U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-E-(N.A.), INC.

DATE: MAY 31, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an electronics and lighting distributor, seeks to temporarily employ the Beneficiary as its senior vice president and general manager 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 Vermont Service Center denied the petition, concluding that the record did not establish that the Beneficiary will be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner submits a statement in support of the appeal asserting that it submitted evidence that the Beneficiary is an executive with the foreign parent company and will continue as an executive for the Petitioner.

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 specialized knowledge capacity, for one continuous year within three years preceding the Beneficiary's application for admission into the United States. 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. Section 101(a)(15)(L) of the Act.

An individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, must include evidence that the petitioner will employ the beneficiary in an executive or managerial capacity, or in a position requiring specialized knowledge, including a detailed description of the services to be performed. 8 C.F.R. § 214.2(l)(3)(ii).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The only issue in this matter is whether the record establishes that the Beneficiary will be employed in an executive capacity for the Petitioner.[1] The Petitioner asserts that the Beneficiary "is an executive with the foreign parent company and will continue in his executive position as Senior Vice President and General Manager of the Lighting Business Unit while employed with the American subsidiary."

Section 101(a)(44)(B) of the Act defines the term "executive capacity" 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.

A. Duties

The Petitioner initially did not provide a description of the duties the Beneficiary would perform for the Petitioner. The record included the Petitioner's organizational chart which did not include the Beneficiary's name or identify the proposed position.

In response to the Director's request for evidence (RFE) on the issue of the Beneficiary's proposed employment, the Petitioner submitted a letter prepared by an authorized representative for both the foreign parent company and the Petitioner. In the letter, the representative stated that the Beneficiary has been an executive while employed with the company and "[h]e is the highest level executive for our lighting business unit and reports directly to the CEO of the company." The representative continued by paraphrasing the definition of executive capacity as the Beneficiary's responsibilities for the foreign parent company's lighting business unit. The representative listed the Beneficiary's duties for the foreign parent company as follows (bullet points added and paraphrased for clarity):

- Developing business plans to fulfill the operational, sales, and revenue goals;
- Manage and direct operations and to achieve operational goals for the Lighting Business Unit of [the foreign entity];

[1] As the Petitioner does not claim and the record does not demonstrate that the Beneficiary will perform duties in a managerial capacity, we restrict our analysis to whether the Beneficiary will be employed in an executive capacity.

- Manage and direct an account management team to achieve sales and profit goals;
- Manage multiple regions and adjust sales goals and procedures as appropriate for each region and recommend sales programs and set short and long-term sales strategies;
- Manage budget performance and all financial components; Manage and elevate the performance of operations and account managers;
- Develop strategic plans to meet desired business goals.

The representative noted that it is very difficult to place a particular percentage of time on the Beneficiary's specific duties but as the highest level executive for the lighting unit he "must handle multiple tasks simultaneously throughout his executive duties." The record also included a letter signed by the foreign entity's human resources manager who repeated the foreign entity's representative's description of duties for the Beneficiary, and noted that the Beneficiary reported directly to the CEO. The letter also listed five people in undefined positions who reported to the Beneficiary.

The Director denied the petition concluding that the record did not include sufficient evidence to establish that the Beneficiary would be employed in a managerial or executive capacity for the Petitioner.

On appeal, the Petitioner asserts that the Beneficiary's duties for both the foreign parent company and the Petitioner include the duties described above. The Petitioner noted the strong client demand for its electronic products and, in particular, the company's LED outdoor/indoor lighting products throughout the United States. The Petitioner claimed that due to the business growth potential and the complexity of the engineering, it needed to transfer the Beneficiary "to manage the expansion and growth of [the company] in the United States." The Petitioner reiterated that the letter in support of the petition, the letters in response to the Director's RFE, and the organizational charts submitted establish that the Beneficiary is an executive and will continue as an executive for the American subsidiary.

