U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38416947

Date: JUN. 16, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a construction equipment sales and rental business, seeks to extend the Beneficiary's temporary employment as its chief executive officer (CEO) under the L-1A nonimmigrant classification for intracompany transferees.[1] *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

Service Center Operations (SCOPS) denied the petition, concluding the record did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

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.*

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for a one-year period ending on October 31, 2024. 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 one year within the date of approval of the petition to support an executive or managerial position.

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. ANALYSIS

SCOPS concluded that the Petitioner did not demonstrate the Beneficiary would be employed in an executive capacity as defined at section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B) or, in the alternative, as a function manager, as contemplated by the definition of "managerial capacity" at section 101(a)(44)(A) of the Act. SCOPS' denial was based solely on a determination that the Petitioner had made material changes to the Beneficiary's job description when responding to a request for evidence (RFE).

On appeal, the Petitioner asserts that the two submitted job descriptions were not materially different and that SCOPS failed to consider the totality of the evidence and all relevant factors in determining whether the Beneficiary would be employed in a qualifying executive capacity. It maintains that the previously submitted evidence demonstrates his eligibility for an extension of L-1A status.

A. Withdrawal of SCOPS' Decision

While we do not agree with the Petitioner's assertion that the record as presently constituted establishes eligibility for the benefit sought, we agree that SCOPS erroneously concluded that the Petitioner made material changes to the Beneficiary's job description. Because the decision focused solely on these perceived material changes, it was not based on a review of all relevant evidence and did not provide the Petitioner with adequate notice of evidentiary deficiencies that are material to the issue on appeal. An officer's written decision must explain the specific reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Accordingly, we will withdraw SCOPS' decision and remand the matter for further review and entry of a new decision consistent with the following discussion.

The Petitioner is a construction equipment sales and rental company that seeks to employ the Beneficiary as its CEO. In a supporting letter, the Petitioner provided a description of the Beneficiary's duties indicating the percentage of time he would allocate to 11 different areas of responsibility, with from 5% to 15% of his time allocated to each area. The Petitioner's letter also included a list of "typical executive decisions" that would fall under the Beneficiary's responsibility as CEO, and a separate narrative description intended to show how the position meets all elements of the statutory definition of executive capacity at section 101(a)(44)(B) of the Act.

In the RFE, SCOPS requested, among other evidence, a letter from the company describing the Beneficiary's "typical executive duties and the percentage of time to be spent on each," but did not address the initial job description or explain why it was deemed to be insufficient. In response to the

RFE, the Petitioner provided a company letter listing 13 "executive duties" and the percentage of time the Beneficiary would spend on each one, with percentages ranging between 5% and 10%. SCOPS denied the petition without evaluating either job description or any other evidence submitted in support of the petition, finding that the Petitioner had provided "an inconsistent account of the beneficiary's duties" which made it impossible for USCIS to determine which statement reflects his actual responsibilities.

Upon de novo review, we conclude the two submitted duty descriptions both convey the Beneficiary's responsibility for directing the overall operations of the company as its senior employee and are not materially different. For example, Petitioner initially stated that the Beneficiary would be overseeing all aspects related to the company's operations and business activities, and be responsible for implementing and modifying strategic policies, goals, and procedures. The description also generally states his responsibility for directing the company's sales, financial and budgetary activities, and his authority for signing contracts, building commercial relationships and overseeing all staffing matters. These same areas of responsibility are all included in the position description provided in response to the RFE. Therefore, the record does not support SCOPS' determination that the Petitioner made material changes to the initial description or that the two accounts of the Beneficiary's duties are substantially inconsistent.

B. Basis for Remand

In determining whether a given beneficiary's duties are primarily managerial or executive, USCIS will 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. Here, as discussed, SCOPS' decision did not reflect consideration of these relevant factors.

We observe that both submitted position descriptions are overly general and do not provide sufficient insight into what tasks the Beneficiary will perform on a day-to-day basis within the context of the Petitioner's equipment sales and rental business. The fact that the Beneficiary will manage or direct a business as its senior employee 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. Because SCOPS denied the petition without discussing the substance of the submitted position descriptions, the Petitioner was not put on notice of this deficiency.

