



**U.S. Citizenship
and Immigration
Services**

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

In Re: 23503753

Date: DEC. 22, 2023

Appeal of California Service Center Decision

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

The Petitioner intends to provide construction and remodeling services in the residential home industry. It seeks to employ the Beneficiary as “President – General Manager” of its new office¹ under the L-1A nonimmigrant classification for 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 record did not establish that the Petitioner secured sufficient physical premises to house its operation or that it would employ the Beneficiary in a managerial or executive capacity within one year of the petition’s approval. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal because the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of the petition’s approval. Because the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding the remaining issue of physical premises. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

I. LAW

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 term “new office” refers to an organization which has been doing business in the United States 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 no more than one year within the date of approval of the petition to support an executive or managerial position.

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).

In addition, regarding a new office petition, the petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The primary issue to be addressed is whether the Petitioner provided sufficient evidence to establish that its operation would support the Beneficiary in an executive capacity within one year of the petition's approval.²

The statutory definition of the term “executive capacity” focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to “direct the management” and “establish the goals and policies” of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will “direct the management” of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive title or because they “direct” the organization, major component, or function as the owner or sole managerial employee. A beneficiary must also exercise “wide latitude in discretionary decision making” and receive only “general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.” *Id.*

A. New Office Requirements

In the case of a new office petition, we review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in determining whether the proposed position is plausible based on a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

In support of the petition, the Petitioner provided a business plan which discusses the Petitioner's hiring and financial projections. In the “Executive Summary” section of the business plan, the Petitioner stated that it received a \$175,000 shareholder investment which would cover start-up costs and “administrative facilities” and would be sufficient to immediately commence business operations.

² The Petitioner does not claim that the Beneficiary's position in the United States would be in a managerial capacity.

The business plan states that the Petitioner intends to fill eight positions “by the end of [its] first year of operation.” However, the five-year personnel budget in the business plan accounts for full-year salaries for all eight positions for all five years, including the start-up year, thus indicating that all eight positions would be filled immediately upon commencing operations rather than gradually throughout the first year. Without a reliable hiring timeline, we are unable to determine whether the \$175,000 the Petitioner received in start-up capital is sufficient to cover the Beneficiary’s salary and initial operating costs so that it can commence doing business. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The Petitioner must resolve the ambiguity regarding its hiring plans with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, the business plan shows that the Petitioner’s “initial administrative structure” would be comprised of the following: “President-General Manager,” a general contractor, a construction supervisor, an administrative assistant, a secretary, a “general services” position, and three full time construction workers – a plumber, a carpenter, and an electrician. The Petitioner added that it will “complement the execution of its projects with subcontractors in the spectrum of construction.” Although the executive summary states that employees would be “supported by a Legal and Financial – Accountant Consultants,” these positions are not accounted elsewhere in the business plan as part of the Petitioner’s hiring plan, nor does the business plan specify any subcontractors “in the spectrum of construction” or otherwise account for the subcontractors in its list of operating expenses.

We also note that the business plan lists no sales or marketing staff among its anticipated hires, and it allocates “0%” of its budget to expenses associated with “commissions in sales.” Likewise, the account of projected operating expenses shows that “0” dollars have been allocated to “commission in sales” and “publicity and marketing,” thus leading us to believe that the Petitioner would operate with no staff or contractors dedicated to marketing and selling its services. Despite providing a financial outlook which shows projected annual revenue increases, the business plan contains no sales strategy explaining how the Petitioner plans to meet those projections, particularly given that it included no staff or contractors who would perform the sales and marketing functions. In other words, although the Petitioner offered revenue projections as part of its financial outlook, it provided no strategy for attracting clients and selling its services, thus leaving us to question how it plans to achieve those projections. *See Chawathe*, 25 I&N Dec. at 376 (stating that relevant, probative, and credible evidence is necessary to support a petitioner’s assertions).

