U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-E-USA LLC

DATE: MAR. 28, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a commercial and industrial designing business, seeks to temporarily employ the Beneficiary 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 denied the petition concluding that the Petitioner did not submit sufficient evidence to establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity.

The matter is now before us on appeal. In support of the appeal, the Petitioner submits additional evidence and a brief disputing the grounds for denial.[1]

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a position involving 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, executive, or specialized knowledge capacity. *Id.*

An L-1A classification petition must be accompanied by evidence establishing that: the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized

[1] We decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b).

knowledge for at least one continuous year in the three years preceding the filing of the petition; the beneficiary is coming to work in the United States in a managerial or executive capacity for the same employer or a subsidiary or affiliate of the foreign employer; and, the beneficiary's prior education, training and employment qualifies him/her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The Director found that the Petitioner did not establish that the Beneficiary is employed abroad and would be employed in the United States in a managerial or executive capacity. However, the Petitioner does not claim that the Beneficiary has been or will be employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary has been and will be employed in an executive capacity.

The term "executive capacity" is defined as "an assignment within an organization in which the employee primarily":

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) 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, 8 U.S.C. § 1101(a)(44)(B). 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.

A. U.S. Employment

First, we will address the issue of the Beneficiary's proposed employment in the United States to determine whether the Petitioner provided sufficient evidence to establish that the Beneficiary would be employed in an executive capacity.

1. Duties

When examining the managerial or executive capacity of the Beneficiary, we will look first to the Petitioner's description of the job duties. The Petitioner's description of the job duties 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).

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). Second, the Petitioner must 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 filed the Form I-129 claiming one employee and a projected gross income of $500,000.[2] The Petitioner states that it is engaged in the design and installation of exhibition displays and stands and related consultancy services. In a supplemental statement, the Beneficiary, in his capacity as the Petitioner's president/CEO, provided the following proposed job duties:

> [O]verseeing all employees and client/supplier relationship, ensuring company is appropriately staffed and organized, ensuring expenditures and all accounts receivable are appropriately handled, assessing risks/benefits, new client acquisition, executing market growth and operational strategies, implementing innovative techniques in the filed [*sic*], expanding the Eco-friendly position of the company, exercising overall quality control and company integrity, and ensuring all business practices are up to code in accordance with state and government requirements.

Supporting evidence also included sales and purchase invoices from the previous year with the latter identifying the Beneficiary as the Petitioner's contact person.

The Director issued a request for evidence (RFE) advising the Petitioner that it did not provide sufficient evidence to establish that it would employ the Beneficiary in an executive capacity. The Director offered the Petitioner an opportunity to resolve this evidentiary deficiency by submitting, in part, a statement describing the Beneficiary's proposed executive job duties, specifying the percentage of time he would allocate to each job duty, and explaining how the Beneficiary would meet each prong of the four-prong definition of executive capacity. The Director also asked the Petitioner to provide an organizational chart illustrating its staffing levels as well as quarterly wage reports for the first and second quarters of 2016 or other evidence of employee wages.

In response, the Beneficiary, in his capacity as the Petitioner's president/CEO, provided a letter containing a job description in which he allocated 43% of his time to broadly stated job responsibilities, which include the following: formulating goals and policies and creating strategies

[2] Although the Petitioner listed a projected income figure, the record shows that the company was established approximately 15 months prior to filing the petition in May 2016. It did not claim to be a new office (defined at 8 C.F.R. § 214.2(l)(1)(ii)(F) as an office doing business in the United States for less than one year), and it provided evidence of regular business transactions dating back to April 2015.

and procedures to ensure business growth and increase in profits (10%); planning and directing the company's finances and operations "at the highest level of executive capacity"(10%); overseeing negotiations with banks, vendors, and "suppliers of lawn products and supplies"(5%); coordinating and monitoring administration and marketing budgets (2%); initiating and implementing procedures for recruiting, managing, and training employees (5%); working with shareholders to determine a marketing and promotion strategy (5%); conducting annual performance evaluations to monitor staff performance (4%); and reviewing reports and financial statements to determine company progress and revise objectives accordingly (2%).

