U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12462966

Date: JAN. 29, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a company engaged in the manufacture and trading of building materials, seeks to continue to temporarily employ the Beneficiary in the United States as its CEO/Managing Director under the L-1A nonimmigrant classification for intracompany transferees.[1] Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition, concluding the record did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. On appeal, the Petitioner contends it has provided sufficient evidence to demonstrate that the Beneficiary would act in a managerial or executive capacity. The matter is now before us on appeal.

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.

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

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period December 18, 2018 until December 17, 2019. 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.

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. Although the Director also considered whether the Beneficiary would be employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act, the Petitioner has not claimed that the Beneficiary's position is managerial in nature. Therefore, we restrict our analysis to whether the Beneficiary would be employed in an executive capacity.

"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 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).

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 the 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.

The Petitioner explained that the U.S. office is "introducing a brand of home improvement products including rustic tiles, marble tiles, toilet seat covers, select internal toilet components, and hand wash basins/sinks." The Petitioner provided the following duties to be performed by the Beneficiary as follows:

- ∑ Direct, plan, and implement company policies and objectives of the business to ensure continuing operations, maximize return on investments and increase productivity.
- ∑ Exercise responsibility over sales and profits; outlining the statement of work for each contract to ensure best efficiency and productivity.
- ∑ Responsible for hiring and firing of staff.
- ∑ Manage, supervise and direct staff personnel in the carrying out of day-to-day activities.
- ∑ Define partner compensation strategies, customer segmentation, operating models, and value propositions.
- ∑ Oversee and coordinate targeted marketing and advertising of company products and brand.

In the denial decision, the Director determined that the list of duties did not support a claim that the Beneficiary's actual duties would be primarily executive in nature and that his subordinates relieve him from non-qualifying duties. He stated that the job description was overly broad and recited vague job responsibilities, without providing any specific examples or any insight into the nature of his daily tasks within the context of the Petitioner's business activities. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. 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); Avyr Assocs., Inc. v. Meissner, 1997 WL 188942 at *5 (S.D.N.Y.). For example, the Director determined that the record is unclear, among other things, regarding the kind of decisions the Beneficiary makes, how he establishes internal company goals and strategic plans, what those plans entail, what policies and protocols he develops, and what kind of decisions are made.

On appeal, the Petitioner states that the Beneficiary is employed in an executive capacity and is "primarily responsible for directing and managing the U.S. company's start-up activities and operations," and "manages and directs the essential function of the company's U.S. market development and expansion." The Petitioner further explained that the Beneficiary's executive level duties will be "establishing business operations and overseeing the viability of the business; spearheading marketing and PR initiatives; continuously company risk monitoring/evaluation to ensure all risks are adequately mitigated or minimized."

The Petitioner submitted duty descriptions for the Beneficiary that do not credibly demonstrate that he would primarily perform executive tasks. The Beneficiary's duties include several general duties that can be performed for any company such as direct, plan, and implement company policies and objectives of the business to ensure continuing operations; maximize return on investments and increase productivity; and directing and managing the U.S. company's start-up activities and operations. The Petitioner did not include an account of the Beneficiary's specific daily tasks or a breakdown of the time allocated to such tasks.

The job duties are also vague and general since the Petitioner did not provide specific tasks that will be performed by the Beneficiary. Although the Beneficiary will direct, plan, and implement company policies and objectives of the business, the Petitioner did not provide information regarding the company policies and objectives that the Beneficiary will develop and how he will make sure that they

are implemented to provide for business growth. Further, the Beneficiary will exercise responsibility over sales and profits but does not explain the goal and methods in which the Beneficiary will "exercise" responsibility. The Beneficiary will expand the business but does not provide sufficient information regarding the methods and milestones developed to expand the U.S. operations.

Further, it is not clear if several of these duties would be non-qualifying operational duties such as exercise responsibility over sales and projects which may include meetings with customers, establishing pricing, negotiation of contracts, and warehouse and shipping of products. In addition, the Beneficiary will define partner compensation strategies, customer segmentation, operating models, and value proposition but did not provide any information regarding what strategies and models the Beneficiary will utilize and if a subordinate would perform the operations tasks. As a company involved in sales and shipping of products, it is not clear who will be responsible for the inventory and delivery of products without staff in these positions. Further, the Beneficiary will oversee and coordinate targeted marketing and advertising of products, but it is not clear if the U.S. office has advertising staff that the Beneficiary would manage rather than perform the day-to-day tasks of advertising operations. The lack of subordinate employees involved in advertising, warehouse and shipping brings into question how much time the Beneficiary can actually devote to executive duties.

Even though the Beneficiary holds a senior position within the organization, the fact that they 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 his actual duties would be primarily executive in nature.

B. Staffing

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 reflecting that the Beneficiary would supervise a receptionist/secretary, a sales/marketing representative, and a contracted controller/accountant. The organizational chart indicated that the drivers, warehouse manager and warehouse stockers are "to be hired."[2] The Petitioner did not provide a detailed description of the duties to be performed by the subordinate staff and therefore it is not clear how the staff would relieve the Beneficiary from performing the day-to-day operational duties. In light of the other documentary evidence also reflecting that the Beneficiary was performing various other non-qualifying operational tasks for the Petitioner, it is likely that he would be engaged as a first line supervisor of the sales/marketing representative, rather than as an executive primarily performing higher-level tasks related to goals and policies.

On appeal, the Petitioner states that the parent company located in Cameroon employs over 300 people that "can provide additional support to the U.S. company if and when needed." The Petitioner also states that it contracted a warehouse management company that handles the transit and procurement services, and a company that acts as the customs broker and shipping agent. However, the Petitioner has not presented enough evidence to document the existence of these employees or provided a description of the services they provide. The Petitioner has also not explained how the services of the contracted employees relieve the Beneficiary from performing non-qualifying duties related to the provision of goods and services. A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof, particularly when supporting documentary evidence would reasonably be available. The Petitioner must support its assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010).

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

ORDER: The appeal is dismissed.

[2] On appeal, it appears that the U.S. company hired additional employees, but the Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. See Matter of Michelin Tire Corp., 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).