U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-I- INC.

DATE: MAR. 1, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a wholesale distributor of hair extensions and accessories, seeks to continue the Beneficiary's temporary employment as its chief executive officer (CEO) 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 record did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner asserts that the evidence of record establishes that the Beneficiary spends 100% of her time performing executive and managerial duties, supervises a subordinate managerial employee, and has sufficient lower level staff who perform the day-to-day activities required to operate its business.

Upon *de novo* review, we will dismiss the appeal.[1]

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.*

[1] The record reflects that the Petitioner submitted a new, properly executed Form G-28 on appeal. Therefore, we will recognize [redacted] the attorney who submitted the Form G-28, as the attorney of record in this proceeding.

II. 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.

"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.

The Petitioner must show that the Beneficiary will perform certain high-level responsibilities consistent with the statutory definitions of managerial or executive capacity. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). In addition, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or 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); *Champion World*, 940 F.2d 1533.

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

The sole issue to be addressed is whether the Petitioner established that it would employ the Beneficiary in a managerial or executive capacity under the extended petition.

When examining the managerial or executive capacity of a given beneficiary, we will look to the petitioner's description of the job duties. The petitioner must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *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.

A. Duties

At the time of filing, the Petitioner provided a description of the Beneficiary's responsibilities as CEO, noting that she "serves at the highest level of the organizational hierarchy," "heads the management and executive team," and is "the primary driver of the organization's strategic direction." It further listed her duties as follows (bullets added):

- Responsible for the successful allocation and deployment of the company's resources
- Establishes, plans, develops and implements all organizational policies, structures and goals
- Contracts all necessary managerial personnel to accomplish set goals, and directly supervises, controls and evaluates the work of all supervisory and managerial personnel
- Establishes salaries and employee benefits
- Prepares, develops and reviews budgets
- Negotiates and executes contracts on behalf of the company
- Seeks strategic alliances for the company
- Formulates and implements all administrative, financial, developmental, and operational policies and procedures of the company

The Petitioner stated that the Beneficiary "spends 100% of her time performing these duties."

In a request for evidence (RFE), the Director informed the Petitioner that the submitted description was lacking adequate detail regarding what the Beneficiary would be doing on a day-to-day basis. The Director requested additional information regarding the Beneficiary's actual daily tasks and the amount of time to be spent on each specific duty.

In response to the RFE, the Petitioner submitted a new letter which included the same duties as stated above. It did not provide the requested information regarding the percentage of time the Beneficiary would allocate to specific tasks and once again stated that the listed duties would require 100% of the Beneficiary's time. The Petitioner also added the following (bullets added):

- Meets with the [Marketing and Sales Manager] each week to discuss daily and weekly data reports, compare each week's figures and data to previous periods, discuss any problems encountered, . . . and discuss the plan and develop strategy and goals for the following week.
- Reviews reports on marketing, sales, and orders to analyze operations to evaluate company and staff performance in meeting objectives and to determine areas of improvement or policy change.
- Establishes executive and management plans to maximize efficiency and quality of service, customer satisfaction, profitable growth, and cost effective execution and management of resources and planning.
- Authorizes requests for disbursements and payments to outside parties.

- Monitors and evaluates financial and market data in establishing and implementing actions based on findings.
- Analyzes market, economic, geographic, demographic, and competitive variables in developing plans.
- Plans, develops, and establishes executive, management, operations, sales and marketing policies and objectives by reviewing activity reports, financial statements, and market conditions.
- Makes all decisions regarding financial operations of the company, including financial forecasts and investments.
- Directs the treasury function of the business, including establishing financial strategies, banking, risk management, and credit arrangements.
- Exercises full and complete discretion in all budgetary, administrative, operational, developmental, and financial decision-making for our company.

