U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39029704

Date: JUL. 02, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a retailer and wholesaler of ceramics and other household goods, seeks to temporarily employ the Beneficiary as the vice president (VP) of operations of its new office 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.

Service Center Operations (SCOPS) denied the petition, concluding the record did not establish that the Petitioner's new office would support the Beneficiary's employment in a managerial or executive capacity within one year, as required by the regulations applicable to L-1A new office petitions. The matter is now before us on appeal pursuant to 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

For purposes of the L-1 nonimmigrant classification, the term "new office" refers to an organization that has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). When a petition for L-1A classification indicates that a beneficiary is coming to the United States as a manager or executive to open or be employed in a new office, the petitioner must establish that a qualifying organization employed the beneficiary in a managerial or executive capacity abroad for one continuous year within three years preceding the filing of the petition. 8 C.F.R. § 214.2(l)(3)(v)(B). In addition, the beneficiary's proposed U.S. employment must involve executive or managerial authority over the new operation. *Id.*

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the new office no more than one year within the date of approval of the petition to support the beneficiary in an executive or managerial position. To demonstrate eligibility, a petitioner must submit evidence to establish that it has secured sufficient

physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. ANALYSIS

The issue before us on appeal is whether the Petitioner established that its new office would support the Beneficiary's employment in an executive capacity within one year.[1]

The term "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, 8 U.S.C. § 1101(a)(44)(B).

To establish that a beneficiary will be employed in an executive capacity, a petitioner must show that they would perform all four of the high-level responsibilities set forth in this statutory definition. If the petitioner establishes that the offered position meets all four elements in the statutory definition, it must then prove that the beneficiary will be *primarily* engaged in executive duties, as opposed to operational activities alongside the company's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

A petitioner filing an L-1A new office petition for an executive has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily executive in nature within one year of a petition's approval. Therefore, we evaluate a petitioner's description of the beneficiary's proposed job duties in the context of the new office's business and hiring plans, its proposed organizational structure, and any other relevant evidence of the company's expected development over that one-year period. *See generally* 8 C.F.R. § 214.2(l)(3)(v)(C).

The Petitioner provided evidence that it was established in Texas in [redacted] 2023 and indicated in its initial supporting letter that it was already engaged in the wholesale and retail sale of ceramic products and other household goods. The Petitioner provided copies of sales invoices, bank statements, Texas Sales and Use tax returns, and photographs of its physical premises located in [redacted] Texas in support of its claim that the new office was already operational.

The Petitioner's initial letter also included a table outlining the Beneficiary's proposed job duties as VP of operations, along with the percentage of time he would allocate to ten different areas of responsibility. The description is essentially identical to that provided for his position as chief operating officer for the Petitioner's foreign affiliate and therefore appears to describe the duties the Petitioner expects the Beneficiary to perform once the company is fully staffed. Briefly, the Petitioner indicated that he would participate in the company's annual budget process; implement plans to ensure

[1] The Petitioner did not claim that the Beneficiary would be employed in a managerial capacity, as defined at section 101(a)(44)(A) of the Act.

the business achieves its financial targets; manage the company's financial resources; implement the company's policies, goals and objectives; delegate responsibilities to managers; implement operational plans, strategies and work processes; and work with the company president to identify and develop new business opportunities. While these responsibilities appear to be consistent with having "executive authority over the new operation," as required by 8 C.F.R. § 214.2(l)(3)(v)(B), the job description also included several operational and administrative tasks such as receiving and processing payments, preparing online storefronts, processing and filling customer orders, purchasing inventory, and performing "administrative duties." However, SCOPS did not ask the Petitioner to clarify the Beneficiary's proposed duties, nor did its decision address the Beneficiary's job description as a basis for the denial.

Beyond the required description of a beneficiary's proposed duties, the evidence submitted with an L-1A new office petition must demonstrate that, within one year, the beneficiary would not only have the requisite authority over the business, but would primarily perform duties that relate to operational or policy management, and not to the supervision of nonprofessional employees or direct involvement in the operational activities of the company. A petitioner must therefore describe the nature of its business, the scope of the entity, and its proposed organizational structure, and provide evidence showing that the new office, more likely than not, will develop to the point where it can support a position in which the duties are primarily executive as defined at section 101(a)(44)(B) of the Act. *See* 8 C.F.R. § 214.2(l)(3)(v)(C); *see generally* 2 *USCIS Policy Manual* L.8(C), https://www.uscis.gov/policy-manual (stating that a petitioner must provide a description of the beneficiary's duties placed in the text of the personnel structure of the organization and the nature and scope of the business it conducts). A beneficiary will not be deemed an executive under the statute simply because they have an executive title such as "vice president," or because they "direct" the organization as an owner or as one of the company's senior employees.

Here, for the reasons discussed below, we agree with SCOPS' determination that the Petitioner did not meet its burden to establish, by a preponderance of the evidence, that the company would develop to the point where the Beneficiary's actual day-to-day duties would be primarily executive in nature within one year, as it did not provide sufficient information regarding the intended personnel structure and expected scope of the business.

