U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF X-I-USA INC

DATE: NOV. 6, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, describing itself as a trade and consultancy company,[1] seeks to temporarily employ the Beneficiary as its president 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 revoked the approval of the instant petition concluding that the Petitioner did not establish that the Beneficiary was employed in an executive capacity as claimed.

On appeal, the Petitioner submits additional evidence it contends explains the absence of the Beneficiary and his subordinates from their claimed office location during a United States Citizenship and Immigration Service (USCIS) site visit. The Petitioner asserts that the Beneficiary acted, and 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.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

[1] The Petitioner stated in a support letter provided with the petition that its "primary business scope" was the "import and export of construction materials," such as granite countertops, and noted that it was also engaged in "civil engineering consultancy."

Under U.S. Citizenship and Immigration Services regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).[2]

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue to be addressed is whether the Petitioner has established that the Beneficiary was employed in an executive capacity. The Petitioner does not claim that the Beneficiary was employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary was 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 performed by the beneficiary and indicate whether such duties were 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 the 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 was performing 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 was *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.

[2] An L-1A nonimmigrant intracompany transferee petition filed on behalf of the Beneficiary was approved on April 4, 2018, for the period May 22, 2018, to May 21, 2020. The Director later revoked this approved petition on April 5, 2019, following the issuance of a notice of intent to revoke (NOIR) on January 28, 2019. The Director concluded that the Beneficiary was no longer eligible for the nonimmigrant classification. *See* 8 C.F.R § 214.2(l)(9)(iii)(2).

As noted above, the Petitioner stated in a support letter that its "primary business scope" was the "import and export of construction materials," such as granite countertops, and it was also engaged in "civil engineering consultancy." The Petitioner indicated that the Beneficiary was tasked with some of the following duties:

- planning and establishing objectives and policies for the Petitioner,
- reviewing activity reports and financial statements,
- doing research on policies and goal making,
- revising objectives and business plans according to the company's performance,
- establishing responsibilities and procedures for attaining objectives,
- searching new directions of business expansion and development,
- reporting to the shareholders' conference about policies, objectives, and goals of the company, annual business plan including financial and budget plans, implementation of those plans and projects, and his important business decisions and proposals for approval,
- directing the subordinate vice president and department managers of the company on making all kinds of plans and proposals,
- listening to reports from the subordinate vice presidents and department managers,
- evaluating the performance of the subordinate vice president, department directors, and professionals, and
- traveling, visiting important business partners and suppliers and attending meetings outside the Petitioner.

In addition, the Petitioner submitted a "detailed daily routine" for the Beneficiary reflecting some of the following daily duties:

- reviewing business documents prepared by his subordinates or received via email, fax or mail,
- making business decisions by dictating correspondences, authorizing major contractual deals, approving arrangements for account receivable and account settlements,
- adjusting business objectives based on examining and reviewing business documents such as activity reports, analysis reports, and business correspondence,
- overseeing budget spending of training program for new employees,
- negotiation of contracts with VIP suppliers and government agencies,
- listening to reports from his subordinate vice president on general situations of business operation including important issues that occurred during the last week

such as directions, goals, marketing and advertisement, communication with banks and lenders, problems, and the implementation of goals and tasks,

- give instructions to his vice president and subordinate managers on strategy and tactics of new projects, adjustment of goals and tasks of the company, and prepare written reports to the shareholder's conference,
- review business documents and make phone calls to banks and government agencies for urgent business issues,
- give instructions to subordinates on how to prepare company's business documents, reports, regulations, or decisions and revise existing policies, rules, and regulations, and
- attend business meeting with a smaller group including the vice president and department managers for discussion on specific subjects or issues important to the development of the company such as research and development of new construction methods, the financial situation of the company, change of business direction, or new strategy on market promotion.

The Petitioner did not submit sufficiently detailed duty descriptions describing the Beneficiary's day-to-day executive-level duties to credibly establish that he devoted his time primarily to qualifying tasks. 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 insight into the actual nature of his role. The Petitioner provided insufficient examples and supporting documentation to demonstrate the Beneficiary's performance of qualifying duties, such as objectives, goals, or policies the he planned or established, business plans he revised, financial or budget decisions he made, plans and proposals he directed, or important business partners and suppliers he managed. The Petitioner also did not articulate or document major contractual deals the Beneficiary approved, training programs he adjusted the budget for, marketing and promotion he approved, banks and lenders he communicated with, problems and issues he dealt with, or government agencies he regularly conversed with. Specifics are clearly an important indication of whether a beneficiary's duties are 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).