The Beneficiary allocated the remainder of his time to 32 additional duties and responsibilities that were divided into seven categories: leadership (10%), operational planning (10%), program planning (5%), human resources planning (5%), financial planning (12%), risk planning (5%), and business coordination between the Petitioner and its foreign parent entity (10%). Rather than allocating time to individual duties that comprised each category, the Petitioner allocated time constraints to the categories themselves. The Beneficiary also addressed how his duties are consistent with the statutory definition of executive capacity.

The Director determined that the evidence as a whole did not establish that the Beneficiary would be employed in a managerial or executive capacity, but did not specifically address the Beneficiary's job duties.

On appeal, the Petitioner asserts that the Director placed undue emphasis on the Petitioner's staffing size and issued a decision that is contrary to one of our adopted decisions. We disagree and find that the Petitioner provided insufficient evidence to support its claim that it would employ the Beneficiary in an executive capacity.

The submitted job description, while lengthy, does not accurately or specifically delineate the tasks the Beneficiary will perform within the context of the Petitioner's service-based business operation. We find that the statements used to account for 43% of the Beneficiary's time are overly vague and lack sufficient information about the Beneficiary's specific daily tasks. The Petitioner did not specify what factors would drive the formulation of goals and policies or state what actual tasks would be performed in the course of planning and directing the company's finances and operations. The Petitioner also did not explain the reference to "lawn products" or state how it applies within the context of the Petitioner's business of providing commercial and industrial design services. The reference to "coordinating with shareholders" is also questionable in light of evidence indicating that the Petitioner's only claimed shareholder is its foreign parent entity, which is claimed to be wholly owned by the Beneficiary. Given that this claimed ownership structure, wherein the Beneficiary is effectively the Petitioner's sole shareholder, the Beneficiary's reference to "shareholders" in describing his job duties is misleading and causes us to question what actual tasks he would perform. The Petitioner has not resolved this ambiguity with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We find that the remainder of the job description is also ambiguous and, at times, inconsistent with the record. More than one-third of the job duties make reference to working with or reporting to a Board of Directors whose existence the Petitioner has not established through the submission of reliable supporting evidence. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Aside from the Petitioner's unsupported claims regarding a Board of Directors, other items listed in the Beneficiary's job description do not provide sufficient detail to show that his duties would be primarily executive in nature. The Beneficiary uses vague, and often repetitive, terms and phrases such as "developing a vision and strategic plan," "oversee the planning of . . . goals and services," developing a "business plan which incorporates goals and objectives, "[a]ct as a professional adviser," "[o]versee the efficient and effective day-to-day operations," and "[m]onitor the day-to-day business operations," which do not provide sufficient insight into the nature of the Beneficiary's expected daily tasks. Similarly, stating that the Beneficiary acts to "ensure" that the Petitioner meets client and shareholder expectations, complies with state licensing requirements, and offers services that reflect the Board's and the Beneficiary's own directives tells us nothing of what the underlying activities would actually entail. The Beneficiary's repeated references to a "staff" also shed no further light on his actual duties, as the record suggests that the Beneficiary was its only employee at the time the Petition was filed. Thus, any job duty that relies on the existence of a support or "management" staff leaves us to question how the Beneficiary would execute that duty in the absence of any support personnel. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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 addressing each of the four elements that comprise executive capacity, the Beneficiary referred to the "advanced background knowledge" he gained during his years of employment abroad and indicated that he is "the most qualified" to direct and oversee the Petitioner's daily operations. The Beneficiary further stated that he would consult with a "management team" to establish goals and policies. As indicated above, the Beneficiary's reference to a "management team" can, at best, be seen as his projection as to future hires, but cannot be used to determine the Beneficiary's actual job duties, as the Petitioner did not employ a "management team" or any personnel aside from the Beneficiary at the time of filing. The Beneficiary also provided a list of his skills and attributes as a leader and pointed to his wide discretionary authority in making business decisions with only "general supervision from [the Petitioner]'s Board or its stockholders" as the Beneficiary works toward "expansion and fulfillment of [the Petitioner's] management staff." However, as with other statements used to describe the Beneficiary's proposed position, this discussion of the four prongs that comprise the definition of executive capacity is vague and provides no further insight as to how the Beneficiary would meet each prong of the definition or what specific tasks he would perform.