At the time of filing in September 2024, the Petitioner stated that it employed one full-time worker and that it "plans on hiring managers to oversee the daily tasks, as well as multiple staff to fulfill and process orders." It did not, however, further address the proposed nature of the office, or include a description of the anticipated scope of the new U.S. entity, its intended organizational structure and its financial goals. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(*1*).

Therefore, in a request for evidence (RFE), SCOPS suggested the types of evidence the Petitioner could submit to demonstrate that it satisfies this requirement, such as a company letter stating the proposed number of employees and types of positions they will hold; the company's business plan for the start-up of the new office; the new office's proposed organizational chart, showing its proposed hierarchy and staffing levels for the first year; or a list of all proposed positions, the job duties associated with each position, and the names of employees for any positions that were already filled.

In response to the RFE, the Petitioner submitted a supplemental letter. The Petitioner emphasized that the company had grown since the date of filing, stating that it employed "anywhere between 4 to 9 employees on any given day depending on our business needs." The Petitioner also explained that it was continuously importing a large volume of inventory, noting that its sales would "result in enough profit to grow the company even more." The Petitioner stated its organizational structure would eventually mirror that of its foreign affiliate "with respect to department managers and other professional positions once [the Petitioner] has grown to be able to support those additional positions."[2]

The Petitioner provided copies of its payroll summaries for the bimonthly pay periods ending on November 15, 2024, November 30, 2024, and January 31, 2015; copies of earnings statements issued to employees on December 19, 2024, and January 22, 2025; and copies of identification documents for the employees paid in January 2025. The January 2025 payroll summary lists 18 full- and part-time employees who received hourly wages between $11.00 and $14.00. The RFE response also included copies of the Petitioner's 2023 federal tax return, lease agreements, bank records, bills of lading, and photographs of its premises.

In its decision denying the petition, SCOPS acknowledged the Petitioner's letter and supporting evidence provided in response to the RFE. SCOPS noted that while the Petitioner showed that it paid 18 workers in January 2025, the record lacked certain material information pertaining to these workers, including their job titles and job duties. Further, SCOPS observed that the Petitioner's response did not include evidence such as a business plan, its proposed organizational chart, its hiring plans, or other relevant evidence to show how the company's staffing and structure would be sufficient to support the Beneficiary's intended executive position within one year of approval.

On appeal, the Petitioner maintains that it submitted sufficient relevant information and supporting documentation to demonstrate, by a preponderance of the evidence, that the new office would be able to support an executive position. It further contends that SCOPS' decision "blurred the definition and requirements of an 'executive' with the definition and requirements for a 'manager'" by questioning whether the new office's organizational structure will, within one year, include "qualified executive, managerial, [or] professional level employees."

The Petitioner also asserts that SCOPS erroneously treated the record's lack of "suggested" evidence as a failure to submit required evidence by denying the petition, in part, because the RFE response did not include a business plan or a proposed organizational chart. It maintains that its assertion that the new office's organizational structure would mirror that of its foreign affiliate was sufficient to demonstrate the intended structure of the U.S. company. Finally, the Petitioner emphasizes that the evidence it provided with its RFE response demonstrated the nature of the business, its hiring of staff, and the company's ongoing growth, noting that SCOPS disregarded these relevant factors in adjudicating the petition.

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[2] The foreign entity's organizational chart depicts 16 positions filled by 12 employees. Specifically, the chart includes a CEO, a chief operations officer (COO), a manager who reports to the COO, an accountant, three department managers (sales, warehouse and "store group") who report to the manager, and 3 staff positions in each department. The chart shows that the Beneficiary, as COO, also serves as the sales department manager, and as a member of the sales team, while the "manager" also serves as "store group manager" and as a member of the staff in that department.

The Petitioner's assertions are not persuasive. The Petitioner bears the burden of demonstrating that the new office will be organized, staffed, and doing business in a manner that would require the Beneficiary to perform duties that are primarily executive in nature within the one-year period allowed by the new office regulations. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(*1*). The Petitioner's general assertion that the company would eventually be organized in a manner that resembles the structure of its overseas affiliate is insufficient to meet this requirement.

Further, while the Petitioner's response to the RFE showed that the company had hired 18 staff, the payroll records alone are insufficient to meet its burden of proof; the regulations specifically require it to address the anticipated scope of the new office's operations and its "organizational structure." *Id.* We cannot determine based on the payroll records what departments and positions the company intends to staff, how the hierarchy of the company will be organized, and whether it anticipates having sufficient personnel in place to relieve the Beneficiary from involvement in the day-to-day operations of the company within one year. For example, although the Petitioner stated it had four to nine staff working in its warehouses daily at the time of the RFE response, it did not indicate when it anticipated hiring staff to perform other necessary functions within the company. Rather, it relies on broad assertions that, based on its initial growth, it will eventually have an organizational structure in place that resembles that of its foreign affiliate and will support a qualifying executive position. The Petitioner has not specifically claimed, however, that it would more likely than not have that management structure in place within one year.

