U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9329070

Date: SEPT. 3, 2020

Appeal of California Service Center Decision

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

The Petitioner, which manages a commercial property and distributes oil and gas equipment and personal hygiene products, seeks to continue the Beneficiary's temporary employment as its vice 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 Petitioner did not establish, as required, that it would employ the Beneficiary in an executive capacity under an extended petition. We summarily dismissed the Petitioner's subsequent appeal, determining that the Petitioner did not specifically identify any erroneous conclusion of law or statement of fact as the basis for the appeal.[1]

The matter is now before us on a combined motion to reopen and motion to reconsider. In support of its motion to reopen, the Petitioner submits additional evidence in support of its claim that it timely filed a brief in support of its appeal that we did not consider prior to issuing the summary dismissal decision.

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. We will grant the motion to reopen the appeal in order to consider the Petitioner's appellate brief.[2] However, upon *de novo* review, the Petitioner has not overcome the grounds for denial of the petition. Accordingly, petition will remain denied.

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

[1] The Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that it would submit a brief and/or additional evidence to our office within 30 days of filing the appeal in June 2019. At the time of our decision in November 2019, the record reflected that no brief or additional evidence had been incorporated into the record.

[2] The evidence submitted on motion is sufficient to establish that the Petitioner timely submitted a brief in support of its appeal. As we are granting the Petitioner's motion to reopen the appeal, the motion to reconsider is moot and will be dismissed.

application for admission into the United States. 8 C.F.R. § 214.2(l)(1). 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. 8 C.F.R. § 214.2(l)(3)(ii).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue to be addressed is whether the Petitioner established that it will employ the Beneficiary in an executive capacity under the extended petition. The Petitioner has not claimed that she would be employed in a managerial capacity.

"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 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. Job Duties

At the time of filing the Petitioner indicated its intent to continue the Beneficiary's employment as its vice president. The Petitioner noted that it is "made up of a number of different business operations: international oil and gas equipment merchandising; property ownership and management; and also production and distribution of eco-friendly general cleaning materials and personal hygiene products."

The Petitioner provided a job description for the Beneficiary, which grouped her responsibilities into five categories and indicated the approximate percentage of time devoted to each category:

- 25% Operational Policies and Procedures
- 20% Logistics Management Policies and Procedures
- 15% Finance and Risk Management

20% Administration
20% Corporate Strategy

The Petitioner also provided a bulleted list of duties or objectives specific to each category. The description, while lengthy, is repetitive and primarily focuses on the Beneficiary's level of authority without providing insight into the nature of her day-to-day work. For example, the Petitioner indicated that the Beneficiary would spend 25% of her time establishing "operational policies and procedures" related to sales and marketing, logistics carrier/agent supervision and control, purchasing, documentation control, recordkeeping, customer relationship management, commercial facility management and post-sale product service management. The Petitioner indicates that the Beneficiary is the senior U.S.-based employee within its international organization, and we do not dispute her authority over company policies. However, the Petitioner cannot meet its burden to provide a detailed description of the duties to be performed by submitting a broad overview of her policy-making authority. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, 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).

After stating that the Beneficiary's responsibility for "operational policies and procedures" will include establishing policies related to logistics, the Petitioner indicated that an additional 20% of her time will be devoted to setting "logistics management policies and procedures" in the international supply chain. The Petitioner indicates that these policies and procedures will relate to freight carrier options, inventory and purchasing management, product delivery logistics management and control in Nigeria, maximizing utilization of technology options, reducing documentation problems, mitigating risk, and evaluating insurance options. However, the Petitioner has no logistics workers and the employees of the Petitioner's Nigerian affiliate who are claimed to be under the Beneficiary's authority are not logistics workers. The record does not establish the extent, if any, of the Beneficiary's authority over contracted carriers. Overall, the Beneficiary's tasks in this category are poorly defined and again focus on her level of authority rather than on her typical job duties within the context of the Petitioner's business.

We note a similar lack of specificity in evaluating the Beneficiary's "corporate strategy" responsibilities. The Petitioner indicates that the Beneficiary will spend 20% of her time "formulating and executing market entry strategies," discovering additional products and markets for the company, discovering new business opportunities and developing acquisition strategies, and "establishing a vision" and "strategic plans" for overseas opportunities. The Petitioner stated in its supporting letter that it intended to expand its operations into the U.S. health care market by acquiring a "congregate living health care facility" within three months of filing the petition in May 2018. However, the record does not reflect that this acquisition ever occurred, nor are there any other examples of the Beneficiary's duties related to "corporate strategy."

