U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF WZI- LLC

DATE: JULY 12, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a real estate investment and development company, seeks to temporarily employ the Beneficiary as its chief financial officer (CFO) under the L-1A nonimmigrant classification for intracompany transferees. 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 Petitioner did not establish, as required, that (1) it has a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary has at least one year of continuous full-time employment with a qualifying foreign entity in the three years preceding the filing of the petition; and (3) it will employ the Beneficiary in a managerial or executive capacity in the United States.

On appeal, the Petitioner contends that the Director was "preoccupied with supposed inconsistencies in the filing, such as a trivial translation matter" in the documentation that was submitted to establish the qualifying relationship. The Petitioner provides additional evidence of the Beneficiary's employment abroad and asserts that the record establishes that she will manage an essential function in the United States.

Upon *de novo* review, we will dismiss the appeal as the Petitioner has not established that it will employ the Beneficiary in a managerial or executive capacity. However, we will withdraw the two remaining grounds for denial.[1]

[1] The Director's adverse determination with respect to the Petitioner's qualifying relationship was based primarily on an inconsistency in the English translation of the foreign entity's name in the submitted documentation. Specifically, in some documentation, one of the Chinese characters was translated as "Property" and, in others, it was translated as "Real Estate." After reviewing the submitted evidence in its totality, we conclude that the Petitioner established by a preponderance of the evidence that it has a qualifying relationship with the Beneficiary's foreign employer. *See* 8 C.F.R. § 214.2(l)(1)(3)(i).

With respect to the Beneficiary's one year of employment abroad, the Director determined that the Beneficiary identified a different foreign employer on her nonimmigrant visa applications submitted in 2011 and 2012, despite the Petitioner's claims that she had worked for its parent company since 2003. On appeal, the Petitioner emphasizes that it must establish that the Beneficiary's qualifying year of employment with its parent company occurred between August 2015 and August

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.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. DEFINITIONS

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

"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.

Based on the statutory definitions of managerial and 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). The Petitioner must also prove that the Beneficiary will be *primarily* engaged in managerial or 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.

III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The issue to be addressed is whether the Petitioner established that the Beneficiary will be employed in a managerial or executive capacity. The Petitioner initially stated that the proposed position of chief financial officer is in an executive capacity, but on appeal states that the position should have been described as a function manager.

2018, when this petition was filed. Further, it submits additional evidence to support its claim that the Beneficiary was employed by its parent company during that period. Finally, the record contains evidence that the employer named on the Beneficiary's prior U.S. visa applications is an affiliate of the Petitioner's parent and therefore a qualifying entity. Accordingly, we find that the Petitioner established that the Beneficiary met the foreign employment requirement. *See* 8 C.F.R. § 214.2(l)(3)(iii).

When assessing the managerial or executive nature of an offered position, we examine a petitioner's description of the job's duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring an L-1 petitioner to submit "a detailed description of the services to be performed"). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of the 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 the Beneficiary's actual duties and role in a business.

Before turning to our discussion of the Beneficiary's proposed duties and the Petitioner's staffing, we note that the Petitioner, on appeal, states that this petition should "be viewed through the lens of a 'new office.'" 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 no more than one year within the date of approval of the petition to support an executive or managerial position. All other L-1A petitioners must establish the ability to support a managerial or executive position at the time the petition is filed.

The Petitioner marked "No" on the Form I-129, Petition for a Nonimmigrant Worker," where asked if the Beneficiary is coming to open or be employed in a new office. Also, in a statement submitted in support of the petition, the Petitioner stated that it has been doing business since March 2017 and "is therefore not a new office." If the Petitioner now believes that it qualifies as a new office, it may file a new petition with the required filing fee and supporting evidence; we will not treat the instant petition as a new office petition.

A. Job Duties

The Petitioner seeks to employ the Beneficiary as the CFO of its real estate investment and development business. The company intends to purchase real property with the potential for development for future lease or re-sale, but had not yet purchased any property as of the date of filing.

