U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37916419

Date: MAY 23, 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 trader and wholesaler of goods, seeks to temporarily employ the Beneficiary as the chief executive officer (CEO) and president 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 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 field denied the petition concluding 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 matter is now before us on appeal. 8 C.F.R. § 103.3.

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

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 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

[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.

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 that it planned to "become the premier destination for the highest quality consumer products to its valued customers in the U.S. market." The Petitioner indicated it would operate as a "general merchandise business" purchasing a wide variety of consumer goods from wholesalers and selling them directly to customers, including clothing, electronics, household items, and toys, creating a "one-stop shop" for consumers. The Petitioner provided the following duty description for the Beneficiary in his proposed position as CEO:

> **Determining, and directing corporate policies, objectives, and strategies of [the Petitioner's] operations by (25% of his time):**
> - Determining and implementing our strategic business plan, which guides the operation, development and direction of the company;
> - Setting up the highest level business goals, strategies, and policies for company operations;

- Establishing operation goals and organizing supervisory organizational structures for our marketing and business development campaigns.
- Supervising and approving operational procedures and standards;

Directing and exercising discretionary authority over business operations by (25% of his time):

- Supervising and overseeing complete, comprehensive, and overall operations of the company in accordance with the direction established in our strategic plan.
- Directing and formulating business plans to generate revenue, profitability and growth;
- Forming partnerships with other business entities on behalf of the company;
- Ensuring business efficiency, quality, services and cost-effective management of resources by exercising executive discretion over areas that require specific attention.

Determining budget and annual operating plans for the organization and overseeing funds for the company's business operations and development by (10% of his time):

- Directing and coordinating financial and budgetary activities in order to properly fund business operations;
- Reviewing business activity reports and financial statements to determine progress and status in attaining business objectives;
- Reviewing business objectives and plans based on current conditions and sales projections;
- Evaluating performance of executives for compliance with established policies and objectives;

Directing human resources activities, including hiring and firing of high-level staff and employees by (10% of his time):

- Hiring and firing other executives, officers, and managers to lead, guide, direct, and evaluate their work performance;
- Hiring business professionals to ensure the company's operational success;

Completing weekly, monthly, and quarterly tasks, such as (10% of his time):

- Submitting annual reports to our parent company and coordinating business operating policies, strategies and marketing plans in the US;
- Creating monthly, quarterly, and annual operating plans that support strategic direction set by the board, correlate them with annual operating budgets and submit plans for the board for approval;
- Representing our company in the media, local communities, and other civil and public activities and events.

The Petitioner submitted a duty description for the Beneficiary that does not credibly demonstrate he would primarily perform executive-level tasks within its first year of operation. The Petitioner did not sufficiently detail the executive-level duties the Beneficiary would perform during the first year, including the tasks he would complete during this time to successfully launch the new business

operation. For instance, the Petitioner did not specify the strategic business plans he would implement, goals and policies he would set, operational procedures and standards he would approve, contracts he would negotiate, or partnerships he would form. Likewise, the Petitioner did not detail the marketing operations he would direct, financial or budgetary activities he would coordinate, hiring decisions he would make, or civic and public activities and events he would attend.

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. For instance, the Petitioner asserted "it is very important that [the Beneficiary] shall have full knowledge about the parent company's operation management, quality control, and production policies, as well as the environmental protection regulations of each country." However, the Petitioner provided few credible details specific to this claimed knowledge, including the nature of the foreign employer's operation management, quality control, and production policies and how these would be implemented into, and be important to, its projected U.S. operations.

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 he 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 a projected organizational chart reflecting that the Beneficiary would oversee a chief financial officer (CFO) who would supervise a sales manager and a controller. The chart also showed that the controller would supervise an accounting associate, while the sales manager would oversee sales representatives and marketing associates.

The Petitioner submitted generic hiring plans that did not sufficiently establish it would develop sufficiently to support the Beneficiary in an executive capacity within one year. For instance, the Petitioner indicated in one organizational chart that the sales manager, controller, sales representatives, marketing associates, and accounting associate would all be hired in 2024, while another organizational chart reflected that these operational employees would be hired in 2025. The Petitioner also did not specify when these employees would be hired during the first year, nor how many sales representatives and marketing associates would be hired. In addition, the stated duties for the Beneficiary's proposed subordinates were generic and provided few credible details, much like his asserted duties. For example, the Petitioner stated that the CFO would be tasked with developing financial plans, analyzing liabilities and investments, ensuring appropriate cash flow, and ensuring compliance with federal and state tax matters. However, much like the Beneficiary's vague duties, the CFO's duties could apply to any financial executive in any company working in any industry and stage of development. The CFO's duties included little detail regarding the Petitioner's projected business or its claimed first year development. The Petitioner submitted similarly vague duties for each of the projected members of its organizational chart.

In addition, the Petitioner did not provide business plans that credibly establish it would sufficiently develop during the first year to support the Beneficiary in an executive capacity. The Petitioner stated that the foreign employer would invest $300,000 in the new venture. However, it provided no insight into how this investment would be used to successfully launch the business. Although the Petitioner submitted revenue projections, it submitted little objective support for these revenue numbers, it did not indicate the costs it would face during the first year, nor how the investment amount would be sufficient to cover its first-year costs.

The Petitioner also emphasized a marketing strategy that included few meaningful details, vaguely indicating it planned on investing in "print ads," "websites and decals," "trade shows," and "word of mouth." However, this plan included no specifics relevant to the Petitioner's business, such as the publications they would place print ads in, industry events or trade shows they would attend, or how it would use word of mouth to grow its business during the first year. Again, the Petitioner's generic business and marketing plans could apply to any company in any industry. The Petitioner mainly listed administrative steps it already took to establish the business, such as placing the investment amount in the Petitioner's bank account, incorporating the company, obtaining an employer identification number, a business license, and sufficient physical premises, but it submitted few actual detailed business plans for the first year to substantiate that it will develop sufficiently to support the Beneficiary in an executive capacity within one year. 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 making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* An executive directs the management of the organization, major component, or essential function of a given organization by controlling the work of managerial or lower-level executive employees. *See generally* 2 *USCIS Policy Manual* L.6(D), https://www. uscis.gov/policy-manual. *See also BlueStar Cabinets, Inc. v. Jaddou*, No. 21-10116, 2022 WL 4364734, at *7 (5th Cir. Sept. 21, 2022) (holding that "'[d]irect[ing] the management of the organization' necessarily includes directing managers of the organization.")

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 his 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 nonspecific hiring projections and little detail with respect to its projected finances during the first year. As such, the Petitioner did not sufficiently establish that the Beneficiary would be primarily focused on the broad goals and policies of the organization rather than its day-to-day operations within the first year nor that he would be in an elevated position overseeing subordinate managers and lower-level executives.

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.