U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF O-I-, LLC

DATE: SEPT. 7, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, which claims to be engaged in "procurement, export, import, and investments," seeks to extend the Beneficiary's temporary employment as its president under the L-1A nonimmigrant classification for intracompany transferees.[1] *See* 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in an executive capacity under the extended petition.[2]

On appeal, the Petitioner submits additional information regarding the positions subordinate to the Beneficiary and asserts that it has "a full team to take care of all non-executive matters." The Petitioner maintains that it established by a preponderance of the evidence that the Beneficiary will be employed in an executive capacity.

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 managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. 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. Section 101(a)(15)(L) of the Act.

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for a one-year period (April 13, 2015, to April 12, 2016). 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.

[2] The Petitioner did not claim that the Beneficiary would be employed in a managerial capacity.

The statute defines an "executive capacity" as 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.

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 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 Director found that the Petitioner did not establish that it will employ the Beneficiary in an executive capacity under the extended petition. Specifically, the Director emphasized that, although the Petitioner provided an organizational chart with job titles for its employees, it did not provide position descriptions for the Beneficiary's direct subordinate or any other employees. As such, the Director determined that the record did not show that the Petitioner's employees would relieve the Beneficiary from significant involvement in non-executive duties required for the day-to-day operations of the business.

On appeal, the Petitioner submits job descriptions for five positions and asserts that the record establishes by a preponderance of the evidence that the employees "will be taking care of the day-to-day activities, allowing [the Beneficiary] to handle and focus on all executive matters only."

When examining the executive capacity of the Beneficiary, we will look first to the Petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we consider 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 business and its staffing levels.

### A. Duties

Based on the definition of executive capacity, the petitioner must first show that a given 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 Petitioner is self-described as a "procurement, export, import and investments" company, although, as discussed further below, the record does not further describe or document the nature of the business. On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner listed the Beneficiary's duties as president as follows:

- Develop a strategic plan to advance the company's mission and objective and to promote revenue, profitability, and growth as an organization.
- Oversee company operations to insure production efficiency, quality, service and cost effective management of resources.
- Plan, develop, and implement strategies for generating resources and/or revenues for the company.
- Approve company operational procedures, policies, and standards.

In a request for evidence (RFE), the Director asked the Petitioner for a more detailed description of the Beneficiary's duties, the percentage of time spent on each, and examples of her expected executive decisions. In response, the Petitioner stated that she "has sole and discretionary authority and exercise[s] wide latitude in discretionary decision making," and "reports to no one." The Petitioner mentioned that she controls the company's direction, operations, and development, has full authority to make all personnel decisions, and delegates responsibility for management and day-to-day operations to the company's general manager. The Petitioner provided the following description:

1. Legal Compliance (5%)
   a. Assures the filing of all legal and regulatory documents and monitors compliance with relevel [*sic*] laws and regulations.
2. Mission, policy and planning (10%)
   a. Helps the top management to determine [redacted] values, mission, vision, and short- and long-term goals.
   b. Helps the top management monitor and evaluate[] [redacted] relevancy to the community, its effectiveness and its results.
   c. Keeps the top management fully informed on the condition of [redacted] and on all the important factors influencing it.
   d. Keeps informed of developments in human services, governance, philanthropy and fund development.
3. Management and administration (35%)
   a. Provides general oversight of the company's activities, manages the day-to-day operations, and assures a smoothly functioning, efficient organization.
   b. Assures organizational stability through development and implementation of standards and control, systems and procedures, and regular evaluation.
   c. Assures a work environment that recruits, retains, and supports quality staff.
   d. Assures process of selecting, developing, motivating, and evaluating staff.

e. Specifies accountabilities for management personnel and evaluates performance regularly.

4. Governance (20%)
   a. Helps the Company articulate its own role and accountabilities and helps evaluate performance regularly.
   b. Manages the company's due diligence process to assure timely attention to core issues and focusses [sic] on long-range strategic issues.
5. Financing (10%)
   a. Oversees the fiscal activities of the organization including budgeting, reporting and audit.
   b. Assures an effective fund development program.
   c. Participates actively in identifying and cultivating and soliciting investment prospects.
   d. Promotes programs and services that are produced in a cost-effective manner while maintaining an acceptable level of quality.
6. Community Relations (20%)
   a. Acts as advocate within the public and private sectors for issues relevant to the company and its services.
   b. Listens to clients and the community to improve services and generate community involvement.
   c. Services [*sic*] as chief spokesperson for the company assuring proper representation to the company to the community.

This description, while lengthy, provides little insight into what the Beneficiary does on a day-to-day basis within the context of the Petitioner's business. First, we note that, although the Petitioner's general manager, [redacted] ostensibly signed the letter containing the description, it appears that he did not write or review the letter. The letter contains repeated references to [redacted] a company name that is not mentioned elsewhere in the record of proceeding and has no apparent relation to the Petitioner or its United Arab Emirates parent company.[3] As the Beneficiary is clearly not spending any portion of her time assisting with the management of the referenced company, the credibility of the job description as a whole is in question.

