U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13358111

Date: NOV. 24, 2020

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, describing itself as an owner and operator of a restaurant and cafe, seeks to temporarily employ the Beneficiary as the managing director of its new office[1] in the United States 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 Director of the California Service Center denied the petition, concluding the record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity or that she would be employed in a managerial or executive capacity in the United States within one year.

On appeal, the Petitioner asserts that it submitted a sufficient duty description and supporting corporate documentation to establish that the Beneficiary was employed in an executive capacity abroad. Further, the Petitioner contends it demonstrated that the Beneficiary would act in an executive capacity within one year.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal. Since the identified basis for denial below is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding whether the Beneficiary would act in a managerial or executive capacity in the United States within one year of an approval. 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).

[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.

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 their 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. EXECUTIVE CAPACITY WITH THE FOREIGN EMPLOYER

The sole issue we will analyze is whether the Petitioner established that the Beneficiary is employed abroad in a managerial or executive capacity. The Petitioner does not claim that the Beneficiary has been employed in a managerial capacity abroad. Therefore, we restrict our analysis to whether the Beneficiary has been 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 foreign executive capacity of a given beneficiary, we will review the petitioner's description of the job duties abroad. The petitioner's description of the foreign job duties must clearly describe the duties 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

To be eligible for L-1A nonimmigrant visa classification as an executive, the Petitioner must show that the Beneficiary performs the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that the foreign position is a qualifying executive position.

If the Petitioner establishes that the offered foreign position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was primarily engaged in executive duties, as opposed to ordinary operational activities alongside the foreign employer's other employees. See Family Inc. v. USCIS, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether the given

beneficiary's foreign duties were primarily executive, we consider the petitioner's description of the foreign job duties, the company's organizational structure abroad, the duties of a beneficiary's foreign subordinates, the presence of other employees abroad to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in the business abroad.

The Petitioner indicated that the Beneficiary's foreign employer "operates as a café and catering service" and that it "offers fresh high-quality coffee and wide variety of healthy and simple food options." In a letter from the foreign employer written by the Beneficiary, she explained her duties as chief executive officer as follows:

> [The Beneficiary] is in charge of managing and directing the business. She sets financial goals, formulates policies, and establishes procedures for [the foreign employer], and implements these policies and procedures to ensure that [the foreign employer] attains its goals. Approximately 30% of [the Beneficiary's] time is dedicated to establishing and implementing goals, policies and procedures.
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> [The Beneficiary] also oversees the compilation of financial forecasts to plan future activities, to improve efficiency, and to estimate future funding requirements. She oversees the preparation of the firm's annual budget to determine [the foreign employer's] allocation of funds and distribution of resources among activities, and to meet estimated expenses. Further, [the Beneficiary] oversee cash management activities, compiles cash flow projections, executes capital raising strategies and negotiates loan agreements. She also directs the investment of funds and determines whether surplus cash should be invested in interest-bearing instruments. Approximately 20% of [the Beneficiary's] time is spent on financial and budget analysis since without effective financial planning and financial management, the firm would not be able to carry out its activities, and meet any of its short term objectives or long term goals.
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> [The Beneficiary] also oversees, plans and coordinates the services provided by [the foreign employer]…[the Beneficiary] handles all contracting for outside services, including negotiation of leased equipment, inventory, food supplies, and etc. [The Beneficiary] oversees the activities and policies, which the company, used to procure the foodstuffs and other products in accordance with the contracting companies' needs. After evaluating past sales records, and analyzing market conditions and inventory turnover, and after taking into account budgetary considerations and consumer demand, the company submits the list of in-demand products to suppliers and places orders indicating the desire products, brands, quantities, deadlines and other specifications, with [the Beneficiary's] final approval. Approximately 20% of [the Beneficiary]s time is spent on these tasks.
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> [The Beneficiary] sets the policies, which the company uses to determine acceptable quality standards for foodstuffs, products, perform[s] quality control functions, and assure[s] that the final product and the services meet the company's high-quality standards. Additionally, [the Beneficiary] oversees functions related to inventory

> control and inventory management. In light of the volume of the company's inventory, [the Beneficiary] dedicates approximately 10% of her time to overseeing inventory management and quality control functions.
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> [The Beneficiary] is further responsible for strategies and policies related to marketing activities. She analyzes data gathered on competitors' prices, products and methods of marketing. [The Beneficiary] also analyzes data pertaining to [the foreign employer's] past sales to determine demand for specific types of services and food products, and to predict future sales activity. Approximately 10% of [the Beneficiary's] time is spent on such activities.

The Petitioner did not submit a detailed foreign duty description sufficiently describing the Beneficiary's day-to-day executive level tasks abroad to credibly establish that she devotes her time primarily to qualifying tasks. The Beneficiary's foreign duty description includes several generic duties that could apply to any executive acting in any business or industry and they provide little insight into the actual nature of her role abroad. The Petitioner provided few examples and little supporting documentation to demonstrate the Beneficiary's performance of qualifying duties abroad, such as financial goals she set, policies and procedures she formulated, annual budgets she managed, or funds she invested in "interest-bearing instruments."

