U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-P-G-, INC.

DATE: OCT. 3, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a two-employee seller of aircraft parts, 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 denied the petition, concluding that the record did not establish, as required, that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity; and (2) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity.

The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and asserts that the Director erred by underestimating the Beneficiary's executive responsibilities abroad, and by inferring ineligibility from the small size of the Petitioner's staff in the United States.

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).

II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director found that the Petitioner did not establish that the Beneficiary has been employed abroad, and will be employed in the United States, in a managerial or executive capacity. The Petitioner claims that the Beneficiary will be and has been employed as an executive.

We note that, at the time of filing, the petitioning U.S. entity had a minimal organizational structure. The Petitioner asserts that it plans to hire more workers after the petition is approved, so that the Beneficiary can participate directly in the hiring and training of the new staff. The Petitioner's claim that the Beneficiary will serve in an executive capacity in the United States rests heavily on the assertion that he will continue to exercise executive authority over the entire multinational organization. Thus, we will restrict our analysis to whether the Beneficiary was employed abroad in an executive capacity. Because this finding is dispositive, we will reserve the issue of the Beneficiary's intended employment in the United States.

"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.

Based on the statutory 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 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.*

When examining the claimed executive capacity of a given beneficiary, we will look to 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 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 foreign entity's business and its staffing levels.

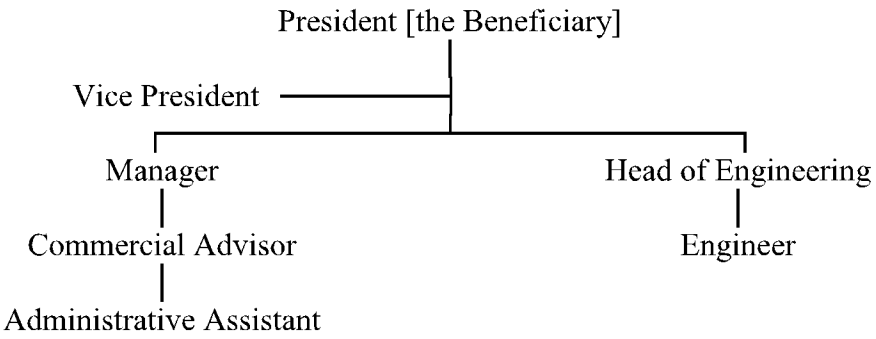
The Beneficiary is president and majority shareholder of the Petitioner's affiliate in Colombia. The only other shareholder is the Beneficiary's mother, who owns 30% of the company and serves as the company's vice president and secretary general of the board of directors. The foreign entity indicated that the Beneficiary has six main responsibilities, summarized below:

> Preside over annual business meeting and monthly executive board meetings (approximately 10% of his time)
>
> Serve as the company's legal representative and spokesperson, including negotiation of contracts and agreements with clients, manufacturers, and suppliers (43%)
>
> Formulate organizational sales policies (18%)
>
> Review activity reports and financial statements, establish strategies for acquiring new clients (17%)
>
> Develop public relations policies (12%)
>
> Personnel actions including hiring and firing (no percentage specified)

The foreign entity addressed the elements of the definition of executive capacity:

> [The Beneficiary] receives minimal supervision from the Board of Directors and has ample latitude in his decision making over the company. An example of the [Beneficiary's] wide latitude in discretionary decision making . . . was his decision to open an affiliate in the United States, Panama and Peru. . . . Additionally, over the years, [the Beneficiary] negotiated and entered into contracts on behalf of our company, recruited and hired local staff, etc. . . . In order to establish the company's goals and formulate company strategies and policies, [the Beneficiary] collaborates with the Commercial Advisor and Head of Engineer[ing] in obtaining the information of the [current and prospective] markets . . . [to] establish the marketing and sales strategies, as well as timelines for each objective. . . .
>
> [The Beneficiary] directs the management of [the foreign company] by meeting with the Vice-President, Manager, Commercial Advisor and Head of Engineering every Monday . . . to review the previous week. . . . [The Beneficiary] also meets with the Vice-President and Manager on a daily basis to check in on the various departments.

An organizational chart showed the following structure for the foreign entity:



A later organizational chart added two commercial engineers, but because the qualifying employment abroad must have taken place in the past, before the filing date, subsequent organizational changes cannot establish eligibility. The revised chart did not show that the Petitioner already employed the two commercial engineers at the time of filing, or explain why they were omitted from the original chart if they were already at the company.

Job descriptions for the listed subordinates indicate that the engineer (also called the aeronautical engineer) contacts suppliers, sends bids to customers, and updates inventory. These duties appear to relate more to sales and logistics than to aeronautical engineering. Similarly, the head of engineering is responsible for "quality control measures" with no evident responsibilities that directly relate to engineering.

