U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13621444

Date: NOV. 24, 2020

Appeal of California Service Center Decision

Form I-129, Nonimmigrant Petition for an Intracompany Transferee (L-1A)

The Petitioner, a construction and heavy machinery rental services company, seeks to extend the temporary employment of the Beneficiary as its Vice President under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 the United States in a managerial or executive capacity under an extended petition. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, the Petitioner has not met this burden and 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 managerial or executive capacity, or in a position requiring specialized knowledge 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)(1). The prospective U.S. employer must also be a qualifying organization that seeks to employ a beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(i).

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period July 6, 2018, until July 5, 2019. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary will be employed in the United States in an executive capacity.[2]

"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.

To be eligible for L-1A nonimmigrant visa classification as an executive, the Petitioner must show that the Beneficiary will perform 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 it is a qualifying executive position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, 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). In determining whether a given beneficiary's duties will be primarily executive, we consider the petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the 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 and its staffing levels.

A. Duties

In its initial letter of support, the Petitioner stated that the Beneficiary would continue to work in its U.S. offices in Florida, and also develop a site in Texas. The Petitioner stated that the Beneficiary would continue to perform the following duties under the extended petition:

[2] The Director determined that the Beneficiary would not be employed in a managerial or executive capacity. On appeal, the Petitioner does not argue that the Beneficiary would be employed in a managerial capacity. Rather, it argues that the Director's decision "failed to recognize that the Beneficiary's duties are primarily executive in nature and erred in its reasoning."

[The Beneficiary] reports to the President of [the Petitioner]. He assists the President in the establishment of operations and in building the Company's headquarters in Texas. He also plays an important role in engaging in negotiations with suppliers to purchase heavy machinery and equipment that are necessary to the Company's operations. The Vice President provides global direction for the Company by developing short-term and long-term financial and operational goals. He works with the Company's staff to implement plans and policies. He is responsible for managing operations and technical support functions to meet target performance goals. He leads, plans, and administers all phases of the Company's operational activities. His main responsibilities include ensuring that all services are processed within contracted turnaround times, maintaining high quality standards and cost targets, and establishing objectives, policies, standards and schedules to ensure quality and cost effectiveness. He is responsible for complying with all environmental, health, and safety requirements and will propose improvements to eliminate or reduce risks. [The Beneficiary] serves as the liaison between clients and the Company on critical issues as well as between the Company and equipment and machinery suppliers. He engages in high-level negotiations to generate lucrative contracts and build beneficial relationships with clients and partners. The Vice President represents the organization at conferences, meetings and trade shows to increase brand awareness as well as to learn about new market and technology developments. He is also in charge of recruiting, hiring, providing training, and supervising the work of employees and independent contractors. [The Beneficiary] also manages special projects as assigned by the President.

The Petitioner listed the following specific duties of the Beneficiary as Vice President:

- Oversee the purchase and sale of the U.S. manufactured heavy equipment and concrete.
- Manage operations and technical support functions to meet target performance goals, ensuring that the Company's efficiency level are optimized.
- Monitor [the Petitioner's] revenues and profits and review financial and non-financial reports to devise solutions and improvements. With the Financial Director, manage the Company's costs and maintain operations at cost-effective levels.
- Analyze the Company's expenditures and other financial information in order to develop plans, policies, and budgets for increasing profits.
- Manage performance indicators such as average margins, cost of services, and various commercial details to measure how efficiently the Company achieves its goals.
- Oversee the recruitment and hiring of personnel and ensure that employees and independent contractors receive adequate training to perform their duties.

