U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF A-F- INC.

DATE: JULY 31, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a flooring distribution company, seeks to temporarily employ the Beneficiary as the chief executive officer (CEO) of its new office[1] 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 record did not establish, as required, that the Beneficiary was employed abroad in a managerial or executive capacity.

On appeal, the Petitioner asserts that it submitted a detailed foreign organizational chart demonstrating that the Beneficiary oversees managers and professional subordinates. The Petitioner also contends that the Beneficiary acts as a function manager and states that he is primarily relieved from performing non-qualifying operational duties by his foreign subordinates.

Upon *de novo* review, we will dismiss the appeal.

## I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, 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.*

[1] The term "new office" refers to an organization which has been doing business in the United States 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.

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner 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. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

We will first analyze whether the Petitioner established that the Beneficiary was employed abroad in a managerial or executive capacity.

"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.

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.

When examining the foreign managerial or executive capacity of a given beneficiary, we will review the submitted description of the job duties. The description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the foreign employer's organizational structure, the duties of a beneficiary's foreign subordinates, the presence of foreign employees to relieve a beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role abroad. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the foreign employer's business, its staffing levels, and its organizational structure.

### A. Duties

Based on the definition of managerial and executive capacity, the Petitioner must first show that the Beneficiary performs 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 was *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the foreign entity'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 the Beneficiary's foreign employer "has a rich experience in manufacturing and exporting engineered hardwood flooring to [the] USA for over 15 years." The Petitioner indicated that the Beneficiary acted as the marketing manager of the foreign employer's "international sales department" from June 2014 to August 2015 prior to being sent to the United States on an F-1 student visa to earn a master's degree. The Petitioner explained that the Beneficiary "was solely responsible for managing all of [the foreign employer's] international promotion, marketing, business development, market research, and public relations activities." It further stated that the Beneficiary had been tasked with "establishing and training teams to send to various flooring trade shows around the world" and "managing accounts of major international clients such as [redacted] and [redacted]

The Petitioner indicated that the Beneficiary spent his time on the following duties abroad:

- 20% developing and implementing "company brand and marketing strategies" and "marketing campaigns for a wide variety of advertising mediums,"
- 20% managing "working relationships with large, important, or strategic [foreign employer] client companies" and growing the company's international client base,
- 10% managing relationships with foreign employer "marketing or brand related business partners," including print, television, and radio organizations, as well as "handling contract negotiations,[and] planning marketing activities or events,"
- 10% resolving "any major issues or disruptions" in his department,
- 10% overseeing "the development, improvement, and administration of client satisfaction measuring methods,"
- 10% handling public relations matters such as "press conferences," "company statements," and "company sponsored marketing/outreach events,"
- 10% "hiring and training Brand Management Center subordinates,"
- 5% conducting "weekly meetings with upper management," and
- 5% reporting weekly to the "Vice President of International Business."

The Petitioner has not submitted a sufficiently detailed duty description that describes the Beneficiary's day-to-day managerial or executive-level duties abroad and credibly established that he devoted his time primarily to qualifying tasks. 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).

The Beneficiary's duty description includes several generic duties that could apply to any manager or executive acting in any business or industry and they do not provide insight into the actual nature of his role abroad. The Petitioner provided insufficient examples and little supporting

documentation to demonstrate the Beneficiary's performance of qualifying duties abroad, such as teams he trained to send to trade shows, major international clients he managed, brand and marketing strategies or campaigns he implemented, or print, television, or radio partners he worked with. The foreign employer also did not adequately detail or document major issues or disruptions the Beneficiary resolved, client satisfaction measuring methods he oversaw, press conferences or company press statements he handled, or "Brand Management Center" subordinates he hired.

The Petitioner also asserted that the Beneficiary managed large clients such as the and but it submitted no supporting documentation to substantiate this assertion. Further, the Petitioner provided a foreign organizational chart indicating that the Beneficiary supervised a customer service representative, two marketing team leads, and two "marketing staff" employees subordinate to the marketing leads, but it did clarify the "Brand Management Center" subordinates mentioned in his duties. In contrast, the Beneficiary's duties do not indicate that he devotes any time to overseeing the personnel set forth in the foreign organizational chart.

Even though the Beneficiary held a senior position within the foreign employer, the fact that he managed or directed a part of the foreign employer's 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 foreign position be "primarily" managerial or executive in nature. *Section 101(A)(44) of the Act.* The Beneficiary may have exercised discretion over a portion of the foreign employer's day-to-day operations and possessed a certain level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties abroad were primarily managerial or executive in nature.

B. Staffing

The Petitioner submitted a foreign organizational chart reflecting that the Beneficiary oversaw a customer service representative and two marketing team leads. The chart also indicated that each marketing team lead supervised a marketing staff employee.

The Director denied the petition emphasizing that the Petitioner did not submit sufficient documentation to establish the Beneficiary's supervision of managerial or professional subordinates abroad. On appeal, the Petitioner emphasizes that the provided foreign organizational chart demonstrates that the Beneficiary supervised managers and professional subordinates.