Further, the Petitioner states that the Beneficary was and would be tasked with giving his subordinates instructions on how to prepare company's business documents, reports, regulations, or decisions; but again, it is not clear what documents, reports, regulations, or decisions it its referring to. In fact, it appears questionable that the Beneficiary would be providing instruction on producing the work product making up the main purpose of his subordinates' roles and this does not appear reflective of executive-level tasks related to setting broad goals and policies of the organization rather than involvement in the day-to-day operations of the enterprise. In addition, several of the Beneficiary's duties appear to overlap, as it indicates several times over that he will be responsible for reviewing and examining "business documents." In fact, it is noteworthy that the Petitioner states that the Beneficiary regularly reviews reports and business documents provided by his subordinate vice president and department managers; yet few of these documents were submitted on the record to substantiate these activities.

Further, the Petitioner stated that the Beneficiary was tasked with "planning, developing, establishing, adjusting and revising policies, regulations, goals and objectives, and business development plans" and listed thirteen policies, including those related to finance and accounting, service quality and control, investment, and business expansion. However, the Petitioner provided only two generic policies it claimed the Beneficiary implemented in 2017, including one titled "Electronic Devices: Bring Your Own Device (BYOD) Policy" and another called "Progressive Discipline Policy and Procedure." These asserted policy documents lacked specificity as to the Petitioner's business and were not credible; in fact, it is questionable that a business mainly shipping granite countertops would devote substantial time to an electronic device policy meant to protect its "trade secrets" and "confidential information."

The Petitioner also submitted other examples of the Beneficiary's executive-level decisions that lacked credibility, such as indicating that the Beneficiary had adopted "key performance indicators for Macro-management of the Operation and Performance" that were written into "annual company objectives." However, again, it did not provide any specific examples of these key performance indicators or any documentation of their existence. The Petitioner further referred to a long-term partnership it forged with a U.S. company to trade in kitchen cabinets, counter-tops, and floors, but it submitted little supporting documentation to substantiate this relationship it claimed generated $100,000 to $200,000 in revenue per month beyond asserted photographs of the Beneficiary's visit to this claimed vendor's location. The record lacks evidence of the Petitioner's agreement with this company or evidence of the Beneficiary's negotiations and dealings with this claimed vendor.

Likewise, the Petitioner emphasized that the Beneficiary had organized a "marketing research team" to "diversify its client base" and that he had instructed his vice president to "approach US [redacted] dealers" to assess the practicality of shipping this equipment abroad as part of a [redacted] construction project in Nepal. Later in response to the Director's NOIR, the Petitioner stated that its "main business scope was importing granite countertops and quartz from China" and it also referenced the potential export of chicken feet and paper products, but it made no mention of the Beneficiary's claimed executive-level plans to import [redacted] equipment as part of a construction project, an executive level decision it greatly emphasized in response to the Director's RFE. In fact, on appeal, the Petitioner provides a claimed memorandum of understanding it executed with a company to potentially purchase paper products for a company based in Hong Kong; however, this asserted agreement questionably includes pricing for [redacted] equipment, not paper products.

Furthermore, the Beneficiary's duties also include discrepancies that leave question as to their credibility. For instance, the Petitioner emphasized that the Beneficiary devotes 10-15% of his time "reporting to the shareholders conference...about policies, objectives and goals of the company, annual business plans including financial and budget plans, the implementation of those plans and projects, and his important business decisions and proposals for approval." However, the Beneficiary and his wife are the only shareholders of the company and its foreign affiliate in China, leaving it questionable that he would devote 10-15% of his time reporting to himself and his wife, who is also one of his subordinates within the U.S. organizational chart. In addition, the Beneficiary's duties also emphasize him focusing on marketing promotions and advertisements and him overseeing a sales and marketing department, but there is no supporting documentation to corroborate that the company has any marketing or advertisement and a statement of its finances reflected that it had spent nothing on

marketing or advertisement through April 2018.[3] The Petitioner must resolve inconsistencies and 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).

