U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-S-USA CORP.

DATE: SEPT. 30, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a freight services company, seeks to temporarily employ the Beneficiary as its chairman 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 record did not establish, as required, that the Beneficiary was employed in a managerial or executive capacity abroad. In addition, the Director concluded that the Petitioner did not demonstrate that the Beneficiary would act in a managerial or executive capacity in the United States.

On appeal, the Petitioner asserts that the Beneficiary qualified abroad, and would qualify in the United States, as an executive. The Petitioner contends that the Director improperly required that the Beneficiary oversee professional subordinates in order to qualify as an executive. The Petitioner further asserts that the Beneficiary is primarily relieved abroad, and would be relieved in the United States, from performing non-qualifying operational duties. The Petitioner also states that the Director placed an undue burden on it to describe all of the Beneficiary's duties both abroad and in the United States.

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 capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id*. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The first issue we will address is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity in the United States. The Petitioner does not claim that the Beneficiary would be employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in an executive capacity.

When examining the executive capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in an executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine 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 Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

Based on the definition of executive capacity, the Petitioner must first show that the 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 stated that it was established as a freight moving company in 2015 "engaged in warehouses, port transportation, and long distance transportation in the U.S." The Petitioner further indicated in response to the Director's request for evidence (RFE) that it leases an 8,000 square foot warehouse and that it had become "[redacted]s contracted warehouse." The Petitioner stated that the Beneficiary acted as the "TOP executive" of the company and provided a lengthy duty description for the Beneficiary including some of the following duties:

- establish and adjust the company's management policies, and strategies,
- oversee the implementation of the strategic goals and objectives,
- give direction and leadership toward the organization's achievement in philosophy, mission, strategy, and objectives,
- report to the Board of directors and chair each board meeting,
- enhance and/or develop, implement and enforce policies and procedures,
- formulate the company's strategic planning to achieve the objectives in the business plan,
- establish companywide systems and procedures for reporting, project controls, financial controls, and employee relations,

- set and drive the company's culture, values, and behavior,
- set direction by communicating the strategy and vision of where the company is going,
- adjust company's overall financial and accounting management systems,
- decide to allocate capital to the company's priorities,
- consider the company's major expenditures and manage the company's capital,
- direct and evaluate the company's fiscal function and performance,
- identify and consider what areas of the company are most efficient,
- work with the Board on the strategic vision as well as the development and negotiation of contracts,
- review and approve major department objectives prepared by department managers,
- resolve differences between department managers and oversee their performance,
- oversee investments and operations of the organization,
- direct the departmental managers to ensure programmatic success through cost analysis support,
- develop and supervise the implementation of brand strategies and action plans,
- lead and facilitate advanced project planning and creative ideas,
- ensure appropriate measures are taken to correct unsatisfactory results,
- make financial recommendations to the Board of directors and foreign parent company,
- oversee the capital structure of the company ensuring the best mix of debt, equity and internal financing,
- oversee the management and coordination of all fiscal reporting activities for the company, including: organizational revenue/expense and balance sheet reports, reports to funding agencies, development and monitoring of organizational and contract/grant budgets,
- oversee financing strategies and activities, as well as banking relationships,
- ensure adequate controls are installed and that substantiating documentation is approved,
- establish and adjust the human resources policies and goals, such as salary, raises, performance bonuses, commissions, and benefit plans,
- promote all safety policies and best practices in planning and executing work,
- recommend remedial action and improvements,
- negotiate on behalf of the company with large important companies,
- represent company and industry conferences and approve major investment or business contracts, and
- maintain good relationships with key customers.

Although the duty description for the Beneficiary is lengthy, it is vague and the Petitioner provides little documentation to substantiate his daily qualifying executive-level tasks. The duty description includes several generic duties that could apply to any executive acting in any industry and they provide little insight into the Beneficiary's actual day-to-day executive tasks. For instance, the Petitioner did not sufficiently detail or document the policies, objectives, and strategies or new departments the Beneficiary would establish, philosophies or missions he would implement, policies

and procedures he would put in place, financial accounting and management systems he would set, capital he would allocate, or major expenditures he would approve. Likewise, it did not articulate or document objectives, plans, and policies the Beneficiary would get approved by the board of directors, contractual and programmatic requirements he would assure compliance with, brand strategies and action plans he would implement, advanced project planning he would facilitate, or capital structure, debts, and financing he would oversee.