In light of the deficiencies outlined above, the Beneficiary's job description does not establish that he would allocate his time primarily to the performance of executive job duties.

2. Staffing

Beyond the required description of the job duties, we review the totality of the record when examining a beneficiary's claimed executive capacity, including 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.

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, 8 U.S.C. § 1101(a)(44)(B). 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 a 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.*

Here, in the Petitioner's initial support letter, the Beneficiary stated that "the company intends to hire a team of highly qualified personnel both on the administrative level, sales, consultation and specialized scale." Specifically, the Petitioner stated the company will hire a vice president, accounts receivable/payable, accounting, operations manager, quality control manager, sales staff, secretary/receptionist, consulting staff, and temporary staff and contractors to help with events and exhibitions. The Beneficiary did not state who is currently carrying out the tasks associated with these positions in the absence of a current staff to fill them.

In response to the RFE, the Petitioner provided a July 2016 organizational chart, which named the Beneficiary as the "President/CEO" and one other individual in the position of general manager, and listed future positions, including a vice president of sales and marketing, a CFO, a production department manager, a sales department manager, and an advertising department manager. We note, however, that the Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

The Petitioner stated it was providing evidence of wages paid to three current employees – the general manager and two "contractor employees." This evidence included: (1) two paystubs for the individual identified as "general manager" (both dated in August 2016); (2) two paystubs for [redacted] (one undated, one dated August 2016); and one undated paystub for [redacted]

whose name is handwritten on the document. The petitioning company's name does not appear on any of these documents. For one of the bi-weekly pay periods, both the "general manager" and one of the "contractors" worked 56 hours at a rate of $14.40 per hour.

As the Petitioner did not provide evidence that it hired its general manager or these two claimed "contractors" prior to filing the petition, the new hires are irrelevant for the purpose of determining whether the Petitioner was eligible when the petition was originally filed. Likewise, the Beneficiary's references to a "management staff" or "team," which imply the existence of a support staff, are not probative as the record indicates that the Beneficiary was likely the Petitioner's only employee at the time the petition was filed. Any references to support personnel were indicative of the Beneficiary's anticipation that he would eventually hire employees to assist him in the future.

Furthermore, while there is some overlap between the positions the Beneficiary listed in the initial support letter and the positions listed in the organizational chart that was later submitted in response to the RFE, the two lists are mostly inconsistent. Namely, the organizational chart did not include a secretary/receptionist, an accounts receivable/payable position, a consulting staff, a quality control manager, or temporary staff and contractors for events and exhibitions, all of which the original support statement listed as proposed staff to be hired in the future. Instead, all of the positions listed in the organizational chart – including a general manager, a sales and marketing vice president, an advertising department manager, a sales department manager, a production department manager, and a Chief Financial Officer – indicate that the Petitioner will be comprised exclusively of managerial or executive personnel. The Petitioner did not supplement the chart with an explanation clarifying who will actually carry out the Petitioner's daily operational and administrative tasks.

In addition, in a cover letter submitted in response to the RFE, counsel for the Petitioner stated that "all 32 staff members within the parent company's headquarter[s] in Italy . . . also support the Beneficiary and manager's work." This assertion is not repeated in any of the Petitioner's statements. Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Here, counsel referenced a "2015 on [the foreign entity]" in support of his claim. The referenced document names the foreign entity and appears to provide information regarding its corporate status, date of establishment, address and contact information, and company representative, among other items. This Italian language document is not accompanied by an English translation. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). At most, it appears that this document was intended to verify that the foreign entity has 32 employees (the number "32" is circled in red ink). It is unclear how this document otherwise supports counsel's claim that 32 Italian employees would support the Beneficiary's work in the United States.

Section 101(a)(44)(C) of the Act requires that, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of

the organization. To establish that the reasonable needs of the organization justify a beneficiary's job duties, a petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development.