- Interact regularly with the parent company in Venezuela and Aruba to discuss operational and financial performance as well as discuss investment decisions to advance the business and increase profits.
- Facilitate the Company in creating and maintaining a positive reputation in the market by ensuring that all services are processed within contracted turnaround times, maintaining high quality standards and cost targets.
- Interact with clients and suppliers to discuss and solve critical issues regarding equipment and machinery purchases.
- Directly assist the President in the establishment of operations and the building of the Company's headquarters in Texas.
- Engage in negotiations with suppliers to purchase heavy machinery and equipment that are necessary to the Company's operations.
- Engage in high-level negotiations to generate lucrative contracts and build beneficial relationships with clients and partners.
- Represent the organization at conferences, meetings, and trade shows to increase brand awareness as well as to learn about new market and technology developments.
- Recruit, hire, and provide training to upper-level employees. Ensure that the upper-level employees and properly supervising the work of lower-level employees and independent contractors.
- Manage special projects as assigned by the President.
- Lead, plan and administer all phases of the Company's operational activities. Manage operations and technical support functions to meet target performance goals.
- Ensure that all services are processed within contracted turnaround times, maintaining high quality standards and cost targets, and establishing objectives, policies, standards, and schedules to ensure quality and cost effectiveness.
- Ensure compliance to environmental, health, and safety requirements and propose improvements to eliminate or reduce risks.
- Interact with clients to discuss and solve critical issues as well as with suppliers regarding equipment and machinery purchases.
- Ensure that the Company has up-to-date equipment and machinery to perform services and negotiate new purchases with suppliers.
- Represent the organization at conferences, meetings, and trade shows to increase brand awareness as well as to learn about new market and technology developments.
- Assist the President to set the Company's strategies, including expansion plans, in order to increase revenues and profits in a sustainable manner.

The Petitioner further broke down the Beneficiary's duties into the following percentages:

- Corporate strategy and goals, 30%
- Negotiations on behalf of the company with respect to suppliers, 30%
- Human resources, 10%
- Operational administration, 25%
- Representing the company at conferences and events, 5%

In denying the petition, the Director determined that the description of duties provided by the Petitioner did not demonstrate that the Beneficiary would primarily perform the high level responsibilities of an executive or manager. Rather, the Director determined that the description of duties indicated that the Beneficiary would devote the majority of his time to day-to-day functions of the business, such as sales, technical support, finance, operations, and negotiations. The Director also determined that the Petitioner did not sufficiently denote the percentages of time to be devoted to each of the Beneficiary's duties, thereby precluding a determination that the majority of his time would be devoted to primarily managerial or executive tasks.

Upon review, we agree with the Director's determination that the job description includes numerous duties that fall outside the statutory definition of executive capacity. Despite asserting that it has hired seven subordinate employees to assist with its operations, the Petitioner states that the Beneficiary will continue to perform numerous non-executive duties initially delegated to him as he opened the Petitioner's new office. Specifically, many of the tasks listed by the Petitioner indicate that the Beneficiary will be directly engaged in the business operations of the company.

For example, the Petitioner states that the Beneficiary will continue to "oversee the purchase and sale of the U.S. manufactured heavy equipment and concrete" and "negotiate new purchases with suppliers," which are typically duties attributed to purchasing agents or buyers and not corporate executives. We further note that the Petitioner claims that 30% of the Beneficiary's time will be devoted to these tasks – more specifically, to "negotiations on behalf of the company with respect to suppliers." Based on these statements, the Petitioner indicates that the Beneficiary will continue to perform purchasing responsibilities that, as of the date of filing, apparently had not been delegated in their entirety to subordinate staff. It is unclear why the Beneficiary would continue to devote such a large percentage of his time to performing direct negotiations with suppliers when the organizational chart indicates that the Petitioner has hired a purchasing agent and a customer service representative.

The Petitioner states that the Beneficiary will continue to "monitor [the Petitioner's] revenues and profits and review financial and non-financial reports to devise solutions and improvements," and "analyze the Company's expenditures and other financial information in order to develop plans, policies, and budgets for increasing profits." The Petitioner further states that he "will manage the Company's costs and maintain operations at cost-effective levels" with the "Financial Director." There is no indication that the Petitioner employs a "Financial Director." Moreover, while these stated duties indicate that the Beneficiary is likely responsible for both qualifying and non-qualifying financial tasks, the Petitioner does not employ any administrative or bookkeeping staff. A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner also indicates that the Beneficiary will continue to perform human resources tasks, such as "oversee the recruitment and hiring of personnel" and "provide training to upper-level employees," and that 10% of time would be devoted to such tasks. The Petitioner does not explain why the Beneficiary, and not a dedicated human resources employee or personnel manager, would continue to hire and train the company's new personnel. Although the record indicates that a general manager

was hired at the time of filing, the Petitioner does not assert that the general manager (or other employee) would relieve the Beneficiary from performing these duties.

