U.S. Citizenship and Immigration Services

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

MATTER OF G-G-(U.S.A.) INC.

DATE: JUNE 20, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which engages in the sale and installation of flooring and window treatments and international trade, seeks to continue the Beneficiary's temporary employment as its president/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.

The Director of the California Service Center revoked the approval of the petition, concluding that the Petitioner did not establish, as required, that: (1) the Beneficiary had at least one year of employment with a qualifying organization abroad in the three years preceding the filing of the initial L-1A petition; and (2) the Beneficiary would be employed in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner contends that the Director either misinterpreted the evidence or failed to review the entire record and, as a result, erroneously revoked the approval of the petition.

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.*

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

## II. EMPLOYMENT WITH A QUALIFYING ORGANIZATION ABROAD

The first issue we will address is whether the Petitioner established that the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the initial L-1A the Petitioner filed on her behalf. *See* 8 C.F.R. § 214.2(l)(3)(iii).

The Petitioner filed the initial L-1A petition in December 2013 and must establish that the Beneficiary worked for a qualifying foreign entity for at least one year between December 2010 and December 2013. The Petitioner claims that she worked for its Chinese parent company, from May 2012 until December 2013.

### A. Facts and Procedural History

The Petitioner's initial evidence included: a letter from verifying the Beneficiary's job title, duties, and dates of employment; a payroll summary indicating that paid the Beneficiary ¥20,000 per month (¥10,000 base pay) between October 2012 and November 2013; and a summary of online "social insurance payment records" that identifies the Beneficiary as "payer" on a base monthly salary of ¥1370 for the period October 2012 to November 2013.

The Director issued a notice of intent to revoke (NOIR) advising the Petitioner of a discrepancy in the Beneficiary's employment history. Specifically, the Director informed the Petitioner that when the Beneficiary applied for a B1/B2 visa at the U.S. consulate in in March 2013, she stated that she was employed as a civil servant by , and not by The Director informed the Petitioner of her intent to revoke the approval of the petition based on a finding that the statement of facts contained in the petition was not true and correct, and allowed the Petitioner an opportunity to submit additional evidence or arguments.

In response to the NOIR, the Petitioner stated that the Beneficiary worked for the government from June 2003 until April 2012, when she reached a "Leave Without Pay Agreement" with that employer. The Petitioner explained that China adopted a leave without pay policy in the 1980s as part of the transition from planned economy to market economy, and that the policy "encouraged government and state-owned company employees to start their own business or to leave their posts within the government system." The Petitioner further stated that "[d]uring the Leave Without Pay period, the employees do NOT get salary and other benefits. The employer keeps the post for the employee during the Leave Without Pay period."

In support of its statement, the Petitioner submitted: (1) the Beneficiary's resume prepared in April 2017;[1] (2) additional social insurance payment records from

[1] According to the Beneficiary's resume, she was employed as a clerk in two city government offices for 12 years prior to being hired as the production director and deputy general manager of a company that produces crystalline silicon solar

identifying "pension insurance" payments [redacted] made for the Beneficiary from 2012 until 2016; (3) copy of a "Leave Without Pay Agreement" dated in April 2012, indicating that the Beneficiary voluntarily applied for leave to "go find another job," while her employer (Jiading District) agreed to keep her position open through April 2014; (4) copies of partially translated online articles regarding China's "Leave Without Pay" policy; and (5) a letter of resignation signed by both the Beneficiary and a representative of the [redacted] on December 16, 2013. In the letter, the Beneficiary stated that "due to family reasons, I believe I can not keep the post."

In the revocation decision, the Director found that the Petitioner had not submitted sufficient evidence to establish that the Beneficiary was employed by [redacted] from 2012 to 2013. The Director emphasized that the Petitioner's response to the NOIR did not include an explanation regarding the employment information the Beneficiary provided on her U.S. visa application in March 2013.

The Director also questioned certain details with respect to the resignation letter, noting that it is unclear why the Beneficiary would cite "family reasons" for not returning to her post if she had accepted another job with [redacted] almost immediately after leaving her government position. The Director noted that the leave without pay agreement does not stipulate that the Beneficiary needed to submit a resignation letter, and observed that it was unclear why the Beneficiary would ask that her resignation request be "approved," as the terms of the leave without pay agreement did not require such approval.

On appeal, the Petitioner asserts that the Director did not review the entire record and specifically emphasizes that it provided social security insurance records from the local government in China demonstrating that [redacted] made payments for the Beneficiary from May 2012 through 2016 "even after the beneficiary came to US and worked with the Petitioner."

The Petitioner also addresses the Beneficiary's letter of resignation. The Petitioner states that "it is reasonable for the beneficiary to resign anytime during the two-year period of leave without pay" and explains that "family reasons may include finding a better position with good salary for her family."

B. Analysis

We agree with the Director's determination that the evidence submitted does not sufficiently resolve the discrepancies in the record.

