U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38945391

Date: JUNE 23, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a "new office," seeks to employ the Beneficiary as its chief executive officer (CEO).[1] The company requests his classification under the L-1A nonimmigrant visa category as an intracompany transferee "executive." *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). Multinational organizations may sponsor qualifying aliens for U.S. temporary employment in this category if they would work in executive or managerial capacities. *Id.*

Service Center Operations (SCOPS) denied the petition. SCOPS concluded that the Petitioner demonstrated neither the Beneficiary's work abroad nor his proposed employment in the United States in the claimed executive capacity. On appeal, the Petitioner contends that SCOPS "ignored" evidence.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the company did not demonstrate that the Beneficiary primarily worked abroad in the claimed executive capacity. We will therefore dismiss the appeal.

I. LAW

A new office petitioner must demonstrate:

- Its securement of sufficient physical premises to house the new office;
- The beneficiary's work abroad for at least one continuous year in the three years before the petition's filing in an executive or managerial capacity;
- The proposed employment's involvement of executive or managerial authority over the new operation; and
- The U.S. operation's ability, within one year of the petition's approval, to support an executive or managerial position.

[1] The term "new office" means an entity that, at the time of the petition's filing, had conducted 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).

8 C.F.R. § 214.2(l)(3)(v); *see also VHV Jewelers, LLC v. Wolf*, 17 F.4th 109, 111 (11th Cir. 2021).

Evidence of ability to support an executive or managerial position must indicate:

- The new office's proposed nature, describing the entity's scope, its organizational structure, and its financial goals;
- The size of the U.S. investment and the foreign entity's financial ability to pay the beneficiary and to commence doing business in the United States; and
- The foreign entity's organizational structure.

8 C.F.R. § 214.2(l)(3)(v)(A)-(C).

II. ANALYSIS

The record shows that, in 2012, the Beneficiary established a company in Israel that designs steel and alloy artwork and other items for architectural projects. The Petitioner, an affiliate of the Israeli company, seeks to employ him in the United States as its CEO.[2] Since the foreign company's establishment, the Beneficiary has served as its general manager. The Petitioner contends that he worked abroad and would continue to serve in this country in an executive capacity.

A. The Beneficiary's Work Abroad

The term "executive capacity" means work where an alien "primarily:"

- Directed the management of an organization or a major component or function of it;
- Established the entity's goals and policies;
- Exercised wide latitude in discretionary decision-making; and
- Received only general supervision or direction from higher-level executive, a board of directors, or stockholders.

Section 101(a)(44)(B) of the Act; *see also VHV Jewelers*, 17 F.4th at 111 ("For an employee to qualify for L-1 status as an executive, the Immigration and Nationality Act requires that the employee bear a certain set of high-level responsibilities and that the employee primarily engage in those specified duties.")

When determining the nature of foreign work, U.S. Citizenship and Immigration Services (USCIS) first examines the job's duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring "a detailed description of the services to be performed") USCIS then weighs other relevant factors, including: the nature and scope of the foreign employer's business; the employer's organizational structure; its staffing levels; a beneficiary's position within its organization; the scope of their authority; work performed by other staff, including whether they relieved the beneficiary from performing operational and administrative

[2] The Petitioner describes itself as a wholly owned subsidiary of the Israeli company. But the record indicates that the Beneficiary wholly owns both companies. Thus, we will refer to the entities as affiliates. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*) (defining an "affiliate" as "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual").

duties; and any other factors that would aid in understanding the beneficiary's actual duties and business role. *Matter of Z-A-, Inc.*, Adopted Decision 2016-02, at **4-5 (AAO Apr. 14, 2016).

In response to SCOPS' request for additional evidence (RFE), the Petitioner submitted letters from the Beneficiary and the foreign employer's chief operations officer (COO) regarding the Beneficiary's work abroad. The Beneficiary stated:

> I have assigned tasks to be performed by many other individuals, additional staff, which . . . allowed me to remain the owner/chief executive/general manager and the design was to keep me from conducting or engaging in the day to day activities of the business, 'blue collar' work of building, manufacturing, finishing our artistic work of steel and metals maintenance and renovations; these other employees deliver and install our company's products. I have had sole discretion to make all decisions for the Israeli company.