The Petitioner initially stated that the Beneficiary's duties would fall under six areas of responsibility, including: cash flow, company liabilities, company performance, department supervision of the accounting and finance department, financial relationships, and "finance or raising capital." However, the Petitioner did not identify the specific duties the Beneficiary would perform in the context of the business, nor did it identify the amount of time she would spend on specific tasks.

For example, the Petitioner stated that the Beneficiary's responsibility for "cash flow" would require her to "control the cash flow position," and "maintain the integrity of funds, securities, and other valuable documents," as well as authority to establish accounting policies and procedures for credit and collections, purchasing, payment of bills and other financial obligations. While this description indicates that the Beneficiary may have the appropriate level of authority over accounting and finance policies, it does not specify in any meaningful detail what she is expected to do on a day-to-day basis as the CFO of a real estate investment company that is still in the process of researching potential properties.

Some of the other responsibilities attributed to the Beneficiary are simply general statements about what a typical company CFO does and do not appear to have been written to reflect the nature of her actual duties within the Petitioner's business. For instance, under the heading "company liabilities," the Petitioner stated "[a] company has many legal contracts, statutory and tax obligations, hidden obligations, hidden liabilities . . . leases or insurance summaries, and expectations from loan covenants and/or the board of directors." This is not a description of the Beneficiary's proposed duties. Similarly, under the "company performance" heading, the Petitioner stated that "[t]he CFO is the company scorekeeper using tools like the balanced scorecard, dashboards, and financial statement ratio analysis to communicate both the company's expected and actual financial performance. The Petitioner noted that the CEO must "understand and watch" company liabilities and "understand the company business model for generating customer value." These statements are not sufficiently detailed and appear to describe the function of any CFO in any organization.

Finally, the Beneficiary's responsibilities for "financial relationships" were stated in similarly broad terms. The Petitioner stated that "the CFO may work in conjunction with the CEO to establish and maintain lines of communication with investment bankers, financial analysis and shareholders," "maintain adequate sources of capital for the company's current borrowings (if any)," and "invest the company's funds and administer employee incentive stock option plans (if the company establishes one)." These general statements appear to be hypothetical and do not meet the Petitioner's burden to submit a detailed descriptions of the actual duties the Beneficiary will perform in the United States. The job description as a whole resembles a general template and does not provide substantive, verifiable details that can be reliably correlated to activities documented in the record.

In a request for evidence (RFE), the Director advised the Petitioner that the description was lacking sufficient detail to establish that the Beneficiary would primarily perform managerial or executive duties. The Director instructed the Petitioner to provide a more detailed statement delineating the Beneficiary's proposed duties and the amount of time to be spent on each specific task. In response, the Petitioner re-submitted the same position description. The Petitioner emphasized that the types of activities described could only be performed by a top-level executive.

In the denial decision, the Director noted that the Petitioner did not provide the requested information regarding the amount of time the Beneficiary would spend on specific tasks. The Director further determined that the duties as described did not clearly show that the Beneficiary's duties would be consistent with the definitions of managerial or executive capacity.

We agree that the Petitioner's response to the RFE did not include the additional information requested and simply repeated a description that, as discussed above, does not provide probative information regarding the Beneficiary's proposed job duties. Reciting a 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 actual duties themselves will reveal the true nature of the employment. *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). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's proposed activities in the course of her daily routine.

On appeal, the Petitioner attempts to clarify the Beneficiary's proposed duties, noting that the part-time contracted accountant "is responsible for the day-to-day actual work" of the financial and

accounting department, while the Beneficiary "will be responsible for the broader devising of policies and implementation standards" of the department. The Petitioner reiterates the same duties provided at the time of filing and attempts to explain how the Beneficiary will perform qualifying duties associated with each area of responsibility.

