U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G- INC.

DATE: MAR. 15, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a provider of education products and services, seeks to continue the Beneficiary's employment as its "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.

The Director of the California Service Center denied the new office petition concluding that the Petitioner 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 challenges the Director's decision, asserting that the decision contains factual and legal errors and misinterprets the submitted evidence.

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 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 the period of July 7, 2016, to July 6, 2017. 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).

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must 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.

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

In this matter, the Petitioner claims that the Beneficiary will be employed in an executive capacity. As the Petitioner does not claim that the Beneficiary will be employed in a managerial capacity, we restrict our analysis to whether the Beneficiary will be employed in an executive capacity.

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 or executive capacity of a given beneficiary, we will look to the petitioner's description of the job duties. The petitioner's job description 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, USCIS examines 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 the submitted evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business and its staffing levels.

A. Duties

Based on the statutory definition of executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). 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); *Champion World*, 940 F.2d 1533.

The Petitioner in this instance owns and operates a preschool and sells educational materials and services. In its supporting statement, the Petitioner stated that it forged a partnership with a U.S. soccer club to organize "an international winter event" to encourage Chinese families to visit the United States for "weekend activities for parents and children." Evidence of its business activities include documents showing the Petitioner's purchase of an existing preschool, photos of the preschool facility, and pay stubs indicating that the Petitioner retained a number of employees who were already working at the preschool. In addition, the Petitioner provided a consulting agreement and a general service agreement, each of which identify the Petitioner as a party to the agreement.

With regard to the proposed position, the Petitioner stated that the Beneficiary would formulate and implement the company's policies and objectives, provide direction and leadership towards realizing the company's "philosophy, mission, strategy, and objectives," make recommendations to the board of directors and carry out their plans approved, review reports and financial statements, and recommend and oversee budgets and investments. The Petitioner also provided formal job descriptions, which included job duty breakdowns for the Beneficiary's first year of employment and his proposed employment under an extended petition. With the exception of the listed actions and initiatives the Beneficiary carried out during the Petitioner's first year of operation, the job descriptions were otherwise identical, generally focusing on the Beneficiary's discretionary decision-making authority with respect to the Petitioner's business activities, finances, and subordinate staff. Both job descriptions consisted of ten groups of duties with each group being allocated 10% of the Beneficiary's time. Each group of duties was placed in one four categories: "About goals and policies"; "About directing the management [and] discretionary decisions"; "About goals and policies [and] discretionary decisions"; and "About discretionary decisions."

In a notice of intent to deny (NOID), the Director notified the Petitioner that the previously submitted job description did not adequately describe the Beneficiary's proposed position because it lacked detailed information about his specific daily activity. Despite being notified of this evidentiary deficiency, the Petitioner resubmitted the original job duty breakdown, claiming that the job description included "detailed duties and expected executive decisions" as well as "the percentage of time (as small as possible) required for each duty." The Petitioner also provided a "Revised Employee List," which contained a job summary for each claimed employee; the Beneficiary's job summary briefly reiterated his leadership role with respect to all business matters and staff and indicated that he would answer only to the board of directors.

The Petitioner also discussed its purchase of a preschool and provided evidence of initiatives undertaken by the Beneficiary following the purchase, including copies of parent and employee handbooks and invoices for upgrades done to the school's security system. The Petitioner also resubmitted the previously described consulting and service agreements and provided product and education service sales invoices and promotional advertising material.

We found several flaws with the consulting agreement in the course of our review. First, although the agreement identifies [redacted] as "Party A" and the Petitioner as "Party B," it does not clearly designate either party as "the Consultant" or the client. Despite the Petitioner's claim that it served as the provider of education consulting services, this agreement does not expressly designate the Petitioner as the service provider. In fact, even if the Petitioner established that it was the service providing party in this agreement, it is unclear who, if not the Beneficiary, would carry out the consulting function, which was not assigned to any of the Beneficiary's direct or indirect subordinates, according to the employee job summaries. Given this lack of clarity as to who would provide education consulting services to the Petitioner's clients, we are precluded from making a determination as to the amount of time the Beneficiary would devote to providing consulting services to the Petitioner's clients. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See, e.g.*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). We also note that sections 1 and 4.1 are at odds with one another in terms of when the consulting agreement will terminate. Section 1 reiterates the agreement's date of execution and states that the agreement "shall terminate after 12 months, unless otherwise agreed in writing . . . ." However, section 4.1, titled "Basic Term," is unclear on the period the agreement will be in effect and, in fact, seems to indicate that the agreement may be terminated on the date that it commences.

Next, with regard to the travel planning service agreement, although the Petitioner is clearly designated as the purchasing party, no additional information was provided about the circumstances under which this agreement would be in effect within the scope of the Petitioner's business operation. The Petitioner also did not state who would oversee the provision of the travel service or specifically disclose the degree of the Beneficiary's involvement in such oversight when discussing his job duties. Despite designating workers in China who would "[o]versee aspects of international operations and activities" and develop business in China, it is unclear who would actually implement the U.S.-based summer and winter camp projects, given that the '[redacted]' which is responsible for the overseas activities, is purportedly comprised of workers in China, thousands of miles away from where the summer and winter camps would actually take place.