In the present matter, while we believe that the Beneficiary will more likely than not establish the goals and policies of the company and exercise wide latitude in discretionary decision-making, the record does not establish that these would be the Beneficiary's primary duties. As stated above, the Beneficiary was the Petitioner's only employee at the time of filing. This overall lack of any support personnel to perform the Petitioner's operational and administrative tasks indicates that the Beneficiary would likely be responsible for meeting the Petitioner's needs by performing both executive and non-executive functions to ensure the Petitioner's continued daily operations. Having considered the Petitioner's reasonable needs, we find that the representations made in the instant record do not establish that the Petitioner can plausibly meet those needs with the Beneficiary as its only employee performing primarily executive-level tasks. Rather, it is likely that the Beneficiary would be required to perform all levels of tasks, whether executive or not, in order to meet the Petitioner's immediate needs, at least until the Petitioner hires support staff who would relieve the Beneficiary from having to perform certain non-executive functions.

On appeal, the Petitioner asserts that the Director abused her discretion and ignored an adopted decision in which we sustained an appeal, concluding that the petitioner in that case provided sufficient evidence to establish that it would employ the beneficiary of its petition in the role of a function manager. *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

We disagree with the Petitioner's arguments. First, we find that the citation to *Matter of Z-A-* is not persuasive, as the facts and circumstances in the present matter are not analogous to those in the cited decision, where we found that the petitioner provided "substantial evidence" of an 8-person staff in Japan who performed technical, sales, and administrative tasks and who were "dedicated exclusively to supporting the growth of the group's business in the Americas." *Id.* at 6. In the present matter, despite the existence of an overseas parent entity, the Petitioner did not provide evidence of the staff employed at the foreign entity, nor did it previously claim or provide evidence to support that any of the foreign entity's staff is "dedicated exclusively" to support the Beneficiary's position and the Petitioner's U.S. operations.

Second, while we found the Director in *Matter of Z-A-* neglected to address the petitioner's "substantial evidence relating to the support provided by the overseas staff located in Japan," the same is not true in the matter at hand. *See id.* As noted above, the Petitioner in the instant matter did not submit evidence to support the contention that the foreign entity's staff is part of the U.S. organization and is dedicated to supporting the Beneficiary and his efforts in the United States. Thus, the Petitioner did not support its assertions with relevant, probative, and credible evidence. *See Chawathe*, 25 I&N Dec. at 376.

Here, the Petitioner has not provided probative supporting evidence documenting the foreign entity's staffing levels and organizational structure, nor has it shown that the personnel employed abroad by

the Petitioner's claimed parent entity have or would in any way support the Beneficiary in his position in the United States. Further, the Petitioner has not provided sufficient evidence to establish that it works together with the foreign entity and the foreign entity's resources to produce products or provide services for the benefit of the U.S. subsidiary. Further, while the Petitioner claims on appeal that it "regularly retains (and will retain) outside professional service providers and subcontractors," the record contains no information as to the specific types of services it claims have been and would be provided and the Petitioner provided limited evidence to show that it retained service providers or hired subcontractors in the past. *See Chawathe*, 25 I&N Dec. at 376.

The Petitioner further contends that the Director "blatantly impos[ed] new and additional standards" and "ignor[ed] the evidence presented." However, it is unclear what new standards the Director applied and what evidence she ignored. We do not agree that the Director imposed a higher standard than preponderance of the evidence, as suggested by the Petitioner. To meet the preponderance of the evidence standard a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Chawathe*, 25 I& N Dec. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

As discussed above, the Petitioner made numerous unsupported claims and offered insufficient evidence to establish who, other than the Beneficiary, was carrying out the Petitioner's daily operational and administrative tasks at the time the petition was filed. In the absence of this critical documentation, we cannot conclude that the Petitioner was ready and able to relieve the Beneficiary from having to allocate his time to primarily non-executive tasks. Therefore, in light of the deficiencies discussed above, the Petitioner has not established that the Beneficiary would be employed in an executive capacity.

B. Employment Abroad

The next issue we will address in this discussion is the Beneficiary's employment with the Petitioner's foreign parent entity and whether the Petitioner submitted sufficient evidence to establish that the Beneficiary has been employed abroad in an executive capacity as claimed.

1. Duties

As with the Beneficiary's proposed U.S. position, the question of whether the Beneficiary was employed abroad in an executive capacity turns in part on the nature of the job duties he performs.

On the Form I-129, the Petitioner stated the Beneficiary has been employed by its claimed Italian parent company as president and CEO since January 2010. In the initial supporting statement, the Beneficiary stated that he has been with the parent company "since [its] start-up in 1981,"[3] that he

[3] Based on his date of birth, the Beneficiary was [redacted] years old during most of 1981.