However, the expanded job description does not sufficiently identify the Beneficiary's proposed day-to-day duties and simply adds broad statements to those already submitted. For example, the Petitioner explains that the Beneficiary's duties with respect to "company liabilities" will include reviewing and conducting "high level discretionary analysis of budgets and expenditures amounting to potentially millions of dollars in development-related transactions." With respect to the Beneficiary's "cash flow" responsibilities, the Petitioner states "she is a high level executive . . . and will be tasked with devising company policy as to our financial matters and communicating this information." The Petitioner states that the Beneficiary's responsibility for "financial relationships" would include devising strategies and overseeing operational strategy for collaboration with financial industry partners." The newly submitted information highlights the Beneficiary's authority over financial matters without including any additional details regarding what the Petitioner expects her to do on a day-to-day basis within the context of the company's current operations.

Both versions of the description provide only vague information that focuses on the Beneficiary's discretionary authority, but says little about the actual tasks she will perform. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros.* 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The fact that the Beneficiary will manage or direct a department, component or function of the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or 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 or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. While it appears the Beneficiary would exercise discretion over the Petitioner's day-to-day financial operations and possess the requisite level of authority with respect to discretionary decision-making, a vague and non-specific position description is insufficient to establish that her actual duties would be primarily managerial or executive in nature.

B. Staffing and Organizational Structure

At the time of filing, the Petitioner stated that it had four employees. The Petitioner submitted an organizational chart showing that the company is headed by a chief executive officer (CEO). The chart shows that the CEO directly oversees the Beneficiary's position as well as four "groups" or departments. These include: an "Advisory Group" with a part-time contracted worker serving as both executive advisor and legal advisor; a "Fund Management" group consisting of an "investment committee" comprised of "CEO, CFO, etc." and a part-time contracted accountant; a "Property Management Group" with on-site project managers to be hired at a later date; and an "Operations Group." The chart reflects that the Operations Group includes a COO position (temporarily filled by the CEO), a vice president of business development (temporarily filled by the contracted executive advisor), an individual who serves as both office manager and human resources manager, a logistics manager, and a vacant marketing and public relations position.

Therefore, the chart reflects that the Beneficiary would have shared authority for supervising the part-time accountant as a member of the "investment committee." Notably the record does not contain clear evidence that the Petitioner makes $2000 monthly payments made to the contracted accountant, (identified as [redacted]) as claimed. The Petitioner has made $2000 monthly payments to a contractor called [redacted]," but it did not state or provide evidence that [redacted] is associated with this company. The record does contain a copy of a Form 941, Employer's Quarterly Federal Tax Return, prepared in October 2018, which identifies [redacted] as the preparer.

The Petitioner also claims for the first time on appeal that the Beneficiary would continue to manage the financial function for its foreign parent company, including "3 overseas finance and accounting professional personnel." The Petitioner provides information regarding the overseas personnel, who include a credit manager in the foreign entity's administration department[2], as well as an accountant and cashier in the finance department. While the Beneficiary may continue to oversee the foreign entity's financial component, the Petitioner has not explained why the foreign entity's staff members should be considered as part of the U.S. company's organizational structure. The Petitioner has neither stated nor provided evidence that the foreign personnel carry out any of its day-to-day financial and accounting functions, and the job duties provided for these employees do not reflect that they are involved in the U.S. company's operations. For example, the credit manager is "responsible for making sure that project return is brought in as scheduled in project plan," making plans for "onsite signing of the project return agreement," and coordination between various project departments. The Petitioner, as of the date of filing, had no projects under development and did not establish its need for an employee in China to perform these functions. We will not consider the foreign entity's financial function or personnel in determining whether the Petitioner can support the Beneficiary as a function manager or executive.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

Here, the Petitioner did not meet its burden to clearly describe the duties the Beneficiary would perform in managing its financial function, and without this information, we cannot determine that the Beneficiary would primarily perform managerial duties associated with the function. In analyzing the Beneficiary's duties, we also take into account the totality of the evidence, including the nature of the business and its current stage of development. The evidence submitted at the time of filing indicated that the Petitioner had identified some potential properties for acquisition, but had not yet completed a purchase of land or property. According to the Petitioner's business plan, it expected to purchase its

[2] This same individual was identified as a member of the marketing department on the foreign entity's organizational chart submitted at the time of filing.

first property at "month 6," to complete its first project at "month 20" and to divest itself of the first completed property at "month 28." The nature and scope of the company's financial activities as of the date of filing, however, are unclear, and, as noted, the Petitioner did not adequately describe the Beneficiary's actual proposed duties in support of its claim that she will primarily manage these activities.