The Beneficiary's claimed duties appear even less credible when viewed in context of USCIS' site visits to the Petitioner's office location on August 30, 2018, and September 6, 2018, where an immigration officer found its office empty and locked on both occasions. In response to the Director's NOIR requesting evidence to address these discrepancies, the Petitioner stated that the Beneficiary was "working on obtain[ing] new deals and signing deals with new clients in the months of August-September, 2018," noting that only one employee was left in charge of the office. Likewise, the Petitioner claimed that the company's other employees were also on the road pursuing clients during these two visits. However, this evidence leaves doubt as to the Beneficiary's claimed daily routine which reflects daily meetings with his vice president and subordinate department managers within a multi-tiered office.

Even though the Beneficiary held a senior position within the organization, the fact that he managed or directed 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 have exercised discretion over the Petitioner's day-to-day operations and possessed the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties were primarily executive in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual was 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.

As noted above, the Petitioner asserts that the Beneficiary qualified as an executive. 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 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.*

In support of the petition and in response to the RFE and NOIR, the Petitioner provided the same organizational chart. This chart reflected that the Beneficiary supervised a vice president overseeing

[3] The petition was filed on May 8, 2018.

a marketing and sales department manager, an administration and finance department manager, and an operation and international trade and shipment department manager. Further, the marketing and sales department manager was shown to supervise one sale representative, the administration and finance department manager an office assistant/bookkeeper, and the operation and international trade and shipment manager two staff.

First, the Petitioner provided generic duty descriptions for the Beneficiary's asserted subordinate managers that do not sufficiently substantiate their positions. For example, the Petitioner stated that the Beneficiary's subordinate vice president was responsible for providing feedback and intelligence in planning and establishing policies and objectives, reporting on the status of goal implementation, carrying out strategic plans, assigning responsibilities to department managers, and coordinating cross-departmental projects. Again, much like the Beneficiary's duties, the duties of the claimed vice president include no indication as to the business within which this employee operates nor does it detail the policies and objectives they established, intelligence they provided, strategic plans they followed, responsibilities they assigned, or cross-departmental projects they managed. In fact, the duties of the vice president appear to overlap greatly with the Beneficiary's responsibilities. The vice president also appears on freight statements from late 2018 and early 2019, leaving question as to whether this claimed subordinate was acting in a senior management position as claimed. It also noteworthy that there is no credible supporting evidence of the Beneficiary delegating duties to his claimed vice president or meeting with him daily, despite asserting this in his duties.

The Petitioner also provided vague duty descriptions for the claimed department managers it asserts reported to the vice president. For instance, it stated that the manager of administration and finance was tasked with overseeing personnel matters such as training and human resources policy, material, and cash flow and administering a budgeting plan, financial policies, and short and long-term financial goals. However, again, beyond two generic policies related to the use of personal devices on the job and methods for dealing with a lack of performance, the Petitioner largely has not substantiated the duties of the claimed administration and finance manager, such as the personnel matters they handled, training they implemented, budgets they administered, or financial policies and goals they set. In fact, in response to the Director's RFE, the Petitioner stated that the administration and finance manager was absent from the office in August and September 2018 during USCIS' site visits and noted that she was traveling in order to develop a relationship with a large paper packing importer in California. However, these duties, reflective of a sales representative or manager, are not consistent with her claimed duties related to setting human resource and finance policies. Further, it is also notable that the Petitioner has provided little supporting evidence to substantiate its assertion that the manager of administration and finance was developing a relationship with a paper packing vendor.

Meanwhile, the Petitioner further vaguely stated that the marketing and sales department manager reporting to the vice president was responsible for formulating policies on marketing development and sales, overseeing negotiations of business deals, establishing a marketing network, planning and directing products promotion, and maintaining clients, but there is no detail in this duty description to substantiate the marketing policies they formulated, the business deals they oversaw, products they promoted, and the clients they maintained. In fact, as we have noted, the record includes no evidence that the Petitioner has conducted any marketing, promotional, or advertising activities, and its budget through the date of the petition included no costs for these activities.

The Petitioner's organizational chart also reflected that the marketing and sales department manager oversaw a sales representative. However, the Petitioner provides no duties for this sales representative; further, the supporting documentation on the record reflects that it purchased and shipped countertops, and later, chicken parts; but there is little indication as to what the company's sales representative sold or would be selling. The Petitioner also submitted an asserted termination letter claiming that it fired the administrative employee responsible for keeping its office open in August and September 2018. However, this letter states that the Beneficiary, the vice president, the sales and marketing manager, and the manager of administration and finance "were busy with signing new clients either in China, or out of town in the United States, in response to the suddenly increased tariffs imposed on the construction materials this office had been importing from China." This statement appears to be in direct conflict with the Beneficiary's claimed daily routine, which indicates that he meets with these subordinate managers daily in their U.S. office to delegate duties, and also conflicts with each of these managers asserted duties.

