U.S. Citizenship and Immigration Services

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

In Re: 10376544

Date: SEPT. 23, 2020

Appeal of California Service Center Decision

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

The Petitioner, a lumber processing and trade company, seeks to continue the Beneficiary's temporary employment as its chairman and president under the L-1A classification for nonimmigrant 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 it would employ the Beneficiary in a managerial or executive capacity. The matter is now 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, the Petitioner has not met this burden. Accordingly, 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 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). 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 would employ the Beneficiary in an executive capacity under the extended petition. Although the Director also considered whether the Beneficiary would be employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act, the Petitioner has not claimed that the Beneficiary's position is managerial in nature.

"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 record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying executive position. 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.

A. Job Duties

At the time of filing in October 2019, the Petitioner indicated that the Beneficiary has performed and will perform the following duties as chairman and president:

> **Current**
> At the sawmill starting up stage, Chairman is more involved in daily operation to make sure the company settles down properly.
>
> - Make procedural decisions about the company's operation.
> - Review the performance reports form General Manager and supervisors including operation reports and financial statements.
> - Reinforce the execution of operation and financial decision. Revise the procedure and direction as needed.
> - Supervise and control the work of management team. Make sure the company is improving towards the planned direction.
>
> **Future**
> Along with the company settling down, Chairman is more focusing on long-term development.
> - Oversee and review the performance of entire company. Reinforce the execution of business plans.
> - Complete the organization structure. Monitor and advise the right staff is placed at the right position.

- Review, adjust and approve the business strategies and plans. Supervise the implementation of the strategies and plans.
- Develop new business scope.
- Oversee the company Board; organize the board meetings on timely manner.
- Create and promote the organization culture and values. Influence employees to achieve the company's goal and self-improvement together.

In a notice of intent to deny (NOID), the Director advised the Petitioner that the submitted job description did not demonstrate what the Beneficiary does on a day-to-day basis. We agree with this assessment of the initial job description as it focuses on the Beneficiary's responsibility for company strategies, policies, objectives and oversight without providing any specific examples or any insight into the nature of his daily tasks within the context of the Petitioner's business activities. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *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); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The Director's NOID appropriately emphasized the need for additional details about the Beneficiary's typical duties as well as information regarding the amount of time he allocates to specific tasks.

The NOID also provided notice of potentially derogatory information obtained by a USCIS officer who conducted an administrative site visit conducted in May 2019. The officer had attempted to visit the Petitioner's location at [redacted] North Carolina, which is also the address listed as the Beneficiary's worksite on the instant Form I-129, Petition for a Nonimmigrant Worker. The USCIS officer found that the company was not operating at that location.

In its response to the NOID, the Petitioner explained that the [redacted] office "used to be where all managers had meetings but is not the plant where the company conducts its regular daily business operations. The Petitioner stated that "now management usually has meetings at the mill," but did not explain why it indicated on the Form I-129 that the Beneficiary would work at the [redacted] office with no other location mentioned. In addition, the Petitioner noted that the Beneficiary is also managing "other trading business and manufacturing business internationally" and is therefore not present at the sawmill for "daily operation and reporting." It indicated that he visits the mill "weekly when he is in the States or monthly when he is travelling internationally."[1]

With respect to the Beneficiary's job duties, the Petitioner stated that he is "released from doing any of the day-to-day operation duties and focuses on his executive duties, which ha[ve] been described in the initial filing." The Petitioner provided the following list as "some samples of some of his daily jobs":

a. Review and monitor accounts payable and accounts receivable to ensure bills are paid correctly and invoices are received on term.

[1] According to the information provided on the Form I-129, the Beneficiary last traveled internationally prior to August 22, 2017, which was the date of his most recent admission to the United States when the petition was filed in October 2019.

b. Combine the inventory status and market needs to make production plan on weekly basis.
c. Monitor sales and sales plan to control the inventory and cash flow.
d. Study market analysis and discuss with business partners to product the market strands and make strategic business decisions.
e. Review monthly, quarterly and yearly financial reports to maintain a healthy financial condition.
f. Combine production, sales, inventory and financial data to manage cash flow and working capital.
g. Review performance of management level employees. Make decisions on hiring, firing and promotion.
h. Attend shareholder meetings to share the company's performance and announce strategic decisions such as development direction, sales target, production plan and financial forecast.