These additions did not provide additional insight into the nature of the Beneficiary's day-to-day duties within the context of the Petitioner's business. The description conveys the Beneficiary's authority over the company as a whole, but is too broad and repetitive to clarify how the Beneficiary would spend her time on a regular basis as the CEO of a hair extension wholesale distribution company.

For example, the Petitioner states that the Beneficiary establishes plans, policies and goals, "formulates and implements . . . all operational policies and procedures," "plans, develops and establishes . . . policies and objectives," and "establishes executive and management plans," and appears to list these as separate and discrete duties. However, all of these non-specific planning and policy-related responsibilities paraphrase the statutory definition of "executive capacity," appear to overlap, and lack explanation regarding the actual tasks that will occupy the Beneficiary's time. 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 spends a significant amount of time on higher-level planning and decision-making responsibilities associated with the company's overall operation.

The Petitioner's description also indicates that the Beneficiary is responsible for reviewing data reports, financial figures and "reports on marketing sales and orders," as well as monitoring and evaluating "financial data and market reports," and analyzing "market, economic, geographic, demographic, and competitive variables." These data review and analysis duties, like the policy-making duties discussed above, are repetitive and appear to overlap, which makes it difficult to determine whether they are separate duties or how much time the Beneficiary devotes to these functions. The Petitioner indicates that several of the Beneficiary's duties concern oversight of the company's financial matters and "directing the treasury function," but the Petitioner does not employ an administrative staff member or other lower level employee to perform routine day-to-day tasks such as banking, invoicing, and bookkeeping.

Finally, some of the Beneficiary's assigned duties, such as negotiating contracts and "seeking strategic alliances" are not explained in sufficient detail to be classified as managerial or executive in nature, absent specific examples of the type of contracts she negotiates or alliances she would form.

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 did not provided the requested 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).

Overall, although we do not doubt that the Beneficiary makes decisions regarding the company's overall direction, the Petitioner has not sufficiently demonstrated how her role requires her to spend her time primarily on the broadly defined responsibilities attributed to her, nor has it provided a sufficient explanation of her day-to-day tasks. The fact that the Beneficiary will direct a business as its owner and 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. The Petitioner's general overview of her responsibilities is insufficient to establish that her actual duties would be primarily managerial or executive in nature.

B. Staffing and Organizational Structure

The Petitioner has consistently claimed that it has four employees: the Beneficiary (CEO), a marketing and sales manager who reports to the Beneficiary, and two lower level employees who report to the marketing and sales manager – a marketing and sales assistant and an overseas sales representative.[2]

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act.[3] Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional."[4] *Id.* If a

[2] The Petitioner provided a copy of its Florida quarterly wage report for the first quarter of 2018 and its payroll summary for the months of April and May 2018. This evidence corroborates the Petitioner's employment of the individuals named on its organizational chart at the time of filing in May 2018.

[3] The Petitioner does not claim that the Beneficiary acts as a function manager.

[4] In evaluating whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." Here, the Petitioner states that all of the subordinate employees have bachelor's degrees but it did not articulate a claim that she supervises professionals or provide evidence of the

beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

As noted, the Petitioner indicates that its four-person company has a three-tiered structure with a CEO, a "middle manager," and two lower-level staff. The Petitioner states that the Beneficiary's direct subordinate performs supervisory duties that include managing, training, and evaluating the work of the lower-level staff and establishing their goals and schedules. However, we cannot determine how much of the Beneficiary's time would be spent on management of her one supervisory subordinate because the Petitioner did not provide the requested breakdown of the Beneficiary's day-to-day tasks and the amount of time the Beneficiary would spend on specific duties. The submitted job description does not reflect that her primary role is that of a personnel manager as there are few mentions of supervisory functions among the broad duties listed.