Further, the record contains inconsistent information regarding the company's staffing and structure that SCOPS has not addressed. The Petitioner stated on the petition that it had five employees at the time of filing in October 2024 but submitted an organizational chart depicting eight employees. Specifically, the initial organizational chart depicted the Beneficiary as CEO with three direct reports: a sales manager with two subordinates; an operations manager who oversees three positions (only one of which was filled); and an "administration" employee with no subordinates. The chart indicates that the sales manager oversees a "sales team" with one employee and an account executive, while the operations manager supervises a mechanic. However, the Petitioner has not provided evidence of wages paid to the individuals identified on the organizational chart as the sales manager and operations manager. Further, the initial evidence of wages paid to staff indicated that the mechanic works on a

part-time basis (15 hours per week) while the individual identified as the "account executive" had last received a paycheck in June 2024 and was no longer on the company's payroll. The Petitioner submitted pay statements for the week ending on October 6, 2024, showing that the company paid only the Beneficiary, the administration employee, the sales team employee, and the part-time mechanic. Therefore, it appears the submitted organizational chart did not accurately represent the Petitioner's staffing levels and structure at the time of filing.

The evidence provided in response to the RFE indicated the Petitioner maintained the same staff of four employees as of December 2024. However, in response to SCOPS' request for the subordinate staff's job duties, the Petitioner changed the job title for the "sales team" employee to "sales and customer service" and changed the mechanic's job title to "operations and maintenance," attributing duties to them that appeared to be outside the scope of the job titles initially provided. At the same time, the Petitioner continued to state that the Beneficiary oversees an operations manager who supervises the day-to-day activities of the company, despite not providing evidence that it ever employed the operations manager (or the sales manager) depicted on the initial organizational chart as the Beneficiary's direct reports. The Petitioner did not provide position descriptions for either of these claimed subordinates.

Finally, on appeal, the Petitioner asserts that all three of the Beneficiary's documented subordinates are managers. It assigns the new job titles of "sales and customer service manager," "operations and maintenance manager" and "administration manager," but resubmits the same organizational chart identifying these same individuals as "sales team," "mechanic" and "administration." We note that the evidence must substantiate that the duties of a beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy and artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. While the Petitioner has submitted what appears to be a payroll document for March 2025 showing the company has hired additional staff, it must demonstrate that all eligibility requirements were met at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998).

As the matter will be remanded, SCOPS should review the evidence of record, including the Petitioner's appeal, and may request additional evidence related to the Beneficiary's proposed U.S. assignment, including evidence to corroborate the Petitioner's claimed staffing levels and its employment of the personnel who would directly and indirectly report to him.

Finally, we note that the record as presently constituted does not contain sufficient evidence to demonstrate the Petitioner's claim that it is a subsidiary of the Beneficiary's last foreign employer, [redacted] a Colombian entity.

The Petitioner submitted a letter from a CPA stating that [redacted] owns 51 of its "voting units" while the remainder of the company's ownership is divided between two other companies that own 33 and 16 units, respectively. The Petitioner's Florida Articles of Organization identify all three companies as members, but this document does not provide additional details regarding the limited liability company's ownership. In addition, the Petitioner submitted one stock certificate indicating

that [redacted] owns 51 shares "of the corporation." However, the Petitioner is organized as a limited liability company owned by members and not as a corporation owned by stockholders. This raises questions regarding the validity of the submitted stock certificate.

As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioner should disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting control of the entity. *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986). Here, the Petitioner relies on a letter from its accountant, a "stock certificate," and its articles of organization to demonstrate the claimed qualifying relationship but this documentation is not sufficient to corroborate its claimed ownership.

III. CONCLUSION

We are withdrawing SCOPS' determination that the Petitioner made material changes to the Beneficiary's job description that warranted denial of the petition. Considering the deficiencies noted above, which were not addressed in SCOPS' decision, we will remand the matter for SCOPS to reevaluate the submitted evidence and determine whether the Beneficiary would be employed in the United States in an executive or managerial capacity and whether the Petitioner demonstrated its qualifying relationship with the Beneficiary's foreign employer. SCOPS should request additional evidence pertaining to these issues, and allow the Petitioner a reasonable opportunity to respond, prior to issuing a new decision.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.