First, the Petitioner has not explained why the Beneficiary did not identify [redacted] as her employer on her U.S. visa application in March 2013, more than 10 months after she purportedly

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modules, silicon rods, solar lights, and batteries. The Petitioner indicates that as production director, she was responsible for supervising the entire production and quality control operations of the company.

joined that company. The claimed "Leave without Pay" arrangement does not explain the Beneficiary's statement on the visa application, since she left her government position specifically to find another job. If the agency was no longer paying her salary or benefits, it remains unclear why she would indicate this employer on her visa application. As noted by the Director, the Beneficiary attested to the accuracy of the information on her visa application under penalty of perjury and has not provided a credible explanation for providing information that she now claims was not correct.

Regarding China's "leave without pay policy," the Petitioner provided insufficient evidence supporting its claim that this policy existed in 2012. The limited and very general information provided suggests that the policy was in place in the 1980s and 1990s. The Petitioner has not submitted any independent evidence from the prior employer confirming the Beneficiary's dates of employment with the government agency in or her release from her position through a leave without pay agreement. Further, we note that the Beneficiary's resignation letter was ostensibly signed by both her and an official of her former employer on a date when she was physically present in the United States, and therefore lacks probative value.[2] The Petitioner must resolve the 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).

The Petitioner submitted documentation in support of its claim that employed the Beneficiary as its production director, including a company letter and the foreign entity's internally-generated payroll documents, which indicate that the Beneficiary received a ¥10,000 "basic salary." The Petitioner also initially submitted evidence showing that the Beneficiary made pension insurance payments on base pay of ¥1370, but this evidence did not identify her employer and the salary did not match what was indicated on the Beneficiary's payroll records.

We acknowledge that the Petitioner submitted documents in response to the NOIR that appear to show that paid "enterprise pension" insurance on the Beneficiary's behalf from May 2012 until December 2016. The Petitioner did not provide evidence that continued to pay the Beneficiary's salary in China or explain why it continued to make these payments for her after she came to the United States in 2013. The Beneficiary indicates in her resume that her employment with ended in December 2013.

In addition, although the same individual translated both sets of social insurance documents from Chinese to English, there are unexplained differences in the two translations. For example, the first set of documents indicated that the "1370" figure referred to "base pay" while the second set indicated that this figure referred to "base units." The numerical figures in the two sets of documents are also slightly different. In light of the other unresolved discrepancies in the record, these insurance payment records provide insufficient independent and objective evidence that the foreign entity employed the Beneficiary for at least one year between May 2012 and July 2013.

[2] USCIS arrival and departure records show that the Beneficiary was admitted to the United States as a visitor on July 2, 2013, was granted a change of nonimmigrant status in December 2013, and did not depart again until 2016.

The Petitioner has not submitted sufficient evidence on appeal to overcome the Director's determination on this issue. Accordingly, we find that the approval of the petition was properly revoked.

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

The remaining issue to be addressed is whether the Petitioner established that the Beneficiary will be employed in managerial or executive capacity under the extended petition.

### A. Definitions

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

The term "executive capacity" is defined 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 managerial capacity of a given beneficiary, we will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a 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, its staffing levels, and its organizational structure.

### B. Duties

The Petitioner provided a statement of the Beneficiary's duties at the time of filing:

- Report to the Board of Directors;
- Establish U.S. company's policies, goals and objectives;
- Implement the strategic goals and objectives of the organization;
- Give direction and leadership toward the organization's achievement in philosophy, mission, strategy, and objectives;

- Exercises discretionary decisions on business strategies and overall direction of U.S. company;
- Cary out the strategic plans and policies as approved by the board of directors;
- Review reports, representation and financial statements from department managers to determine progress and status in attaining objectives;
- Formulate planning recommendations to the board of directors;
- Oversee budgets investments, and operations of organization;
- Recommend yearly budget for board approval.

This broad description of the Beneficiary's duties did not convey what she would be doing on a day-to-day basis as the Petitioner's president. The Petitioner did not provide any concrete examples of policies, strategies, or goals the Beneficiary would develop and implement in support of its claim that she would spend his time primarily focused on higher-level planning and decision-making responsibilities. In fact, many of the duties simply paraphrase the statutory definition of executive capacity and the Petitioner did not identify the specific tasks that would occupy the Beneficiary's time. Reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. The Petitioner has not provided any detail or explanation of the Beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The Petitioner also provided a six-page job description which, despite its length, is similarly vague and repetitive. For example, the description mentions the Beneficiary's responsibility for reviewing daily reports by the CFO and department managers at least 50 times. Therefore, while the description appears on its face to be quite extensive, it provides little additional insight into the nature of the Beneficiary's day-to-day tasks within the Petitioner's flooring and window treatment business.