Lastly, the Petitioner explained that the manager of operational and international trade would be tasked with supervising subordinate staff in taking and placing purchase orders, formulating policies and goals on international trade in accordance with the company's performance in marketing and sales, directing subordinates in selecting and inspecting merchandise, coordinating business operations, providing engineering support, and solving engineering problems by referring clients to seller technical teams. Again, this duty description does not credibly discuss the policies and goals this employee formulated, the merchandise they oversaw, or the engineering problems they dealt with. Indeed, the Petitioner provided supporting documentation reflecting that it purchased and shipped granite countertops and chicken feet; as such, it is not clear what engineering problems and technical teams the claimed manager of operational and international trade would coordinate. Further, the Petitioner did not specify how this employee would manage the company's logistics nor did it discuss the policies they set.

In fact, in response to the NOIR, the Petitioner stated that the asserted manager of operational and international trade was absent from office in August and September 2018 because they were "busy signing new clients in China, or out of town in the United States." Yet again, this statement that does not appear to match up with this claimed manager's asserted duties. Furthermore, the Petitioner refers only to the subordinates of this claimed manager as "staff" and does not describe their operational duties as necessary to properly understand the asserted manager of operational and international trade's role.

The Petitioner has also not submitted evidence to establish that its operations were sufficient to sustain the Beneficiary in an executive capacity. As noted, the Petitioner claims that the Beneficiary oversees a vice president supervising three departmental managers, yet it provides little objective evidence to demonstrate that its operations are sufficient to support this organizational structure. For example, the Petitioner submitted internal financial information from April 2018 in support of the petition, but it otherwise provides no tax documentation, audited financial statements, or other probative objective evidence to substantiate its revenues or operations.

In fact, as we and the Director discussed, the fact that the Petitioner's office was locked and empty on two occasions in August and September 2018 leaves substantial question as to whether it was operating

sufficiently to support the Beneficiary in his asserted executive role. In response to the NOIR, the Petitioner left only additional question as to its organizational structure and operations, stating that its main business, the importation of granite countertops, had sustained a "heavy blow" due to trade tariffs. It also indicated that it was now exploring the export of chicken parts and potentially paper products, and further stated that all of its department managers were out of the office seeking out these opportunities. However, it provided no clarification as to how these developments would impact its asserted annual revenues provided in support of the petition, its previous stated plans to export construction equipment, or its asserted organizational chart. Therefore, the submitted evidence strongly indicates that the Petitioner's operations are uncertain and unstable and it has provided little evidence to overcome this on appeal.

In conclusion, the Petitioner has not substantiated its claim that the Beneficiary acted in an executive capacity when the approved petition was revoked. It submitted generic duty descriptions for the Beneficiary which do not demonstrate his actual day-to-day executive-level duties. Further, the Petitioner provided examples and evidence of his claimed executive-level actions that lacked credibility and support. The Beneficiary's duties also included unexplained discrepancies, such as the Beneficiary reporting to unidentified shareholders who appeared to be him and his wife and him overseeing sales and marketing activities for which there is no supporting evidence. The Petitioner also provided duty descriptions for the Beneficiary's claimed subordinate managers that lacked detail and credibility. Indeed, it statements in response to the NOIR indicated that these subordinates were no longer acting in their claimed roles. Lastly, the Petitioner has not provided sufficient evidence to overcome the substantial questions raised by its empty and locked office observed by a USCIS immigration officer in August and September 2018. In fact, the Petitioner acknowledges that it has largely abandoned its previous business and it has provided little evidence to overcome questions as to whether its operations are sufficient to support the Beneficiary in an executive capacity. For these reasons, the Petitioner has not established that the Beneficiary acted in an executive capacity when the petition was revoked.

III. CONCLUSION

The Petitioner has not established that the Beneficiary was employed in an executive capacity; therefore, the revocation of the approved petition will not be disturbed.

ORDER: The appeal is dismissed.

Cite as *Matter of X-I-U- Inc*, ID# 6347262 (AAO Nov. 6, 2019)