U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38791090

Date: JUN. 13, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a describing itself as a consulting and investment research company, seeks to employ the Beneficiary as its chief executive officer (CEO) under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity, including its affiliate or subsidiary, to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

SCOPS denied the petition, concluding the record did not establish that the Petitioner had a qualifying relationship with the Beneficiary's former foreign employer. SCOPS further determined the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial or executive capacity in the United States. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal as the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity. Since this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding SCOPS' other basis for denying the petition. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, 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.*

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue we will analyze is whether the Petitioner established that it would employ the Beneficiary in an executive capacity in the United States. The Petitioner does not claim that the Beneficiary would be employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in an executive 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.

When examining the executive capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in an executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

A. Duties

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 record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying executive position.

If a 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 its 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.

The Petitioner indicated that it is a "privately held single-family office providing equity and related capital to purpose-driven people and businesses." The Petitioner stated that it is responsible for identifying and recommending investment opportunities in the U.S. and European markets thereby generating a 2% consultancy fee from the foreign based [redacted] that established its operations in the United States. The Petitioner submitted the following duty description for the Beneficiary as its CEO:

> **Portfolio Client Management (40% of his time)**
> - Periodically meet with senior management and executive leadership of portfolio clients to understand needs, gain insights into market trends, and assess the impact on company position.

- Lead conference calls, meetings, business lunches and company sponsored events to promote [the Petitioner] portfolio, client retention, and enhance existing portfolio relationships.

Business Growth Strategy Development and Implementation (25% of his time)

- Review financial reports, quarterly fiscal earnings, and historical results of portfolio clients to assess future investment strategy for [the foreign company's] portfolio.
- Develop [the Petitioner] investment strategy and strategic business plans in collaboration with [the foreign company] executive leadership.
- Participate on weekly conference calls with other regional CEOs within the [foreign company] to discuss strategic initiatives and alignment on company strategic objectives.
- Visit client offices and site locations and periodically meet with portfolio client company leadership to understand ongoing and planned business initiatives.

Business Forecasting & Market Research Evaluation (25% of his time)

- Evaluate reports provided by [Petitioner] Research team and third-party vendors concerning market trends and risk analyses.
- Periodically assess business performance based on key performance indicators (KPIs), administrative operational efficiency, and achievement of short-term and long-term strategy goals.
- Identify and present investment recommendations to [the foreign company] based on financial and business reporting provided by [the Petitioner] research team and third-party vendors.
- Periodically evaluate strategic alignment between [the Petitioner] investment portfolio performance and strategic investment targets and revise portfolio holdings as needed.

Continuous Process & Performance Management (10% of his time)

- Establish goals and objectives for [the Petitioner's] USA back-office and research division, including current and future employees.
- Ensure [Petitioner] US employees are properly trained and align with company standards.
- Approve changes or modifications to [Petitioner] company policies and procedures.
- Participate in final interviews for prospective hires and provide final approval and new company hires.

The Petitioner submitted a duty description and other supporting documentation indicating his involvement in non-qualifying operational tasks related to the company's provision of services. For instance, the Petitioner submitted vendor invoices dated in March 2024 for financial information services and disaster recovery licenses listing the Beneficiary as the contact for billing.[1] The Petitioner also provided documentation reflecting the Beneficiary negotiating a lease agreement and evidence from a client indicating that he provided management consulting services, assisting this client with their management practices and revising their organizational structure. Although we acknowledge

[1] The petition was filed on September 16, 2024.

that these may have been executive-level tasks if performed within the Petitioner's operations, in this case, these consulting services were provided to a third party, and therefore reflective of non-qualifying operational tasks directly related to the provision of services. The Petitioner further stated that the Beneficiary would be tasked with collaborating and providing "insightful advice to [the Petitioner's] clients," again indicating his direct involvement in the provision of services to clients. The Petitioner also provided meeting minutes and emails indicating that the Beneficiary was tasked with managing the company's family fund and making investment recommendations related thereto. However, there is little supporting documentation to substantiate that the Beneficiary was relieved from the operational tasks inherent in this responsibility and delegating non-qualifying tasks to his claimed subordinates. As such, the Beneficiary's duty description and the provided supporting documentation suggest his substantial involvement in performing a wide array of non-qualifying operational tasks related to the company's provision of services, or at the very least, his performance of operational activities alongside his colleagues.

Whether the Beneficiary is an executive employee turns on whether the Petitioner has sustained its burden of proving that their duties would be "primarily" executive. *See* sections 101(a)(44)(B) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties were executive-level functions when the petition was filed and what proportion were non-qualifying operational tasks. The Petitioner submitted a duty description and supporting documentation including tasks related to the provision of services to clients, but it did not sufficiently quantify the time he spent on these duties as compared to qualifying executive-level duties. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of an executive as of the date the petition was filed. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In contrast, the Petitioner did not sufficiently articulate or document what executive-level tasks he was performed during the many years he acted in his asserted role. The Petitioner did not detail or document the new policies, plans, goals, and long-term objectives he formulated and set. Likewise, the Petitioner did not specify or document the reports he assessed from his research term and third-party vendors, the KPIs he monitored, goals and objectives he set for the back office and research division, and the training he directed for his claimed subordinates. The lack of evidence of the Beneficiary performing executive-level tasks and delegating to his subordinates his particularly noteworthy since the Petitioner states that he has been working in his role since 2017. 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. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Even though the Beneficiary holds a senior position within the organization, the fact that he will manage or direct the business does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(44)(B) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive in nature. *Id.* The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily executive in nature.