Nevertheless, the Director initially approved the petition based on this broad description of the Beneficiary's duties and an organizational chart depicting 12 subordinate payroll and contract employees. Subsequent to the approval of the petition, USCIS conducted an administrative site visit at the Petitioner's location, at which time the Beneficiary stated that her duties are "going out to seek clients; visit customers in order to bring in business; and visit suppliers." In the revocation decision, the Director noted that these are not the types of duties the Petitioner indicated the Beneficiary would perform.[3]

The Petitioner has not addressed this finding in its appeal. Therefore, there is an unresolved inconsistency between the overly broad position description provided in support of the petition, and

[3] The Director also noted that the Beneficiary required an interpreter and does not speak English, leading the Director to question whether the Beneficiary is able to perform the duties she described at the time of the site visit. On appeal, the Petitioner argues that the Beneficiary's English language skills are not relevant to her employment in a managerial or executive capacity and further notes that she has bi-lingual employees available to assist her with translation. We agree with the Petitioner's assertions in this regard and have not considered the Beneficiary's English language cabilities in making a determination regarding her employment capacity.

the Beneficiary's own statement that she performs non-managerial duties such as seeking clients, visiting customers to bring in business, and visiting suppliers. The Petitioner's descriptions of the Beneficiary's duties do not attribute any of these non-qualifying tasks to her.

The fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. Here, we are unable to determine whether the claimed managerial or executive duties constitute the majority of the Beneficiary's duties, or whether the Beneficiary primarily performs non-qualifying operational duties related to sales and purchasing. The record does not establish what proportion of the duties is managerial in nature, and what proportion is non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Therefore, even though 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, the record contains inconsistent information regarding the nature of her actual duties.

C. Staffing and Organizational Structure

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

The Petitioner, which does business as [redacted] states that it sells shutters, blinds, shades, flooring, windows, doors, and cabinets. The Petitioner also indicates that it exports baby products to China. The Petitioner's organizational chart identified a total of 13 employees, including: the Beneficiary (president/CEO); a CFO; a sales department staffed by a manager and three salespeople; a service department staffed by a service manager, warehouse employee, and two installers; and an operation department staffed by a manager and two office clerks. The chart identified 11 payroll employees and two contractors. The Petitioner also indicates that the Beneficiary oversees a sales department and an international trade department in China, staffed by a total of four employees.

The Petitioner filed the Form I-129 in December 2016. The Petitioner's quarterly federal tax returns and state quarterly wage reports for the first three quarters of 2016 indicated that the company regularly employed between five and seven workers in any given month, and reported only five employees at the end of September 2016. However, the Petitioner did provide internally generated payroll documents indicating that it paid all 11 employees named on the organizational chart in November 2016.

At the time of the USCIS site visit in April 2017, however, the only person working in the Petitioner's store was an individual who claimed that she was not an employee of the petitioning company, but merely there to help the Beneficiary. The Petitioner later provided bank statements to

the officer that conducted the site visit. However, in the NOIR, the Director observed that the documents did not show that the Petitioner was paying the Beneficiary and at least 12 other employees as claimed on the petition.

In response to the NOIR, the Petitioner submitted a statement from the Beneficiary, who indicated that the company "has paid all the ordinary employees on time." The attached supporting evidence included copies of checks paid to 11 employees; however, none of the evidence was contemporaneous with the date of the site visit. In fact, the most recent paycheck provided was from March 2017. Further, only three subordinate workers received checks during that month, and those checks appeared to be for work performed in February 2017. Therefore, the record does not support a claim that the Petitioner remained more than minimally staffed at the time of the site visit, or who, other than the Beneficiary, was receiving wages at that time. The Petitioner has not submitted any additional evidence or an explanation regarding the absence of on-site employees during the site visit, nor has it shown that it continues to have the staffing and structure that it claimed at the time of filing.

Therefore, the Petitioner did not demonstrate how it would continue to support the Beneficiary in her claimed managerial or executive capacity under the extended petition. Rather, given the lack of evidence that the Petitioner maintained the staffing levels claimed at the time of filing, it appears more likely than not the Petitioner was unable to relieve her from direct involvement in the non-managerial day-to-day operations of the company's flooring, window treatment, and export business.

The Petitioner has not demonstrated that the Beneficiary would primarily supervise a subordinate staff of professional, managerial, or supervisory personnel, or an essential function of the company. *See* section 101(a)(44)(A)(ii) of the Act. Furthermore, the Petitioner has not established that it continued to employ staff who would the Beneficiary from performing non-qualifying duties. Regardless of the Beneficiary's position title, the record is not persuasive that she will function at a senior level within an organizational hierarchy or primarily focus on the broad policies and goals of the company, rather than on its day-to-day operations.

For the reasons discussed, the Petitioner has not established that it would employ the Beneficiary in a managerial or executive capacity under the extended petition. As such, we find that the Director properly revoked the approval of the petition on this basis.

## IV. CONCLUSION

The appeal will be dismissed because the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity under the extended petition, or establish that the Beneficiary had one year of employment with a qualifying foreign entity in the three years preceding the filing of her initial L-1A petition.

**ORDER:** The appeal is dismissed.

Cite as *Matter of G-G-(U.S.A.) Inc.*, ID# 1255503(AAO June 20, 2018)