U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-S-A-

DATE: JAN. 31, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a company operating an after school education facility, seeks to continue the Beneficiary's employment as its 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 Director overlooked internal payroll documentation reflecting that it employs managers and professionals subordinate to the Beneficiary who support her employment in an executive capacity.

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 July 1, 2016, until June 30, 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 AN EXECUTIVE CAPACITY

The first issue to be addressed is whether the Petitioner has established that the Beneficiary would act 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 submitted a vague job description for the Beneficiary that did not demonstrate her actual day-to-day tasks. The Director emphasized the Beneficiary's focus on sales and marketing duties and the lack of employees to relieve her from these non-managerial tasks. The Director further determined that the Petitioner did not establish that the Beneficiary supervised managerial or professional subordinates, pointing to discrepancies in submitted tax documentation. The Director concluded that the evidence indicated that the Beneficiary would likely act as a first line supervisor of non-managerial and non-professional subordinates.

On appeal, the Petitioner asserts that the Director overlooked internal payroll documentation supporting its employment of managerial and professional employees subordinate to the Beneficiary. The Petitioner further emphasizes that the Beneficiary oversees professionals whose positions require bachelor's degrees, including elementary level teachers, an accountant, and school administrators. In addition, the Petitioner states that it employs subordinate managers who supervise its several independent contractor teachers and instructors.

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 definition of 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 2016 as a school focused on "education, esp[ecially] after school, summer camp, winter camp, and Chinese language and culture." The Petitioner indicated that the Beneficiary would devote 20% of her time to "short-term and long-term business plans and goals for the company" and implementing "strategies and policies to guide the expansion of the company's business." The Petitioner explained that the Beneficiary would spend another 20% of her time on handling the "recruiting process," including taking recommendations from the school's principal on the appointment of employees and making final decisions on "hiring, terminating, promoting, demoting, evaluating [the] performance of executive personnel and managerial personnel for compliance with established policies and objectives." In addition, the Petitioner stated that the Beneficiary is responsible 20% of the time for directing the company's "financial administration," including determining areas of "cost reduction and program improvement."

Furthermore, the Petitioner indicated that the Beneficiary would devote 20% of her time to setting the company's "sales and marketing strategies" and another 5% to evaluating and advising "on the impact of long range planning [and] the introduction of new programs/strategies." The Petitioner also explained that the Beneficiary would spend 5% of her time on enforcing "policies and procedures" and promoting "great performance and positive morale," and another 5% on determining "business expansion policies," adding "promising programs and eliminating outdated programs," and defining "operational policies." Lastly, the Petitioner stated that the Beneficiary would devote a nominal amount of time to improving the budgeting process, providing strategic financial input, and developing a "reliable cash flow projection process and reporting mechanism."

The Petitioner has submitted a vague duty description for the Beneficiary that does not convey her actual day-to-day tasks or establish that she would devote her 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 her role. The Petitioner provided few examples and little supporting documentation to demonstrate the Beneficiary's performance of her stated duties, such as short-term and long-term business plans and goals for the company she has set, strategies and policies for expansion she has implemented, hiring recommendations she accepted from the school's asserted principal, policies and objectives she has established, areas of cost reduction and program improvement she has identified, sales and marketing strategies she has set, or new programs or strategies she has introduced.

Indeed, the Beneficiary's duties are repetitive, referring several times to strategies, policies, procedures, processes, and programs which have not been described in detail. The Beneficiary's stated duties make few references to the Petitioner's specific business operations and they are nearly identical to those she performed under the new office petition, despite the changes in the company's level of operations and development. 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).

Even though 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) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive in nature. Sections 101(A)(44)(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 her actual duties would be primarily executive in nature.

B. Staffing

In support of the petition, the Petitioner stated that it employs seven individuals as "employees" and 19 "contractors." The Petitioner submitted an organizational chart reflecting that the Beneficiary oversees two subordinates, a principal of the school and a deputy principal- manager of international communication. The principal is shown to supervise several departments and employees, including a finance department consisting of an independent contractor accountant and a "HR and accountant employee," a teaching department led by a contracted teaching department head, and a logistics department including an employee devoted to organizing and picking up students and a contracted dance teacher. Further, the principal is also shown to supervise an "enrollment receptionist." The chart also indicates that the teaching department head oversees several teachers, including three contracted math teachers, one computer teacher, two Chinese language teachers, and three English teachers.

