U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10980275

Date: OCT. 23, 2020

Appeal of California Service Center Decision

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

The Petitioner, a beauty salon and spa, seeks to employ the Beneficiary temporarily as its general manager under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. 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 that the Petitioner did not establish, as required, that: (1) the Beneficiary was employed abroad in a managerial or executive capacity; and (2) the Beneficiary's proposed position would be in a managerial or executive capacity. The matter is 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, we will dismiss the appeal because the Petitioner did not establish the Beneficiary's position abroad was in a managerial or executive capacity. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding the Beneficiary's proposed U.S. employment in a managerial or executive capacity. 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).

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).

II. EMPLOYMENT ABROAD IN AN EXECUTIVE CAPACITY

The primary issue to be addressed is whether the Petitioner provided sufficient evidence establishing that the Beneficiary's position abroad was in an executive capacity.[1]

"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 performed certain high-level responsibilities. Section 101(a)(44)(A) of the Act. The Petitioner must also prove that the Beneficiary was primarily engaged in executive duties, as opposed to ordinary operational activities alongside the foreign entity's other employees. See Family Inc. v. USCIS, 469 F.3d 1313, 1316 (9th Cir. 2006).

The description of the job duties must clearly describe the Beneficiary's duties and indicate whether such duties are in a managerial or an executive capacity. See 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the employing company's organizational structure, the duties of the 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 the 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. Job Duties

First, we will discuss the duties performed by the Beneficiary in her position with the foreign employer. We note that the actual duties themselves reveal the true nature of the employment. 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).

In a supporting cover letter, the Petitioner stated that the foreign entity operates as a beauty salon and spa where it provides "beauty consulting services" and sells beauty products. The Petitioner stated that the Beneficiary directed the foreign entity and managed its finances and daily activities by "handling the salon's business schedules and meeting tight deadlines" as well as maintaining responsibility for customer satisfaction and complaint resolution. The Petitioner added that the Beneficiary "developed individualized, therapeutic skin care problems" and provided a résumé which states that the Beneficiary was involved in establishing relationships with existing and prospective customers, increasing brand visibility, working together with "salon managers" to review the

[1] The Petitioner does not claim that the Beneficiary was employed in a managerial capacity. Therefore, we will limit our discussion to the Petitioner's claim that the Beneficiary was employed in an executive capacity.

company's business plans, sales, and operational costs, and providing "leadership and vision" for the foreign entity's "signature" beauty techniques.

In a request for evidence (RFE), the Petitioner was notified that the job description offered in support of the petition was insufficient because it did not adequately describe the Beneficiary's assigned duties or explain how she performed those duties. The Petitioner was therefore asked to list the Beneficiary's typical executive job duties, indicate what percentage of time she allocated to each duty, and explain how the assigned duties fit the statutory definition of executive capacity.

In response, the Petitioner provided the Beneficiary's foreign employment agreement, which reiterates that the Beneficiary's duties included establishing existing and prospective client relationships and working with salon managers to review business plans, operational costs, and sales. The Petitioner added that the Beneficiary also supervised and controlled the work of managerial and professional employees. In a separate statement, the Petitioner provided additional information about the Beneficiary's foreign employment, stating that the Beneficiary holds "one of the highest executive positions," "directs and oversees the entire company's operation," and "leads and oversees the Hair Training Department." The Petitioner did not clarify how oversight of a specific department within the organization supports the claim that the Beneficiary oversees "the entire" operation. The Petitioner also offered a list of the following broadly stated job duties:

- Developing and executing business strategies
- Providing "strategic advice" to the company's president and vice president;
- Preparing and implementing business plans;
- Ensuring that policies and legal guidelines are communicated to all employees at all levels;
- Communicating with shareholders and business partners;
- Overseeing the company's finances and investments;
- Delegating responsibilities and supervising the work of managers;
- Reading reports and resolving problems;
- Assuming the role of "public speaker and public relations representative"; and
- Analyzing and resolving "problematic situations."

The Petitioner did not elaborate on the types of business strategies the Beneficiary developed and executed, describe the business plans she implemented, or offer insight as to the "strategic advice" the Beneficiary offered to the company's top leadership. The Petitioner also did not clarify how the Beneficiary ensured proper communication of policies and guidelines or the methods she employed for overseeing finances and investments. Moreover, the Petitioner did not establish that developing business plans, communicating policies and guidelines, and monitoring investments are duties that are commonly performed on a daily or weekly basis within the context of a beauty salon. Likewise, the Petitioner did not establish that public speaking and acting as a public relations representative are relevant in the daily operation of a beauty salon. Further, although the Petitioner stated that the Beneficiary's position abroad required her to resolve problems and address "problematic situations," it is unclear that assuming this role entailed performing primarily executive job duties. In sum, the Petitioner did not convey specific information that would lead to a meaningful understanding of the

types of job duties the Beneficiary performed as a claimed executive within the scope of a beauty salon and spa operation.