Overall, the Petitioner did not provide an adequate explanation of the Beneficiary's activities in the course of her daily routine. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros.*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In a request for evidence (RFE), the Director advised the Petitioner that the submitted position description is too general and vague to establish what she does on a day-to-day basis within the context of the company's business activities, and was not accompanied by supporting evidence demonstrating her performance of the stated responsibilities. The Director requested that the Petitioner further describe the Beneficiary's typical executive duties in "concrete detail" and the percentage of time to be spent on each specific duty. The Director also requested documentary evidence to substantiate the claimed job duties.

In response to the RFE, the Petitioner maintained that that it had already provided "very extensive and clear details of the Beneficiary's executive duties" and objected to the Director's determination that the description was vague or general, noting that "the regulations do not require submission of extensive evidence of the alien's prior and proposed employment." The Petitioner also emphasized that it had submitted the same duty description in support of prior L-1A petitions filed on the Beneficiary's behalf. The Petitioner did not otherwise respond to the Director's request for a more detailed description of the Beneficiary's position.

For the reasons discussed, we agree with the Director's determination that the position description provided at the time of filing did not provide a detailed description of the services to be performed by the Beneficiary, as required by 8 C.F.R. § 214.2(l)(3)(i). Although the Petitioner indicates that it submitted the same position description to USCIS in support of a previous petition, an adjudicator's fact-finding authority should not be constrained by any prior petition approval, but instead, should be based on the merits of each case.[3]

The regulation states that a petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. *See* 8 C.F.R. § 103.2(b)(8). Further, the regulation at 8 C.F.R. § 214.2(l)(3)(viii) provides that a petition shall be accompanied by "such other evidence as the director, in his or her discretion, may deem necessary." The Director's request for a more detailed position description was within his discretionary authority. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the Petitioner asserts that USCIS "can and should reasonably assume that someone is in charge; someone is the ultimate authority; someone must authorize contracts, purchases, logistics, financing, etc." The Petitioner contends that it is "evident that even without the minutiae of detail requested by the [Director] by virtue of the Beneficiary's position atop such an organization with this level of activity, she qualifies as an executive for L-1 purposes." Finally, the Petitioner states that "as a matter of business logic, once the evidence establishes tha[t] an organization is of sufficient size, business volume and operational history, it is obvious, without the need for excessive detail, that the senior executive of that organization clearly exercises the executive duties needed in order for the organization to reach that level in the first place, and which qualifies the executive for L-1 status."

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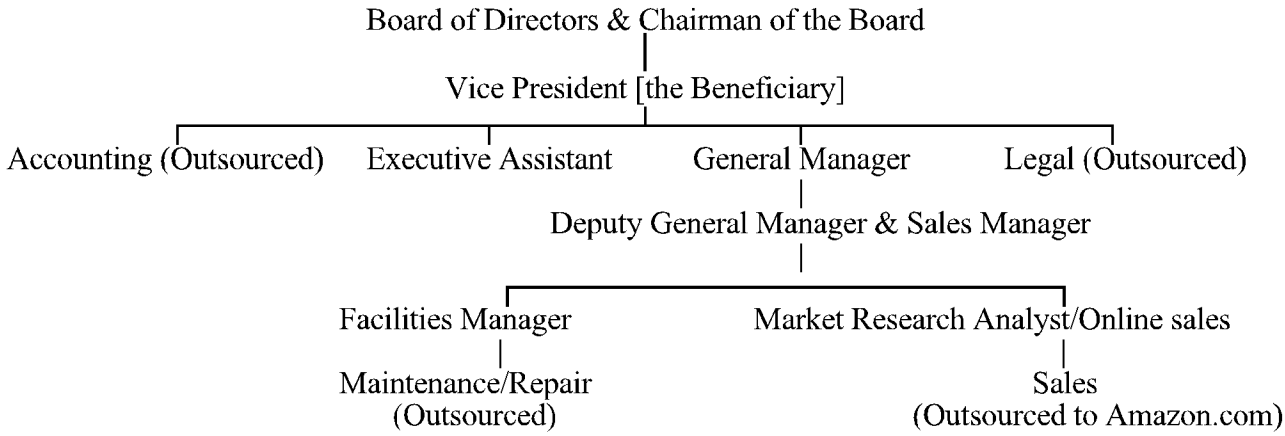
[3] *See* USCIS Policy Memorandum PM-602-0151, *Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status* 3 (October 23, 2017), http://www.uscis.gov/legal-resources/policy-memoranda.