Moreover, the provided organizational chart reflected that the deputy principal supervises an "art group" consisting of two contractors acting as managers overseeing contractors teaching architecture modeling and "Chinese papercut," a "special camp group" made up of a contractor running a "robot camp," and a contracted ping pong teacher, and a science teacher. In sum, the organizational chart indicated that the Petitioner is staffed by seven employees and nineteen contractors.

On appeal, the Petitioner emphasizes that the Director overlooked evidence indicating that the Beneficiary oversees several subordinate managers and professionals. However, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary supervises subordinate managers as necessary to allow her to primarily direct the management of the organization and establish its goals and policies. First, the Petitioner provides a California state quarterly contribution return and report of wages from the first quarter of 2017 indicating that it paid the following amounts to its employees: $800 to the accounting and HR employee, $6420 to the principal, $1692 to the deputy principal, $12,500.01 to the Beneficiary, and $3865 to one of its Chinese language teachers.

On appeal, the Petitioner further points to internal payroll documentation as support of its extensive organizational chart. Specifically, the Petitioner provides a payroll summary covering the period from January 1, 2016, through June 23, 2017 reflecting that it paid seven employees and "contractors" the following: the Beneficiary ($45,833.37), the deputy principal ($4000), the Chinese teacher [redacted] ($7576.75), the principal ($46,590), the Chinese teacher [redacted] ($4941.25), the accounting and human resources employee ($2400), and the logistics employee ($1200). Meanwhile, the Petitioner provided other payroll documentation in support of the petition reflecting that its employees were paid the following in April 2017: the Beneficiary ($4166.67), the deputy principal ($2000), the Chinese teacher [redacted] ($971.25), the logistics employee ($600), the accounting and human resources employee ($800), the principal ($1570), and the Chinese teacher [redacted] ($1416.25).

The Petitioner's internal payroll documentation indicates that beyond the Beneficiary and the principal, it has paid relatively nominal amounts to its other support employees during its eighteen month period of operation. Two of the employees, the logistics employee and accounting and human resources employee are shown to earn less than minimum wage for full-time work. Specifically, the Petitioner states that the logistic employee and accounting and human resources employee work full-time, yet the evidence indicates that they only earn $600 and $800 per month respectively.[2] Further, April 2017 payroll documentation submitted in support of the petition indicates that the principal devotes significant time to teaching, as she earned a substantial portion of her salary in "teaching hours" during that month, or $570 out of a total of $1570 earned. Further, the principal's most recent payroll slip from April 2017 indicates that she earned $1570 that month and $8,000 to date during that year, while the Petitioner elsewhere on the record indicates that this

[2] Projected over a full year, this would indicate that the logistics employee would earn $7200 and the accounting and human resources manager $9600 annually for full-time work, or well less than the $15,080 that is required pursuant to the federal minimum wage to be paid to a full-time employee during one year. Indeed, the California minimum wage is significantly higher at $10.00 per hour.

subordinate manager earns $3,000 per month, which we note would suggest that she should have earned $12,000 in salary by April 2017. This evidence leaves question as to the assertion that the principal is acting at the head of the school overseeing four departments and the 26 employees and contractors reflected in its organizational chart.

In fact, beyond the staff set forth in its payroll summaries, the Petitioner provides little support that it regularly engages its numerous independent contractors. Most notably, the Petitioner contends that it employs a head of teaching subordinate to the principal who oversees several teachers, including three math teachers, a computer teacher, two Chinese teachers, and three English teachers. However, the Petitioner submits little evidence to support that it regularly paid this claimed managerial subordinate as of the date of the petition. Indeed, although it provides some evidence, such as independent contractor agreements with some of its asserted contractor teachers, the Petitioner provided insufficient evidence to demonstrate that its many asserted contractor teachers can be considered subordinates within the Petitioner's organizational chart. In sum, this evidence indicates that the Petitioner has likely submitted an organizational chart with artificial tiers of management. The Petitioner must resolve this discrepancies and ambiguities 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).

