U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15775566

Date: MAR. 02, 2021

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner[1] states that it is a "locally Greek fast food restaurant." It seeks to employ the Beneficiary temporarily as its "President" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).[2]

The Director of the California Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary was employed and would be employed in the United States in a managerial or executive capacity. The matter is before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal because the Petitioner did not establish that the Beneficiary would be employed in an executive capacity.[3] Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's employment abroad. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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, or in a position requiring specialized knowledge for one continuous year within three years preceding the beneficiary's

[1] The Petitioner states that it is a Florida business entity that is doing business as [redacted]. Although the Petitioner provided documents showing its use of this alternate business name, there is no formal documentation showing that the alternate name has been registered and is recognized by the state or federal government.

[2] The Petitioner previously filed a new office petition (with receipt number [redacted]), which was approved for a one-year period, from January 26, 2016 to January 25, 2017. The Petitioner's subsequent extension petition (with receipt number [redacted]) was denied and the Beneficiary departed the United States. Accordingly, the Petitioner indicates that the basis for classification of the current petition is "New Employment."

[3] The Petitioner claims that the Beneficiary will be employed in an executive capacity.

application for admission into the United States. 8 C.F.R. § 214.2(l)(1). 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. 8 C.F.R. § 214.2(l)(3)(ii).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The primary issue to be addressed is whether the Petitioner provided sufficient evidence to establish that the Beneficiary's position with the U.S. entity would be in an executive capacity.[4]

"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.

Based on the statutory definition of executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. Section 101(a)(44)(A) of the Act. The Petitioner must also prove that the Beneficiary will be primarily engaged in 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).

The description of the job duties must clearly describe the Beneficiary's duties and indicate whether such duties are in a managerial or an executive capacity. See 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the employing company's organizational structure, the duties of the 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 the 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 and its staffing levels.

A. Job Duties

First, we will discuss the duties to be performed by the Beneficiary in the proposed position with the U.S. entity. We note that the actual duties themselves 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).

In a supporting cover letter, the Petitioner described the Beneficiary as "the highest executive" and stated that during the company's new office phase the Beneficiary approved budgets, hired staff, and developed and coordinated business objectives, while receiving minimal guidance from the board of directors. The Petitioner also provided a job duty breakdown in which it listed the following eight

[4] Because the Petitioner does not claim that the Beneficiary will be employed in a managerial capacity, we will limit our discussion to the Petitioner's claim that the proposed position will be in an executive capacity.

core sets of job duties and assigned an hourly time allocation to each set of duties based on a 40-hour work week:

1. Creating, communicating, and implementing the Petitioner's "vision, mission, [and] corporate policies" and leading in the development and implementation of a "strategic plan" - 5 hours.
2. Guiding and evaluating the "managerial staff," including offering rewards programs and disciplinary actions and meeting with the "Operations/Restaurant Manager" to ensure that "strategic direction filters down" to all levels of the organization - 5 hours.
3. Soliciting advice from the board and reporting on sales and financial status - 2 hours.
4. Formulating and implementing "the strategic plan" with "significant input from the organization" regarding organizational improvements such as "suggestion systems, work teams, improvement meetings" - 5 hours.
5. Providing oversight of "the complete operation" consistent with the "strategic plan" and organizing the Petitioner's "structure to facilitate a successful operation" - 7 hours.
6. Assessing the Petitioner's success in meeting "each strategic goal" based on financial, sales, and inventory reports from the "Operations/Restaurant Manager," the kitchen manager, and the "House Manager" - 5 hours.
7. Communicating with "key customers" and considering new projects or acquisitions that will "increase [sic] company image and exposure to the market" - 6 hours.
8. Participating in industry events - 5 hours.

In a request for evidence (RFE), the Director observed that the listed duties appeared repetitive and determined that the job description did not sufficiently explain what the Beneficiary would actually be doing or offer sufficient insight into the Beneficiary's role with the U.S. entity. The Director also pointed to evidence outside the record which led him to question whether the Beneficiary would primarily perform duties of an executive nature. Given the noted deficiencies, the Petitioner was asked to list the Beneficiary's typical executive job duties, indicate the percentage of time to be allocated to each duty, and explain how the assigned duties fit the four-prong definition of executive capacity.

In response, the Petitioner provided a supplemental job duty breakdown that restated the above eight core sets of duties and elaborated on the duties listed in Nos. 1, 4, and 6. With respect to the duties listed in No. 1 above, the Petitioner stated that the Beneficiary will: set "clear goals with clear and measurable standards," provide management with written metrics to measure an employee's success, and create corporate policies that will offer guidance in addressing "workplace situations." The Petitioner further stated that the Beneficiary will identify a need for certain policies, "draft and write the policies in clear language," meet with employees to "[o]btain support" for the new policies, and update and revise the policies when necessary. Despite providing this additional information, the Petitioner did not explain why the top executive in an organization would require "support" from subordinate staff to fulfill this policy role or what practical need exists within the context of a seven-person restaurant operation that would justify allocating five hours of the Beneficiary's time on a weekly basis to creating and drafting policies.

