U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Z- INC.

DATE: JAN. 11, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a four-employee airline ticket wholesaler, seeks to temporarily employ the Beneficiary as its vice president under the L-1A nonimmigrant classification for intracompany transferees. *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 Vermont Service Center denied the petition, concluding that the Petitioner had not established, as required, that the Beneficiary would be employed in an executive capacity for the U.S. entity.[1]

On appeal, the Petitioner contends that the Beneficiary's proposed position satisfies all four regulatory requirements of executive capacity. The Petitioner asserts that the Beneficiary was previously employed in an executive capacity for the foreign entity and that her intended U.S. position is almost identical to the foreign position. The Petitioner claims that the Beneficiary will have executive level responsibilities and answer only to the Petitioner's chief executive officer.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

[1] The Petitioner does not claim that the Beneficiary will be employed in a managerial capacity. Thus, we will restrict our analysis to the Beneficiary's claimed executive capacity.

An individual L-1A petition filed on Form I-129, Petition for a Nonimmigrant Worker, must include evidence that the petitioner will employ the beneficiary in a managerial or executive capacity, including a detailed description of the services to be performed. 8 C.F.R. § 214.2(l)(3)(ii).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The Director determined that the Petitioner had not submitted sufficient consistent evidence to establish that the Beneficiary would be employed in an executive capacity for the U.S. entity. The Director noted the insufficiency of the proposed position's descriptions, the inconsistencies in the organizational charts submitted, and the lack of evidence demonstrating that the Beneficiary would be relieved from performing non-qualifying duties.

The Act defines the term "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 thereof; 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.

We will address both the Petitioner's description of the Beneficiary's intended duties as well as the Petitioner's staffing to determine whether the Petitioner has established this eligibility requirement. We note that when reviewing staffing levels as a factor in determining whether an individual is acting in a managerial or executive capacity, we must 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.

A. Duties

When examining the executive capacity of a beneficiary, we review the description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The definition of executive capacity has two parts. First, the petitioner must show that the beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). 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, e.g., Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

The Petitioner's initial description of the Beneficiary's duties was general and essentially re-stated portions of the statutory definition of executive capacity. 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 response to the Director's request for evidence (RFE) the Petitioner provided a lengthy narrative describing the Beneficiary's business responsibilities and an additional description of the Beneficiary's management responsibilities. The Petitioner did not provide a division of the Beneficiary's time between the business responsibilities and the management responsibilities. The Petitioner also did not allocate the Beneficiary's time amongst the various responsibilities in either of these categories.

The Beneficiary's business responsibilities included understanding the market conditions, organizing and implementing internal audit activities, and participating in the development of the company's budget. The Petitioner added that the Beneficiary would "[g]rasp the company's financial situation, operating results and changes in funds" and "[p]reside over the development of the company's financial management." The Petitioner noted that the Beneficiary would also be "responsible for the audit of the company's budget, financial revenue and expenditure plans, cost-effective plans, credit plans, financial reports, accounting statements, major business plans related to the financial revenue and expenditure; economic contracts, economic agreements and etc."

The Petitioner's two-page description of the Beneficiary's business responsibilities is generic. The Petitioner does not relate any of these general responsibilities to the Petitioner and its airline ticket wholesaler business. Thus, these responsibilities could apply to any organization. Moreover, the Petitioner does not describe the Beneficiary's specific tasks. Reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. The Petitioner has not provided the necessary detail or explanation of the Beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Id.*

The Petitioner's separate description of the Beneficiary's management responsibilities also lacks specificity and detail. The Petitioner claims that the Beneficiary's management responsibilities will include organizing the Petitioner's structural hierarchy, recruiting, hiring, training, evaluating, and dismissing employees, and reviewing subordinate departments' expenditures. These responsibilities appear to relate more to supervision of personnel and not to executive duties.

