U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17201972

Date: June 7, 2021

Appeal of California Service Center Decision

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

The Petitioner, an international trade company, seeks to continue the Beneficiary's temporary employment 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 that the Beneficiary would be employed in an executive capacity in the United States. The Director further determined that the Petitioner did not demonstrate that the Beneficiary had been employed in executive capacity abroad. The matter is now before us on appeal.

In these proceedings, the petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a 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.*

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The primary issue we will address is whether the Petitioner established that it would employ the Beneficiary in an executive capacity. The Petitioner did not claim that the Beneficiary would be employed in a managerial capacity.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

To be eligible for L-1A nonimmigrant visa classification as an executive, a petitioner must show that the beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B)(i)-(iv) of the Act. If the petitioner establishes that the offered position meets all elements set forth in the statutory definition, it must prove that the beneficiary will be *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

In determining whether a given beneficiary's duties will be primarily executive, we consider the petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business and its staffing levels.

A. Job Duties

In a cover letter submitted with the petition, the Petitioner stated that the Beneficiary will continue serving as its CFO and summarized her duties as follows:

- Develop and adjust the organization's overall financial accounting and financial management systems;
- Develop and adjust the financial procedures and standards, and budget management;
- Establish and adjust company's financial and accounting policies, goals, and objectives;
- Develop and adjust financial business plans and forecasts;
- Oversee financing strategies and activities, as well as banking relationships;
- Prepare financial statements;
- Review financial statements to determine progress and status in attaining objectives; formulate planning recommendations to the board of directors;
- Develop and implement finance, accounting, billing, and auditing procedures;
- Oversee each department to ensure proper maintenance of all accounting systems and function; etc.

The Petitioner also submitted a multi-page job description chart which divides approximately 70 job duties into ten groups and indicates that each group of responsibilities would require 10% of the Beneficiary's time. While lengthy, this breakdown was repetitive, vague, and primarily re-stated and paraphrased the duties described above, without adding specifics. The ten groupings lacked any clear structure and many duties appear several times throughout the description. Both the summary of duties

and the expanded list of duties focus on the Beneficiary's level of authority over the company's financial matters without providing insight into what she is expected to do on a daily basis within the context of the Petitioner's international trading company. Further, the expanded description indicates that the Beneficiary's role includes oversight of "the finance staff," but the Petitioner does not claim to employ any subordinate staff responsible for financial functions or activities.

Although the Petitioner provided several examples of specific actions the Beneficiary had taken since becoming CFO, these examples did not describe what she would do on a regular and ongoing basis. For instance, the Petitioner stated that the Beneficiary had recommended that the company apply for business licenses and permits and a trademark and approved a plan to participate in trade shows, but these do not describe her typical day-to-day duties.

In a request for evidence (RFE), the Director advised the Petitioner that it did not sufficiently describe the offered position and requested additional information regarding the specific tasks the Beneficiary would perform and the amount of time she would spend on individual tasks.

In response to the RFE, the Petitioner provided a revised breakdown of the Beneficiary's position but did not follow the Director's instructions to list her specific day-to-day duties and clarify the amount of time she allocates to each of them. The revised job description divides the Beneficiary's duties into five groups, with each group allocated 20% of her time. The Petitioner included the original duties in the revised description, but also added a significant number of additional duties, despite indicating that the previous description accounted for 100% of the Beneficiary's time. The initial job description indicated that the Beneficiary's role as CFO includes all aspects of the company's finances and was essentially limited to financial, accounting, budgetary and cost control matters. However, in response to the RFE, the Petitioner added responsibilities related to personnel, human resources, public relations, contract negotiation, and authority for the overall direction, policies, strategies, and objectives of the business.

For example, in the RFE response, the Petitioner indicated that the Beneficiary "establishes the human resources policies and goals," adjusts the positions of employees, and exercises authority for hiring, firing, and promotion and other personnel actions. The Petitioner also added tasks related to contract negotiation, representation of the company at industry conferences, maintenance of relationships with key customers, and acting as the company's "principal public relations officer." In addition, the Petitioner added new responsibilities that are essentially identical to those attributed to the company's CEO. Specifically, the Petitioner stated that the Beneficiary will "exercise discretionary decision on business strategies and overall direction of the U.S. company," "coordinate business activities to achieve company's goals and objectives," carry out the "strategic plans and policies as approved by the board of directors," direct the management of the organization, and "promote the company's direction and momentum . . .." None of these responsibilities were included in the initial iteration of the Beneficiary's job duties.