The Petitioner has consistently claimed that the Beneficiary will be employed in a "managerial and executive capacity." The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that 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 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.*

As noted, the Petitioner submitted a broad description of the Beneficiary's responsibilities, portions of which resemble or paraphrase the statutory definition of executive capacity. While the Petitioner indicates that the Beneficiary spends 100% of her time on qualifying duties, we must evaluate this claim by taking into account the totality of the evidence, including the duties of the subordinate staff, and the ability of those staff to relieve the Beneficiary from involvement in the day-to-day operations of the business.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, we must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. However, it is appropriate to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company. *Family Inc. v. USCIS*, 469 F.3d 1313

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employees' degrees. Rather, the Petitioner emphasizes that the Beneficiary's direct subordinate is a managerial or supervisory employee.

(9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when we note discrepancies in the record. *See Systronics*, 153 F. Supp. 2d at 15.

The job duties provided for the subordinate staff, like the Beneficiary's duties, are stated in general terms and lack references to the actual nature of the business the Petitioner operates and the products it sells, which limits the probative value of the descriptions. For example, the Petitioner states that the marketing and sales assistant "presents and explains rates and service agreements to customers," a task that appears to be incongruous with the company's business as a wholesaler of hair extensions. The marketing and sales manager's position also contains anomalous references to reviewing "customer specifications and related information to determine requirements," and training staff on the company's "services" and "tools." The Petitioner does not claim to operate a business that involves entering service agreements, providing services, or gathering customer specifications and requirements. These references raise questions as to whether the Petitioner has provided a complete and accurate account of the duties performed by its employees.

The Petitioner indicates that the overseas sales representative and marketing and sales assistant perform many of the same duties, including contacting customers to solicit orders, attending trade shows, assisting in marketing development and product releases, and customer service. However, the Petitioner indicates that the overseas sales representative also performs all functions related to logistics, import-export, customs declarations, and shipping and delivery of products to customers, duties which appear to be atypical for a sales employee. It is unclear how the sales representative divides his or her time between these functions, or whether any shipping functions he performs are limited to overseas business. Further, we note that the Petitioner submitted a number of screenshots from its website (http:/ .com), which we have also consulted. The website refers to the individual who holds the "overseas sales representative" position as the company's co-founder and suggests that he or she leads the company alongside the Beneficiary, which raises question regarding the accuracy of the job description submitted for this individual.

As noted above, the Petitioner does not claim to have any administrative staff or a bookkeeper to handle the company's day-to-day administrative, banking and financial matters and the Beneficiary is the only person claimed to be responsible for the financial function. The Petitioner also does not have any staff who are claimed to source and purchase its inventory, despite the fact that the company reported over $720,000 in purchases on its 2017 federal tax return, and its bank statements reflect regular withdrawals for purchases of hair products from companies in the United States and China. Further, the submitted evidence (specifically, the Petitioner's website) refers to the company's "quality control staff" and a "shipping department" which do not appear to exist within the organizational chart submitted with the petition. We will not assume that the Beneficiary's subordinates, who are presented as sales and marketing staff, are responsible for all of these activities. Accordingly, the record does not establish that the Beneficiary would be relieved from significant involvement in day-to-day administrative, financial, purchasing, and other non-managerial and non-executive functions necessary for the operation of the business.

We interpret the statute to prohibit discrimination against small or medium-size businesses. However, the statute requires all petitioners to establish that a given beneficiary's position "primarily" consists of managerial or executive duties, and that it has sufficient personnel to relieve a beneficiary from performing operational and administrative tasks.

Here, the Petitioner has not provided a clear breakdown of the Beneficiary's actual duties, and has not provided sufficient probative information regarding how all of the day-to-day duties of its hair extension wholesale distribution business are divided among the three-person subordinate staff, particularly since those staff members are claimed to be primarily focused sales and marketing. The Petitioner has not met its burden to show that it reasonably requires the Beneficiary to spend her time primarily on the claimed managerial or executive duties.

For the reasons discussed, the Petitioner has not established that it would employ the Beneficiary in a managerial or executive position under the extended petition.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-I- Inc.*, ID# 1943150 (AAO Mar. 1, 2019)