U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40156905

Date: OCT. 27, 2025

Motion on Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a "new office," seeks to employ the Beneficiary as its general manager. The company requests his classification under the L-1A nonimmigrant visa category as an intracompany transferee "executive." See Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). Multinational organizations may sponsor qualifying aliens for U.S. temporary employment in this category if they would work in executive or managerial capacities. Id.[1]

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner did not establish that the Beneficiary was employed abroad in an executive capacity and he would be employed in this same capacity in the United States within one year. We later dismissed an appeal filed by the Petitioner. The matter is now before us again on a motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

[1] 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 his or her 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).

In dismissing the Petitioner's appeal, we concluded the record supported SCOPS' determination that there was insufficient evidence of the Beneficiary's asserted executive role abroad. We emphasized the Beneficiary's duties reflected that he performed both executive and non-executive tasks abroad. We indicated the Petitioner did not demonstrate that he was primarily engaged in executive-level duties while employed abroad. For instance, we noted that SCOPS requested more detail regarding the Beneficiary's foreign duties as well as percentages of time he spent on each of his tasks daily. We discussed the fact that the Petitioner did not submit this directly requested evidence. As such, we affirmed SCOPS' determination that the Petitioner did not establish the Beneficiary was employed in an executive capacity abroad.[2]

On motion, the Petitioner contends that we did not properly consider a letter from the foreign employer's chief operating officer (COO) describing the Beneficiary's duties. The Petitioner asserts this letter establishes that the Beneficiary worked primarily in an executive capacity abroad. The Petitioner further states that we unfairly focused on the lack of percentages of time assigned to the Beneficiary's asserted tasks and failed to properly consider the totality of the evidence, including a list of the foreign employees and their duties. The Petitioner emphasizes that the Beneficiary's duties include fifteen categories of executive-level tasks and contends that we erred in concluded that several of his duties were operational in nature. The Petitioner asserts that the provided evidence clearly demonstrates he directed the management of the foreign employer and acted in a "pure executive capacity."

First, we disagree with the Petitioner's assertion on motion that we erred in overemphasizing the lack of percentages of time assigned to the Beneficiary's claimed tasks abroad. To illustrate, the COO of the foreign employer provided the following duty description for the Beneficiary:

> **[The Beneficiary] has full 100% discretion to operate the company he owns; he has full latitude in all discretionary decision making:**
> - Approves and closes deal of all contracts;
> - Approves of the hiring and firing of employees;
> - Supervises all managers who oversee employees ranging from 15-45 employees;
> - Conducts business meetings with managers beneath him;
> - Establishes goals for the company, whether to expand offerings in designs to customers, visits the company factory, at a different location, or make sure all business operations are working fine, that the factory and production managers have full control of the manual labors; that all machinery is reported as properly and regularly maintained and all production of metal items come out as planned;
> - He determines company new goals and targets; has conducted decision to expand operations to the USA and investigated the USA market; funded [the Petitioner];
> - Defines the company policies, products, general orientation and main services to be done for customers;

[2] Notably, we declined to address whether the Beneficiary would be employed in an executive capacity in the United States within one year of an approval of the petition and reserved this issue. *See Immigration & Naturalization Serv. v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions). We continue to reserve this issue here.

- Set deadlines for projects and overall targets to be achieved within months and years. Decides expansion of company;
- Creates executively an approved marketing and sales plan for certain period of time for the targeted markets or customers;
- Follows up on all departments including finance, procurement, design, production, and shipping;
- Direct communication with customers when needed to arrange payments, discuss issues with project deadlines;
- Reviews sales reports and budgets, then comparing actual income and expenses;
- Directs other employees' work who are engaged in marketing through social media, newspaper, direct interviews, presence in main events with businessmen, etc.
- Makes final decision of the procurement of main inventory machines, laser cut, bending, etc.
- Meetings with service providers' executives when needed to finalize prices and service type, such as raw material suppliers;
- Builds a team of the company based on key personnel in which the company will be upgraded through the years;
- Establishes a proper place for main offices, workshop, international branches considering all logistics needed;
- Solves major problems in company that may arise during work. Represents the company if any government agency seeks to have a meeting with the company.