In addition, the Petitioner did not detail or substantiate with supporting evidence funding agencies the Beneficiary would work with, "contract/grant budgets" he would monitor, banking relationships he would manage, contracts he would advise the board on, human resource policies he would put in place, safety and best practice policies he would implement, or negotiations and key customers he would oversee. Specifics are clearly an important indication of whether a beneficiary's 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

On appeal, the Petitioner contends that the Director placed an undue burden on it to describe every one of the Beneficiary's daily duties. However, we disagree that submitting credible details and supporting documentation to substantiate the Beneficiary's daily executive level tasks represents an "undue burden." We note that it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

Further, the Petitioner lists several duties for the Beneficiary which appear to bear little relation to its operation of a freight business with a handful of trucks, such as the Beneficiary managing grants, deciding on commissions and bonuses when it has no apparent sales staff, engaging in "project planning" and "programmatic requirements," and implementing "brand strategies." Without further explanation and evidence, it is not clear how these duties relate to the Petitioner's freight business; in fact, there are no references to its specific business in the Beneficiary's duties. In addition, the Petitioner stated that the Beneficiary would "approve business partners in the U.S. and deny proposals based on current market conditions" and "approve the service providers and agreements;" however, there is little indication and no documentation to support what business partners, proposals, service providers, or agreements to which it is referring.

To the extent the Petitioner provided supporting documentation related to the Beneficiary's activities, this evidence was reflective of his performance of non-qualifying operational duties. For instance, the Petitioner submitted documentation reflecting the Beneficiary's payment of rent for a warehouse in September and October 2018, and later again in March 2019, and his purchase of trucks for the freight business in August 2017. United States Citizenship and Immigration Service (USCIS) records reflect that the Beneficiary was previously in the United States on an L-1A nonimmigrant visa from approximately January 2016 to January 2017[1] working for the Petitioner; yet, it notably submits few details and little documentation to substantiate his performance of the qualifying duties listed in his duty description or his delegation of duties to subordinates and claimed department managers during this time.

[1] The petition was filed on December 17, 2018.

Whether the Beneficiary is an executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" executive. *See* sections 101(a)(44)(B) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties would be executive functions and what proportion would be non-qualifying. The Petitioner provided documentation reflecting the Beneficiary's involvement in non-qualifying operational tasks, but does not quantify the time he spends on these non-qualifying duties. For this reason, we cannot determine whether the Beneficiary would primarily perform 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).

Even though the Beneficiary holds a senior position within the organization, the fact that he 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 in nature. *Id.* The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily executive in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Petitioner submitted an organizational chart in support of the petition dated in November 2018, or just prior to the date the petition was filed, indicating that the Beneficiary would oversee dispatch, warehousing, transportation, financial, and administration managers.[2] The dispatch department manager was shown to supervise a dispatcher, while the chart reflected that the warehousing department manager oversaw an inventory employee, an operator supervising two operations assistants, and two forklift drivers. Meanwhile, the transportation department manager was shown as oversee twelve "W2 drivers" and the financial department manager a clerk and a bookkeeper. Lastly, the chart indicated that the administration department manager oversaw a front desk employee and an administrator.

As discussed, the Petitioner asserts that the Beneficiary would qualify as an executive. 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

[2] We acknowledge that the Petitioner also submitted an organizational chart dated in February 2019 in response to the Director's RFE; however, we note that the nexus of our analysis must be focused on the company's organizational structure as of the date the petition was filed, or in December 2018. 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).

beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the beneficiary 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.*

There are discrepancies on the record that leave question as to the Petitioner's asserted organizational structure as of the date the petition was filed and whether the Beneficiary acted at the head of a complex organizational hierarchy at this time. For instance, in support of the petition, the Petitioner stated that it had 28 employees "including 11 independent contractors." However, submitted California State wage tax documentation from the third quarter of 2018 indicated that it only employed ten individuals. Further, only eight of the employees included in the Petitioner's California State wage tax documentation from the third quarter of 2018 are listed in the corresponding organizational chart, including only three of the Beneficiary's claimed managers; specifically the dispatch, transportation, and administration managers. In addition, state wage tax documentation only showed a small number of claimed operational employees; namely the claimed clerk, inventory employee, a front desk employee, forklift driver, dispatcher, and an administrator earning only a nominal salary.

