U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C- INC.

DATE: MAY 14, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which is engaged in the purchase, sale, and research and development of life science products and medical instruments, seeks to continue the Beneficiary's temporary 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 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 Director failed to consider relevant evidence, misapplied the law, and reached a denial decision that was inconsistent with the record. The Petitioner contends that the totality of the evidence is sufficient to establish that the Beneficiary will be employed in an executive capacity.

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 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 Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period August 7, 2016, until August 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). This evidence must demonstrate that the beneficiary will be employed in a managerial or executive capacity, as defined at sections 101(a)(44)(A) and (B) of the Act, under the extended petition.

II. U.S. EMPLOYMENT IN A EXECUTIVE CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary will be employed in an executive capacity under the extended petition. The Petitioner did not claim that the Beneficiary would be employed in managerial capacity; therefore, our analysis will address only the Petitioner's claim that the Beneficiary's proposed position would be 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 executive capacity of a given beneficiary, we will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (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 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

Based on the definitions 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 at 1533.

The Petitioner submitted the following list of duties for the Beneficiary's position of CEO at the time of filing and added the percentage of time to each listed duty in response to the Director's request for evidence (RFE):

- Establish overall business objectives, formulate financial goals, streamline business processes and set company guidelines and policy . . .; 10%
- Establish and implement proper sales guidelines and goals for the company; create and implement effective marketing strategies to help company reach potential clientele; 10%
- Develop and revise company business plan, and review reports from managers to evaluate the effectiveness in implementing the plan; 5%
- Provide leadership and develop a strategic plan to advance the company's goals and to promote revenue, profitability, and grown . . . through regular meetings with managers; 10%
- Establish key goals and direct financial manager the implementation of key financial objectives and performance metrics; 5%
- Review and approve annual and quarterly budgets for the company, including purchases, shipping, labor, marketing, advertising, sales, public relations, and research & development; 4%
- Establish the policy and system to share marketing and sales data with the parent company to increase revenue, efficiency, and overall customer satisfaction; 5%
- Confer with the Chinese parent company's top management and board of directors . . . ; 1%
- Establish employment policies, including but not limited to hiring, firing, and performance and compensation metrics; 10%
- Oversee all departments' work in the development of key clients, customer service and market analysis of industry segments and clients; 2%
- Direct department managers for creating effective sales strategies and determine the proper marketing target for business incentive; direct department managers for planning of market asset purchases and streamline the supply chain and logistics; 8%
- Direct department managers to formulate an effective purchase-sales procedure to reduce transactional costs and reflect market trends; 3%
- Inform parent company's top management of significant financial and market trends and recommend appropriate action; 2%
- Exercise discretionary decision-making power on all major operational sales, financial and budgeting issues concerning the [Petitioner's] growth; 10%
- Exercise discretionary decision-making power on hiring necessary employees and establishing training protocols . . .; 10%
- Keep up-to-date with current market conditions and industry trends. 5%

We agree with the Director's determination that this description does not provide sufficient insight into the nature of the Beneficiary's day-to-day duties. The description conveys the Beneficiary's authority over the Petitioner's operations, but is too broad and repetitive to clarify how he would primarily spend his time within the context of the Petitioner's business as of the date of filing.

Several of the duties paraphrase or closely resemble the statutory definition of "executive capacity." For example, the Petitioner asserts that the Beneficiary will "establish overall business objectives"

and policies," "provide leadership and develop a strategic plan," establish sales goals for the company," "establish key goals," "exercise discretionary decision-making power" on all issues, "establish employment policies," and "establish the policy and system" to share data with the parent company. These broad duties, which the Petitioner states will require more than 50 percent of the Beneficiary's time, do not establish the nature of the specific tasks the Beneficiary would perform as part of his regular routine. 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).

We acknowledge that the Petitioner provided two examples of written policies authored by the Beneficiary (relating to employee attendance and employee travel and expenses), but this evidence is insufficient to support the Petitioner's claim that he would spend his time *primarily* focused on higher-level planning and decision-making responsibilities associated with the overall direction of the company. On appeal, rather than provide additional details regarding the Beneficiary's specific tasks, the Petitioner re-states the same job duties provided previously and emphasizes that the job description does not include operational or administrative tasks. However, a position description that is so broad that it does not meaningfully identify what the Beneficiary would be doing has limited probative value. As noted, reciting a 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.

Therefore, although the Beneficiary makes decisions about the company's policies and activities, the record on appeal does not adequately show how his role requires him to spend his time primarily on the broadly defined responsibilities identified in his duty description. The fact that the Beneficiary will direct a business as its senior employee does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(44)(B) of the Act. As discussed further below, the Petitioner has not shown how the new office developed during the first year of operations to the point where it requires the Beneficiary to perform primarily executive duties.

B. Business, Staffing, and Organizational Structure

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS takes 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. The regulations allow for a one-year period for the U.S. entity to commence doing business and develop to the point that it will support a beneficiary in a qualifying managerial or executive position. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

The Petitioner, established in 2016, states that it purchases life science products, medical instruments, and biological reagents, and exports them to hospitals, universities, and research centers

in China. It further noted that it has installed a biological lab in its office and "will also provide equipment maintenance, flow cytometry analysis, reagent and assay development services" in 2017. The Petitioner had $0 in sales in 2016 and $30,895 in sales in the first half of 2017. The Petitioner explained that its Chinese parent company is "the only company in China" authorized to import and noted that it has been negotiating with U.S. suppliers to purchase 3000 units of to export to China. The Petitioner stated that it expected to convert this prospective purchase into millions of dollars in revenue.