Adding to the duties in No. 4 above, the Petitioner stated that in order to implement a strategic plan the Beneficiary will complete the following four-step process that will require him to meet with managers in order to: (1) "communicate the company's objectives" based on its "values, vision, and mission"; (2) drive accountability by demonstrating each employee's impact on the company's

success; (3) participate in weekly meetings to review goals and progress; and (4) require managers to monitor their subordinates to ensure that their goals "align with the President's vision." Again, however, the Petitioner did not establish that its operation's "strategic plan" is sufficiently complex so that the Beneficiary would need to devote five hours a week of time to implementing that plan through a four-stop process that requires consistent evaluation of the restaurant's objectives and "vision." It is unclear how a restaurant's objectives and "vision" would change or why the frequency of those changes would warrant continued communication of those changes to ensure the restaurant's success. Lastly, the Petitioner elaborated on No. 6 above, stating that the Beneficiary will meet with managers to track progress and review financial, sales, and expense reports for the purpose of "[m]aintaining awareness and knowledge" of the company's finances.

The Petitioner did not specify which of the listed job duties it deemed as executive, nor did it assign time allocations to individual executive duties as requested in the RFE. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Further, the Petitioner provided no additional information about the activities listed in Nos. 2, 3, 5, 7, and 8, which cumulatively comprise 25 hours and comprise 62.5% of the Beneficiary's 40-hour work week. Despite listing duties that highlight the Beneficiary's discretionary authority with respect to the restaurant's staff and operations, the Petitioner did not adequately describe the "strategic direction" the Beneficiary plans to provide or the incentives he plans to offer; it did not point to specific daily or weekly executive activities that constitute oversight of "the complete operation" or identify the specific steps required to "facilitate a successful operation"; nor did it explain how meeting with "key customers" and participating in industry events qualify as executive job duties.

Further, the Petitioner did not establish a practical need to spend two hours per week reporting performance data and soliciting advice from the board of directors, five hours per week evaluating management's performance, seven hours per week aligning the "strategic plan" with the Petitioner's "structure," or six hours per week communicating with restaurant patrons and evaluating new projects. As a result of the noted deficiencies and ambiguities, the Petitioner did not adequately describe what specific actions the Beneficiary would undertake for the majority of the work week.

In denying the petition, the Director pointed to the lack of sufficient information about the Beneficiary's job duties, finding that the Petitioner did not adequately explain the specific actions the Beneficiary would undertake in carrying his assigned duties or elaborate on the extent of the Beneficiary's involvement in such activities as participating in industry events. The Director concluded that the Petitioner did not provide sufficient evidence that the Beneficiary would spend his time primarily performing duties of an executive nature.

On appeal, the Petitioner restates the Beneficiary's job duty breakdowns and highlights the primary role the Beneficiary assumed during the first several years of the Petitioner's operation, including creating an employee handbook, defining employee roles, and developing policies with respect to hiring, safety, technology, privacy, and building credit. Although these actions indicate that the Beneficiary may have assumed a key role in establishing the Petitioner's restaurant operation, they do not demonstrate that the Beneficiary would primarily perform executive job duties or that performing primarily executive job duties would be warranted within the context of this operation going forward.

We note that managing or directing a business does not necessarily establish a beneficiary's 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. Thus, even if the Beneficiary exercised discretion over the restaurant operation and possessed the requisite level of authority with respect to discretionary decision-making, these elements alone would not be insufficient to establish that the Beneficiary would perform primarily executive job duties in the daily course of a seven-person restaurant operation. As previously noted, we rely on specific information about a beneficiary's actual daily tasks as an important indication of whether their 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. at 1108.

Per our analysis of the evidence on record, the Petitioner offered a deficient job description that did not adequately specify the Beneficiary's daily or weekly tasks within the specific context of its restaurant operation. As such, we cannot conclude that the Beneficiary's time would be primarily allocated to tasks of an executive nature.

B. Staffing

Next, we will address the Petitioner's staffing at the time of filing. When staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, the reasonable needs of the organization must be considered in light of the overall purpose and stage of development of the organization. See section 101(a)(44)(C) of the Act.

As mentioned earlier, the Petitioner claimed seven employees at the time of filing. Supporting evidence includes an organizational chart depicting the Beneficiary in the top tier of the hierarchy as "president," who will oversee a restaurant staff that includes an "operations/restaurant manager" overseeing a "front of the house manager" and a "kitchen manager head chef." The latter is shown as overseeing one lead cook who then oversees a line cook and a "prep cook/dishwasher"; the "front of the house manager" is shown as overseeing a cashier/delivery person. The Petitioner provided job duty breakdowns for the three individuals with the word "manager" in their respective position titles, indicating that all three are full-time employees. Although the record indicates that the Petitioner was adequately staffed with personnel at the time of filing, it has not provided sufficient evidence demonstrating a practical need for an executive position within the context of a fast-food restaurant, nor did the Petitioner establish that a seven-person restaurant staff would support an executive position whose chief focus would be to perform primarily executive job duties.

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.

In the matter at hand, the Petitioner focuses heavily on the Beneficiary's elevated position and the company's overall ability to relieve the Beneficiary from having to perform tasks associated with food service and direct management of employees who perform those tasks. However, the Petitioner does not establish that its seven-person fast-food restaurant has either the need or the ability to employ the Beneficiary as an executive whose primary focus would be directing the management of the organization and establishing the organization's goals and policies. The Petitioner must support its assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). Here, the Petitioner does not adequately support its claims and instead relies in large part on the Beneficiary's discretionary authority and top placement within the organization. However, the Petitioner does not convey a meaningful account of the specific executive tasks the Beneficiary would perform in the routine course of a fast-food restaurant, nor does it adequately demonstrate how a primarily executive position would fit within the context of the Petitioner's business model.

In light of the evidentiary deficiencies described above, the Petitioner has not established that the Beneficiary would be employed in an executive capacity.

ORDER: The appeal is dismissed.