However, in response to the Director's RFE in March 2019, approximately three months later, the Petitioner provided California State wage documentation from the fourth quarter of 2018 listing 22 employees, in contrast to that from the previous quarter showing only eight employees included in its claimed organizational structure. The Petitioner does not explain this large increase in the company's employees listed in quarterly state wage tax documentation in only one month from September 2018 (eight confirmed employees) to October 2018 (16 listed employees). In sum, these discrepancies leave question as to whether the Beneficiary was acting at the head of a complex organizational hierarchy at the time the petition was filed. This uncertainty is heightened by the fact that the Petitioner submitted little supporting documentation to substantiate the claimed members of the Petitioner's organizational hierarchy acting in their asserted roles, including evidence of the Beneficiary delegating tasks to his claimed subordinate managers. The Petitioner must resolve this inconsistencies 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).

Furthermore, the Petitioner submitted vague duty descriptions for the Beneficiary's claimed subordinate managers that do not sufficiently substantiate that he acts within a complex organizational hierarchy and primarily tasked with setting the goals and policies of the organization. For instance, the Petitioner stated that the dispatch manager was tasked with directing "the Dispatch department staff," including determining route job assignments, handling requests for service, maintaining relationships with shippers and brokers, and maintaining accurate logs. However, there is little credible detail in this duty description, such as an explanation of the routes this employee manages, the customers they receive service requests from, the shippers or brokers they work with, or evidence of the logs maintained.

Likewise, the Petitioner stated that the warehouse manager is responsible for overseeing the warehouse department; specifically, initiating, coordinating, and enforcing program, operational, personnel policies, and procedures, studying legislation to comply with warehousing, material handling, and shipping requirements, advising management on needed actions, preparing the annual warehousing budgets, initiating corrective actions, and selecting and training warehouse staff. However again, this duty description for the warehouse manager excludes critical details to substantiate that they actually would act in this role, such as the policies and procedures they would enforce, laws they would ensure enforcement of, budgets they set, issues they advise upper management on, corrective actions they initiated, or trainings they conducted.

In addition, the Petitioner provided similarly generic duty descriptions for the Beneficiary's other claimed managers. For example, it stated that the transportation manager would be tasked with repairs and maintenance to equipment, vehicles, or facilities, formulating policies, procedures, goals, or objectives, implementing schedule or policy changes for transportation services, ensuring compliance with administrative policies and procedures, conducting safety audits, planning routes and load scheduling, confronting climate change issues by issuing transport strategies, and preparing the department budget. But, again, this duty description does not provide credible details to sufficiently corroborate this subordinate position, such as the repairs they did or would complete, policies, procedures, goals, or objectives they did or would set, schedule or policy changes they did or would implement, routes and load scheduling they did or would manage, transport strategies confronting climate change they did or would issue, or information on this department's budget.

As another example, the Petitioner stated that the administration manager was responsible for coordinating administrative procedures and systems to devise ways to streamline processes, providing coaching and guidance to ensure maximum efficiency, facilitating business operations, and ensuring adherence to policies and regulations; however again, there is little indication as to what procedures, systems, processes, operations, and regulations are being referred to.

Finally, the Petitioner indicated that the financial manager was tasked with providing strategies that the company should take, comparing performance against business plans, developing new long-term business plans, managing budgets, evaluating cost-reduction opportunities, overseeing the finance department, and setting goals and objectives and designing a framework for these to be met. Yet again, this duty description for the financial manager did not provide important details to corroborate this role, namely, the referenced strategies, business plans, budgets, cost reduction efforts, goals, objectives, or frameworks discussed. In fact, the lack of detail specific to the activities of these subordinate managers is particularly notable as the Petitioner listed them in its organizational chart when it submitted the petition, but still provides little detail as to their specific tasks and accomplishments as of the date of this appeal in April 2019. In sum, we did not find the duty descriptions of the Beneficiary subordinate managers were sufficiently credible to establish that the Beneficiary would act at the head of a complex organizational hierarchy and that he would be primarily tasked with higher level executive duties.

