U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37919571

Date: MAY 15, 2025

Appeal of Service Center Operations (SCOPS) Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, describing itself as a provider of free wireless networking technology (or Wi-Fi), seeks to temporarily employ the Beneficiary as the chief strategy officer (CSO) of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The field denied the petition concluding the Petitioner did not establish that the Beneficiary was employed abroad in a managerial and executive capacity. In addition, SCOPS determined the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial or executive capacity within one year following an approval of the petition. The matter is now before us on appeal. 8 C.F.R. § 103.3.

Upon de novo review, we will dismiss the appeal as the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year following an approval of the petition. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Since this issue is dispositive, we decline to reach and hereby reserve its arguments with respect to the field's other ground for denial. *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 in a petition involving a new office, 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

[1] The term "new office" refers to an organization which has been doing business in the United States 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 no more than one year within the date of approval of the petition to support an executive or managerial position.

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.*

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY WITHIN ONE YEAR

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in an executive capacity in the United States within one year of an approval of the petition. The Petitioner does not claim that the Beneficiary would be employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in an executive capacity.

"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.

In the case of a new office petition, we review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended executive capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily executive in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in analyzing whether the proposed executive position is plausible based on a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

When examining the executive capacity of a given beneficiary, we will review 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 an executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

A. Duties

The Petitioner stated in a submitted business plan that its new venture "establish an extensive network of state-of-the art WiFi access points in strategic locations such as cafes, restaurants, shopping malls, stadiums, and other public spaces." The Petitioner indicated that its objective was to "become the premier provider of innovative internet solutions that significantly enhance customer connectivity and engagement." The Petitioner explained that the Beneficiary would be tasked with "defining and overseeing the implementation of the strategic vision that drives the organization" and focused on "high-level strategy, financial oversight, and leadership of senior executives across key departments."

The Petitioner submitted the following duty description for the Beneficiary as its CSO:

1. **Strategic Leadership and Vision:**
   - Establishing and implementing the company's short-term, medium term, and long-term strategic objectives.
   - Approving corporate policies and ensuring alignment with the company's overall vision and mission.
   - Leading the planning and execution of international expansions, including opening of new offices in global markets.
2. **Oversight of Key Departments and Senior Executives:**
   - [The Beneficiary] directly supervises foreign employer senior executives who manage the company's primary functions, including a chief operating officer (COO), director of sales and franchises, chief technology officer (CTO), and human resources manager.
3. **Financial and Operational Oversight:**
   - Approving the company's annual budget and allocating resources strategically to maximize performance.
   - Monitoring key performance indicators (KPIs) to ensure operational efficiency and financial health.
4. **External Representation:**
   - Representing the company in negotiations with investors and strategic partners.
   - Signing high-value contracts and agreements critical to the company's growth.

The Petitioner submitted a duty description for the Beneficiary that does not credibly demonstrate that she would primarily perform executive-level tasks within the first year. The Petitioner did not sufficiently detail the executive-level duties the Beneficiary would perform during the first year, including the tasks she would complete during this time to successfully launch the new business operation. For instance, the Petitioner did not specify the strategic objectives she would implement, the corporate policies she would put in place, vision and mission she would establish, the resources she would strategically allocate, or the KPIs she would monitor. Likewise, the Petitioner did not detail the day-to-day tasks inherent in her negotiating with investors and strategic partners, nor did they specify the investors and partners she would work with, or the contracts and agreements she would likely sign.

The duty description the Petitioner provided for the Beneficiary is generic, vaguely referring to duties that could apply to any executive working in any business or industry and it makes little reference to its specific business or how it would be launched during the first year. The duty description also does not sufficiently articulate the Beneficiary's daily executive-level tasks at the end of the first year. Further, the Petitioner did not sufficiently indicate how the Beneficiary would be primarily relieved from performing non-qualifying operational tasks within one year. It submitted nonspecific executive duties such as him supervising departments, senior executives, and professionals as well as focusing on the "opening of new offices in global markets." However, there was little explanation regarding these claimed new offices and global markets.

On appeal, the Petitioner submitted another duty description that largely reiterates the generic executive-level tasks previously submitted in response to SCOPS' request for evidence (RFE), vaguely referring to the Beneficiary defining strategic vision, aligning business units, supervising senior executives, establishing KPIs, developing strategic partnerships, and leading risk management strategies. Again, the Petitioner provided little detail as to his actual day-to-day tasks required to successfully launch the business during the first year, and in each case, it provided no specific examples of strategies, KPIs, strategic partnerships, risk management strategies, or other such probative details.