Lastly, while the Petitioner submitted six invoices for a 12-day '[redacted]' it did not provide corroborating evidence to show that payments were made on those invoices or disclose the dates and location(s) of the camp(s), describe the nature of the camp activities, or specify who within the Petitioner's organization would organize and oversee those activities during the camp session(s). This overall lack of sufficient evidence about the full scope of the Petitioner's business precludes a meaningful understanding of the Beneficiary's level of participation and amount of time he would devote to the daily operational tasks associated with this revenue-generating activity.

In the denial decision, the Director determined that the NOID response contained a deficient job description that lacked specific information about the Beneficiary's daily job duties. The Director

therefore concluded that the Petitioner did not establish that the Beneficiary would primarily perform tasks of an executive nature.

On appeal, the Petitioner contends that purchasing a preschool was within its business scope as an investment company and argues, as it did in the NOID response, that a detailed job description and specific time allocations for each duty had already been provided. We disagree and find that the Petitioner did not adequately support its claims with a detailed description of the Beneficiary's typical daily tasks.

As noted earlier, the Petitioner provided identical job duty breakdowns to describe what the Beneficiary did during the Petitioner's first year of operation as a new office and what he would do in his proposed position under an extended petition. As evident from the provisions of the "new office" regulations, it is assumed that the beneficiary of a new office petition is not likely to focus primarily on executive job duties during a new office petitioner's initial phase of operation. As such, we question the reliability of a job description that was used to describe the Beneficiary's job duties during two entirely different phases of the Petitioner's operation. The fact that the Petitioner did not provide a job duty breakdown that reflects the Petitioner's stage of development under an extended petition indicates that the job description is overly broad and does not identify actual tasks that correspond to a specific operational phase. For instance, the first set of duties was placed in the category "About goals and policies" and stated, in part, that the Beneficiary would be responsible for "creating, planning, implementing and integrating the [Petitioner's] strategic direction"; "[d]evelop[ing] the culture of the business"; communicating and implementing "the company's vision, mission, and overall direction"; leading in strategy development and implementation; reviewing and approving various management and marketing policies and objectives; and reviewing, evaluating, and approving investment projects and proposals made by the general manager and marketing director and collaborating with them to "generate substantial annual revenue and foster ... financial health." The Petitioner did not assign time constraints to individual job duties or provide specific information about the underlying tasks that would enable the Beneficiary to formulate policies, strategies, and objectives. The Petitioner also did not specify any policies, strategies, or objectives that are consistent with its stage of development at the time the petition was filed.

The second set of job duties – also categorized as "About goals and policies" – was equally vague, focusing on the Beneficiary's responsibility with respect to company finances and business strategies that are consistent with the company's short- and long-term goals. The Petitioner stated that the Beneficiary would also: generate new business and approve new projects; guide board actions; establish and adjust financial procedures, accounting policies, and management systems; review financial business plans and forecasts; and approve annual budgets, audit reports, and business decisions. The Petitioner did not state how the Beneficiary would generate new business or establish that this is a qualifying executive job duty, nor did the Petitioner state how much time the Beneficiary would devote to this potentially non-executive task. As with the first set of duties, these job duties are similarly comprised of vague statements that convey the same general idea about the Beneficiary's discretionary authority in all business matters; they do not, however, provide true insight as to the Beneficiary's proposed daily actions within the scope of the Petitioner's education-based organization.

The next six sets of duties were categorized as "About directing the management [and] discretionary decisions"; the Petitioner indicated that the duties in these six sets would consume 60% of the Beneficiary's time. The Petitioner did not explain why the job duties were separated into six sets, given that all six sets were identified under the same category. The duties listed were once again broad in nature and did not identify the Beneficiary's specific daily tasks, maintaining focus on the Beneficiary's discretionary authority with respect to the company's staff, finances, and business objectives. Although the Petitioner expressly stated that the Beneficiary would engage in contract negotiations, it did not establish that contract negotiation is an executive task or state how much time the Beneficiary would devote to this activity. The Petitioner also stated that the Beneficiary would help with "all tasks necessary to achieve the company's mission," thereby indicating that the Beneficiary may have to perform other non-executive job duties to meet the company's business needs. Again, the Petitioner did not identify specific tasks or assign time allocations in such a way that would establish that the Beneficiary would devote more time to executive tasks than to non-executive ones. Instead, the Petitioner broadly relied on the Beneficiary's key role in overseeing, monitoring, and coordinating the company's business activities, subordinate staff, and financial interests to establish that he would be employed in an executive capacity. As noted earlier, these generalities lack meaningful content and do not take into account that the Beneficiary's job duties during the Petitioner's earlier operational phase were likely to have been different from tasks he would be required to perform during the phase of development the Petitioner entered at the time this petition was filed.