The Petitioner established that it employed five workers subordinate to the Beneficiary at the time of filing. The Petitioner's organizational chart depicts the Beneficiary's direct U.S. subordinates as an operations manager and a financial and administration manager. The charts shows an international trade/sourcing specialist and a sales representative subordinate to the operations manager (as well as a logistics specialist based in China), and an administrative assistant and outsourced CPA subordinate to the financial/administration manager. The Petitioner also stated that the Beneficiary relies on the "exclusive support" of additional employees based in China, including a marketing manager, who supervises a marketing specialist and a customer service representative.

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.*

Here, the Petitioner asserts that the Beneficiary directs the management of the company through the subordinate operations manager, finance and administration manager, and overseas marketing manager. It provided position descriptions for all employees and asserts that the evidence establishes that the Beneficiary oversees subordinate managers and that it has sufficient staff to relieve the Beneficiary from significant involvement in the day-to-day operations of the company. However, given the Petitioner's level of operations at the time of filing, some of the duties assigned to the subordinate staff, without further explanation, do not appear to be realistic.

As noted, the Petitioner achieved $30,895 in sales during its initial year of operations. The supporting evidence shows that the Petitioner purchased 15 units of from a company in and sold these products to its parent company in May 2017 for $30,895. The Petitioner did not document any other completed business transactions in its first twelve months of operation. The Petitioner provided e-mail correspondence showing that the operations manager and Beneficiary have been making inquiries with U.S. vendors regarding the purchase of

products, as well as evidence that employees in China have communicated with the Petitioner about products and the requirements of potential overseas customers.

What the Petitioner has not shown, however, is how it relies upon the full-time services of four overseas employees at its current stage of development. The Petitioner indicates that these same employees reported to the Beneficiary before the U.S. company was established so it is reasonable to believe that they have other ongoing responsibilities unrelated to supporting the Petitioner's business. The Petitioner has arranged for a single order to be shipped to China as a result of its efforts during its initial year of operations and has not explained how this level of activities requires four full-time staff overseas.

Similarly, the lack of evidence of the Petitioner's business operations raises questions regarding the duties attributed to the U.S. staff, particularly those with managerial job titles. While the company may eventually fully support the functions assigned to the subordinate employees, it appears that many aspects of the submitted job descriptions include prospective duties. For example, the Petitioner stated that the operations manager will "build the R&D team to lead new product development," "lead or manage others responsible for audits, registrations, corrective actions," supervise "purchasing and logistics departments," and manage relationships with "key external partners." These duties are incongruous with the current scope of the Petitioner, which is not engaged in research and development, does not have purchasing or logistics departments, and has not identified any audit activities or key external partners. The company's limited operations also raise questions about the nature of the duties performed by the sourcing specialist and sales representative, as the Petitioner has not shown that it was regularly engaged in sourcing or selling any products at the time of filing.

Here, the Petitioner emphasizes that it has sufficient staff to relieve the Beneficiary from performing non-executive duties. However, the size of the staff is not at issue. The Petitioner has not provided detailed descriptions of the actual duties the Beneficiary and the subordinate staff would be performing in light of the company's stage of development at the time of filing, nor has it supported its claim that company was able to support an executive and a tier of managerial staff after its initial year in operations. The Petitioner emphasizes that the Beneficiary is not taking orders for goods, answering questions about merchandise, confirming shipment and logistics, tracking inventory, paying bills, answering calls, conducting sales transactions, or conducting research and development activities. However, it is not clear whether any employees were required to perform these duties on a regular basis at the time of filing. Beyond the single completed sales transaction, the record contains limited information about the company's activities, and does not sufficiently describe the employees' actual duties.

Based on the nature of the company and its stage of development when the petition was filed, the Petitioner has not shown that it requires the Beneficiary to primarily perform the higher-level executive functions attributed to him and has not established that it would employ the Beneficiary in an executive capacity under the extended petition.

III. DOING BUSINESS

Although not addressed by the Director, we find that the Petitioner did not submit sufficient evidence to demonstrate that it has been doing business for the previous year. *See* 8 C.F.R. 214.2(l)(14)(ii)(B). "Doing business" means the regular, systematic, and continuous provision of goods and/or services. 8 C.F.R. § 214.2(l)(1)(ii)(H).

USCIS granted the Beneficiary L-1A status in August 2016. As noted, at the time the Petitioner filed this extension request on July 28, 2017, it had completed one sales transaction in May 2017. The Petitioner did not submit sufficient evidence to show that its business operations have been regular, systematic and continuous during the previous year. For this additional reason, the petition may not be approved.

IV. CONCLUSION

The appeal will be dismissed because the Petitioner did not establish that it will employ the Beneficiary in an executive capacity under the extended petition or that it has been doing business for the previous year.

ORDER: The appeal is dismissed.

Cite as *Matter of C- Inc.*, ID# 1184282 (AAO May 14, 2018)