U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29481419

Date: JAN. 18, 2024

Appeal of California Service Center Decision

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

The Petitioner, a data analysis provider, seeks to temporarily employ the Beneficiary as its chief product officer 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 California Service Center denied the petition, concluding the record did not establish that the Beneficiary was employed abroad, or would be employed in the United States, in a managerial or executive capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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 their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id*. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The primary issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in the United States in an executive capacity.[1]

"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.

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.

Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business and its staffing levels.

A. Job Duties

The Petitioner states that it is a data analysis provider that "provides a qualitative user reach platform that elevates thew voice of customers." The Petitioner claimed that in the role of chief product officer, the Beneficiary will "continue to oversee daily operations, translate strategy into actionable goals for performance and growth, and help implement organization-wide goal setting, performance management, and operational planning." The Beneficiary's duties were described in further detail as follows:

1. Design, technology, and product development and management (40%):
   a. Allocating company resources, producing technology solutions, and taking user-centric design decisions to resolve priority issues.
   b. Owning the complete life cycle of the product and making all related decisions.

[1] Throughout the record and on appeal, the Petitioner affirms that the Beneficiary is an executive and claims that he will be performing executive duties.

c. Creating wireframes, design components, and high-fidelity pixel perfect designs to be further developed by the engineering team.
d. Meeting users to gain their feedback, learn their needs, and discover new possibilities in expanding the product.
e. Preparing long-term and short-term product roadmaps.
f. Doing daily stand-ups with the team to discuss progress and challenges.
g. Setting up product and technical processes for successful feature launches.

2. Employee management and payroll (10%):
   a. Conducting monthly and quarterly one-on-ones with employee to promote their growth.
   b. Perform yearly appraisals, promotions, salary hikes, and bonuses.
   c. Oversee administrative work and other logistics to ensure that employees are equipped with all necessary tools and equipment.

3. Customer support and communication (5%):
   a. Communicating with product users and decision-makers to keep them updated of the latest developments in the product.
   b. Resolving bugs and other technical issues for users.

4. Hiring (15%):
   a. Sourcing and interviewing candidates, while assessing their technical skills and suitability.
   b. Conducting salary negotiations.
   c. Working with recruiters to find suitable candidates from India and around the world.

5. Third party vendors/services (5%):
   a. Managing third party vendors, consultancies, and service providers such as [redacted].
   b. Negotiating prices and contracts with vendors.

6. Finances and taxes (5%):
   a. Managing finances and employee expenses.
   b. Working closely with an external finance team to track all finances and file company and employee taxes on time.

7. Sales and stakeholder management (10%):
   a. Meeting with the sales department to discuss priorities and understand product expectations.
   b. Bringing sales leads and helping the sales team close deals.

8. Marketing and branding (10%):
   a. Creating a marketing strategy.

The Director issued a request for evidence (RFE), noting that the description of duties and supporting evidence was insufficient to establish that the Beneficiary would be employed in a primarily managerial or executive capacity. Noting that the duty description identified several non-qualifying tasks, the Director requested additional information clarifying the nature of his duties. In response, the Petitioner resubmitted the original description of duties, noting that the Beneficiary's U.S. duties are identical to those performed abroad and emphasizing that his duties are primarily executive in nature. Although the Petitioner clarified the percentages of time to be devoted to each of the Beneficiary's stated duties, it did not provide further clarification of his duties as requested by the Director.

In denying the petition, the Director determined that the Petitioner's description of the Beneficiary's duties was insufficient, noting that the duties as stated included non-qualifying tasks such as administrative and technical functions and therefore did not establish that Beneficiary's duties would be primarily executive. On appeal, the Petitioner asserts that the duty description was sufficient as it meets and exceeds the preponderance of the evidence standard, and again emphasizes the Beneficiary's performance of primarily executive duties.

For the reasons outlined below, the Petitioner did not demonstrate that the Beneficiary's role will be primarily executive in nature, as the job description the Petitioner offered contains generalities that preclude a meaningful assessment of the Beneficiary's actual tasks in the course of the Petitioner's daily operations.