In conclusion, the Petitioner provided a U.S. duty description for the Beneficiary that was overly vague and which did not sufficiently convey his actual day-to-day executive level tasks. Indeed, the Beneficiary's duty description appeared to include several references to duties that did not appear

credible in light of the company's business and operations; and beyond this, supporting documentation reflected his likely involvement with the day-to-day operational matters of the business rather than primarily goal and policy setting. Further, the record does not include any evidence of the Beneficiary delegating duties to his claimed subordinates, despite him acting in this role for approximately one year previously. In addition, the Petitioner submitted state wage documentation and other payroll evidence that left question as to its claimed organizational structure and vague duty descriptions for the asserted level of managers claimed to work underneath the Beneficiary. In sum, the evidence did not sufficiently demonstrate that the Beneficiary would likely act within a complex organizational hierarchy primarily setting goals and policies.

Therefore, for the foregoing reasons, the Petitioner has not established that the Beneficiary would act in an executive capacity in the United States.

III. FOREIGN EMPLOYMENT IN AN EXECUTIVE CAPACITY

As we have discussed, the Director also denied the petition concluding that the Petitioner did not establish that the Beneficiary was be employed in an executive capacity abroad. Because of the dispositive effect of the above finding of ineligibility; namely, our affirmation of the Director's conclusion that the Petitioner did not establish that the Beneficiary would act in an executive capacity in the United States, we will only briefly address the remaining issue addressed by the Director.

In denying the petition on these grounds, the Director determined that the Beneficiary's foreign duties were overly vague and pointed to the lack of duties for the Beneficiary's subordinates abroad. Upon review, we concur with the Director that the provided evidence does not sufficiently demonstrate that the Beneficiary acts in an executive capacity abroad.

The Petitioner indicated that its foreign parent company was established by the Beneficiary in 2009 and stated that it "owns more than 50 sets of construction and large-scale mechanical equipments [*sic*]," that it "completed many large projects in China," and that it had 94 regular fulltime employees.

Again, although the Petitioner submitted a lengthy foreign duty description for the Beneficiary, the stated duties were generic and the record lacked supporting documentation to substantiate that the Beneficiary was primarily engaged in these claimed executive level tasks. Specifics are clearly an important indication of whether a beneficiary's 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 1103, 1108.

For instance, the Petitioner did not sufficiently detail and document the management, finance, sales, projects, policies, objectives, and strategies the Beneficiary established and adjusted, market plans and sales strategies he developed, specific decisions he made, business relationships with large clients he maintained, and final decisions of the shareholders he carried out. Further, the Petitioner did not explain and support with documentation the human resources policies and management systems he developed, high level employees he trained, sales goals and objectives he set, or key employees he hired or fired. The Petitioner also did not describe or document the financial strategies, plans, and policies the Beneficiary set, funding and loans he oversaw, and accounting systems and financial

functions he put in place. Again, this lack of detail is noteworthy since the Petitioner contends that the Beneficiary has acted in his role abroad, his time in the United States aside, since 2009. In fact, the Beneficiary's foreign duty description is largely similar to his U.S. duty description, despite the fact that the Petitioner asserts that he oversaw a construction company working on large projects in China, a business and scope much different than his claimed role in the United States.

In fact, to the extent the Petitioner provided details regarding the foreign employer's activities these provided little credible insight into his actual duties and accomplishments abroad. The Petitioner provided examples of largely unexplained projects the company completed, such as "the project of the embankment of the southern bank of [redacted] River" or the "supporting roads around [redacted] Sailing Center," amongst several others. However, the Petitioner did not explain the Beneficiary's specific involvement in these various projects or describe the qualifying executive-level duties he performed in relation to them. There is also little supporting documentation substantiating the Beneficiary's performance of executive-level duties within a complex organizational hierarchy abroad; namely, that he has been acting at the head of a construction company completing large projects in China for around a decade.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary is employed in an executive capacity abroad.

IV. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that Beneficiary would be employed in a managerial or executive capacity in the United States or that he is employed in a managerial or executive capacity abroad.

ORDER: The appeal is dismissed.

Cite as *Matter of H-S-USA Corp.*, ID# 6058874 (AAO Sept. 30, 2019)