The Petitioner also suggests that it was erroneously penalized for opting to provide evidence other than the items SCOPS suggested in the RFE, such as its proposed organizational chart, a business plan showing the company's financial goals and intended staffing and hiring plans, or a list of proposed personnel with job titles and duties. While the regulations do not specify what the Petitioner must submit to satisfy its burden under 8 C.F.R. § 214.2(l)(3)(v)(C)(*1*), the evidence SCOPS suggested was reasonable and offered the Petitioner an opportunity to provide probative information regarding "the proposed nature of the office describing the scope of the entity, its organizational structure and its financial goals." The payroll records and other evidence of growth the Petitioner provided have been considered. However, for the reasons discussed, this evidence is not sufficient to show the company's intended scope, its financial goals, and the organizational structure it intends to have in place within one year.

We also acknowledge the Petitioner's claim on appeal that the staffing and structure of the company are not directly relevant when applying the definition of "executive capacity" at section 101(a)(44)(B) of the Act because the definition contains "no single mention of requiring any subordinates, employees or staff." The Petitioner's assertion that the structure and staffing of the organization have little relevance to evaluating whether the Beneficiary would be employed in an executive capacity is not persuasive.

First, the Petitioner's own description of the Beneficiary's proposed duties contains many references to subordinate staff and the work they are expected to perform. For example, the Petitioner states that the Beneficiary will be reviewing daily, weekly and monthly purchasing, sales and administrative financial reports, training and delegating responsibilities to subordinates, supporting the company's "sales and service teams," preparing staff schedules, and coordinating employee tasks associated with "production, sales and distribution." Therefore, it is reasonable to inquire about what specific

positions the Petitioner expects to fill by the end of the first year of operations, and whether such staff would be sufficient to relieve him from engaging in primarily non-qualifying duties.

Further, section 101(a)(44)(C) provides that USCIS must consider the reasonable needs of the organization in light of its overall purpose and stage of development if using staffing levels as a factor in determining whether an individual is acting in an executive capacity. The statute therefore does not support the Petitioner's claim that staffing levels are irrelevant to such a determination.

In addition, an executive employee, by definition, is one who "directs the management of the organization or a major component or function of the organization." *See* section 101(a)(44)(B)(1) of the Act. An executive directs the management of a given organization by controlling the work of managerial or lower-level executive employees, either by directly supervising them or having indirect authority over such employees by exercising control over a function that is binding on such employees. *See generally* 2 *USCIS Policy Manual*, *supra* at L.6(D). Finally, when adjudicating an L-1A petition, regardless of whether the petition is for a manager or an executive, USCIS considers the totality of the evidence and all relevant factors, including the nature and scope of the business, the company's organizational structure and staffing levels, and the work performed by other staff within the petitioner's organization, including whether those staff would relieve the beneficiary from performing operational, administrative and other non-executive duties. *See generally* 2 *USCIS Policy Manual*, *supra* at L.3(A) (describing how USCIS evaluates whether a beneficiary would be employed in a managerial or executive capacity).

Therefore, the statute, regulations and USCIS policy guidance all support the need to consider evidence regarding a petitioner's projected staffing levels and organizational structure when evaluating whether a new office would support an executive position within one year.

Here, for the reasons discussed, the Petitioner did not meet its burden to demonstrate, by a preponderance of the evidence, that it would have sufficient personnel in place to relieve the Beneficiary from significant involvement in the day-to-day operations of the company within the one-year timeframe allowed by the regulations. Without such a showing, the Petitioner has not demonstrated that he would primarily perform duties consistent with the statutory definition of "executive capacity" within that one-year period. Accordingly, we will dismiss the appeal.

III. BENEFICIARY'S FOREIGN EMPLOYMENT

Although not addressed in SCOPS' decision, the record contains insufficient evidence to establish that the Beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii). The Petitioner claims the Beneficiary meets this requirement based on his employment as chief operating officer (COO) of [redacted] Ltd. since January 2019, and provided evidence intended to demonstrate its affiliate relationship with this Chinese company.

However, where asked to summarize the Beneficiary's work experience at Part 8 of the L Classification Supplement to Form I-129, the Petitioner stated that the Beneficiary, at the time of filing in September 2024, was employed not solely by [redacted] Ltd., but by three different

Chinese companies.[3] To establish the Beneficiary's eligibility, the Petitioner must show that [redacted] Ltd. employed him in a full-time position. Considering the Petitioner's statement that he concurrently worked for three employers in the three years preceding the filing of the petition, including a company that he owns and presumably manages, it did not meet its burden to establish his full-time employment with its claimed affiliate.

While this unresolved issue is not grounds for our dismissal of this appeal, the Petitioner should offer clarifying evidence of the Beneficiary's employment history in any future filings, whether in further pursuit of the instant petition or with regard to any other employment-based petition where full-time employment with a qualifying organization abroad is a requirement for eligibility.

IV. CONCLUSION

The Petitioner did not establish, as required, that its new office would support the Beneficiary's proposed executive position within one year. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

[3] The Petitioner stated on the petition that the Beneficiary had been employed as sales manager for [redacted] Ltd from September 2018 to the present; as COO of [redacted] Ltd. from January 2019 to the present; and as the owner of [redacted] Ltd. from July 2022 to the present.