U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12286121

Date: FEB. 25, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a company engaged in the sales and production of lighting products, seeks to continue the Beneficiary's temporary employment as its chief executive officer (CEO) under the L-1A classification for nonimmigrant intracompany transferees.[1] 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 Texas Service Center denied the petition, concluding that the record did not establish, as required, that the new office developed to an extent that it was able to support a managerial and executive position. More specifically, the Director found that the Petitioner had not shown that: (1) it was doing business, as the regulations define that term; (2) the new office was financially able to support the Beneficiary's intended position; and (3) the Beneficiary's position was primarily that of a manager or executive. The Director also noted that the Petitioner did not establish the Beneficiary's services in the U.S. will be temporary, and that the evidence does not establish that the Beneficiary maintained proper immigration status while in the U.S.

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 Director's additional grounds for denial. *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*

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period January 4, 2019 until January 3, 2020. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

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 managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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.*

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue to be addressed is whether the Petitioner established that it would employ the Beneficiary in an executive capacity under the extended petition. The Petitioner has not claimed that the Beneficiary's position is managerial in nature.

"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 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. 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.

At the time of filing, the Petitioner claimed to have 3 employees and $15,094 in gross earnings. The Petitioner stated that it produces "high-quality lighting products, specifically of energy conservation and environmental protection light products such as LED floodlights, LED high bay and LED streetlights." The Petitioner also stated that it will "utilize the Parent Company's superb expertise, vast experience and insights gained from years of successful operation in China to help it tap the enormous potential of the U.S. lighting products market and to complete several major business expansion and globalization projects in the U.S. and beyond." The Petitioner indicated that the Beneficiary has performed and will continue to perform the following duties as CEO:

Establishes [the Petitioner's] Goals and Policies (40%)

- plans and develops [the Petitioner's] policies and strategies and implements them through subordinate personnel;
- establishes major economic objectives for company and its divisions;
- participates in formulating its global expansion plans and strategies and directing its implementation;
- participates in setting the U.S. company's goals and providing financial support for [the Petitioner];
- directs financial planning, procurement, and deployment of funds from the parent company's investment;
- makes budget plan, supervising and implementing approved budget, and working with Petitioner's financial professionals to develop and ensure compliance to budget;
- analyzes Petitioner's operations and reporting monthly to the top executive of Parent Company in China about Petitioner's business operations and business development;
- works with Parent Company to further strategic business development and planning, including IP protection of any new products.

Keeps knowledge up-to-date about the US economy, local news, and business trends in lighting markets; attend business conferences, acquire important partnership and cooperation, liaising with import/export partners and clients (20%)

- holds meetings with the management teams in both [the Petitioner] and [the foreign company] to discuss ways to promote Petitioner's overall success;
- attends product exhibitions and business conference in the World, and to keep an eye on the current market around the world via the internet and news on the Internet and television.
- designs and develops new lighting products according to the needs of consumers in the U.S. market, while trying to lower the manufacturing cost.
- directs and coordinates formulation of program to provide funding for new or continuing operations to maximize returns on investments, and to increase profit of the Petitioner.
- oversees product development and production planning to ensure production reflect and meet the market needs.
- participates in the formation and implementation of related production policies and procedures to ensure that certain targets are met.

Supervises and Controls the Work of Other Supervisory and Managerial Employees (20%)

- supervises and controls the work of the managers of each department;
- directs the management of activities of [the Petitioner] through the departmental managers; and
- confers with the managers to review its personnel's performance and solicits their contributions toward optimizing the operations of the company.

Hiring and firing and Recommending Personnel Actions (5%)

- directs and supervises recruitment, interviewing, and selection of employees to fill vacant positions;
- decides pay schedules and prepares budget of personnel operations; and
- contracts with outside suppliers to provide employee services.

Exercises Wide Latitude in Discretionary Decision Making (15%)

- reports to the Board of Directors of the parent company but receives only general supervision or direction;
- exercises wide discretionary power in regard to operational and financial planning, budgeting, personnel recruitment, and other matters of the subordinate departments;
- exercises discretionary power regarding the hiring and firing of subordinate managers and workers.