The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, a petitioner cannot offer a new position to a beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The information provided by the

Petitioner in its response to the Director's RFE did not clarify or provide more specificity to the original duties, but rather added new generic duties to the initial job description.

Finally, the Petitioner provided a brief hourly breakdown of the Beneficiary's "typical daily tasks" in which it attempted to describe what she would do during an eight-hour workday. These tasks resembled those provided in other descriptions in the record and did not provide any additional insight into her specific proposed duties.

Overall, most of the duties included in both versions of the Beneficiary's job description are written in overly generalized terms, with many of them generally paraphrasing the statutory definition of executive capacity. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The fact that a beneficiary will assist in the direction of a business or a component of a business and exercise some discretion over its day-to-day operations does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive in nature. Section 101(A)(44)(B) of the Act. As such, a detailed job description is critical in determining the nature of the employment; reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient. In order to meet its burden of proof, the Petitioner must identify the specific tasks the Beneficiary will perform or the services she will provide within the context of its business. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros.*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, for the reasons discussed, neither the initial job description nor the description provided in response to the RFE provided insight into the specific tasks the Beneficiary performs on a day-to-day basis as the Petitioner's CFO.

In June 2019, after issuing the RFE in this matter, U.S. Citizenship and Immigration Services (USCIS) conducted a site visit and interviewed the Beneficiary about her role with the Petitioner and the Petitioner's activities. Following the site visit, the Director issued a notice of intent to deny (NOID). In the NOID, the Director summarized the job descriptions submitted at the time of filing and in response to the RFE, noting that they were inconsistent and lacked sufficient detail regarding the Beneficiary's actual day-to-day tasks. The Director also provided notice that the results of the site visit did not support a determination that the Beneficiary performs primarily executive duties.

Specifically, the Director advised the Petitioner that, when asked to describe her duties, the Beneficiary stated that she "talks and meets with company accountants, facilitates the shipping of products with the factory, talks and meets with the company's sales manager, and takes orders over the telephone or email and forwards to the appropriate staff for shipping." She was unable to describe her duties in additional detail when requested to do so.

In addition, the NOID reflects that the USCIS site inspection officers interviewed the Beneficiary at her residence in [redacted] California after finding none of the company's employees present at the Petitioner's [redacted] office during normal business hours. The Beneficiary informed the officers that the company's employees typically work in the office Monday through Friday, noting that some

may be "in the field" on certain days. She indicated that on the day of the site visit, all of the employees were in the field buying and researching products and attempting to acquire new business, which, as further discussed in the analysis of the Petitioner's staffing below, is not consistent with the job descriptions provided for the company's subordinate staff.

In response to the NOID, the Petitioner provided a letter from its CEO, but he did not attempt to rebut the Beneficiary's statement that her duties include facilitating the shipment of products, taking orders by telephone and email, and forwarding those orders to staff for shipping. These are the day-to-day tasks associated with operating an international trade business and are not included among the duties the Petitioner has attributed to the Beneficiary's CFO position. Further, the job descriptions provided for the U.S.-based subordinate staff do not indicate that any of them are responsible for making shipping arrangements or taking sales orders, which raises questions as to how much of the Beneficiary's time would be spent on these types of non-executive tasks and how the day-to-day work of operating the business is actually allocated among the company's eight-person staff.

Instead of addressing the concerns raised by the site visit, including the Beneficiary's statement that she performs non-executive tasks related to sales and shipping, the Petitioner maintained that its response to the RFE was sufficient to establish that the offered position is in an executive capacity. However, the deficiencies of the initial description and RFE response were discussed in the NOID; the Petitioner did not address or attempt to rebut the Director's determination that those descriptions were overly vague and inconsistent with one another.

For the reasons, already discussed, we agree with the Director's conclusion that the written job descriptions submitted in support of the petition and in response to the RFE are vague, repetitive, internally inconsistent, and do not identify the specific duties the Beneficiary typically performs and how much time she allocates to such tasks. Further, the Petitioner has not attempted to rebut the Beneficiary's statement that she performs operational tasks that are not reflected in the written job descriptions provided. As the Petitioner does not deny that she performs these routine operational tasks, its claims that the written descriptions of her duties are accurate, complete, and sufficient to establish that her duties are primarily executive in nature are not persuasive. The Petitioner has not resolved the inconsistencies 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).