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) of the Act. If a beneficiary directly supervises other

employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

The Petitioner did not submit sufficient evidence to substantiate that the Beneficiary acted in a managerial or executive capacity overseeing subordinate managers and professionals abroad. The Petitioner submitted monthly foreign payroll documentation specific to the Beneficiary's asserted foreign employment dating from June 2014 through August 2015; however, only the Beneficiary's name is translated into English, while more than thirty other "management" employees listed in these monthly records are not translated. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and supports the employment of the Beneficiary's asserted subordinates.

In fact, the provided foreign payroll documentation leaves question as to the foreign employer's submitted organizational chart. As noted, the foreign payroll documentation lists more than thirty "management" employees and their monthly base salaries. The Beneficiary was shown to have, by a significant margin, the highest monthly salary amongst the management employees listed in the submitted foreign organizational chart. For instance, the next highest listed base monthly salary was 4,000 Chinese Yuan, while the Beneficiary was shown to earn 10,000 Chinese Yuan. However, the submitted foreign organizational chart indicates that there were several higher level managers acting above the Beneficiary, including the vice president of international business to whom the Beneficiary reports, three other vice presidents of other departments, sourcing and quality control departments heads, and a chairman and general manager. Likewise, the chart showed several other department managers acting at the same level within the organization as the Beneficiary. It is questionable that the submitted payroll documentation indicated that the Beneficiary earned at least 6,000 Chinese Yuan more monthly than every other listed management-level employee.

Further, it is also noteworthy that the Petitioner provides no supporting documentation to substantiate the Beneficiary's supervision of his claimed subordinates or his delegation of tasks to these employees. Therefore, the Petitioner did not sufficiently substantiate the Beneficiary's claimed subordinates abroad with supporting documentation.

In addition, the Petitioner provided vague duty descriptions for the Beneficiary's subordinates that do not adequately demonstrate that they acted in their claimed capacities. For instance, the Petitioner stated that the subordinate customer service representative was tasked with "consulting with customer complaints," determining claim amounts and settlements, managing customer call-back work, and managing customer satisfaction survey work. First, we note that this employee was not shown to have subordinates of his own in the provided organizational chart; as such, he does not

qualify as a subordinate manager. The remaining question is whether this subordinate acted in a professional capacity.[2] On appeal, the Petitioner submits a degree for the claimed customer service representative indicating that he earned a master's degree in business administration. However, the Petitioner did not submit evidence to demonstrate that the customer service representative was employed by the foreign employer and that he was a subordinate of the Beneficiary. Further, the customer service representative's duty description is vague and generic and does not demonstrate that a bachelor's degree is required for the performance of the position's duties. Indeed, the duties of the position appear to be administrative and operational in nature, including dealing with customer complaints, managing customer satisfaction surveys, and archiving customer claim files, and this employee had no subordinates to perform the non-professional tasks inherent in this asserted position.

The Petitioner also did not substantiate that the Beneficiary supervised two managerial marketing team leads overseeing marketing staff. The duties of the asserted marketing leads are also vague, noting their management of the company's "social brand through innovative social buzz and traditional marketing strategies," development of "channel partnership relationships," engagement at "network conferences and tradeshows," their development of strategies "to cross-sell/upsell," and their work with the sales team on "pitches and proposals." However, these provided duties do not articulate details such as marketing strategies these employees formulated, partnership relationships they developed, or pitches and proposals they offered. In addition, the duties of the marketing team leads do not reference any supervisory responsibilities. As such, the Petitioner has not corroborated that the Beneficiary oversaw two managerial marketing leads abroad acting as subordinate supervisors.

On appeal, the Petitioner provides documentation indicating that the Beneficiary's asserted marketing leads hold foreign degrees in information technology management and international trade, respectively. However, even if we were to conclude that the employment of the marketing leads was substantiated, the duties of these positions appear very similar to a typical sales representative, a position that has not been demonstrated to require a bachelor's degree. Beyond indicating that these subordinates hold degrees, the Petitioner does not substantiate that these positions require a baccalaureate degree as a minimum for entry.

Therefore, the Petitioner did not submit sufficient evidence to establish that the Beneficiary primarily oversaw managers or professional subordinates in his former capacity abroad, namely, that he qualified as a personnel manager.

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[2] In determining 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."

The Petitioner also contends on appeal that the Beneficiary was employed abroad as a function manager. However, the Petitioner has not articulated a specific function that the Beneficiary managed. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead was 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 managed an essential function, it must clearly describe the duties that were performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function was a clearly defined activity; (2) the function was 'essential,' i.e., core to the organization; (3) the beneficiary was primarily *managing*, as opposed to *performing*, the function; (4) the beneficiary acted at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary exercised discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

The Petitioner has not sufficiently articulated or documented the Beneficiary's purported employment as a function manager. For instance, the Petitioner stated that since the foreign employer is "a heavily export-based business, it is clear that their international marketing department would be performing an 'essential function' within the organization." The essential nature of the Beneficiary's asserted function is not apparent from this statement alone. The Petitioner emphasized that the Beneficiary set department goals and policies, that he planned marketing strategies, and managed department resources. However, as we have discussed, the Petitioner provides little detail and supporting evidence to corroborate the Beneficiary's daily activities in this role or the essential nature of the asserted function. In fact, as we have noted, the Petitioner provides insufficient and conflicting documentation regarding the Beneficiary's foreign subordinates; and therefore, did not demonstrate that he was primarily tasked with managing his asserted function rather than performing it.