B. Operations and Staffing

Pursuant to section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

As discussed, the Petitioner asserted that the Beneficiary would be employed in an executive capacity when the petition was filed. The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the organization, major component, or function as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The Petitioner indicated in the Form I-129, Petition for a Nonimmigrant Worker, that it had four employees. The Petitioner provided an organizational chart reflecting that he would oversee an office manager and a research manager, and the chart further showed that the research manager supervised a research analyst.

In denying the petition, SCOPS emphasized that the Petitioner did not sufficiently establish that the Beneficiary acted as more than a first-line supervisor of operational-level employees and that he had managers or lower-level executives to direct. SCOPS also determined that a majority of the Beneficiary's duties were indicative of an employee performing tasks necessary to provide services, such as managing investments and client relationships. On appeal, the Petitioner reasons that U.S. Citizenship and Immigration Services (USCIS) determined that the Beneficiary acted in an executive capacity while employed abroad and that his role in the United States is substantially similar.

The Petitioner did not directly address SCOPS' basis for denying the petition; namely that it did not demonstrate the Beneficiary would primarily direct subordinate managers or lower-level executives, or that his executive-level direction would impact these employees. As discussed by SCOPS, an executive directs the management of the organization, major component, or essential function of a given organization by controlling the work of managerial or lower-level executive employees. *See generally* 2 *USCIS Policy Manual* L.6(D), https://www. uscis.gov/policy-manual. *See also BlueStar Cabinets, Inc. v. Jaddou*, No. 21-10116, 2022 WL 4364734, at *7 (5th Cir. Sept. 21, 2022) (holding that "'[d]irect[ing] the management of the organization' necessarily includes directing managers of the organization."). As noted, the Petitioner provided little documentation to support that he was primarily relieved from performing non-qualifying operational tasks and delegating tasks to lower-level managers or executives. For instance, the Beneficiary's duties indicated that he was responsible

for evaluating reports concerning market trends and risk analyses provided by an asserted research team and third-party vendors. The Beneficiary's duties also stated he was tasked with establishing goals and objectives for the company's back-office and research division. However, the Petitioner provided little supporting documentation to substantiate that the Beneficiary was supported in his investment activities and consulting services by subordinates, suggesting that he was performing these tasks on his own or with little support from his claimed subordinates. The record includes no evidence of the Beneficiary delegating to subordinate managers. In addition, none of the Beneficiary's claimed subordinates had duties consistent with providing services to clients, again indicating that he was likely providing all the services of the company.

As such, the provided documentation suggests that the Beneficiary was more likely than not operating the business rather than delegating non-qualifying tasks to subordinates, directing subordinate managers and executives, and primarily focused on setting goals and policies. It is also noteworthy that the Petitioner provided little evidence to substantiate its finances, revenue, and wages paid as of the date the petition was filed, leaving question as to whether they had sufficient operations to support subordinate management for the Beneficiary to oversee. Again, the Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582, 591-92.

In addition, the Petitioner provided supporting evidence leaving uncertainty as to whether the Beneficiary had sufficiently wide latitude in discretionary decision making. For instance, the Petitioner submitted minutes of investment committee meetings dated in January 2025 and February 2025 reflecting the Beneficiary's recommendation to invest approximately $2.3 million and $10 million in two separate funds. The meeting minutes in each case were signed by the director of the parent fund based in Brazil and the agenda was titled "approval of the investment[s]." The Beneficiary indicated that he was "humbled by the opportunity" to oversee his family's fund in the United States and the supporting evidence indicates that the fund he oversaw in the United States was a lesser fund operating as an outgrowth of a larger family fund based in Brazil. It was this larger foreign fund that provided approval to the Beneficiary's investment decisions, leaving uncertainty as to whether he had, and would have, wide latitude in discretionary decision making independent of the foreign company.

In sum, the submitted evidence and statements of the Petitioner reflect that it had limited operations as of the time the petition was filed leaving uncertainty as to whether it could have supported the Beneficiary in an executive capacity. For example, the Petitioner did not provide evidence to establish that it had employees to provide services to clients or lower-level managers or executives for the Beneficiary to direct when the petition was filed. There is also no supporting evidence reflecting the Beneficiary's delegation of duties to subordinate managers and lower-level executives, and as discussed, insufficient documentation to support his performance of qualifying executive-level duties. Therefore, it is questionable given the Petitioner's apparent operations when the petition was filed, the submitted supporting documentation, and the nature of the business, that the Beneficiary would have acted in an elevated executive-level capacity where he would primarily focus on broad goals and policies rather than day-to-day operations.

For the foregoing reasons, the Petitioner has not sufficiently established that the Beneficiary would be employed in an executive capacity.

ORDER: The appeal is dismissed.