The Petitioner emphasized that the Beneficiary "makes high level and strategic management decisions, such as production plans, selling targets, financial forecast and cash flow management."

In the denial decision, the Director acknowledged the Petitioner's explanation regarding the business location but found that it had not provided an adequate explanation for its use of the [redacted] North Carolina address on the petition. The Director also observed that the Petitioner "failed to provide additional evidence regarding the beneficiary's duties" in its rebuttal to the NOID.

On appeal, the Petitioner maintains that it provided "detailed descriptions" of the Beneficiary's duties in its original submission and in response to the NOID and asserts that it "again submits the detailed job descriptions for the beneficiary" in support of the appeal.

Upon review, it appears that the Director did not consider the Petitioner's list of eight "sample" duties provide in response to the NOID. However, these additional duties, when considered with the broad job description provided at the time of filing, did not meet the Petitioner's burden to provide a detailed description of the services to be performed by Beneficiary. We note that several of these sample duties mirror the responsibilities assigned to the Petitioner's general manager, the Beneficiary's direct subordinate. Specifically, according to the Petitioner's statements, the general manager is also responsible for making hiring and firing decisions and conducting performance reviews, regularly reviewing finances and overseeing cashflow to ensure the company's financial health, proposing and directing the implementation of business plans and strategies, reviewing market analyses to make business decisions, and combining production, sales, inventory, personnel and accounting information. The Petitioner did not provide any explanation for this overlap in duties between its two senior employees.

Further, the list of sample duties was only claimed to represent "some of [the Beneficiary's] daily jobs" and therefore did not purport to offer a complete description of his actual day-to-day duties, nor did it indicate how the Beneficiary would allocate his time between different areas of responsibility and specific tasks to support a claim that his actual duties would be primarily executive in nature. The Petitioner lists the Beneficiary's duties as including both vague and non-specific executive tasks and administrative or operational tasks (such as reviewing accounts payable and receivable) but did not

quantify the time the Beneficiary spends on these different duties. For this reason, we cannot determine whether the Beneficiary would be primarily performing the duties of an executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Finally, in support of the appeal, the Petitioner submits an additional description of the Beneficiary's duties. Unlike previous versions, the new description assigns a percentage of time to each area of responsibility. However, the description is otherwise similar to those provided previously because it focuses on the Beneficiary's level and scope of authority rather explaining the tasks that occupy his time on a day-to-day basis. For example, the Petitioner indicates that he would spend 35% of his time on oversight and review of "the overall performance of the entire company," and an additional 30% of his time on responsibilities related to company plans and strategies, including mapping "long term business development strategies," planning the company's "road map and strategy for growth," reviewing the annual business plan, and making the final decision on "business strategies and plans and programs."

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. Co.,* 724 F. Supp. at 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's activities in the course of his daily routine, despite the fact that he has already held the offered position since 2016 and information regarding his typical duties should be readily available.

The fact that the Beneficiary occupies the top placement within the Petitioner's organizational hierarchy and serves as its chairman and president does not necessarily establish that he would be employed 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, while the Beneficiary may manage or direct the business and possess the requisite level of authority over the company's policies, strategies, and personnel, his discretion over these business matters is not sufficient to establish that his actual duties would be primarily executive in nature.

As noted, we also must consider the submitted position descriptions within the context of the Petitioner's business, which requires a review of the nature of the business, its structure, and its staffing levels. For the reasons discussed below, the Petitioner has not established that the staff in place at the time of filing were able to support the Beneficiary in a position in which he would be required to perform primarily executive-level duties.

