U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-R-A- INC

DATE: JAN. 9, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a car rental company, seeks to continue the Beneficiary's temporary employment as its vice president under the L-1A nonimmigrant classification for intracompany transferees.[1] *See* 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 California Service Center denied the petition, concluding that the record did not establish that the Beneficiary would be employed in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner asserts that the Beneficiary oversees a supervisory subordinate who relieves him from primarily performing non-qualifying operational duties. The Petitioner contends that the Beneficiary will act in as a qualifying executive under the extended petition.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification for a new office, 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.*

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period May 24, 2016, to May 23, 2017. 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.

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).

The statute defines an "executive capacity" as 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.

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) takes 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.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The first issue to be addressed is whether the Petitioner has established that the Beneficiary would at in an executive capacity under the extended petition. The Petitioner does not claim that the Beneficiary will be employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary will be employed in an executive capacity.

In denying the petition, the Director concluded that the Petitioner did not demonstrate that the Beneficiary has supervisory or professional subordinates. The Director emphasized that the Petitioner employed only two individuals subordinate to the Beneficiary, neither of whom were shown to perform managerial duties. The Director also determined that the duties of the Beneficiary's subordinates were not reflective of professional level employees.

On appeal, the Petitioner asserts that the Beneficiary primarily performs executive level duties focusing on securing financing to expand the company's rental car fleet and acquiring business partners. The Petitioner states that the operational tasks of the business are handled by a fleet manager subordinate the Beneficiary. The Petitioner contends that the Beneficiary will act as an executive under the extended petition.

When examining the executive capacity of the 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). Beyond the required description of the job duties, USCIS examines the claimed executive capacity of a beneficiary, including 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 business and its staffing levels.

A. Duties

Based on the definitions of managerial and executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, 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); *Champion World*, 940 F.2d 1533.

The Petitioner stated that it was established in the United States to operate a rental car business focusing on Brazilian tourists visiting central Florida. The Petitioner indicated that the Beneficiary's primary responsibility under the extended petition would be to expand the Petitioner's rental car fleet. The Petitioner explained that the Beneficiary would be tasked with developing "management staff," identifying and promoting "growth opportunities," implementing "company policies around recruiting, staffing, training and account management," and working "with management to address issues creating barriers to company growth." The Petitioner also stated that the Beneficiary was responsible for supervising "all aspects of the management team," searching for "sources of financing," identifying "new business opportunities" and participating in "new business pitches." Further, the Petitioner asserted that the Beneficiary would be tasked with expanding "existing accounts," maintaining "commercial connections," developing and conducting "trainings," training and educating "management to apply customer service standards and practices," creating and implementing "strategic marketing plans," creating and implementing "financial and marketing goals," and creating and maintaining "budgets."

On appeal, the Petitioner provides an additional duty description for the Beneficiary indicating that the Beneficiary would be devoted to representing the company in "legal or extra judicial proceedings," negotiating "business contracts," implementing a "process of internal procedures" and "quality assurance policy and protocols," acquiring "fleet vehicles," "hiring and terminating employees," assigning goals and objectives to company personnel, guiding "company expansion," setting "marketing, sales, business development and financial goals," reviewing "financial statements," identifying "areas of improvement," and supervising "educational, Information Technology, accounting and financial departments." The Petitioner also submits a hourly breakdown of the Beneficiary's typical daily work week indicating that he devotes a significant portion of his day meeting with "potential clients," a "marketing contractor," "financing partners," "staff," "suppliers," "business partners," and contacts in the community. In addition, the daily work schedule also reflected that the Beneficiary follows up on ongoing projects, visits with financial partners, and deals with "solving and pending matters."

The Petitioner has submitted a vague duty description for the Beneficiary that does not convey his actual day-to-day tasks or establish that he would devote his time primarily to executive duties. The Beneficiary's duty description includes several general duties that could apply to any executive acting in any business or industry and they do not provide insight into the actual nature of his role. The Petitioner provided few examples and little supporting documentation to demonstrate the Beneficiary's performance of his stated duties, such as growth opportunities he promotes, company policies he has implemented, growth issues he has addressed, sources of financing he has sought, new business opportunities he is exploring, trainings he has developed, customer service practices he has applied, strategic marketing plans he has put in place, budgets he has set, contracts he has negotiated, quality assurance policies and protocols he has established, goals and objectives he has set, or areas of improvement he has identified. 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 the Beneficiary's weekly schedule, the Petitioner indicated that he meets with several different persons throughout the week, including marketing contractors, financing partners, potential clients, suppliers, business partners, and community contacts. The Petitioner does not articulate any examples of these parties nor submitted supporting documentation to substantiate these relationships. In fact, in apparent contradiction, the Petitioner states that the Beneficiary would supervise "educational, Information Technology, accounting and financial departments," despite these departments not being included in the submitted organizational charts or the company's hiring plans. The Petitioner also emphasizes the Beneficiary's responsibility for hiring employees and references his regular interaction with a "management team." However, the Petitioner does not articulate any additional hiring plans during the first two years of operation and it has not substantiated that it has, or will have, a management team. Indeed the most specific duty referenced in the Beneficiary's duty descriptions is his responsibility to expand the company's "fleet" of rental cars, an apparent non-qualifying operational duty which would be delegated by an executive level employee.