"has spent the past six years overseeing this company's operations," and that he is "engaged" in ensuring that the foreign entity continues to operate successfully. Although the Petitioner included a section heading titled, "The Foreign Position Filled by the Transferee," the information discussed in the paragraph that followed pertained only to the Beneficiary's "current responsibilities" with the U.S. organization.

Although the RFE response contains a separate statement from the Beneficiary addressing his position with the foreign entity, the statement contained little information about the duties he carried out during such employment and instead primarily aimed to establish that the Beneficiary was employed abroad during the relevant time period. Namely, the Beneficiary stated that he started employment with the entity abroad in 2010 and claimed that his "main duties" included "oversee[ing] all daily business operations and management and consultancy services as well as design and installation of exhibition stands in Europe and in overseas countries . . . ." The Beneficiary further stated that he "oversees all daily client/supplier relationship [*sic*], market growth and operational strategies, implementing innovative techniques in the filed [*sic*], expanding the eco-friendly position of the company" and claimed that he "contributed to the best business practices in the competitive global economy." The Petitioner did not provide a percentage breakdown listing the Beneficiary's job duties, even though the RFE specifically pointed out that such information was not included among the Petitioner's original supporting evidence.

In the denial, the Director pointed to the absence of a percentage breakdown and list of job duties describing the Beneficiary's employment abroad and concluded that the Petitioner did not submit sufficient evidence to establish that the Beneficiary has been employed in an executive capacity.

On appeal, the Petitioner conflates the Director's discussion of the Beneficiary's employment abroad with the discussion of the Beneficiary's proposed position with the U.S. entity without focusing specifically on the deficiencies pertaining to the latter position. Although the Petitioner objects to the Director's focus on personnel size, this element was not specifically addressed in the discussion of the Beneficiary's position abroad. Rather, the Director's discussion of the Beneficiary's employment abroad concentrated on the deficient job description, noting that she was unable to determine whether the Beneficiary was employed in a managerial or executive capacity without a delineation of the Beneficiary's specific job duties and the times allocated to individual tasks. The Petitioner does not address this critical deficiency on appeal or provide additional information about the job duties the Beneficiary performed during his employment abroad. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. As noted, the Petitioner did not specifically delineate the Beneficiary's former job duties, thereby precluding us from gaining a meaningful understanding of the nature of tasks he primarily performed. *See Fedin Bros*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

2. Staffing

As previously indicated, a determination of whether the Beneficiary was employed abroad in an executive capacity encompasses multiple factors, including not only the Beneficiary's job

description, but also the foreign entity's organizational structure, the duties of his subordinate employees, the presence of other employees to relieve him from performing operational duties, the nature of the business, and any other factors that will contribute to understanding his actual duties and role in the business.

Further, as a subordinate level of managerial employees is inherent to an executive-level position, we must evaluate the foreign entity's staffing structure to determine whether a complex organizational hierarchy was in place to elevate the Beneficiary's position to that of an executive who had the ability to "direct the management" and "establish the goals and policies" of that organization as well as exercise "wide latitude in discretionary decision making" while receiving 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, 8 U.S.C. § 1101(a)(44)(B).

Here, the Petitioner did not provide any evidence or information illustrating the foreign entity's organizational hierarchy. While the Petitioner generally claimed that the Beneficiary, in his capacity as owner of the foreign entity, had unfettered discretionary authority to formulate policies and make all business decisions, the record lacks evidence of the foreign entity's staffing and therefore precludes us from being able to assess the foreign entity's organizational structure and determine whether it had a managerial tier of employees for the Beneficiary to direct and, in general, whether the foreign entity had sufficient staff to relieve the Beneficiary from having to carry out its daily operational and administrative functions. As noted, the record's only mention of the foreign entity's staffing was counsel's claim that the foreign entity has 32 employees, a claim that was not supported by probative corroborating evidence.

In light of the analysis provided above, we find that the Petitioner has not established that the Beneficiary was employed abroad in an executive capacity.

III. CONCLUSION

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary has been employed abroad or would be employed in the United States in an executive capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of I-E-USA LLC*, ID# 228792 (AAO Mar. 28, 2017)