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, although the Petitioner provided the percentage of time the Beneficiary would devote to each of his duties, it did not sufficiently document what proportion of the Beneficiary's duties would be executive functions and what proportion would be non-qualifying. The Petitioner listed the Beneficiary's duties as including both executive duties and technical and administrative tasks but did not quantify the time he spends on these different duties. For example, in addition to claiming that the Beneficiary will oversee daily operations and manage organizational goals, the Petitioner also states that the Beneficiary will be responsible for administrative tasks such as recruiting and hiring personnel and monitoring payroll, and technical tasks such as creating wireframes, design components, and high-fidelity pixel perfect designs. Absent a breakdown of the percentages of time the Beneficiary would devote to each duty, 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). 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner has not articulated the specific duties that the Beneficiary will perform and has not offered a breakdown of how much time would be devoted to each qualifying and non-qualifying duty.

Although it appears that the Beneficiary, as the U.S. entity's chief product officer, is responsible for establishing company goals and overseeing the company's product development, the fact that the Beneficiary will manage or direct a component of 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. Section 101(A)(44)(B) of the Act. While the Beneficiary may exercise discretion over the U.S. entity's daily operations and possesses decision-making authority regarding its product development, the position description does not establish that his day-to-day duties would be primarily executive in nature.

B. Staffing and Organizational Structure

Beyond the required description of the job duties, we also 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.

The Petitioner claims that it was established in 2019 and had three employees at the time of filing. The Petitioner provided a general overview of its staffing, claiming that all the Beneficiary's subordinates, except one, were based abroad and provided remote support.

The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than on its day-to-day operations. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the organization as the owner or sole managerial or executive employee.

When staffing levels are considered in determining whether an individual will act as a manager or executive, USCIS must also take into account relevant evidence in the record concerning the reasonable needs of the organization as a whole, including any related entities within the "qualifying organization," giving consideration to the organization's overall purpose and stage of development. *See* section 101(a)(44)(C) of the Act; *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016). If a petitioner claims that a beneficiary's managerial or executive role is dependent on other staff or entities within the larger qualifying organization, it bears the burden of submitting probative evidence to support such claims.

Here, the Petitioner asserts that it significantly relies on support from staff employed by its parent company in India but has not sufficiently documented the foreign entity's employment of these staff, described the services they provide, or explained how they interact or work with the Beneficiary and U.S. personnel. The Petitioner's general claims that its parent company provides operational and administrative support to the U.S. subsidiary should be corroborated with evidence explaining and documenting the nature and scope of this support and the specific functions performed by the foreign entity's personnel. Although the Petitioner submitted an organizational chart, resumes, and performance evaluations for several India-based individuals, the record does not include evidence that the Petitioner or its foreign parent pays the salaries of the India-based employees identified on the organizational chart, nor does it establish how they support the U.S. operation or how much time they

spend doing so. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Absent corroborating documentation of their employment or other evidence of the support they provide to the U.S. company, the record does not establish that the foreign staff support the U.S. operation.

Moreover, despite claiming the U.S. entity had three employees at the time of filing, the Petitioner indicates that only one employee, the company's director of marketing, was based in the United States at that time. Although the Petitioner submitted the resume and a performance appraisal for its director of marketing in response to the RFE, the record contains insufficient evidence demonstrating the Petitioner actually employed this individual. The Petitioner did not submit pay stubs or payroll records demonstrating its employment of the director of marketing, or any other individuals, at the time this petition was filed in January 2023.

USCIS must take into account the reasonable needs of the organization in light of the overall purpose and stage of development of the organization if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity. *See* section 101(a)(44)(C) of the Act. Here, while the Petitioner claims that the Beneficiary has been and will continue to be employed in a primarily executive capacity, it does not explain how the Beneficiary would be relieved from performing non-qualifying duties at the time of filing without subordinate employees to support him. Without detailed and complete information about the actual tasks performed by the Beneficiary, the claimed director of marketing, and the claimed overseas staff, we are unable to determine the extent to which they would effectively relieve the Beneficiary from significant involvement in day-to-day, non-executive tasks associated with operating the company. Considered in its totality, the evidence does not support a determination that the Beneficiary's duties are primarily executive in nature. Accordingly, the Petitioner has not established that the Beneficiary would be employed in the United States in an executive capacity as defined at section 101(a)(44)(B) of the Act.

III. RESERVED ISSUES

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding the Director's separate determination that it did not establish that the Beneficiary was employed abroad in a managerial or executive capacity. *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 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).

IV. CONCLUSION

For the reasons discussed, the Petitioner has not established that it will employ the Beneficiary in an executive capacity. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.