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) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. 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 managerial or executive in nature.

B. Staffing

In support of the petition, the Petitioner submitted an organizational chart indicating that the Beneficiary supervised an "operational staff" employee and an "administrative staff" employee. The Petitioner provided a "personnel plan" specific to its first five years of operation indicating that it

only planned to employ the Beneficiary and its two other current employees during its first two years of operation.

In response to the Director's request for evidence (RFE), the Petitioner submitted a second organizational chart indicating that the Beneficiary oversaw a fleet manager who in turn supervised an operational employee. The Petitioner also provided duties for these employees, indicating that the fleet manager was responsible for "supervising operations services," greeting customers, recovering items left in rental cars, providing accurate receipts to customers, inquiring as to customer satisfaction, checking returned vehicles for damage, managing the recall and scheduled maintenance of rental vehicles, fulfilling scheduled reservations, and keeping the rental car lot organized. Meanwhile, the Petitioner stated that the operations services employee was tasked with vacuuming and prepping rental cars, shuttling cars to car washes and dealerships, cleaning the vehicles, managing vehicle fluids, performing basic maintenance on the vehicles, verifying registration and plates, and delivering rentals to customers.

On appeal, the Petitioner asserts that the fleet manager oversees the operations level employee thereby qualifying him as a manager and making the Beneficiary a supervisor of other managers. The Petitioner provides an updated duty description emphasizing the fleet manager's supervision of "operations services employees," including directing them to clean and prepare vehicles and instructing them on repairs and organization of the vehicle lot.

The Petitioner has not submitted sufficient evidence to demonstrate that it has sufficient operational, managerial, and professional staff to allow the Beneficiary to act in an executive capacity. 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 organization must have a subordinate level of managerial employees for a beneficiary to direct and they 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.*

As noted by the Director, an executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The Petitioner has not credibly established that the Beneficiary supervises a subordinate level of managerial employees that relieve him from primarily performing non-qualifying operational level tasks. First, as we discussed previously in this decision, the Petitioner has articulated and

documented few executive level duties for the Beneficiary. The duties of the Beneficiary's asserted managerial subordinate also do not indicate that he acts in a managerial capacity. It is noteworthy that the Petitioner originally indicated that the fleet manager and operational employee both reported directly to the Beneficiary; however, later it modified the record to reflect that the fleet manager supervised the operational employee. Now on appeal the Petitioner modifies the duties of the fleet manager to emphasize his supervision of the operational employee. As such, the Petitioner's contention that the Beneficiary spends significant time directing managerial subordinates is left questionable. Further, it has provided no documentary evidence of the Beneficiary, or his claimed managerial subordinate, delegating tasks to subordinates.

In addition, discrepancies in provided payroll documentation when compared to employer's quarterly tax documentation leave question as to the asserted employment of the Beneficiary's claimed fleet manager and operational subordinate. In support of the petition, the Petitioner submitted a "payroll summary" covering January through May 19, 2017. This document reflected that the claimed fleet manager earned $1,524, and the operational employee $1,370, during the second quarter of 2017. However, later in response to the RFE, the Petitioner provided a Florida Employer's Quarterly Report for the second quarter of 2017 indicating that the fleet manager had earned only $1,188 and the operational employee $1,070 during the second quarter of 2017. The Petitioner does not address this discrepancy, and it leaves question as to the asserted employment of the Beneficiary's asserted managerial and operational subordinates. Indeed, the Petitioner's state employer's quarterly report from the second quarter of 2017, corresponding with the petition, indicates that the fleet manager, an asserted supervisor, earned only $118 more than his claimed subordinate. The Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In sum, the submitted evidence does not indicate that the Beneficiary oversees a subordinate level of managerial employees allowing for him to primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise.