In addition, the business plan offers inconsistent sales growth projections. Namely, the business plan contains two pages titled “Financial Projections.” The first “financial projections” page provides a broad overview of projected “administrative expenses,” “depreciation-amortization expenses,” “estimated balance in cash,” “sales,” and “another [sic] operating expenses” within the context of the Petitioner’s shareholder investment. The other “financial projections” page offers a more detailed breakdown of the types of services the Petitioner plans to sell, the prices customers will be charged for each type of service, and the Petitioner’s cost for providing the service. Based on the sales and cost figures projected on the latter chart, the Petitioner anticipates a sales increase of over 30%, going from approximately \$402,000 in net sales in the first year, to approximately \$535,000 the following year. In sum, the Petitioner offered two different revenue projections with no sales plan to support or explain how it came up with either one. The inconsistency in these sales projections further highlights the deficiencies in the business plan and undermines the reliability of the information provided therein. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to

where the truth lies. *Ho*, 19 I&N Dec. at 591-92. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

In the denial, the Director questioned whether the Petitioner is adequately funded, noting that the Petitioner's bank account contains a balance of \$175,985, which is significantly below its first-year payroll expenses totaling \$259,974. On appeal, the Petitioner offers financial figures pertaining to the residential construction market, indicating that it will benefit from increased sales within that market. The Petitioner also points to its own sales projections to support the claim that it is adequately funded. However, given the deficiencies described above, we disagree with the Petitioner's argument. Although the Petitioner was offered an opportunity to explain how the U.S. investment would be sufficient to support the U.S. operation, the Petitioner reiterated its broadly stated plans and projections, which do not adequately explain how the Petitioner plans to meet its sales objectives. The inconsistency in the business plan's sales projections further highlights the plan's deficiencies and undermines the reliability of the information provided therein.

B. Job Duties

We also reviewed the Beneficiary's job description and find the evidence to be insufficient to establish that the Beneficiary would perform primarily executive job duties within one year of the petition's approval.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial or executive responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment and to establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

Here, the Petitioner's initial supporting statement contains a job duty breakdown that lists broadly stated business objectives and offers little to no insight about the Beneficiary's actual activities within the scope of a residential construction business. For instance, the Petitioner stated that the Beneficiary would spend 20% of his time "adopt[ing] the strategic and administrative decisions that lead to achievement of goals and . . . planning, developing[,] and implementing [sic] that company strategy"; 15% ensuring the operation's funding by "[d]irect[ing] and coordinat[ing] formulation of financial programs"; 15% working towards greater efficiency and cost reduction by "[p]lan[ning] and direct[ing] the implementation of commercial, operational[,] and compliance policies"; and 18% coordinating and developing public relations policies, "[f]ormulating pricing policies," and determining prices for the services to be sold.

Although the business plan contains another job description for the Beneficiary's proposed position, it too offers only general information that does not explain what actions the Beneficiary plans to take to ensure the Petitioner's progression into a more advanced phase of development that would support the Beneficiary in a primarily executive position. More specifically, the business plan states that the Beneficiary will plan and implement "the strategy of the company in the market" and "supervise the sales and administrative financial areas." However, the Petitioner provides no insight about a specific sales strategy or the means for staying competitive in the relevant market. The job description lists other generalities about the Beneficiary's executive role, including planning for business expansion, approving contracts with clients and service providers, revising financial statements, and outlining hiring policies. Again, these duties focus on the Beneficiary's discretion over the Petitioner's day-to-day operations and indicate that the Beneficiary would possess the requisite level of authority with respect to discretionary decision-making. However, the Petitioner does not provide a job description that offers insight about the Beneficiary's actual tasks within the scope of a residential construction business during its developmental phase. 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. *See* 8 C.F.R. § 214.2(l)(3)(ii). As indicated earlier, it is the Petitioner's burden to establish that it will support an executive position within one year of the petition's approval. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

On appeal, the Petitioner argues that the Beneficiary's job duties "have been clearly defined" and restates the job descriptions provided in the initial supporting letter and in the business plan. We disagree with the Petitioner's argument. Despite maintaining the claim that the Beneficiary will be employed in an executive capacity within one year of this petition's approval, the Petitioner has not adequately described the Beneficiary's job duties or explained what specific actions the Beneficiary will take during the company's first year of operation to ensure that the company progresses beyond the new office phase of development. Furthermore, because the Petitioner does not establish that it will have personnel or contractors who will market and sell the Petitioner's services, we cannot eliminate the possibility that the Beneficiary will directly perform these operational tasks beyond the Petitioner's new office phase.

In sum, the Petitioner has not adequately described the Beneficiary's job duties and we therefore cannot conclude that the Beneficiary will primarily perform executive job duties within one year of the petition's approval.

III. CONCLUSION

For the reasons discussed above, we conclude that the Petitioner has not established that the Beneficiary will be employed in an executive capacity within one year of the petition's approval.

ORDER: The appeal is dismissed.