In the denial, the Director determined that the Petitioner did not adequately describe the Beneficiary's foreign job duties, thereby precluding a determination as to whether the foreign position was executive in nature as claimed.

On appeal, the Petitioner argues that the Director "issued two contradictory decisions," noting that USCIS issued an RFE with respect to this petition and a separate petition pertaining to "a second employee for the same Petitioner." The Petitioner did not, however, establish that the separate filing is relevant to the instant matter. Moreover, USCIS may, in the course of adjudication, issue one or more RFEs with respect to each petition it adjudicates; this includes instances where there are multiple petitions filed by the same petitioner, regardless of whether the petitions pertain to the same beneficiary. Despite the Petitioner's reference to "two contradictory decisions," it has not established that USCIS acted inappropriately in the course of carrying out its adjudicatory responsibilities. The Petitioner must support its assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). Here, the Petitioner does not offer evidence to support the assertion that the Director issued "two contradictory decisions." In fact, despite challenging the propriety of the Director's decision and asking us to consider "all relevant evidence," the Petitioner does not specify which evidence it claims is sufficient to refute the denial. Rather, the Petitioner offers only general assertions about the Beneficiary's "extensive professional experience" and focuses on the Beneficiary's position title as "Director" of the foreign entity, yet it provides no insight about the vague elements that comprised the Beneficiary's foreign job duties to support the claim that the employment abroad was in an executive capacity.

We further note that managing or directing a business does not necessarily establish a beneficiary's 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. Thus, even if the Beneficiary exercised discretion over components of the foreign beauty salon and possessed the requisite level of authority with respect to discretionary decision-making, these elements alone would not be insufficient to establish that her actual duties were primarily executive in nature. As such, we rely on specific information about a beneficiary's actual daily tasks as an important indication of whether their 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. at 1108.

As discussed above, the Petitioner offered a deficient job description that did not list the Beneficiary's specific daily or weekly tasks within the specific context of a beauty salon. As such, we cannot conclude that the Beneficiary's time was primarily allocated to tasks of an executive nature.

B. Staffing

Next, we will address the Petitioner's staffing at the time of filing. When 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.

In its RFE response letter, the Petitioner offered two competing claims regarding the Beneficiary's position within the foreign entity's organization. On the one hand, the Petitioner asserted that the Beneficiary "directs and oversees the entire company's operations," while on the other hand it claimed that the Beneficiary "directly leads and oversees the Hair Training Department." The Petitioner provided an organizational chart that depicts the foreign entity's president and vice president at the top two organizational tiers, respectively, while the Beneficiary and another director are depicted as overseeing the "hair trainer" and "specialty trainer" departments, respectively. Neither director is depicted as subordinate to the other, and despite the Petitioner's claim that the Beneficiary "directs and oversees the entire company's operations," the organizational chart does not support this claim. Instead, the chart depicts the Beneficiary's position alongside another director, each overseeing two "assistant trainer" employees. The primary distinction between the staffing in the two departments is that number of employees the "assistant trainer" in each department oversees. The assistant trainers in the Beneficiary's department oversees five employees – two estheticians, a trainer, a hair stylist, and a cosmetologist – while the assistant trainers in the "specialty trainer" department oversee three employees – a massage therapist, a cosmetologist, and a makeup artist. The chart does not, however, depict a hierarchy where the Beneficiary has authority over the "entire company's operations," as claimed in the original supporting statement. The Petitioner must support its assertions with relevant, probative, and credible evidence. See Chawathe, 25 I&N Dec. at 376.

On appeal, the Petitioner contends that the Beneficiary's position abroad was in an executive capacity, asserting that she has been employed as "the Director" of the foreign entity. As discussed above, the organizational chart that the Petitioner provided does not support this claim. Rather, it indicates that the Beneficiary oversees one of the foreign entity's two departments and that another director, who is similarly placed within the foreign entity's organization, oversees the other department. The organizational chart does not corroborate the Beneficiary's job duty breakdown, which states that the Beneficiary has authority over the foreign entity's business plans and strategies and its investments and financial performance, nor does it depict the Beneficiary as having authority over the entity as a whole. Rather, the chart shows that the foreign entity has a president and vice president who occupy the top two tiers within the organization.

In light of the deficiencies described above, we cannot conclude that the Beneficiary was employed in an executive capacity during her period of foreign employment.

ORDER: The appeal is dismissed.