B. Staffing and Organizational Structure

As noted, the Petitioner indicates that it operates a lumber processing and trade business and stated that it had 15 employees when it filed the petition in October 2019. The Petitioner submitted an organizational chart identifying the Beneficiary's direct subordinates as a general manager and a secretary. The chart depicts an office manager who reports to the secretary, while all other staff report directly or indirectly to the general manager. Those staff include a mill manager who supervises four equipment operators, four lumber packers, two loader operators, and a truck driver. Finally, the chart shows that the company has vacancies for a forester, a safety manager and a maintenance employee.

The Petitioner submitted evidence of wages paid to staff in 2018 and the first half of 2019 and submitted a personnel list showing the hire date for employees identified on the chart, some of which were hired in the third quarter of 2019 and therefore not reported on the submitted payroll documentation. Neither the general manager nor the secretary were on the company's payroll.

In the NOID, the Director advised the Petitioner that a USCIS officer had spoken with the company's general manager [redacted] while conducting the site visit. [redacted] informed the officer that he is not employed by the organization and only spends 30 minutes per week at the sawmill. He identified [redacted] as the manager who runs the day to day operations. The Director observed that [redacted], and [redacted] the secretary) are listed on the organizational chart but are not included on the wage and payroll documentation. The Director also noted additional inconsistencies between the submitted organizational chart, payroll records and quarterly wage reports and advised the Petitioner that it is unclear who is employed by the organization.

In response, the Petitioner submitted a letter from [redacted] who stated that he and [redacted] are "minority shareholders participating and in charge of company's management and reporting to beneficiary." He explained that he spends only 30 minutes each week at the Petitioner's mill because he "also manages other sawmills that he owns" but noted that he communicates with the mill manager and secretary daily. [redacted] also addressed the inconsistencies between the initial organizational chart and the payroll and quarterly wage documentation, noting that there was significant employee turnover in the summer of 2019.

In support of its response to the NOID, the Petitioner submitted: an updated organizational chart showing some additional turnover among its lower level staff; a copy of its North Carolina quarterly wage report for the third quarter of 2019; and a master staff list that appears to include all personnel who joined or left the company in 2019. This evidence showed that the office manager, who according to [redacted] is the person charged with managing the day-to-day operations of the mill, left the company in August 2019 although she appeared on the organizational chart submitted at the time of filing and in response to the NOID.

In the denial decision, the Director concluded that the Petitioner had not fully resolved the inconsistencies discussed in the NOID and had not explained why none of the employees were working at the location listed on the Form I-129. The Director noted, for example, that the Petitioner's quarterly wage report for the third quarter of 2019 listed over 30 employees but indicated that it employed 12 employees in each month during the quarter.

On appeal, the Petitioner maintains that there are "no inconsistencies" between the submitted payroll evidence and organizational charts. It emphasizes that it submitted tables showing the dates of employment for each of its employees who worked in 2019 and questions whether the Director reviewed that evidence. The Petitioner also maintains that it submitted evidence at the time of filing that its mill operations are in [redacted] North Carolina and never claimed that all of its staff work at the [redacted] location indicated on the petition.

Upon review, while the Petitioner has resolved some of the inconsistencies observed by the Director, some of which were caused by frequent turnover among lower-level staff, the record does not clearly establish the management structure in place at the Petitioner's mill operation. The Petitioner has

consistently stated that the Beneficiary relies on the general manager, secretary and mill manager to handle the day-to-day supervision of the mill's activities, while [redacted] stated that the office manager [redacted] is in charge of managing the mill's day-to-day operations. However, there are ambiguities in the record surrounding the employment of each of these key subordinate employees.

With respect to the general manager position, we note that the Petitioner's initial evidence in this matter included a copy of its initial L-1A petition filed on the Beneficiary's behalf in 2016. That petition included a letter indicating that the Petitioner employed [redacted] as its full-time general manager at a salary of $55,000. [redacted] now claims, through his statement in response to the NOID, that his management responsibilities are carried out through e-mail, phone calls and a 30 minute weekly visit to the mill, that he is not an employee, that he manages several other unrelated sawmill operations, and that he does not receive a salary but is paid by bonus. The Petitioner notes that it submitted a corporate resolution dated in 2016 which indicates that [redacted] is to receive 10% of the company's net profits as a "management bonus" but it has not explained its earlier statement to USCIS that he also earns a salary as a full-time employee.