In addition to the generic descriptions of the Beneficiary's proposed position, the Petitioner does not allocate the Beneficiary's time to any of the responsibilities listed. Although the Director specifically requested that the Petitioner provide the percentage of time the Beneficiary will spend on any executive or managerial duties, the Petitioner did not provide this information. Thus, we are unable to determine whether the claimed generally described executive duties even constitute the majority of the Beneficiary's duties. As the record does not establish what proportion of the Beneficiary's duties is executive in nature, if any, the Petitioner has not established that the Beneficiary will perform primarily in an executive capacity.

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. While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess some

level of authority with respect to discretionary decision-making, the position descriptions alone are insufficient to establish that her actual duties will be primarily executive in nature.

B. Staffing

Beyond the required description of the job duties, we review the totality of the record when examining 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.

The Petitioner's initial organizational chart depicted the Beneficiary as the vice president reporting to the chief executive officer. Although the organizational chart also identified a web development manager, a sales manager, and two sales representatives, none of these employees report to the Beneficiary's position. The Petitioner submitted a revised organizational chart in response to the Director's RFE. The revised chart showed the Beneficiary in the position of accounting manager and listed two "accountants" as reporting directly to her position. One of the individuals identified in the "accountant" position is also depicted as providing data management and reporting to the website developer. The chart no longer includes a sales department or sales employees. The Petitioner does not offer an explanation for the revision to the organizational chart, the deletion of the sales department, or the change in the Beneficiary's and other employees' positions.

The Petitioner also does not provide position descriptions for any employees, other than the Beneficiary. Although the record included resumes for four individuals, the resumes do not include the work these individuals perform or performed for the Petitioner. Additionally, two of the resumes are for individuals not listed on either organizational chart. The two resumes for the individuals depicted on the organizational chart show these individuals were previously employed as accounting assistants, not accountants.

The record includes the Petitioner's state quarterly employment report for the first quarter of 2017, the quarter in which the petition was filed. This report lists six individuals but only four names correspond to positions on the Petitioner's revised organizational chart. These positions are the chief executive officer, two website developers, and the "accountant." Without detailed information on what the Petitioner's employees do, the Petitioner has not established that these individuals perform or will perform duties that will relieve the Beneficiary from primarily performing the Petitioner's administrative, financial, and operational tasks.

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.[2] Under the statute, a beneficiary must have the ability to "direct the management" and

[2] On appeal, the Petitioner compares the Beneficiary's foreign and intended duties by emphasizing that her position in

"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.* Here, the Petitioner has not identified a subordinate level of managerial employees for the Beneficiary to direct. The record also does not include probative evidence that the Petitioner is sufficiently staffed to allow the Beneficiary to primarily direct a major component or function of the organization and delegate the duties necessary to carry out the administrative and operational tasks of a component or function.

We have considered the reasonable needs of the organization in light of the overall purpose and stage of development of the organization. To establish that the reasonable needs of the organization justify a beneficiary's job duties, a petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. Here, the Petitioner has not explained its deletion of a sales department and creation of an accounting department or how these changes impact its actual business. Whether the Beneficiary's position is titled vice president or accounting manager, the record does not include probative evidence that the Petitioner has the necessary staffing to relieve the Beneficiary from performing primarily non-qualifying duties. The Petitioner has not established how its reasonable needs justify the Beneficiary's performance of non-executive duties. A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Furthermore, the reasonable needs of the Petitioner will not supersede the requirement that the Beneficiary must be "primarily" employed in a managerial or executive capacity, and not spending the majority of his or her time on non-qualifying duties. *See* sections 101(a)(44)(A) and (B) of the Act. The Petitioner has not established this essential requirement of this visa classification.

III. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary will be employed in a managerial or executive position for the Petitioner.

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the organizational structure of both entities shows that she reports directly to the chief executive officer. However, the Beneficiary's placement in the organizational structure is but one factor to consider. The totality of the evidence in this matter does not establish that the Beneficiary will be relieved from performing primarily non-qualifying duties enabling her to perform primarily executive duties.

ORDER: The appeal is dismissed.

Cite as *Matter of Z- Inc.*, ID# 921657 (AAO Jan. 11, 2018)