Even if we look beyond this unexplained discrepancy, the position description is too general to convey the nature of the Beneficiary's typical duties. The Petitioner's statement that the Beneficiary "provides general oversight of the company's activities," "assures organizational stability," evaluates company performance, and acts as company spokesperson suggest her level of authority, but do not sufficiently detail what it is she actual does as president of the company. 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.

[3] An Internet search for this company name indicates that the referenced business is a privately held entity located in Pakistan.

*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).

The deficiencies in the job description are compounded by the lack of information regarding the nature of the Petitioner's business activities. As noted, the Petitioner stated that it is engaged in "procurement, export, import and investments." The Petitioner's 2015 federal tax return shows that its principal activity is "trading goods," but it also provided a profit and loss statement showing that it receives "consulting income" along with "sales" income. The general manager's job description states that he manages the Petitioner's store, but the only address provided for the company appears to be an office or office suite, rather than a storefront. The position description for the business development manager, who reports to the general manager, indicates that this employee will "lead and deliver global technology consulting engagements" but the persons reporting to this employee do not appear to be technology workers. The Petitioner has not submitted invoices or other evidence of individual business transactions that might clarify what type of business it operates.

Even though the Beneficiary holds the senior position within the organization, 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. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive in nature. Sections 101(A)(44)(B) of the Act. The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to decision-making; however, the Petitioner has not provided a detailed, credible description of her job duties, nor has it provided material information regarding the nature of the business to give context to the Beneficiary's job description.

B. Staffing

The Petitioner stated that it had nine workers at the time of filing in April 2016. In response to the Director's RFE, the Petitioner provided an organizational chart and employee list, as well as copies of its payroll records, state quarterly wage reports, quarterly federal tax returns, and IRS Forms W-2, Wage and Tax Statement for 2015 and 2016. As noted, the Petitioner has supplemented the record on appeal with position descriptions for five of the positions listed on the organizational chart.

The organizational chart identifies the Beneficiary as president/CEO and shows that she supervises a general manager and an in-house counsel. The general manager is depicted as supervising: (1) an administration department staffed by a manager and an assistant; (2) a marketing department staffed by a business development manager, a sales executive (trading department), and a front office & customer service executive (customer service department); and (3) a finance department staffed by an accounting and procurement assistant. The chart appears to reflect the Petitioner's structure at the time it submitted the RFE response in December 2016, as five of the nine employees named on the chart were not on the payroll in April 2016.

However, in reviewing the Petitioner's staffing, we will first look at the structure of the company at the time of filing. The Petitioner paid a total of eight people in April 2016, including the Beneficiary

and the employees later identified as the general manager, administrative manager, and sales executive (trading department). The record does not contain job titles or duties for the other persons employed at the time of filing and The Petitioner did not submit the required statement describing the staffing of the new office and the positions filled during the first year. *See* 8 C.F.R. § 214.2(l)(14)(ii). As such, the record contains incomplete information regarding the structure of the company at the end of its initial year of operations.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and they must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise 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.*

Here, while the Beneficiary appears to have the appropriate level of authority, the Petitioner has not established that, as of the date of filing, she was primarily concerned with the broad policies and goals of the organization, that the day-to-day oversight of the business rested with a subordinate tier of management staff, or that she would be relieved from substantial involvement in the day-to-day operations of the business.

As noted, the record lacks a credible detailed position description for the Beneficiary and a consistent description of the nature of the business. It also contains incomplete information regarding the types of positions filled during the first year, and the position descriptions provided on appeal for the company's employees have only added to the confusion regarding the nature of the business. The general manager's description indicates that he manages the Petitioner's store, but there is no other mention of a store in the record and, for this reason, we cannot determine if the job description is credible. The Petitioner provides a position description for the in-house counsel but he was hired six months after the petition was filed. It is unclear whether the business development manager position was created after the date of filing, or was previously held by a different person. Regardless, the record does not support a finding that this employee was hired to "lead and developer global technology consulting engagements" because the record does not show that the Petitioner is a technology consulting company.

Citing *Matter of Z-A-*, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016), the Petitioner notes that it need only establish that the Beneficiary's duties are *primarily* executive. The Petitioner emphasizes that it clearly met that burden as it showed that the subordinates perform all non-executive matters and that the Beneficiary will "handle and focus on all executive matters only." However, the record does not contain sufficient evidence to establish what the Beneficiary does on a

day-to-day basis, what the petitioning company does, or how non-executive functions associated with the business were distributed among the subordinate employees on staff at the time of filing.

The Petitioner once again contends that the Beneficiary's position has all the necessary elements of an executive position, but, again, does not sufficiently elaborate regarding the nature of the Beneficiary's duties within the context of the business as it existed at the time of filing. We agree with the Director's determination that the evidence is insufficient to establish that the Beneficiary would be employed in an executive capacity under the extended petition.

## III. CONCLUSION

The appeal must be dismissed as the Petitioner did not establish that it will employ the Beneficiary in an executive capacity.

**ORDER:** The appeal is dismissed.

Cite as *Matter of O-I-, LLC*, ID# 621122 (AAO Sept. 7, 2017)