The COO stated that the Beneficiary has founded, directed, and managed the foreign entity's business operations as its chief executive. The COO said that the Beneficiary has "full 100% discretion to operate the company he owns" and "full latitude in all discretionary decision making."

The COO, however, listed the Beneficiary's job duties abroad as including several tasks that are operational or managerial in nature rather than executive, such as:

- "Sets deadlines for projects;"
- "Direct communication with customers when needed to arrange payments, discuss issues with project deadline;" and
- "Directs other employees' work who are engaged in marketing through social media, newspaper, direct interviews, presence in main events with businessmen, etc."

The record supports SCOPS' finding of insufficient evidence that the beneficiary's duties abroad were primarily executive. As previously indicated, an executive must have "primarily" engaged in executive level duties. *See* section 101(a)(44)(B) of the Act; *see also Brazil Quality Stones, Inc. v. Chertoff*, 531 F.3d 1063, 1070 (9th Cir. 2008) ("Under the plain terms of the [Act], [a beneficiary] cannot qualify for an L–1A visa simply because he performs managerial tasks; such tasks must encompass his *primary* responsibilities.") (emphasis in original). Because the record indicates that the Beneficiary performed both executive and non-executive tasks, the Petitioner has not demonstrated that he primarily worked in the claimed executive capacity. SCOPS' RFE asked for details of his foreign duties that "includes the percentage of time spent on each duty." But the Petitioner did not provide the requested time percentages. *See* 8 C.F.R. § 103.2(b)(14) ("Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request.") The company therefore has not demonstrated that the Beneficiary "primarily" performed executive level duties abroad.

On appeal, the Petitioner contends that SCOPS overlooked evidence establishing the executive nature of the Beneficiary's duties abroad. The company notes its submission of the foreign employer's organizational chart. The chart lists the Beneficiary at its top as "owner, general manager," above the COO, an administrative executive/accountant, designer, engineering and production chief, and a

factory manager who purportedly supervised nine to 20 production workers. The company also points to the Beneficiary's letter describing his foreign duties. The Petitioner asserts: "It was impossible for [SCOPS] to overlook this evidence, requiring a reversal of the denial of the L-1A status to [the Beneficiary]."

But the evidence that the Petitioner cites does not establish that the Beneficiary "primarily" worked abroad in an executive capacity. *See* section 101(a)(44)(B) of the Act. As previously explained, the Petitioner's evidence indicates his performance of both executive and non-executive duties abroad, and, contrary to the RFE request, the company did not establish how much time he spent performing these tasks. The Petitioner therefore has not demonstrated that the Beneficiary "primarily" engaged in executive-level duties abroad, and the company's arguments on appeal are unavailing. *See VHV Jewelers*, 17 F.4th at 115 (stating that the petitioner "points to no evidence that counters the Agency's determination that many of [the beneficiary's] duties were 'non-qualifying duties' related to sales, training, marketing, pricing, and supervising 'non-qualifying personnel'"); *see also Kong Hong USA Inc. v. Chertoff*, No. C-06-00804EDL, 2006 WL 3068876, at *6 (N.D. Cal. Oct. 27, 2006) (with a record "lacking in detail as to what percent of time was spent on managerial or executive duties versus other non-qualifying duties," finding insufficient evidence that a beneficiary "primarily" engaged in qualifying duties).

The Petitioner did not demonstrate that the Beneficiary primarily worked abroad in an executive capacity. We will therefore affirm the petition's denial.

B. The Proposed U.S. Work

Our determination regarding the nature of the Beneficiary's foreign employment resolves this appeal. Thus, we need not reach and hereby reserve consideration of the Petitioner's arguments regarding the nature of his proposed U.S. work. *See Immigration & Naturalization Serv. v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

III. CONCLUSION

The Petitioner did not demonstrate that the Beneficiary primarily worked abroad in an executive capacity. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.