Finally, the Petitioner also suggests on the record that the Beneficiary acted in an executive capacity abroad. However, a petitioner claiming that a beneficiary performed as a "hybrid" manager/executive does not meet its burden of proof unless it has demonstrated that the beneficiary primarily engaged in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary was primarily employed in either a managerial or 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.*

As discussed, the Petitioner did not sufficiently describe the Beneficiary's day-to-day executive-level duties abroad. In fact, the Beneficiary's duties include discrepancies that leave question as to his actual role abroad. The Petitioner also did not submit supporting documentation to substantiate the Beneficiary's claimed subordinates abroad and it provided vague duty descriptions for them. Further, the Petitioner also did not corroborate that the Beneficiary was primarily removed from performing non-qualifying operational duties in his capacity abroad. Therefore, the Petitioner has not substantiated that the Beneficiary supervised managers abroad as claimed and that he primarily focused on the broad goals and policies of the organization rather than its day-to-day operations.

For the reasons discussed above, the appeal must be dismissed as the Petitioner did not establish that the Beneficiary was employed in a managerial or executive capacity abroad.

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

We will also enter an additional basis for denial. The Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States within one year of an approval of the petition.

The Petitioner stated that it would distribute the foreign employer's products in the United States. However, the Petitioner submitted few details as to the Beneficiary's proposed day-to-day duties in the United States. For instance, it indicated that the Beneficiary would "report to the president and Board of Directors on policy goals and policy formations," "oversee the key operations of the company," "hire and fire managers," and "deliver what is required to grow market shares in the line with the strategic business directions."

Similar to the Beneficiary's asserted foreign duties, his U.S. duty description consists of generic duties that could apply to any manager or executive acting in any business or industry; such duties do not provide insight into the actual nature of his role. The Petitioner provided few specifics related to how the Beneficiary's day-to-day duties fit specifically within the company's first year business plans. For instance, the Petitioner did not specify actions the Beneficiary would take during its first year of operation to assure that it develops as necessary to support him in a managerial or executive capacity within one year. The Petitioner also submits few examples of policies and goals he would set, key operations he would oversee, or strategic business directions he would deliver. In sum, the Petitioner has submitted few details regarding the Beneficiary's day-to-day tasks during the first year. Again, specifics are clearly an important indication of whether a beneficiary's duties would be primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd.*, 724 F. Supp. 1103, 1108.

Further, the Petitioner's first year business and investment plans do not adequately demonstrate that it is likely to support the Beneficiary in a managerial or executive capacity within one year. For instance, the Petitioner provided a business plan that articulated few details on what it would do during the first year to launch the business, only vaguely noting that it would "provide better customer service," generate "online internet exposure," take advantage of "sourcing advantages," and provide "excellent product or service." The Petitioner also provided evidence indicating that the Petitioner had invested in the new U.S. venture; but it did not detail how this investment is sufficient or how it would be used to launch the business.

Lastly, the Petitioner submitted conflicting hiring projections leaving question as to the credibility of its first year staffing plans. For instance, at the time the petition was filed, the Petitioner submitted first year hiring projections in its business plan reflecting that it would hire a general manager, a warehouse manager, a front desk receptionist, an accountant, and three sales managers during the first year. However, in response to the Director's request for evidence (RFE), the Petitioner provided a substantially different organizational chart indicating that the Beneficiary would supervise an office/HR manager, a warehouse manager, a sales manager, and a chief financial officer (CFO). Further, the chart indicated that the office/HR manager would oversee a receptionist, the warehouse manager would direct warehouse staff, the sales manager would supervise "multiple sales teams" and "multiple marketing teams," and the CFO would oversee an accounts manager overseeing "accounts staff." The Petitioner did not submit hiring projections on when the members of this wholly revamped organizational chart would be hired, nor did it provide duties, salaries, or expected education levels for these employees. In addition, the Petitioner provided no explanation or projections as to how it would support this expanded organizational chart during the first year. The complete reformation of the projected U.S. organizational chart in response to the RFE leaves significant question as to the credibility of the Petitioner's first year business and hiring plans.

For these reasons, the Petitioner has not established that the Beneficiary would act in a managerial or executive capacity within one year.

## IV. CONCLUSION

The appeal will be dismissed because the Petitioner did not establish that the Beneficiary was employed abroad in a managerial or executive capacity or that he would be employed in a managerial or executive capacity in the United States within one year of the petition's approval.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-F- Inc.*, ID# 1367851 (AAO July 31, 2018)