U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-A-I-G- LLC

DATE: NOV. 1, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a trucking company, seeks to continue the Beneficiary's temporary employment as chief executive officer (CEO) 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 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 submits third party support letters it contends demonstrate that the Beneficiary would act 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.*

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue to be addressed is whether the Petitioner has established that the Beneficiary would act in an executive capacity. The Petitioner does not claim that the Beneficiary would be employed in a managerial capacity; therefore, we will restrict our analysis to whether the Beneficiary would be employed in an executive capacity.

The statute defines an "executive capacity" 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 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). Beyond the required description of the job duties, we examine 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 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 stated that it "transports automobiles and other vehicles" from two locations and that it owns and maintains three 18-wheeler trucks transporting "about 160 loads per month." The Director issued a request for evidence (RFE) requesting that the Petitioner submit a description of the Beneficiary's typical executive decisions and duties. In response, the Petitioner provided the following duties and responsibilities for the Beneficiary as CEO, amongst others:

- act as chief business strategist and set the goals of the company,
- direct the expansion of the Petitioner into new regions in the United States,
- set the timetable for the acquisition of materials,
- set the fiscal goals and operational policies,
- ensure company policies are in line with regulatory guidelines for the transportation industry,
- make decisions to recruit personnel,
- decide on the acquisition of vehicles, warehouses, logistical support and equipment,

- implement the marketing strategy,
- implement policies for customer service ensuring timely deliveries,
- set budgetary goals and modify the budget,
- implement Department of Transportation (DOT) regulations,
- maximize returns on investments,
- enforce corporate policies,
- direct the management for market expansion by adding brokers and customers,
- make final hiring and firing decisions,
- receive and review efficiency and quality control reports,
- ensure compliance with customer service policies,
- sign company checks,
- introduce new ideas to the company,
- sign binding contracts,
- represent the Petitioner with potential brokers and customers,
- approve any increases to credit lines and expenses, and
- pursue collections or waive balances.

Upon review, we concur with the Director's conclusion that the Beneficiary's duties are overly vague and that the record includes insufficient evidence to corroborate his primary performance of executive-level tasks. 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).

The Beneficiary's duty description includes several generic duties that could apply to any executive acting in any business or industry and they do not provide sufficient insight into the actual nature of his role. The Petitioner provided insufficient examples and little supporting documentation to demonstrate the Beneficiary's performance of qualifying duties, such as expansion to new areas he ordered, fiscal goals and operational policies he set, company policies he established, or business strategies for expansion he put in place. Likewise, the Petitioner did not detail or document marketing strategies the Beneficiary implemented, investments he maximized, customer service policies he set, contracts he signed, or credit lines he approved. This lack of detail and documentation is particularly noteworthy since the Beneficiary is asserted to have worked in his proposed executive capacity since February 2015.

On appeal, the Petitioner submits additional support letters; however, these provide little additional insight into his actual day-to-day executive-level duties. For instance, the Petitioner submits a letter from an accountant and tax planner vaguely stating that the Beneficiary is tasked with setting "business goals, the budgetary policy and the marketing strategy of the company" and that he "sets the policies related to customer service," but this letter provides little additional detail regarding his day-to-day executive-level tasks or what goals, policies, and marketing strategies he set or would put place. In fact, a submitted 2017 profit and loss statement and a provided expense report from 2017 reflect that the company spent only $140 on advertising during that year and this documentation

reveals no other apparent expenses related to marketing the company, leaving question as to the assertion that the Beneficiary spends a significant portion of his time on marketing strategies. Similarly, the Petitioner provides a letter from a trucking dispatch company with which it works; however, this document also provides no insight on its direct dealings with the Petitioner or the Beneficiary and little detail on his actual duties, but merely explains its operations and organizational structure and concludes that the Beneficiary acts in an executive role.