In sum, the evidence of record does not sufficiently delineate the Beneficiary's actual job duties and the amount of time she allocates to executive-level tasks and thus does not establish that her duties would be in a primarily executive capacity as defined at section 101(a)(44)(B) of the Act.

B. Staffing and Organizational Structure

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we must 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.

Under the statutory definition of executive capacity at section 101(a)(44)(B) of the Act, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of the organization. Inherent to the definition, the beneficiary must primarily focus on the broad goals and

policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title, or because they "direct" the enterprise as an owner and occupy a senior position on an organizational chart.

The Petitioner indicates that it is engaged in international trade and that it works closely with its Chinese affiliate. The business transactions documented in the record reflect that the petitioning company has purchased and distributed various types of products including baby products, e-cigarette and vaping products, bottled CBD water, frozen chicken feet, and food products, with most products exported for distribution to China, Taiwan, and Hong Kong. The Beneficiary stated that the business was solely engaged in the trade of baby products at the time of the site visit in 2019.

The Petitioner indicated that it had eight employees in the United States at the time of filing in January 2019. An organizational chart submitted at that time indicated that the Beneficiary and the CEO serve in lateral positions and report to the board of directors. The chart depicts three department managers (purchasing, marketing and sales) in the next tier of the company's hierarchy. The chart reflects that the purchasing manager supervises four purchasing employees who are all located in China. The sales manager is depicted as having one U.S.-based subordinate and nine sales subordinates based in China. Finally, the organizational chart shows that the marketing manager supervises two U.S.-based employees (an assistant and an office clerk), as well as a "promotion commissioner" based in China. Despite the Petitioner's statement that the Beneficiary oversees "the finance staff," the chart does not depict such staff. The Petitioner submitted payroll documentation confirming that it employed the U.S.-based workers identified in the organizational chart at the time it filed the petition.

When staffing levels are considered in determining whether an individual will act as a manager or executive, we will also take into account relevant evidence in the record concerning the reasonable needs of the organization as a whole, including any related foreign entities within the "qualifying organization." *See Matter of Z-A-* Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016). If a petitioner claims that it has a reasonable need for foreign staff to perform some of the operational tasks associated with its U.S. business, it has the burden of documenting those foreign employees and the duties they perform for the U.S. entity.

Here, however, the Petitioner did not meet this burden. It did not provide a recent organizational chart for its Chinese affiliate,[1] submit evidence that it or its affiliate pays wages to the China-based employees included on the U.S. organizational chart, or submit other corroborating evidence related to its claimed overseas staff. In the RFE, the Director acknowledged the Petitioner's claim that employees in China perform sales, purchasing and marketing duties for its U.S. office, but emphasized that it did not establish how they support the U.S. operation or how much time they spend doing so. In response, the Petitioner stated that "as an international trade company mainly engaged in imports and exports to China, it is very reasonable and typical to have employees in the U.S. and China." The Petitioner indicated that the U.S. and Chinese staff "will definitely relieve [the Beneficiary] from performing operational daily duties," but did not provide any additional evidence related to the Chinese staff.

[1] The record contains an organizational chart for the Petitioner's foreign affiliate, but it was created in December 2015 and pre-dates the Beneficiary's transfer to the United States.

The Petitioner has also claimed that "[t]here are many outsourced service providers retained by our company to provide professional services" but it did not document these outsourced providers, provide evidence of payments made to them, or explain the nature or scope of the services they provide to the company. As such, our discussion of the Petitioner's staffing will focus on the U.S.-based workers whose employment has been documented in the record.

The Petitioner provided brief position descriptions for the sales, marketing and purchasing manager positions at the time of filing, indicating that each manager reports to both the CEO and CFO and that they perform nearly identical duties despite their different areas of responsibility. For example, the Petitioner indicated that both the sales and marketing managers are responsible for evaluating customer and marketing reports, developing pricing strategies, and "liaison with media and advertising." The Petitioner stated that the purchasing manager, like the sales manager, will "manage and coordinate sales staff and activities in the U.S.," but there is only one subordinate sales employee in the United States and this employee is not shown as one of the purchasing manager's subordinates. The Petitioner indicated that each manager is responsible for the general supervision of their department and departmental staff but did not further specify the nature of their duties.