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 she would primarily perform executive tasks. The Beneficiary's duties include several general duties that can be performed for any company. For example, the Beneficiary will spend 40 percent of her time to establish the Petitioner's goals and policies; plan and develop the Petitioner's strategies; establish major economic objectives for the company; make a budget plan and direct financial planning. The Petitioner did not include an account of the Beneficiary's specific daily tasks to perform these duties. Further, the Petitioner does not explain the business strategies and methodologies the Beneficiary will develop, or the objectives and goals of the company, or the impact of the budget and financial planning. 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 the Beneficiary establishes major economic objectives; makes a budget plan; attends product exhibitions and business conferences; designs and develops new lighting products according to the needs of consumers in the U.S. market; directs and coordinates formulation of program to provide funding for new or continuing operations; decides pay schedules and prepares budget of personnel operations; and contracts with outside suppliers to provide employee services. These duties involve the day to day operations of running a business such as research, marketing, design, client relations, customer service, human resources, accounting, and manufacturing. In addition, the Petitioner does not explain the role of the staff to allow a determination that 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, the Beneficiary will spend 20 percent of her time supervising and controlling the work of other supervisory and managerial employees. For example, she will supervise and control the work of the managers of each department; direct the management of activities of the Petitioner through the departmental managers; and confer with the managers to review its personnel's performance and solicits their contributions toward optimizing the operations of the company. However, the Petitioner employs a customer service representative and a sales representative that do not manage subordinate employees, or a department. It is not clear how the Beneficiary will spend 20 percent of her time on these tasks without supervisory or managerial employees.

A beneficiary working in an executive capacity 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." Section 101(a)(44)(B) of the Act. The Petitioner stated that the Beneficiary will spend 15 percent of her time exercising wide latitude in discretionary decision making by reporting to the Board of Directors of the parent company but receives only general supervision or direction; exercises wide discretionary power in regard to

operational and financial planning, budgeting, personnel recruitment, and other matters of the subordinate departments; and, exercises discretionary power regarding the hiring and firing of subordinate managers and workers. However, these vague phrases do not explain the actual underlying tasks that the Beneficiary would carry out on a daily basis. Aside from establishing that the Beneficiary has discretion over operational and policy matters, it is unclear precisely what the Beneficiary would be doing.

Although the Beneficiary holds a senior position within the organization, the fact that she 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 her actual duties would be primarily executive in nature.

B. Staffing and Organizational Structure

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 an organizational chart of the U.S. entity that indicated the Beneficiary would supervise a customer service representative and a sales representative. The organizational chart also listed positions that are open and will be filled in the future. The positions were a manager of operation, manager of finance and administration, manager of sales and marketing, and a finance administration assistant.

The Petitioner provided the following duties for the sales representative: meet or exceed sales goals; responsible for recording the contract information of customers and meeting their needs; and deal with and follow up customer feedback and maintain customer relationship. The duties of the customer service presentative are as follows: greet customers and answer phones; improve office efficiency; write correspondence to customers and vendors, as well as schedules make appointment and set up

meetings; attend business meetings, took notes on proceedings and disseminated notes; organize travel arrangements and outlined itineraries; update master calendar with latest appointments; and responsible for office maintenance and management. The duties performed by the two employees do not provide sufficient evidence that they will relieve the Beneficiary from performing operational and administrative tasks rather than primarily perform duties executive in nature. In addition, the record does not clearly establish the management structure in place at the Petitioner's organization. The Petitioner has stated that the Beneficiary directs the management of the whole U.S. entity through department managers; however, there is no evidence that any manager or supervisor was employed by the Petitioner at the time the petition was filed, raising questions regarding the nature of the oversight and supervision of the Petitioner's sales representative and customer service representative.

Furthermore, the Petitioner submitted an income statement for 2019 and it appears that the salaries paid in October 2019 was $246.44, and in November 2019 was $227.75. Thus, it appears that the two employees were not full-time. Although the Director noted this discrepancy in the denial decision, the Petitioner did not address the Director's concerns. Further, in response to the Director's request for evidence, the Petitioner explained that the business has not expanded this past year because the Beneficiary was ill, and due to the trade war between the U.S. and China whereby the "tariffs have increased our cost of doing business for more than a third, which caused us to suffer financial and lose market share." Although the Petitioner claims that the Beneficiary will direct the management of the entire organization through subordinate department managers, the obvious lack of full-time managers and lower-level personnel who would absolve the Beneficiary from the responsibility of performing day-to-day, non-qualifying operational activities undermines the Petitioner's claim that the Beneficiary's employment is in a primarily executive capacity.

On appeal, the Petitioner asserts that the Director did not consider the reasonable needs of the organization. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the Petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the Beneficiary from primarily performing operational and administrative tasks, the Petitioner is ineligible by regulation for an extension. In the instant matter, the Petitioner has not reached the point that it can employ the Beneficiary in a position where she will be performing primarily executive capacity duties.

Taking into account the inconsistent evidence regarding the Petitioner's employees, and the general and brief job descriptions for each position, it is not clear how the employees will relieve the Beneficiary from performing administrative and operational duties.

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 the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.