Further, the Petitioner asserted in response to the Director's RFE that we previously issued a decision in October 2016 that determined the Beneficiary's duties were sufficiently detailed. First, we note that in making a determination of statutory eligibility, we are limited to the information contained in the record of proceedings. 8 C.F.R. § 103.2(b)(16)(ii). As such, in the current matter, we have not reviewed the duties the Petitioner submitted for the Beneficiary in the petition filed in September 2015. Further, the current petition was filed in January 2018, more than two years after the petition which was addressed in our October 2016 decision. We note that the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

In contrast, some of the Beneficiary's more specific duties, and other evidence on the record, indicate his involvement in many of the non-qualifying operational matters of the business. For instance, the Beneficiary's duties indicate that he devotes his time to coordinating with brokers and customers, signing all company checks, approving *any* [emphasis added] expenses, and pursuing collections or waivers of payments. A submitted itemization of the company's 2017 expenses reflects the Beneficiary issuing checks to pay the company's rent and electrical bills and to compensate brokers, a dispatcher, contracted truck drivers, and vehicle storage company.

In addition, the Petitioner submits a letter on appeal from a truck insurance and permitting service provider referring to the Beneficiary's direct involvement in "the process of obtaining all the documents required from The Department of Transportation," "following all the steps as required," complying with "all the DOT requirements including...record checking, Fuel tax report, Vehicle inspections," and handling all such day-to-day regulatory matters. The letter also explains that the permitting company is "working to add another unit to [the Beneficiary's] as he is checking to buy it in the new months." In sum, this letter suggests that the Beneficiary is directly involved in most of the operational aspects of the business and delegating few of these non-qualifying tasks to his subordinates, such as those related to permitting the company's trucks and purchasing them.

Even though the Beneficiary holds a senior position within the organization, the fact that he will manage or direct a business 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. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive in nature. *Id.* The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily executive in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we 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.

In response to the RFE, the Petitioner submitted an organizational chart indicating that the Beneficiary supervised a general manager who in turn oversaw an administrative assistant, a data entry employee, and an operation supervisor. The chart further reflected that the operation supervisor oversaw several contractors, including a dispatcher provided by a contracted company, four truck drivers, and various other contractors listed under "suppliers and services," such as a truck repair center, a tire provider, and Federal Express shipping. The Petitioner also provided a Florida employer's quarterly wage report for the fourth quarter of 2017 indicating that it paid wages to six employees.

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 did not provide sufficient evidence regarding the Beneficiary's lone subordinate asserted to act as a manager which demonstrates that he acts in this capacity. For instance, the duties of the general manager overlap greatly with the Beneficiary's, indicating that he is tasked with "overseeing the operations of the company," "implement[ing] the policies," "manag[ing] the budgets," "hiring and firing the personnel," and ensuring "that the company goals are met." However, much like the Beneficiary's duties, the duties of the asserted general manager provide little detail, such as policies he implemented, budgets he managed, or personnel he hired. Further, although the duties indicate that the general manager delegates tasks to the administrative assistant and data entry employee, including recording expenses and clerical duties, there is no evidence to substantiate this assertion. Similarly, there is no documentation corroborating that the Beneficiary delegates duties to the general manager. In fact, the letter submitted on appeal from the accountant and financial planner indicates that the Beneficiary "receives daily productivity reports from the [General] Manager;" however, this probative evidence is not submitted to substantiate the general manager's position.

Furthermore, the submitted evidence also leaves question regarding the Petitioner's asserted organizational structure and whether the Beneficiary works within a complex organizational hierarchy. For instance, as noted, the provided organizational chart indicated that the Beneficiary supervised a general manager overseeing an operation supervisor. In turn, the operation supervisor was shown to oversee the dispatcher, four truck drivers, and other contractors that service its three trucks. However, a 2017 payroll document provided by the Petitioner indicates that it stopped paying the operation supervisor in October 2017, approximately three months prior to the date the petition was filed. These payroll records also indicate that the Petitioner hired a fulltime dispatcher in October 2017, but this employee did not appear in the submitted organizational chart. In addition, submitted paystubs from December 2017 reflect that the general manager, the dispatcher, and the data entry employee were all paid the same rate of $10 per hour, leaving doubt as to the general manager's claimed supervisory authority.