The commercial advisor "plans and implements sales, marketing and product development programs" and "collaborates with the President and Manager to devise and implement marketing campaigns." The foreign entity did not identify any actual front-line sales staff, and it appears that the commercial advisor personally performs sales and marketing tasks rather than overseeing plans implemented by unidentified lower-level staff. Furthermore, although some job descriptions discuss bids and inventory, the Petitioner did not show who, at the foreign company, is responsible for handling, storing, and shipping that inventory. It therefore appears that at least some of the company employees have logistical duties that the job descriptions did not disclose.

Given the above issues with the job descriptions, the Petitioner has not established that the foreign entity had a management structure for the Beneficiary to oversee at a primarily executive level.

The Director denied the petition, stating that the Beneficiary's job description is questionable and insufficiently corroborated. The Director noted that the Beneficiary purports to spend 10% of his time meeting or consulting with the board of directors, but the Beneficiary is the majority shareholder, and he and his mother comprise the entire board. The Director also concluded that the foreign entity's "multi-layered corporate structure . . . appears to have been inflated," and the subordinate employees appear to be operational-level employees who report directly to the Beneficiary.

On appeal, the Petitioner asserts that the 10% figure relates to the Beneficiary's interactions with not only the board of directors but also the "executive staff," which includes the manager and the head of engineering. Even so, the Petitioner did not establish how the Beneficiary could devote 10% of his

time – several hours per week – to preparing for and participating in an "Annual Business Meeting" and monthly "Executive Board meetings."

The Petitioner asserts that, under Colombian law, the foreign entity does not need to have a board of directors at all, and the family relationship between the shareholders is not a disqualifying factor. These points, however, do not address the relevant finding. The Petitioner indicated that the board of directors has some degree of influence over the Beneficiary's actions, in the form of "minimal supervision," but the Beneficiary himself is the majority shareholder and the only other board member is subordinate to the Beneficiary in the foreign organization. The Petitioner has not shown how, under those circumstances, the board could have any meaningful authority separate from, and superior to, the Beneficiary himself. The lack of a formal legal requirement for such a board to exist does not relieve the Petitioner of its obligation to provide accurate information about the function and authority of that board.

The Director found that the Petitioner apparently "exaggerated the corporate structure" to make the organization seem more complex than it really is. The Director found, for example, that the Petitioner had not shown that the individual with the title of "aeronautical engineer" "actually performs the duties of an Aeronautical Engineer."

On appeal, the foreign entity states that "the aeronautical engineer uses his knowledge of aviation and technology to ensure that we acquire parts that meet safety and environmental regulations." According to the O*NET database maintained by the Bureau of Labor Statistics, aeronautical engineers "[p]erform engineering duties in designing, constructing, and testing aircraft, missiles, and spacecraft. May conduct basic and applied research to evaluate adaptability of materials and equipment to aircraft design and manufacture. May recommend improvements in testing equipment and techniques."[1] These tasks involve significantly more than simple familiarity with product specifications and aircraft requirements, and they bear little resemblance to the complete job description that the foreign entity originally provided for the aeronautical engineer, shown below:

- Search the items requested in the search portals.
- Contact by telephone or by mail to the selected suppliers according to each tender
- Enter the information of the suppliers to the company's quotation system.
- Structure the offers and send them to the Chief Engineer for review and authorization.
- Send bids or offers electronically to different customers.
- Maintain control and update the inventory of [the U.S. company] on the search platforms.

The individual identified as the manager of the foreign entity has operational and administrative duties that appear to preclude a finding that the employee's responsibilities are primarily managerial. For example, her "[r]esponsibilities include public relations for the office." The foreign entity identified no subordinate employee with public relations duties, and therefore it appears that the manager herself performs, rather than manages, public relations tasks. The manager also has an unspecified role "to coordinate the delivery of the orders placed by clients and the pick-up of [imported] materials." To

[1] Source: https://www.onetonline.org/link/summary/17-2011.00 (last visited Sept. 18, 2019).

the extent that the foreign entity has identified specific tasks performed by the manager, those tasks indicate a level of hands-on operational involvement well beyond the role of a manager.

The Petitioner has not shown that the Beneficiary's immediate subordinates have a level of responsibility sufficient to constitute the management of the foreign entity.

The record indicates that the Beneficiary also holds positions of authority at affiliated entities in Peru, Mexico, and Panama, but the Petitioner did not submit much information about those entities or evidence of their staffing and the roles they play in the overall organization. The Beneficiary himself states, on appeal, that the Colombian "affiliate specializes [in] the purchase, sales, *manufacturing*, commercialization and imports and exports of equipment and parts for aircraft," but the entity in Colombia claims no manufacturing staff. This reference to manufacturing continues a pattern of material claims with little or no evidentiary support in the record.

We note, too, that promotional materials in the record state: "We have a trained aeronautical team [of] Aeronautical Engineers and Technicians." Submitted personnel information identified only one aeronautical engineer, discussed above, and no technicians. The promotional materials also refer to "repair workshops allies [*sic*] in North America, South America and Europe." It is not clear whether these "allies" are contractors or affiliates; the record does not say.

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that the Beneficiary was employed in an executive capacity abroad.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of A-P-G-, Inc.*, ID# 6059736 (AAO Oct. 3, 2019)