In the RFE, the Director advised the Petitioner that it did not sufficiently describe what the three department managers do on a day-to-day basis or how they allocate their time, and also noted that the evidence did not identify what duties are performed by the subordinate staff in each department. In response to the RFE, the Petitioner submitted a revised organizational chart in which it switched the job titles of the individuals originally identified as the sales manager and purchasing manager without explanation. The Petitioner also provided a chart that includes the names, job titles, educational background, salaries, and job duties for the three department managers. The original descriptions were slightly revised to indicate that each manager reports only to the CFO rather than to the CFO and CEO as previously stated. In addition, the Petitioner indicated that all three managers "manage and coordinate sales staff and activities in the U.S." As noted, the organizational chart indicates that 9 of the 10 claimed sales staff are in China and that they report only to the sales manager.

Despite the Director's request, the Petitioner did not include more detailed information regarding the duties performed by the department managers, nor did it provide information regarding the subordinate employees in each department. On appeal, the Petitioner now offers a chart which briefly describes the duties of all staff included on its initial organizational chart. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the Director's RFE or NOID. *Id.* Further, we note that despite the Petitioner's claim that employees based in China make up 60% of its staff, it still has not submitted corroborating documentation of their employment or other evidence of the support they provide to the U.S. company.

On appeal, the Petitioner maintains that the previously submitted evidence is sufficient to establish that the Beneficiary is one of the top executives in the U.S. company, reports to and receives only general supervision from the president/CEO, "establishes all the important goals and policies of the U.S. entity on finance," "directs the management of the whole U.S. entity through department

managers," and "exercises wide latitude in discretionary decision-making, such as policies, strategies and objectives."

We acknowledge that the Petitioner has consistently indicated that it employs two executives, three managers, and three subordinate employees in the United States. However, it cannot meet its burden solely by submitting a chart showing tiers of subordinate employees with executive and managerial job titles. The evidence must substantiate that the duties of a beneficiary and their subordinates correspond to their placement in an organization's structural hierarchy.

The job descriptions submitted by the Petitioner, particularly the job description provided in response to the Director's RFE, indicate significant overlap between the Beneficiary's duties and those performed by the CEO. The CEO, like the Beneficiary, is claimed to report to the board of directors, establish the company's policies, strategies, goals, and objectives, give direction to the organization, and exercise discretion on business decisions. This overlap makes it difficult to gauge the Beneficiary's actual level of discretionary authority within the scope of an organization in which two of eight employees are claimed to be employed in an executive capacity.

Further, we note that despite the Beneficiary's title of CFO and the Petitioner's initial indication that her role is mainly focused on executive oversight of the company's finances as well as "finance staff," none of the company's managers or subordinate staff have been tasked with handling routine financial functions such as bookkeeping, accounting, banking, invoicing, auditing, and accounts payable and receivable. There is evidence that the Petitioner has utilized the services of an accountant to file certain tax documents, but it has not adequately documented the nature or extent of these outsourced services, accounted for other day-to-day tasks associated with the company's finances, or otherwise established that the subordinate staff relieve the Beneficiary from performing non-executive duties associated with the company's financial activities. The lack of supporting staff in this area undermines the Petitioner's claim that the Beneficiary's responsibilities are limited to high-level direction of the company's financial activities and functions.

The Petitioner has consistently stated that the Beneficiary will direct the management of the company through subordinate department managers, who oversee the employees performing the day-to-day work of the company. However, as noted the brief job summaries the Petitioner provided for its department managers are vague and do not adequately establish what they do on a day-to-day basis or how they oversee the China-based staff that they are claimed to supervise. Despite the Petitioner's claims that the actual sales and purchasing activities are performed by the subordinate staff in these departments rather than by the department managers, it has not rebutted the Beneficiary's statement to USCIS officers that all of the company's employees spend time in the field researching and purchasing products and attempting to acquire new business. In fact, the CEO confirms on appeal that it requires all of its employees to "go out to sell and participate in exhibitions." However, five of the company's eight employees are claimed to be managers or executives who rely on lower-level staff to perform activities such as purchasing and sales.

Finally, as noted above, the Petitioner has not rebutted the Beneficiary's own statement that her duties include taking sales orders by telephone and e-mail and coordinating the shipping of the company's products, nor has it indicated that the lower-level staff are responsible for performing these types of duties.

Without detailed and complete information about the actual tasks performed by the Beneficiary, the managers and the subordinate and claimed overseas and outsourced staff, we are unable to determine the extent to which they would effectively relieve the Beneficiary from significant involvement in day-to-day, non-executive tasks associated with operating an international trade company. As noted, the Petitioner claims that she directs the management of the company's financial activities but does not have staff to support her with the day-to-day aspects of those activities, while the Beneficiary herself indicates that she takes sales orders and makes shipping arrangements. Considered in its totality, the evidence does not support a determination that the Beneficiary's duties are primarily executive in nature.