Further, although the Petitioner submitted a position description for its general manager, it includes responsibilities for "management rules," personnel and financial responsibilities and business planning duties which appear to overlap with the Beneficiary's stated duties. The Petitioner indicates that he spends much of his time directing sales and marketing activities, including direction of a "sales team" that does not appear to exist within the company. Based on the foregoing, we cannot determine how much time [redacted] devotes to the management of the company, what duties he performs, or the extent to which he relieves the Beneficiary from engaging in non-executive duties.

The record is similarly lacking with respect to the Petitioner's employment of the secretary, [redacted] The evidence submitted in support of the previous filing indicated that this individual is an employee with a $50,000 salary, but the Petitioner now claims that he or she only receives a bonus as a minority shareholder. This individual is not on the payroll and there is no independent evidence establishing whether or to what extent they perform duties for the petitioning company. The Petitioner indicates that the secretary performs several administrative duties, but is also responsible for training new employees, which given the Petitioner's acknowledged level of turnover, would appear to require a significant investment of time.

With respect to the office manager, we note that although [redacted] indicated to a USCIS officer that [redacted] filled this position and was the person who managed the day-to-day operations of the mill, the evidence submitted in response to the NOID indicated that she left the company in August 2019, prior to the filing of the petition. The Petitioner nevertheless continued to keep her on its organizational charts and has not indicated that it hired anyone to replace her in the office manager position.

Finally, the Petitioner has consistently indicated [redacted] joined that company as its mill manager in November 2018 and that he continues to hold this position. The Petitioner's previous L-1A petition on behalf of the Beneficiary indicated that the mill manager is a salaried position whose occupant at that time earned $800 per week ($41,600 annually). The Petitioner's payroll evidence, however, indicates that [redacted] is a part-time hourly employee who earns $11.00 per hour. In addition, a personnel list submitted in response to the NOID indicates that the Petitioner briefly employed another individual [redacted] as its mill manager in June 2019 while [redacted] was on its payroll. [redacted]

[redacted]'s listed wage is $24.04 per hour (approximately $50,000/year). [redacted] earned approximately $13,360 through the first three quarters of 2019 and only $9,600 in 2018. This evidence raises questions as to whether the Petitioner employs him in a full-time position as a mill manager as claimed.

Overall, while the frequent turnover among lower-level staff explains some of the staffing inconsistencies noted by the Director, the evidence does not adequately document the Petitioner's employment of the four critical staff who are claimed to relieve the Beneficiary from involvement in the day-to-day management, supervision and other operational and administrative aspects of the mill's daily operation. The Petitioner also indicates that it has relied on "independent 3rd party foresters for raw materials procurement" until it fills its vacant forester position but has not documented its use of their services.

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 an owner or sole managerial employee.

Here, the Petitioner has not sufficiently documented its claimed full-time employment of the general manager, mill manager, office manager and secretary who are claimed to support the Beneficiary's executive position. Accordingly, it has not established how the organization is managed, supported its claim that the Beneficiary is primarily focused on its broad goals and policies, or demonstrated that he is relieved from involvement in non-executive tasks necessary for its day-to-day operations.

On appeal, the Petitioner emphasizes that the Beneficiary's "executive capacity has been recognized by the USCIS in the initial L1A petition and 1st extension." USCIS has clarified that "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." 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* (Oct. 23, 2017), https://www.uscis.gov/sites/default/files/ USCIS/Laws/Memoranda/2017/2017-10-23Recission-of-Deference-PM6020151.pdf. This memorandum also emphasized that "the burden of proof remains on the petitioner, even where an extension of nonimmigrant status is sought." *Id.*

Based on the evidence submitted with the instant petition, the Petitioner has not met its burden to establish that it would employ the Beneficiary in an executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.