Finally, the Petitioner states that the Beneficiary will "lead, plan and administer all phases of the Company's operational activities," as well as "manage operations and technical support functions to meet target performance goals." While we do not doubt that the Beneficiary, as Vice President of the company, will be engaged and knowledgeable regarding the company's operational activities, we cannot conclude that the listed tasks are executive job functions. For example, the Petitioner also indicates that the Beneficiary will "represent the organization at conferences, meetings, and trade shows to increase brand awareness," and that he will continue to devote 5% of his time to these duties. Combined with his "operational administration" of the company, to which he devotes 25% of his time, it appears that the majority of the Beneficiary's duties under the extended petition will continue to be non-qualifying, operational duties essential to the company's continued business operations.

The Petitioner's overview of the duties, and the breakdown of the percentage of time the Beneficiary will devote to each duty, indicate that the Beneficiary will continue to perform the same duties previously delegated to him under the initial new office petition. Despite indicating that it has hired several subordinate staff members, the Petitioner does not explain the roles of these individuals with regard to the duties of the Beneficiary. There is no indication that any of the newly hired employees will relieve the Beneficiary from the non-qualifying duties identified in our discussion above; rather, the Petitioner indicates that they will perform their own roles and their own specific duties simultaneous to those of the Beneficiary. Absent evidence demonstrating that the Petitioner has sufficient staff to relieve the Beneficiary from primarily performing non-qualifying duties, we cannot determine that he will be employed in a capacity that is primarily executive under the extended petition.

On appeal, the Petitioner does not directly address the Director's determination regarding the non-qualifying duties included in the Beneficiary's job description. Rather the Petitioner asserts that the Director's decision was arbitrary, capricious, and constitutes an abuse of discretion because the Director's request for evidence (RFE) did not ask for additional details regarding the duties of the Beneficiary's position or the percentages of time devoted to the duties. Upon review, the Petitioner's assertions are not persuasive. As indicated above, the Petitioner provided a detailed overview of the duties of the proffered position, along with a general breakdown of the time devoted to each area of the proposed duties. On appeal, the Petitioner repeats its previous description of the duties of the position and does not address the deficiencies noted in the Director's decision.[3]

The Petitioner also submitted a description of "Top Executives" from U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as well as the O*NET OnLine Summary Report

[3] The regulation at 8 C.F.R. § 103.2(b)(8) permits the Director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the Director. Where evidence of record indicates that a basic element of eligibility has not been met, it is appropriate for the Director to deny the petition without a request for evidence. Also, even if the Director had erred as a procedural matter in not issuing an RFE relative to the Petitioner's lack of evidence to establish that the duties of the proffered position were primarily managerial or executive, it is not clear what remedy would be appropriate beyond the appeal process itself. If the Petitioner has rebuttal evidence, the administrative process provides for a motion to reopen or an appeal as a forum for that new evidence. As

for "11-1011.00, Chief Executives," and asserts that the Beneficiary's duties closely align to the duty descriptions listed in the summaries for each of these occupations. While acknowledged, the issue before us is whether the Petitioner has demonstrated that the Beneficiary will primarily perform executive tasks. While we note that the generic duty descriptions in the *Handbook* and O*NET include similar duties to those listed in the Petitioner's description of the Beneficiary's duties, these documents do not demonstrate that the Beneficiary will be relieved from performing the non-qualifying duties discussed above and that his role will be primarily executive in nature.

Again, the Petitioner maintains that the Beneficiary will continue to perform the same duties previously delegated to him as he opened the Petitioner's new office, which include numerous non-qualifying tasks. Despite indicating that it has hired additional employees, the Petitioner provides no explanation as to how those individuals will interact with the Beneficiary and relieve him from performing non-qualifying duties. Rather, the Petitioner claims that the Beneficiary will continue in his prior role without modification. We do not question that the Beneficiary, as the U.S. entity's Vice President, is responsible for directing the company and establishing its goals and policies. However, the fact that the Beneficiary 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 or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. While the Beneficiary exercises discretion over the U.S. entity's day-to-day operations and possesses decision-making authority, the position description does not establish that his day-to-day duties would be primarily executive in nature.

B. Staffing and Organizational Structure

Next, we will address the U.S. company's staffing at the time of filing. If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, the reasonable needs of the organization must be considered in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act. As noted, the U.S. company was established as a new office and its prior petition was approved for one year, with a validity period that ended on March 29, 2020. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year from the date of approval of the petition to support an executive or managerial position.

The Petitioner provided evidence that it employed seven individuals at the time of filing, in addition to the Beneficiary and the Petitioner's president. According to its organizational chart, the president oversees the Beneficiary and the general manager, and the general manager oversees an assistant manager, an equipment service coordinator, a purchasing agent, a customer service representative, a sales and marketing agent, and a clerk.