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 may exercise discretion over the Petitioner's policies and objectives and possess the requisite level of authority with respect to discretionary decision-making, the position description alone is insufficient to establish that her actual duties would be primarily executive. As acknowledged by the Petitioner, we must also consider the nature of the business, its structure and its staffing levels in order to determine whether the company can support the Beneficiary in an executive capacity.

B. Staffing and Organizational Structure

The Petitioner stated that it "currently runs its operations with human resources comprising six U.S. employees, additional work force operating [at the Petitioner's affiliate] in Nigeria, independent contractors who handle the legal, tax and accounting needs of the company."

The Petitioner submitted an organizational chart which depicted the following U.S.-based staff:



The chart indicates that there are four employees working in the United States under the Beneficiary. In addition, the chart indicates that the Deputy General Manager directly supervises a Country Manager based in Nigeria who oversees: (1) an "Oil and Gas Equipment Team" that includes three sales engineers and two maintenance engineers; and (2) a "Cleaning and Hygiene Products Sales Team" led by a marketing/commercial manager who oversees an assistant marketing manager, three marketing executives, and a delivery and logistics employee.

An updated chart submitted in response to the RFE included new employees – a sales and marketing manager who reports to the deputy general manager, a sales and marketing associate who reports to the market research analyst, and a second sales and marketing associate who reports to the sales and marketing manager.

The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). For

this reason, we will not consider more recent hires who were not on the Petitioner's payroll as of May 2018. The Petitioner's IRS Forms W-2, Wage and Tax Statements and quarterly wage reports for 2018 demonstrate that the Petitioner employed the Beneficiary, the general manager, the deputy general manager/sales manager, facilities manager, market research analyst and executive assistant at the time of filing.[4]

The Petitioner indicated that the 11 Nigeria-based staff identified on its chart are on its foreign affiliate's payroll, but it did not indicate whether it compensates its affiliate for their salaries or otherwise support its claim that they work under the Beneficiary's supervision and carry out services for the petitioning U.S. company. While the Petitioner demonstrated that it supplies two lines of products to its affiliate operations in Nigeria, it did not provide sufficient evidence to establish that it ultimately manages the entire Nigeria-based marketing, sales, distribution, and technical support operations for these products through the overseas employees as claimed.

The Petitioner also provided brief position descriptions for its staff at the time of filing. It stated that the Beneficiary's direct subordinate, the general manager, oversees all lower level staff, implements operational policies, logistics and management plans, and liaises with the foreign entity's department managers. The Petitioner indicated that the deputy general manager oversees the sales function, "directs the acquisition of oil and gas industry products as well as hygiene products" and performs other duties assigned by the general manager. However, the Petitioner did not indicate that it employs any purchasing or logistics staff to perform the company's main functions of acquiring and coordinating the export of these products. The Petitioner stated that the facilities manager is responsible for its commercial property, including a banquet hall that hosts events, but the record reflects that the facilities manager has no subordinate employees and did not work on a consistent basis in 2018, as she was off the Petitioner's payroll for a period of several months.

In the RFE, the Director advised the Petitioner that the job descriptions provided for the subordinate employees were too general to establish the nature of their typical duties, and were not accompanied by sufficient evidence that the subordinates actually carry out the broad functions assigned to them. The Director noted, for example, the lack of evidence showing who would support the facilities manager and advised the Petitioner that it did not sufficiently document or explain how the foreign staff has been assigned to primarily support its U.S. business activities.

In response, the Petitioner submitted the same brief job descriptions provided at the time of filing. The Petitioner also included flow charts which describe 13- and 14-step processes for the handling of a purchase order received from overseas; however, the processes described involve three employees (a sales and marketing manager and two sales and marketing associates) whose positions did not exist at the time of filing. Neither flow chart mentions any duties performed by the deputy general manager position.

In the denial notice, the Director found that the Petitioner had not established how it can support the management structure described in the company's organizational chart, and further found that the evidence did not sufficiently articulate or document how the foreign staff falls within the scope of the Beneficiary's management and control.

[4] The record reflects that the facilities manager worked intermittently in 2018. This employee earned $2700 in the first quarter, $8100 in the second quarter, $0 in the third quarter, and $5000 in the fourth quarter of 2018.

