organization regularly performed operational duties for it at the time of the petition's filing. A petitioner must substantiate the foreign staff's existence and the nature of and need for their services. *Matter of Z-A-*, Adopted Decision 2016-02 at *6. The Petitioner has not sufficiently substantiated its purported foreign workers' existence nor identified them. The company also has not detailed the services they purportedly provided nor explained who performed the workers' usual duties for their Venezuelan employers when they assisted the Petitioner.

As proof that the organization's Venezuelan employees helped support the Petitioner, the company submits copies of email messages between the Beneficiary and foreign workers. But the record shows that the Director's request for evidence previously informed the company of the need for this type of evidence and afforded it a reasonable opportunity to respond. We therefore decline to consider the evidence in the first instance on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring a petitioner to submit all requested evidence together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence on appeal where "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

Even if we considered the email messages, they would not demonstrate that foreign workers regularly assisted the Petitioner at the time of the petition's filing in November 2019. Although the dates of the seven messages range from September 2019 through February 2021, only one predates the petition's filing. A single Venezuelan worker sent most of the messages, attaching documents for the Beneficiary's signature or review. None of the messages indicate that their attachments involve or

benefit the Petitioner. The email messages therefore would not establish the Petitioner's regular receipt of operational assistance from foreign workers at the time of the petition's filing.

The Petitioner claims that the Director overlooked additional evidence of foreign workers' assistance to the company. The company states that the record shows the Beneficiary's signature on many authorizations, orders, instructions, etc., demonstrating his authority and control over the organization's companies. But the Beneficiary's authority and control are not at issue. The signed documents do not specifically establish that, at the time of the petition's filing, Venezuelan workers regularly performed operational duties for the Petitioner.

The Petitioner also contends that the Director's decision errs by continually confusing the term "manager" with "executive." As an example, the company cites the decision's statement that the Beneficiary must be "managing the [company's] management."

The Director's decision is not a model of clarity. But, taken in context and mindful of the statutory definition of "executive capacity," the decision sufficiently indicates that, by "managing the management," the Director meant that the Beneficiary must direct the company's management. *See* section 101(a)(44)(B)(i) of the Act. In explaining the definition of executive capacity, the U.S. Court of Appeals for the Eleventh Circuit, which has jurisdiction over the Petitioner's location, has used nearly identical words. The Court stated: "So the requirement that an executive 'direct the management' means that an executive must guide, order, command, or instruct the management. In other words, an executive *manages the management*." *VHV Jewelers*, 17 F.4th at 114 (emphasis added). The record therefore does not establish that the Director confused the term "manager" with "executive" or that the decision's language prejudiced the Petitioner.

The record also does not support the Petitioner's assertion that the Director misanalysed its filing as a new office petition. The Director's decision distinguishes the Petitioner's *prior* new office petition for the Beneficiary from the company's *current* request to extend his L-1A status. The decision properly states and applies the requirements for extending a petition that previously involved a new office. *See* 8 C.F.R. § 214.2(l)(14)(ii) (A-E).

Finally, as a small company, the Petitioner contends that the Director "discriminated" against it by focusing on its number of employees. USCIS cannot determine a beneficiary's qualifications as a manager or executive "merely on the basis of the number of employees that the individual supervises or has supervised, or directs or has directed." Section 101(a)(44)(C) of the Act.

The Director's decision, however, reflects consideration of factors other than the Petitioner's number of employees. The Director also considered: the job-duty descriptions for the Beneficiary, the Petitioner's other employees, and foreign workers in the organization; the Petitioner's organizational structure; and whether U.S. or foreign workers in the organization relieved the Beneficiary from having to primarily perform non-executive duties. Thus, the record does not demonstrate that the Director solely focused on the Petitioner's number of employees or "discriminated" against the company based on its size. *See VHV Jewelers*, 17 F.4th at 115 ("[A]n organization's small size, standing alone, cannot support a finding that its employee is not acting in a managerial [or executive] capacity," but "size is nevertheless a relevant factor in assessing whether an organization's operations

are substantial enough to support a manager" or executive) (quoting *Brazil Quality Stones, Inc. v. Chertoff*, 531 F.3d 1063, 1070 (9th Cir. 2008).

III. CONCLUSION

The Petitioner has not established that, at the time of the petition's filing, the Beneficiary primarily worked in an executive capacity and directed the company's management. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.