Further, the Petitioner has submitted vague position descriptions for the Beneficiary's claimed subordinate managers that do not demonstrate the nature of their asserted roles. For instance, the Petitioner indicates that the principal is tasked with supervising the daily operation of the school and implementing "effective instructional programs." However, as noted, the Petitioner's recent payroll documentation from April 2017 appears to indicate that she spends a significant amount of her time teaching students. The Petitioner also provided vague duties for the deputy principal position and did not articulate "new business ideas" she has offered or "international cooperation" she has fostered. Further, the Petitioner provides no supporting documentation to substantiate that the Beneficiary is primarily delegating operational tasks to her subordinate managers; in fact, the record includes little evidence of the claimed principal or deputy principal performing duties for the school.

We acknowledge that the Petitioner sets forth other managerial subordinates in its organizational chart, such as the head of teaching reporting to the principal overseeing nine employees and contractors teaching math, computers, Chinese, and English. However, the Petitioner provides insufficient evidence to establish that this contracted staff member acts in a managerial role within the organization. For instance, the Petitioner submits an IRS 1099, Miscellaneous Income report indicating that it paid the head of teaching $19,311 during 2016; but otherwise, it provides no evidence that it continued to engage this individual on a regular basis at the time of filing or that this individual is working in a managerial capacity within the organization. Indeed, this claimed manager does not appear in the organization's most recent payroll documentation. Further, the submitted organizational chart suggests that two contractors oversee an "art group," consisting of two contractors teaching architectural modeling and Chinese paper cutting. However, the Petitioner again provides little supporting evidence to support the regular engagement of these contractors, or that these employees act in supervisory capacities within the organization. In sum, the Petitioner has

submitted insufficient evidence to corroborate that the Beneficiary primarily delegates duties to subordinate managers as necessary to allow her to primarily focus on the goals and policies and overall management of the organization.

As noted, the Petitioner also emphasizes on appeal that the Beneficiary supervises numerous professional subordinates. Although a beneficiary is not required to have professional subordinates in order to qualify as an executive, we will nonetheless address the Petitioner's assertion to assess the credibility of the record, and also to address whether the Beneficiary may qualify, in the alternative, as a "personnel manager."[3] The Petitioner notes the educational nature of its business and emphasizes that elementary level teachers and administrators, as well as accountants, are required to hold bachelor's degrees.[4] First, the evidence does not support that the Petitioner employs professional level accounting employees. As discussed, the employee devoted to accounting and human resources was shown to earn less than the federal minimum wage for full-time work, leaving question as to whether a bachelor's degree is required for this position. Likewise, the Petitioner lists a certified public accountant in its organizational chart and further suggests that he qualifies as a professional subordinate. However, although we acknowledge there is some evidence on the record that the Petitioner pays this independent contractor for accounting services, this is not sufficient to demonstrate that this service provider can be considered a professional subordinate regularly reporting to the Beneficiary.

In addition, the Petitioner submits little evidence to establish that any of its employees or its many asserted contractors hold specific bachelor's degrees required for their positions. It is notable that the Petitioner operates an after care and camp facility for children of various ages, not an elementary school. Although we acknowledge that bachelor's degrees might assist those teaching Chinese, English, computers, math, or other topics in an after school program, there is little evidence to support that specific bachelor's degrees are required to fill these various positions. In fact, the Petitioner did not provide supporting documentation to substantiate the degrees held by the individuals included in its organizational chart. For instance, the Petitioner states that its principal earned a Chinese degree in drama, while its deputy principal holds a "Master'[s] degree." However, the record includes no evidence of these degrees, nor has the Petitioner stated explicitly what

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[3] The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act.

[4] In evaluating whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

specific bachelor's degrees are required for these positions. Therefore, the record does not support the Petitioner's claim that most of the Beneficiary's subordinates are professional employees.

The Petitioner has not submitted sufficient evidence to demonstrate that it has sufficient managerial and support 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.*

The Petitioner has not credibly established that the Beneficiary supervises a subordinate level of managerial employees or that the company regularly employs sufficient staff to relieve her 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 subordinates also do not demonstrate that they act in managerial capacities. Here, even though the Beneficiary has the appropriate level of authority, the Petitioner has not established that, as of the date of filing, she 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 she would be relieved from substantial involvement in the day-to-day operations of the business. Further, the evidence indicates that the Beneficiary is likely substantially involved in the operational matters of the business and it has submitted little evidence to indicate that she will delegate operational tasks to managerial employees or other subordinates. 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. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of S-S-A-*, ID# 937168 (AAO Jan. 31, 2018)