In light of the deficiencies noted above, we find that the job descriptions provided in this matter were deficient and lacked the degree of detail that is necessary to determine what actual tasks the Beneficiary would perform on a daily basis and the executive or non-executive nature of those tasks. Grouping the Beneficiary's job duty breakdown into categories does not impart sufficient critical knowledge about his specific tasks; these subdivisions confuse, rather than help, our ability to understand the Beneficiary's specific tasks, as the Petitioner did not explain why the same category was assigned to multiple sets of job duties. Further, while we acknowledge that the Petitioner assigned 10% of the Beneficiary's time to ten *sets* of job duties, contrary to its claim, no time allocations were assigned to individual job duties.

Moreover, as noted throughout this decision, the job description was primarily comprised of vague references to the company's "vision and mission" and broad claims about the Beneficiary's overall job responsibilities. While this information is adequate to give us a general sense of the Beneficiary's discretionary authority over all business matters, it does not convey a meaningful understanding of the specific activities that would comprise the Beneficiary's proposed position. The fact that the Beneficiary will manage or direct the Petitioner's organization does not necessarily establish that the Beneficiary would be employed 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, aside from establishing that the Beneficiary will exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, the Petitioner must

establish that the duties to be performed would be primarily at an executive level. We note that a detailed job description is critical in establishing that the Beneficiary's proposed position meets the statutory criteria, as 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).

While the Beneficiary may have discretionary authority over the Petitioner's financial and business concerns, the Petitioner has provided a job description that consists mainly of general information and does not establish that the Beneficiary would primarily perform executive-level tasks as part of his daily or weekly routine.

B. Staffing

At the time of filing, the Petitioner claimed that it had 14 employees and no net annual income. In support of the petition, the Petitioner provided an organizational chart that depicted the Beneficiary at the top of the organizational hierarchy, second only to the company's board of directors. The chart shows that the Beneficiary has one direct subordinate – the general manager – who oversees a marketing director, the director of the preschool that the Petitioner purchased, and an international department located in China.

The Petitioner's NOID response included pay stubs for the Petitioner's employees in July 2017 during which the instant petition was filed. The record does not contain a pay stub for the Petitioner's marketing director or evidence to show that the Petitioner compensated the employees it claims to have in China. As noted earlier, the NOID response also included an employee job description sheet, which indicates that critical marketing duties are assigned to the marketing director. However, based on the lack of evidence showing that the Petitioner actually employed a marketing director at the time of filing, it is unclear who was performing the duties of this position and how the lack of a marketing director would affect the Beneficiary and his ability to devote his time primarily to executive job duties.

In denying the petition, the Director incorrectly applied the statutory definition of executive capacity to the Beneficiary's subordinates. We note that only the Beneficiary is bound by the criteria set by the statutory definition of managerial or executive capacity. As such, the Petitioner must provide evidence to show that its organizational hierarchy and staffing structure will support the Beneficiary in an executive position. Here, notwithstanding the flawed analysis, the Director properly questioned how the Beneficiary would oversee employees that are located in China, given the distance between the Beneficiary and the location where three of his claimed subordinates would execute the tasks of the [redacted] The Director also noted that the submitted employee pay stubs do not corroborate the claim that the Petitioner had 14 employees at the time the petition was filed.

On appeal, the Petitioner contends that we must take into account "the wider qualifying international organization," which includes employees who work overseas. However, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec.

369, 376 (AAO 2010). In the present matter, the Petitioner has not provided sufficient information explaining how the Beneficiary would oversee employees who work in China, nor has it provided evidence of compensation to show that it actually employs these individuals, as claimed. We therefore cannot conclude, based on the evidence provided, that the Petitioner has foreign-based employees who would help relieve the Beneficiary from having to allocate his time primarily to non-executive tasks.

Furthermore, 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 organization must have a subordinate level of managerial employees for a beneficiary to direct and they 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.*

The Petitioner asserts that it operates within "a typical traditional organizational reporting structure" where the Beneficiary assumes the role of its "top executive" with multiple subordinate levels of employees below him. The Petitioner's organizational chart indicates that the general manager is the Beneficiary's only direct subordinate and that it is the general manager who would oversee a preschool director, a marketing director, and the "international department" where the three China-based employees would work. However, as previously stated, the Petitioner has not provided evidence to show that at the time of filing it employed a marketing director, who would oversee a marketing department, or that it had overseas employees, who would carry out the duties of an "international department." *See Chawathe*, 25 I&N Dec. at 376. Although the Petitioner appears to have two marketing employees, a preschool director, and part- and full-time preschool teachers, we cannot conclude that this organizational structure provides a sufficient managerial tier through which the Beneficiary can be said to "direct the management" of the organization.

III. CONCLUSION

For the reasons discussed above, we find that the Petitioner has not established that the Beneficiary will be employed in the United States in an executive capacity under an extended petition. The appeal will be dismissed for this reason.

ORDER: The appeal is dismissed.

Cite as *Matter of G- Inc.*, ID# 1015557 (AAO Mar. 15, 2018)