Although we do not expect the Petitioner to detail every executive-level task of the Beneficiary, the lack of this detail leaves substantial uncertainty as to whether she would primarily perform executive-level duties within the first year. Specifics are clearly an important indication of whether a beneficiary's duties would be 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

B. Business Plan and Projected Staffing

When a new business is established and operations commence, the regulations recognize that a designated executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive-level and often the full range of qualifying responsibilities cannot be performed. To qualify for the L-1 nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment and establish that the proposed enterprise will support an executive position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual executive who will primarily perform qualifying executive-level duties.

The Petitioner provided an organizational chart reflecting that the Petitioner would oversee five foreign employer executives and managers including a COO, CTO, a chief marketing officer (CMO), sales manager, and a human resources manager. The COO was shown to supervise an operations manager overseeing technical support staff and customer service representatives. The chart also reflected that the CMO would supervise marketing specialists and that the sales manager would oversee sales representatives. The human resources manager was further shown to oversee human resources specialists. In part 5, section 14 of the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner indicated that it then had 15 employees in the United States.

The Petitioner submitted business plans that did not credibly establish how it would develop sufficiently during the first year to support the Beneficiary in an executive capacity. For instance, the Petitioner emphasized that the Beneficiary would oversee several foreign employer executive and managerial employees and other operational employees; however, it was not clear whether the operational employees were foreign employees or projected employees in the United States within the first year. The Petitioner vaguely indicated in the Form I-129 that it had 15 employees, but again, it was not specified whether these were foreign employees or projected U.S. employees, or both. The

Petitioner also did not sufficiently explain how the foreign employees related to the development and operation of the Petitioner during the first year.

In addition, the Petitioner also did not submit hiring plans or timelines in the United States, leaving question as to whether it would have sufficient staff to support the Beneficiary in an executive capacity during the first year. For instance, the Petitioner stated in its business plan that it would hire a sales team in the United States, but it did not indicate how many sales employees or when they would be hired. Without U.S.-based operational employees, it is not clear who would sell and install the 200 WiFi access points at various public spaces in the United States the Petitioner stated would be installed by the end of 2024.[2] It is also not sufficiently established that the Petitioner would likely generate sufficient revenue to launch the business as claimed without this asserted revenue from these asserted WiFi installations. Likewise, without U.S.-based technical support staff and marketing specialists, it is not clear what employees would support the Petitioner's claimed operations within the first year.

The Petitioner also provided evidence indicating that the foreign employer invested $50,000 in its new venture. However, it did not sufficiently discuss and document how this investment would be used to meet its first year operational and financial goals, which predicted it would install extensive WiFi access points generating a projected $1 million in advertising revenue by the end of 2024, only approximately two months after the date the petition was filed. In addition, the Petitioner indicated that its U.S. business plans would be facilitated using a "proprietary advertising platform" and "advanced WiFi technology," neither of which were substantiated with supporting evidence. On appeal, the Petitioner submits an additional support letter from the foreign employer COO it contends specifies its first-year plans more clearly. For example, the letter asserts that the "the expansion of [the Petitioner] has been the result of carefully planned and executed strategic processes under the leadership of the [Beneficiary]," further indicating she was instrumental in creating and executing a growth strategy. These statements ambiguously indicate that the Petitioner's expansion and growth have already occurred, and it provides no clear "carefully planned strategic processes" or growth strategies. In sum, the Petitioner submitted numerous first year claims regarding its plans and development with little objective support. The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

As noted, the Petitioner asserted that the Beneficiary would be employed in an executive capacity within one year. 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

[2] The petition was filed on November 8, 2024.

making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The Petitioner did not adequately demonstrate that the Petitioner would likely act in an executive capacity within the first year following an approval of the petition. As discussed, the Petitioner provided a generic duty description for the Beneficiary offering few credible details as to her actual day-to-day executive level tasks, both during the first year and at its end. The Petitioner also submitted vague and unsupported first year business plans that did not substantiate it would likely develop to the point where it would require the beneficiary to perform duties that are primarily executive in nature within one year of the petition's approval. As discussed, the Petitioner articulated executive-level tasks and responsibilities that could relate to any executive in any business at any stage of development. It also submitted no hiring projections and confusingly intermingled foreign employer's employee and the Petitioner's projected operations, with little clarification. As such, the Petitioner did not sufficiently establish that the Beneficiary would primarily focus on the broad goals and policies of the organization rather than its day-to-day operations within the first year.

For the foregoing reasons, the Petitioner has not established that the Beneficiary would be employed in an executive capacity within one year of an approval of the petition.

ORDER: The appeal is dismissed.