The Petitioner provides a list of the duties of each of these individuals, which indicates that several of these individuals perform day-to-day tasks for the company not previously attributed to the Beneficiary. For example, the equipment manager is tasked with warehouse safety, monitoring inventory, and tracking and tracing goods, and the equipment service coordinator oversees scheduled

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noted above, the Petitioner did not supplement the appeal with additional details regarding the proffered position to address the deficiencies noted by the Director.

maintenance of equipment, tests major components, and inspects, repairs and replaces worn parts. The sales and marketing manager identifies prospective customers and helps customers select products, whereas the customer service representative takes customer orders, answers customer questions, and handles complaints. The clerk is tasked with answering phones, handling mail, arranging staff meetings, filing, and basic bookkeeping.

The roles of the remaining employees, namely, the general manager and the purchasing agent, are somewhat unclear with regard to their interaction with the Beneficiary and whether they relieve the Beneficiary from performing non-qualifying duties. For example, the purchasing agent "negotiates contracts with buyers on behalf of the company" and "attends meetings and trade shows." As discussed above, the Petitioner claims that 30% of the Beneficiary's time is devoted to negotiating contracts with clients and 5% of his time to attending trade shows. The general manager's duties include tasks such as "establish company policies, goals, objectives, or procedures," "monitor suppliers," "perform personnel functions," and "review financial statements." The general manager's vaguely stated duties appear to encompass numerous duties of the Beneficiary, but no explanation is provided as to how much time is devoted to each stated duty or whether the general manager relieves the Beneficiary from any portion of these duties.

While the Petitioner has demonstrated that it employs several individuals to carry out many of the day-to-day functions of the company, it has not explained why the primary duties of the Beneficiary include so many non-qualifying tasks that overlap with the duties of the general manager and purchasing agent, and it is further unclear how these employees are able to support the Beneficiary in a primarily executive position.

Again, the Petitioner claimed that the Beneficiary's time is spent as follows:

- Corporate strategy and goals, 30%
- Negotiations on behalf of the company with respect to suppliers, 30%
- Human resources, 10%
- Operational administration, 25%
- Representing the company at conferences and events, 5%

Here, while we acknowledge the presence of subordinate staff, the Petitioner did not establish how they relieve the Beneficiary from performing the day-to-day activities of the U.S. company or otherwise support a position in which his actual duties would be primarily executive in nature.

On appeal, the Petitioner does not address the organizational structure of the company at all. As currently constituted, the record simply identifies the positions mentioned above and provides a generic list of duties for each individual, including the Beneficiary. There is no discussion or explanation in the record as to how all of these individual interact with each other, and there is no assertion or indication that any of these employees relieve the Beneficiary from performing the duties stated above. Although the Petitioner claims that the purchasing agent negotiates contracts and attends trade shows, there is no explanation as to why the Beneficiary still spends a combined 35% of his time devoted to these tasks. Similarly, although the Petitioner states that the general manner handles personnel and financial matters, as well as general operational matters, there is no explanation why

the Beneficiary still devotes another combined 35% of his time to human resources and operational administration.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. If a business does not have the necessary staffing after one year to sufficiently relieve the beneficiary from performing operational and administrative tasks, the petitioner is ineligible for an extension. Here, although the organizational chart suggests that a subordinate staff is available to perform many non-qualifying operational duties, the Petitioner has not explained why 70% of the Beneficiary's time continues to be devoted to non-qualifying tasks.

The record reflects that the Beneficiary is a partial owner and the Vice President of the company. However, the record does not establish that his duties are primarily executive in nature. The Petitioner simply lists the duties of the Beneficiary, and the duties of its other employees, without providing any discussion or explanation regarding the manner in which the employees interact or support each other within the claimed organizational hierarchy. The Petitioner does not state that the subordinate employees relieve the Beneficiary from performing the non-qualifying tasks discussed above. Instead, it holds steadfast to its claim that the Beneficiary will continue to perform the numerous non-qualifying duties he performed during the company's first year of operations. Again, despite the presence of subordinate staff, the Petitioner maintains that the Beneficiary will continue performing primarily non-executive tasks. Accordingly, the Petitioner has not established that he would be employed in the United States in an executive capacity as defined at section 101(a)(44)(B) of the Act.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary would be employed in the United States in an executive capacity. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.