In denying the petition, the Director emphasized the lack of corroborating evidence to substantiate the Beneficiary's performance of executive-level tasks abroad or her interaction with her foreign subordinates. On appeal, the Petitioner provides additional documentary evidence meant to reflect the Beneficiary's performance of executive-level duties abroad. However, this documentation is also generic and does not credibly substantiate the Beneficiary's primary performance of executive duties abroad daily. For instance, the Petitioner provided three directives signed by the Beneficiary dating from 2017 through 2019. These directives only vaguely announce the company's targeted net profits and there is little indication to whom these announcements were directed, and the documents include few credible specifics or instructions from the Beneficiary as to how these targets would be achieved.

In addition, the Petitioner provided an "order" it claims was issued by the Beneficiary abroad in January 2018 whereby she approved a "marketing programme [sic] for 2018" and indicating that this program would be implemented by a marketing executive. However, the foreign employer's asserted foreign organizational chart does not include a marketing executive and the employee mentioned in the order is identified as "in-house legal counsel" in the organizational chart. Further, the attached marketing plan for 2018 again included few credible specifics related to the asserted marketing program, only generically discussing a website's "visual concept" and "a content plan for Instagram," without any actual plans or directions related to these initiatives. This provided "order" does not credibly reflect the Beneficiary' delegation of duties to subordinates abroad or her setting of executive-level goals and policies.

Likewise, the Petitioner provided two other "orders," one reflecting the Beneficiary appointing the foreign employer's claimed operations manager and another addressing a 2017 "programme [sic] for the in-process monitoring over compliance with hygiene regulations." However, again, the latter document is not convincing, as it includes very few specifics as to the foreign employer's actual health or hygiene procedures and processes and no detail related to its actual daily business operations. In

other words, as discussed by the Director, the Petitioner has provided few details and little credible documentation to substantiate that the Beneficiary has been primary performing executive-level duties abroad and delegating tasks to claimed supervisory subordinates.

In contrast, to the extent the Petitioner provided detail in the Beneficiary's foreign duty description, this indicated her involvement in non-qualifying operational activities, such as contracting for leased equipment, inventory, and food supplies, submitting lists of products to suppliers, and her performing inventory control and management. Although the Petitioner vaguely indicates that the Beneficiary oversaw these operations or provided only "final approval," there is little credible evidence to substantiate this and demonstrate her primary delegation of non-qualifying tasks to her claimed foreign subordinates. In fact, the Petitioner submitted a link to its website including an article about a catering event the foreign employer completed and it noted that "there were three guys [sic] who helped serve the event: the founder…and his partners [the Beneficiary] and Alena, all very pleasant and knowledgeable." This article suggests the Beneficiary's direct provision of catering services to clients and the record otherwise includes little supporting evidence to substantiate that she primarily oversees subordinate supervisors and other operational employees who provide these services while she sets executive-level goals and policies.

Whether the Beneficiary is an executive employee abroad turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" executive. See sections 101(a)(44)(B) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's foreign duties were executive functions and what proportion would be non-qualifying operational tasks. The Beneficiary's foreign duties and the other supporting evidence indicate her performance of administrative or operational tasks, but the Petitioner does not quantify the time she spends on these duties as compared to executive-level tasks. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of an executive abroad. See IKEA US, Inc. v. U.S. Dept. of Justice, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary holds a senior position within the foreign employer, the fact that she manages or directs the business does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a foreign position be "primarily" executive in nature. Id. The Beneficiary may exercise discretion over the foreign employer'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 abroad are 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, the reasonable needs of the foreign organization are taken into account in light of the overall purpose and stage of development of the organization. See section 101(a)(44)(C) of the Act.

As discussed, the Petitioner asserts that the Beneficiary qualifies as an executive abroad. 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.

The Petitioner submitted a foreign organizational chart reflecting that the Beneficiary oversaw "in-house legal counsel," an outsourced accounting services provider, and an operations manager. In turn, the operations manager was shown to supervise a head cook and a head barista. Further, the chart indicated that the head cook oversaw a line cook, a dishwasher/cleaner, and a server, while the head barista supervised another barista.

However, despite the direct evidentiary request of the Director in the RFE, the Petitioner did not provide detailed job descriptions for the Beneficiary's claimed foreign subordinates, nor their educations or salaries. Likewise, the Petitioner provided little credible supporting documentation to substantiate the Beneficiary's oversight or delegation of duties to her claimed subordinates. In fact, as we discussed in the previous section, the Petitioner submitted a series of generic "orders" on appeal that do not credibly reflect her daily performance of executive-level tasks and her delegation of non-qualifying operational duties to her subordinates. As noted, it is not clear from the Beneficiary's duty description what executive-level duties she is engaged in while overseeing a café and catering location abroad.

In addition, the Petitioner provided no evidence to substantiate the foreign employer's employment and payment of its claimed employees abroad or supporting evidence to corroborate its operations or financial situation. In fact, the Petitioner states that it would utilize $200,000 as an investment to launch its proposed new café in the United States; however, it openly acknowledges that this money was a gift from the Beneficiary's mother and that it did not originate from the foreign employer. This, along with the lack of supporting documentation as to the foreign employer's finances and operations, leaves substantial uncertainty as to whether the foreign employer's operations are sufficient to support the Beneficiary in an executive capacity abroad where she must be primarily focused on the broad goals and policies of the organization rather than its day-to-day operations. The Petitioner must resolve ambiguity 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).

For the foregoing reasons, the Petitioner has not established that the Beneficiary is employed abroad in an executive capacity.

ORDER: The appeal is dismissed.