The record does not include probative evidence of the Petitioner's business or a clear description of the Beneficiary's role for the U.S. entity. The Petitioner was incorporated in 2002 and claims on the Form I-129, that it employs 10 people. The record does not include any information describing the duties of the Petitioner's claimed employees. Moreover, the record does not include documentary evidence to support the Petitioner's claim that it employs anyone. Additionally, the initial organizational chart identified only seven employees in the 10 positions listed on the chart. The revised organizational chart submitted in response to the Director's RFE depicted eight positions, including the Beneficiary. The record also contains uncertified IRS Forms 1120, U.S. Corporate Income Tax Returns, for the years 2012 to 2015. The tax returns do not include information on the salaries paid to officers or employees. The tax returns also identify the Petitioner as a logistics service center and indicate that it provides services. It is unclear from this information, if the Petitioner provides services, is involved in the distribution of the foreign entity's products, or if its logistical services are related to the distribution of the foreign entity's products. We note, however,

that the record includes purchase orders identifying the foreign entity as the supplier and showing the products shipped to third parties, not to the Petitioner at its California location. Without a basic understanding of the Petitioner's business operations and purpose it is not possible to ascertain the Beneficiary's proposed role for the U.S. entity.

The Petitioner asserts on appeal that the Beneficiary is being transferred to manage the expansion and growth of the company in the United States; however, the Petitioner does not adequately describe what the Beneficiary will be doing in this regard. Reciting the 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. The Petitioner has not provided any detail or explanation of the Beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Even if considering that the Beneficiary will perform the same duties for the Petitioner as he performs for the foreign entity, we find that duties such as: managing and elevating operations and account managers' performance; managing, directing the account management team to achieve sales and profit goals; and developing strategic plans to meet desired business goals, do not describe the actual tasks involved in carrying out these generally described responsibilities. The record does not detail the Beneficiary's proposed involvement in developing business plans, achieving operational goals, or managing multiple regions and recommending sales programs and strategies for the U.S. entity. The Petitioner's use of the words "manage and direct," without the added context of the Beneficiary's duties in carrying out those tasks is, in essence a restatement of the statutory definition. General assertions of this type do not tell us what the Beneficiary is actually doing and who would perform the operational tasks so that the Beneficiary would not have to perform them himself.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and they must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The Petitioner does not describe a subordinate level of managerial employees and their duties for the Beneficiary to direct at the U.S. or foreign entity. The Petitioner does not describe the Beneficiary's

daily duties for the Petitioner with sufficient specificity to establish that the Beneficiary's role in the organization will be in an executive capacity.

B. Staffing

Beyond the required description of the job duties, we review the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, 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 record included an organizational chart for the foreign parent company depicting the Beneficiary as responsible for the foreign entity's lighting product line. The chart does not list any positions subordinate to the Beneficiary or indicate that he is responsible for sales, finance, or any other department. As noted above, the foreign entity's human resources manager identified five individuals at the foreign entity and claimed those individuals reported to the Beneficiary. The record does not include a description of these individuals' duties.

The Petitioner also submitted a revised organizational chart, in response to the Director's RFE, which inserted the Beneficiary's proposed position at the U.S. entity. The record, however, does not include any job descriptions for any U.S. employees that might be considered subordinate to the Beneficiary. The record does not identify any individual or department that would assist the Beneficiary in developing the U.S. entity or the foreign entity's expansion and growth in the United States. Similarly, the record does not include information or evidence regarding distributorships, third party contractors, or budgetary positions. The definitions of executive and managerial capacity have two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See, e.g., Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533. Here, the record does not include sufficient probative evidence demonstrating that the Beneficiary will be relieved from performing operational tasks necessary to expand the company and the other general duties described.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, we must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. We have long interpreted the statute to prohibit discrimination against small or medium-size businesses. However, we have also consistently interpreted the Act to require petitioners to establish that the beneficiary's position "primarily" consists of managerial or executive duties, and that it has sufficient personnel to relieve a beneficiary from performing operational and administrative tasks. The lack of clarity regarding the Beneficiary's role at the U.S. entity and the

lack of personnel to relieve the Beneficiary from performing non-qualifying duties, precludes a determination that the Petitioner's reasonable needs justify the Beneficiary's performance of non-managerial and non-executive duties. A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner has not submitted evidence to overcome the Director's determination. The record does not include probative evidence that the Beneficiary will direct a subordinate level of managerial employees or will primarily supervise managerial, professional, or supervisory employees. The record does not include probative evidence that the Beneficiary's primary duties are executive or managerial in nature. The appeal must be dismissed for this reason.

III. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that it will employ the Beneficiary in an executive or managerial capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of L-E-(N.A.), Inc.*, ID# 364379 (AAO May 31, 2017)