Moreover, the provided evidence does not indicate that the Petitioner was sufficiently operational as of the date of the petition to support the Beneficiary in an executive capacity. The Petitioner correctly observes that we must take into account the reasonable needs of the organization and that a company's size alone may not be the only factor in denying a visa petition for classification as a multinational executive. *See* section 101(a)(44)(C) of the Act. However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-executive operations of the company or a company that does not conduct business in a regular and continuous manner. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record. *See Systronics*, 153 F. Supp. 2d at 15.

The Petitioner has not submitted sufficient evidence to demonstrate that it is sufficiently operational to support the Beneficiary in an executive capacity. First, as we have covered, the Petitioner only employs two operational subordinates with duties reflecting that they are exclusively devoted to the

tasks of renting vehicles, including prepping them for rental, maintaining them, dealing with daily customer service, and other similar duties. However, there is little indication that these employees are primarily relieving the Beneficiary from the non-qualifying operational aspects of the business. Indeed, the Petitioner states directly that the Beneficiary's primary responsibility would be to expand the vehicle inventory of the company an apparent non-qualifying operational level task likely including shopping around for cars and handling other transactional matter related thereto. Otherwise, the Petitioner provides no specific examples or documentation indicating that the Beneficiary is primarily performing qualifying executive level tasks related to directing the management of the organization and setting its goals and policies.

In fact, the Petitioner provides little evidence specific to its operations and the evidence does not demonstrate that it has developed sufficiently to support the Beneficiary in an executive level capacity. For instance, the Petitioner states that it business is struggling that that its business plans have "crumbled" due to an economic downturn in Brazil. The Petitioner provides no statements or financials indicating the state of the company or the revenue it has earned as of the date of the petition. Indeed, the provided payroll and state employer's tax documentation indicates that the Petitioner is not paying the Beneficiary's over $75,000 salary. Further, the Petitioner's business plans reflects that it only plans on hiring the two asserted subordinates already reflected in its current organizational chart during the first two years. Therefore, on whole, the provided evidence does not establish that the Petitioner developed sufficiently during the first year to support the Beneficiary in a qualifying executive capacity.

Here, even though the Beneficiary has the appropriate level of authority, the Petitioner has not established that, as of the date of filing, he was primarily concerned with the broad policies and goals of the organization, that the day-to-day management rested with a subordinate tier of management, or that he would be relieved from substantial involvement in the day-to-day operations of the business. As discussed, the Petitioner did not consistently or sufficiently describe the Beneficiary's duties and we cannot determine that his role would primarily involve executive-level tasks. Further, the evidence indicates that the Beneficiary will be substantially involved in the operational matters of the business and it has submitted little evidence to indicate that he will delegate operational tasks to subordinates. In addition, the Petitioner has not demonstrated that the Beneficiary has managerial or professional subordinates as of the date of the petition, or that his claimed subordinates would primarily relieve him from performing non-qualifying operational duties. As such, the evidence does not demonstrate that the Beneficiary would act in a qualifying executive capacity. For this reason, the appeal will be dismissed.

III. DOING BUSINESS

Beyond the decision of the Director, we find that the Petitioner has also not demonstrated that it is doing business as required by the regulations. When a petition indicates that a beneficiary is coming to the United States to open a "new office," the petitioner must show that it is ready to commence doing business immediately upon approval. At the time of filing the petition to open a "new office," a petitioner must demonstrate that it has acquired sufficient physical premises to commence

business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See* 8 C.F.R. § 214.2(l)(3)(v). If approved, a beneficiary is granted a one-year period of stay to open the "new office." 8 C.F.R. § 214.2(l)(7)(i)(A)(3). At the end of the one-year period, when a petitioner seeks an extension of the "new office" petition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires a petitioner to demonstrate that it has been doing business "for the previous year" through the regular, systematic, and continuous provision of goods or services. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H) (defining the term "doing business"). The mere presence of an agent or office of the qualifying organization will not suffice. *Id.*

As we have discussed in the previous section, the Petitioner has not submitted sufficient evidence to indicate that the Petitioner was regularly, systematically, and continuously providing goods or services as of the date of the petition. Although the Petitioner has provided what appear to be rental contracts for vehicles executed during the first year, it has not substantiated its revenue, financials, and ongoing operation. The provided evidence is not sufficient to demonstrate that the Petitioner was systematically providing goods and services as of the date of the petition for extension. For this additional reason, the petition is not approvable.

IV. CONCLUSION

The appeal must be dismissed as the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity under the extended petition or that it was doing business.

ORDER: The appeal is dismissed.

Cite as *Matter of M-R-A- Inc*, ID# 913471 (AAO Jan. 9, 2018)