



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

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

In Re: 20682351

Date: MAY 16, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, describing itself as an owner and operator of a gas station and convenience store, seeks to temporarily employ the Beneficiary as the general manager of its new office¹ in the United States under the L-1A nonimmigrant classification for intracompany transferees. *See* 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 the record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity or that he would be employed in a managerial or executive capacity in the United States within one year. The Petitioner later appealed the Director's decision and we dismissed the appeal. The Petitioner then filed a combined motion to reopen and reconsider, which we dismissed. Subsequently, the Petitioner filed a motion to reopen, which we also dismissed. The matter is again before us on a motion to reopen.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity 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)(3)(v)(B). 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 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

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.

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).

The term “executive capacity” is defined 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 motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the petitioner has shown “proper cause” for that action. Thus, to merit reopening, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. As such, we will determine whether the Petitioner has submitted new facts, supported by documentary evidence, to warrant reopening of our October 28, 2021, decision.

As discussed in our prior decisions, which we incorporate here by reference, we determined that the Petitioner did not show that the Beneficiary had been employed in a primarily executive capacity abroad by the foreign entity.² We acknowledged that the Beneficiary is the owner of a foreign business, but noted that simply managing or directing a business as the owner does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. In our previous decision, we determined that the record did not include probative evidence sufficient to establish that the Beneficiary’s actual duties will primarily be executive in nature.³

We further concluded that the description of the Beneficiary’s duties for the foreign entity was generic and insufficiently detailed, and therefore prohibited a conclusion that the Beneficiary primarily performed the tasks of an executive as defined in section 101(a)(44)(B) of the Act. In addition, we noted that despite an organizational chart for the foreign entity identifying a legal advisor, an accountant, and a sales manager, subordinate to the Beneficiary, the Petitioner did not offer probative evidence demonstrating that the foreign entity employs subordinate staff to perform the actual

² As also noted in our prior decisions, since this issue is dispositive, we decline to reach and hereby reserve the Petitioner’s arguments with respect to the other basis of our prior dismissal on appeal. *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).

³ The Petitioner does not claim and the record does not demonstrate that the Beneficiary’s duties for the foreign entity are in a managerial capacity as defined by section 101(a)(44)(A) of the Act.

day-to-day, non-managerial/non-executive operations of the company, as the record contained no evidence supporting the continuous employment of these subordinates.

On motion, the Petitioner asserts that it has shown, by a preponderance of the evidence, that the Beneficiary acted in a primarily executive capacity for the foreign business. The Petitioner restates the primary duties of the Beneficiary in his position abroad, and claims that the following exhibits, all of which were previously submitted, constitute probative evidence of the Beneficiary's executive and proprietary authority in the foreign business:

- (1) Mozambique government notice entitled "Exercise of Commercial Activity;"
- (2) Copy of a Shop Rent contract for the foreign business location;
- (3) Mozambique government notice acknowledging the Beneficiary, an Indian national, will perform duties as the owner of the foreign entity;
- (4) Copy of the foreign entity's 2019 corporate tax return; and
- (5) Copy of the foreign entity's bank statement covering the period from August 2016, through August 2018.

The Petitioner has still not sufficiently addressed our prior conclusions that the Beneficiary's duties were overly generic, nor has it provided probative supporting evidence of his executive level duties abroad. As also concluded in our prior decisions, the duty description for the Beneficiary includes regular, routine day-to-day operational tasks necessary for the foreign entity to continue to do business, and does not include the detailed description and probative evidence necessary to establish the Beneficiary primarily performed executive duties for the foreign entity. Although we do not expect the Petitioner to detail and document every executive-level task of the Beneficiary abroad, the lack of these specifics leaves substantial uncertainty as to whether he primarily acted in a qualifying role. Reciting 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., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the record does not establish that more likely than not, the Beneficiary has performed primarily executive duties for the foreign entity.

The Petitioner has not presented a new fact to establish that at the time it filed the petition, the Beneficiary was employed in a primarily executive capacity abroad. Moreover, the resubmitted evidence presented on motion does not meet the requirements of a motion to reopen as set forth at 8 C.F.R. § 103.5(a)(2).

III. CONCLUSION

Because the Petitioner has not submitted new facts or evidence demonstrating proper cause for reopening the proceeding, it has not met the requirements of a motion to reopen and the motion must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.