On appeal, the Petitioner emphasizes that its "small core staff of 4 professionals" working under its executive is sufficient and notes that "it is not the Service's job to determine the effectiveness of the management structure or even how they are structured in this small entity." The Petitioner also clarifies that the foreign staff identified on the organizational chart provide their services primarily to the foreign affiliate, but notes that to the extent that they perform duties in support of the U.S. company, they do so under the Beneficiary's "executive supervision." The Petitioner suggests that the Director impermissibly denied the petition based only on the size of the company, without considering the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization, as required by section 101(a)(44)(C) of the Act.

When considering the Petitioner's staffing and the relative needs of the organization, we must consider the nature of the Petitioner's business activity. The Petitioner indicates that its main activities include purchasing oil and gas equipment which is exported to its Nigerian affiliate and purchasing and exporting hand sanitizer and hygiene products that are manufactured by a contractor in California and then marketed and sold by the foreign affiliate. It also owns a multi-use commercial property that includes a church, a dwelling, and a banquet hall that is available to rent for events.

The Petitioner emphasizes its gross income ($901,526 in 2017) and the complexity of its multi-faceted business in support of its claim that it has a reasonable need for an executive. However, we note that the submitted bank statements for 2017 and 2018 suggest that the company is involved in a limited number of purchase and sales transactions. For example, in 2018, the Petitioner received monthly deposits ranging from $0 to under $7000 for six months out of the year, despite claiming to be actively engaged in at least three different lines of business. During that year, the Petitioner received a $435,000 wire transfer from [redacted] a subsidiary of its Nigerian affiliate, annotated "part payment for investment" and the bank statements reflect only one other large deposit.

In addition, although the Petitioner emphasizes the complexity of its business and indicates that fulfillment of each purchase order requires extensive research, the record reflects that the Petitioner works with a limited number of parties in carrying out its activities. The evidence indicates that it purchases used oil and gas refinery equipment from a Texas supplier and ships it to [redacted] a Nigerian company owned by its foreign affiliate. It purchases all of its hygiene products from the same manufacturer and ships them to its foreign affiliate, which sells them to its Nigerian customers. An overview of the business also indicates that the Petitioner supplies gas pumps to the Nigerian market; however, these products are designed by the affiliate's engineers and manufactured according to their specifications by a Chinese manufacturer. The Petitioner refers to the Chinese manufacturer as its "partner" but has not documented this relationship or provided evidence of its role in supplying these products.

The Petitioner documented its ownership of a banquet hall and an adjacent church, and appears to receive some rental income, but the Petitioner did not show the extent of its business activity beyond the passive act of owning the property and collecting rent. This part of its operation is staffed by a facilities manager who appears to work only intermittently and it remains unclear who performs operational tasks involved in running the banquet hall, or how many people (employees or contractors) are needed, and how frequently, to perform those tasks. Although the Petitioner indicated that it relies on contractors for roof repairs, security systems, and elevator maintenance at the property, it did not identify how the banquet facility operates with only one intermittent employee.

Overall, with the exception of the commercial property and the claimed sale of hygiene products on Amazon.com, the record reflects that the organization's substantive business activity takes place in Nigeria, with the petitioning U.S. entity playing a peripheral role as a purchasing entity and supplier. The Petitioner indicates that it employs the Beneficiary in an executive capacity, a general manager, a deputy general manager, a facilities manager, a market research analyst and an executive assistant, but does not claim to have any staff whose main role is related to purchasing or coordinating logistics and export activities, which are the U.S. company's primary activities. The Director reasonably questioned the Petitioner's employment of three managers and an executive in a six-person company and requested more detailed information regarding who was performing the operational and administrative tasks of the company at the time of filing. As noted above, the Petitioner did not adequately respond to this request.

The Petitioner maintains that, regardless of whether the Beneficiary's subordinates are bona fide managers, the staff is sufficient to support an executive position because the Petitioner also relies on contractors and overseas workers. At the same time, although some of the Petitioners' key claims regarding the Beneficiary's executive authority rest on her asserted authority over workers in Nigeria, it concedes on appeal that those workers are primarily focused on providing services for the Petitioner's overseas affiliate.

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.

The Petitioner has consistently indicated that the Beneficiary is the senior employee in the U.S. company and has authority to establish its goals and policies. However, it did not describe her executive duties in detail and the totality of the evidence does not establish that the company, based on its staffing, structure, and the nature and scope of its business activities, can support her in a position that is primarily executive in nature.

III. CONCLUSION

The Petitioner did not establish that it would employ the Beneficiary in the United States in an executive capacity. Accordingly, although we have reopened the matter in order to consider the appellate brief, the petition will remain denied.

ORDER: The motion to reopen is granted in part and dismissed in part.

FURTHER ORDER: The motion to reconsider is dismissed.