The Petitioner asserts that we did not properly consider the Beneficiary's duties and claims they clearly establish his executive role abroad. We disagree. The Petitioner submitted a generic duty description for the Beneficiary's role abroad. The foreign duty description vaguely discussed a variety of executive-level duties without providing meaningful detail as to his actual day-to-day tasks within the foreign business. The Petitioner provided insufficient specifics and no supporting documentation to sufficiently substantiate his performance of qualifying executive-level duties abroad such as the goals he established for the company, the targets he put in place, policies and main services he implemented, or marketing and sales plans he created. Likewise, the Petitioner did not detail and document the key personnel he hired, main offices or workshops he established, major problems he solved for the company, or matters he represented the company on with government agencies. The lack of detail and supporting documentation to substantiate the Beneficiary's qualifying executive duties abroad is particularly noteworthy since the Petitioner asserted that he had worked in this role since 2012, or for approximately twelve years. Specifics are clearly an important indication of whether a beneficiary's foreign duties involve executive duties, 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).

In contrast, to the extent the Petitioner provided detail in the Beneficiary's duties, this was mostly indicative of an employee focused on day-to-day operational matters alongside his subordinates rather than an executive broadly setting goals and policies for the organization. For example, the Beneficiary's duties discuss him approving and closing *all* contracts, ensuring that *all* machinery is properly and regularly maintained, and checking that *all* production of metal items come out as planned [emphasis added]. Likewise, the foreign duties indicate he was tasked with communicating with customers on payments and project deadlines and deciding on the procurement of "main

inventory," including laser cut and bending machines.[3] The Petitioner also indicated elsewhere in a biography submitted for the Beneficiary that he an artist specializing in creating designs in weather exposed steel and other special metals. It is notable that the Beneficiary's photograph next to the biography reflected him utilizing a power tool on metal. As such, it appears very likely that some of the Beneficiary's duties abroad were devoted to non-qualifying operational tasks directly related to his provision of metal work services or his performance of these services alongside his colleagues. However, the Petitioner questionably refused to document what percentage of the Beneficiary's time was devoted to executive-level duties as opposed to non-qualifying operational tasks in response to SCOPS' request for evidence, on appeal, and now again on motion.[4] Instead, the Petitioner merely declares that the Beneficiary worked in a "purely executive" role. Again, as we discussed in our prior dismissal, failure to submit requested evidence precluding a material line of inquiry shall be grounds for denying the benefit request. *See* 8 C.F.R. § 103.2(b)(14). Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g.*, *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

As we emphasized in our prior decision, whether the Beneficiary was an executive abroad turns on whether the Petitioner has sustained its burden of proving that his duties were "primarily" executive. See sections 101(a)(44)(B) of the Act. The Petitioner does not credibly document what proportion of the Beneficiary's foreign duties were executive functions and what proportion were non-qualifying operational tasks. The foreign description discussed the Beneficiary's involvement with administrative or operational tasks but did not sufficiently quantify the time he spent on these duties as opposed to qualifying executive-level duties. For this reason, and as we previously indicated in our prior decision, we cannot determine whether the Beneficiary primarily performed the duties of an executive while employed abroad. *See* IKEA US, Inc. v. U.S. Dept. of Justice, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In addition, the record includes little documentary evidence demonstrating the Beneficiary performing qualifying executive-level tasks abroad; namely, him setting broad goals and policies and overseeing subordinate managers or lower-level executive employees. For instance, the Petitioner provided no evidence, beyond its statements, to substantiate the Beneficiary's delegation of tasks to his claimed subordinate managers including the claimed COO, the chief of engineering and production

[3] 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.* An executive directs the management of the organization, major component, or essential function of a given organization by controlling the work of managerial or lower-level executive employees. *See generally* 2 *USCIS Policy Manual* L.6(D), https://www. uscis.gov/policy-manual. *See also BlueStar Cabinets, Inc. v. Jaddou*, No. 21-10116, 2022 WL 4364734, at *7 (5th Cir. Sept. 21, 2022) (holding that "'[d]irect[ing] the management of the organization' necessarily includes directing managers of the organization.").

[4] We note that the Petitioner was free to file a motion to reopen and submit additional evidence.

department, and the factory manager. In fact, the Beneficiary's duties discuss him following up with all "departments" including finance, procurement, design, production, and shipping departments; however, the provided foreign organizational chart did not list finance, procurement, or shipping departments. Similarly, the Beneficiary's duties indicated that he was tasked with directing other employees engaged in marketing, yet the foreign organizational chart reflected no marketing employees. The Petitioner must resolve discrepancies and ambiguities 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, we conclude that our prior decision to affirm SCOPS' denial of the petition was in accordance with applicable law and policy. The Petitioner has not demonstrated that our prior decision was based on an incorrect application of law nor demonstrated the Beneficiary's eligibility for the requested benefit. Therefore, the motion to reconsider must be dismissed.

ORDER: The motion to reconsider is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.