Meanwhile, the Petitioner also provided a list of payments made to contractors in 2017. This document indicated that the company paid only two truck drivers regularly during 2017 and that it had last paid two other drivers in April and July 2017 respectively. The Petitioner also listed a dispatch service provider in its organizational chart. However, the same list of payments to contractors revealed that it stopped paying the dispatch contractor monthly in September 2017. In addition, the organizational chart also reflected a truck repair center, a tire provider, and Federal Express as part of the organizational chart; yet, the aforementioned listing of contractor payments did not include these asserted members of the organizational chart. Although it is reasonable to conclude that the Petitioner would pay for services to maintain its trucks, such as repairs and tires, there is little evidence to support that these contractors could be considered part of the company's organizational hierarchy or under the executive authority of the Beneficiary. These discrepancies leave question as to the Petitioner's submitted organizational structure and whether the Beneficiary acts within an elevated position within a complex organizational hierarchy overseeing a subordinate level of managerial employees. For instance, the supporting evidence indicates that the Petitioner only engaged two truck drivers as of the date the petition was filed, leaving question as to whether it requires a CEO, a general manager, an operation manager, a dispatcher, and a data entry employee to function. The Petitioner must resolve discrepancies 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 discussed, the Petitioner submits opinion letters on appeal it contends demonstrate that the Beneficiary acts in an executive capacity. The Petitioner provides a letter from an accountant and financial planner, another from the president of a truck insurance and permitting service provider, and one from a dispatch contractor listed in the company's organizational chart. However, the letters from the accountant and dispatch contractor provide few additional details as to the Beneficiary's actual duties. In addition, these letters do not corroborate the Petitioner's asserted organizational structure. For instance, both of these letters vaguely state that the Petitioner has "6 supporting employees, at least one of whom is a manager, and 6 contractors." However, submitted payroll documentation indicated that the Petitioner only had five employees and that it was only paying three contractors as of the date the petition was filed. Further, the listing of contractor

payments indicated that the Petitioner regularly paid the dispatch contractor from January through October 2017. Despite this, the dispatch contractor provides almost no detail as to its direct interactions with the Petitioner or Beneficiary or detailed information substantiating its dealings with subordinate managers or operational employees within the Petitioner. It only vaguely indicates that it "evaluated [the Petitioner's] business and its records," but does not describe the materials it reviewed in concluding that the Beneficiary acts as an executive.

Likewise, the accountant and financial planner states that the Beneficiary's "duties confirm [*sic*] to the requirement of an Executive," but he provides little insight as to how this conclusion was reached and few additional details as to the Beneficiary's actual day-to-day executive-level duties or the Petitioner's claimed organizational structure. Indeed, in contrast, the letter from the truck insurance and permit service provider reflected the Beneficiary's substantial involvement in all operational aspects of acquiring and permitting the company's trucks. Therefore, in total, we do not find the additional third party support letters submitted on appeal persuasive in demonstrating the Beneficiary's executive capacity. We may, in our discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988).

The Petitioner has not sufficiently demonstrated that the Beneficiary will have a subordinate level of managerial employees to direct, allowing him to primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. The evidence indicates that the Petitioner would more likely than not be engaged in a wide range of operational activities rather than executive-level tasks. The Petitioner does not clearly and credibly describe and document the Beneficiary's proposed day-to-day executive duties and his stated duties do not appear credible in light of the company's staffing and level of operations. For these reasons, the Petitioner has not established that the Beneficiary would act in an executive capacity under an extended petition.

III. QUALIFYING RELATIONSHIP

Because we conclude that the Petitioner did not demonstrate that the Beneficiary would act in an executive capacity in the United States, we need not address other issues evident in the record. That said, we will briefly identify an additional ground of ineligibility to inform the Petitioner that this issue should be addressed in future proceedings.

Regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities. *See, e.g.*, *Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988); *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). Ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology Int'l*, 19 I&N Dec. at 595.

In the Form I-129, the Petitioner indicated that it is a subsidiary of "the [redacted] and noted that it is 51% owned by this foreign company. However, it submits no supporting documentation to substantiate this assertion. We acknowledge that the Petitioner was previously approved for L-1A visas on behalf of the Beneficiary from approximately February 2015 through January 2018. However, as previously mentioned, in making a determination of statutory eligibility, we are limited to the information contained in the record of proceedings. 8 C.F.R. § 103.2(b)(16)(ii). In any future proceedings, the Petitioner should submit evidence to demonstrate that it has a qualifying relationship with the Beneficiary's former foreign employer.

IV. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that the Beneficiary would be employed in an executive capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of E-A-I-G- LLC*, ID# 1776122 (AAO Nov. 1, 2018)