On appeal, the Petitioner emphasizes that we must consider 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. The Petitioner also cites *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570, 1574 (N.D. Ga. 1988) to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act primarily in a managerial or executive capacity. Here, there is no indication that the Director denied this petition based on the size of the petitioning company, nor are we basing our decision on the size of the company.

The Petitioner also emphasizes on appeal that it must only establish that it meets each eligibility requirement for the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner's descriptions of its employees' duties were so general that they lack probative value. Further, information obtained during the site visit indicates that the Beneficiary and the lower-level staff are engaged in performing duties that are not included in the written descriptions of their positions, which further undermines the probative value of those descriptions.

The Petitioner asserts that the Beneficiary will be one of the two highest ranking figures at the petitioning company; however, the issue is not the extent of the Beneficiary's authority or her placement in the organizational structure, but whether all relevant factors, taken together show that the Beneficiary will primarily perform executive duties. For the reasons cited above, we conclude that the Petitioner has not demonstrated the Beneficiary's eligibility. Accordingly, the appeal will be dismissed.

III. RESERVED ISSUES

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding the Director's separate determination that it did not establish that the Beneficiary was employed abroad in an executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

We also have not addressed the business activities of the Petitioner's subsidiary company [redacted] which was established in 2016. In the RFE, the Director noted that, in a previous petition filed on the Beneficiary's behalf [redacted], the Petitioner indicated that she was involved with the subsidiary's activities, and that at the time, the company intended to engage in cannabis cultivation and marijuana manufacturing and distribution. Accordingly, the Director questioned whether the Beneficiary's activities under the extended petition would be in compliance with state and federal law.[2] In its response to the RFE, the Petitioner stated that [redacted] had never engaged in the cannabis industry and "has not even operated since its establishment." The Petitioner provided a copy of the subsidiary's 2018 federal tax return which showed that the company had reported no income and no business expenses apart from payment of "taxes and licenses," although it continued to own land valued at over $67,000. The Director did not address the subsidiary's activities in the final decision and the Petitioner reiterates on appeal that [redacted] has "never been engaged in any cannabis industry" and has not otherwise been operational.

While the evidence is sufficient to demonstrate that [redacted] was not actively doing business at the time this petition was filed, it appears that the company continues to exist, shares a business address with the Petitioner, and maintains an active company status with the California Secretary of State.[3] Accordingly, the Petitioner should address this subsidiary's activities in any future proceedings in order to establish that the Beneficiary's employment offer does not contravene federal law.

IV. PRIOR APPROVAL

As acknowledged by the Director, USCIS previously approved a petition granting an extension of the Beneficiary's L-1A status. Although there is a previous finding of eligibility, the burden of proof in the request for an extension of petition validity remains on the petitioner. *See* Section 291 of the Act. Each nonimmigrant petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

Further, in this matter, the Director had new material information obtained during the USCIS site visit that was not available at the time of the prior petition's approval. The Director articulated the new material information in the NOID and provided the Petitioner an opportunity to respond prior to issuing the final decision. USCIS is not required to approve applications or petitions where eligibility has not been demonstrated merely based on a prior approval. *See Matter of Church Scientology Int'l*,

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[2] In *Matter of I- Corp.*, Adopted Decision 2017-02 (AAO Apr. 12, 2017), we concluded that although USCIS' primarily responsibility is to adjudicate immigration benefit requests available under applicable immigration law, we will also take into account other intersecting areas of law, including federal criminal law. In other words, USCIS cannot approve a visa petition that is based on employment that contravenes another federal law.

The Controlled Substances Act (CSA) imposes restrictions on the manufacture and distribution of marijuana in the United States. *See* 21 U.S.C. § 812, 841(a)(1). The CSA states that "it shall be unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." 21 U.S.C. § 841(a)(1). Under the CSA, anyone seeking to manufacture or distribute marijuana must apply for registration. *See* 21 U.S.C § 822(a)(1). Although certain states have legalized or decriminalized the use of marijuana—including the state of California—its possession, cultivation, and distribution remains illegal under federal law.

[3] *See* Website of California Secretary of State, https://businesssearch.sos.ca.gov/CBS/Detail (last accessed on June 7, 2021).

19 I&N Dec. 593, 597 (Comm'r 1988).

V. CONCLUSION

For the reasons discussed, the Petitioner has not established that it will employ the Beneficiary in an executive capacity. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.