We acknowledge the Petitioner's claims that all of the "day-to-day actual work of accountancy within the U.S. company" is performed by its contracted part-time accountant. The Petitioner indicates that this contractor is responsible for taxes and payroll, but also in charge of developing and managing financial systems and policies, financial forecasting and risk analysis, and preparing the company's budgets and financial reports. However, as noted, the Petitioner did not provide sufficient evidence of its payments to the accountant, nor did it provide a copy of a contract delineating her expected responsibilities in support of its claims that it has entrusted forecasting, budgeting, financial systems and policy-making tasks to a contractor. Notably, the Petitioner's business plan identifies no future positions for accounting or finance staff, and indicates that the company will continue to rely solely on a part-time contracted accountant in the coming years. The Petitioner did not sufficiently support its claim that the Beneficiary would be relieved from performing non-managerial duties associated with the company's financial function.

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 or a component of the enterprise.

While the Petitioner emphasizes the Beneficiary's elevated stature within the parent organization and her long tenure as its CFO, it must still submit sufficient evidence to establish what she will do on a day-to-day basis for the U.S. subsidiary during its developmental stage of development, and to establish how the company would support her in a managerial position as of the date of filing. The Petitioner has not established how its current level of activities and staffing would support a position in which the Beneficiary would be primarily focused on the goals and policies of the U.S. company. As discussed above, the Petitioner's claim that she will continue in her role as CFO and vice president of the parent company does not establish that her proposed role in the United States will require her to perform primarily executive duties.

The Petitioner correctly observes that we must take into account the reasonable needs of the organization and that a company's size alone may not be the only factor in denying a visa petition for classification as an L-1A intracompany transferee. *See* section 101(a)(44)(C) of the Act. As noted, the Petitioner states on appeal, that "within the context of the reasonable needs, this case should . . . be viewed through the lens of a new office." However, as already discussed, the Petitioner did not file a new office petition and therefore must demonstrate that its business can currently support a managerial or executive position in its financial department.

The Petitioner asserts that the Beneficiary will be the highest ranking figure at the petitioning company with respect to its financial operations and notes that the parent company's investment in the U.S. company is significant; however, the issue is not the extent of the Beneficiary's authority, but whether all relevant factors, taken together show that the Beneficiary will be employed in a *primarily* executive or managerial capacity. For the reasons cited above, we find that the Petitioner has not met this threshold.

IV. DOING BUSINESS

Although not addressed in the Director's decision, we find that the Petitioner has not established that it is doing business as defined in the regulations. *Doing business* means the regular, systematic, and continuous provision of goods and/or services. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H).

The Petitioner indicates that it intends to develop commercial and residential properties for sale or lease but had not purchased property as of the date of filing. The record reflects that it signed a "company acquisition agreement" with a property owner on December 14, 2018, three months after filing the petition. While the Petitioner stated at the time of filing that it has been in business since March 2017, and that the Beneficiary is coming to develop an office that has been in business for over one year, the record does not contain evidence of such business activities.

We acknowledge that the real estate industry may have a longer development period than some other industries. However, the regulatory definition of "doing business" does not vary from industry to industry, nor does it make an exception for industries in which it takes longer to reach the stage of actually engaging in the regular, systematic, and continuous provision of goods and/or services.

The Petitioner, as a real estate developer that had not yet purchased any property, and which did not provide evidence of any other business activities, did not meet its burden to establish that it was doing business at the time of filing. For this additional reason, the petition cannot be approved.

V. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the 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.

Cite as *Matter of WZI- LLC*, ID# 4289731 (AAO July 12, 2019)