



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

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

In Re: 22717706

Date: NOV. 21, 2022

Appeal of California Service Center Decision

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

The Petitioner, describing itself as a real estate development company, seeks to temporarily employ the Beneficiary as the president and chief executive officer of its new office¹ 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 Director of the California Service Center denied the petition on multiple grounds, concluding the record did not establish that: 1) it had secured sufficient premises to house the new office, 2) the Beneficiary was employed abroad in a managerial or executive capacity, and 3) the Beneficiary would be employed in a managerial or executive capacity within one year of an approval of the petition.

On appeal, the Petitioner asserts that it secured a sufficient premises through a sublease to house its new office during the first year. Further, the Petitioner contends that submitted foreign employer corporate documentation demonstrates that the Beneficiary was employed as an executive abroad. The Petitioner also states that it provided documentation, including a business plan, establishing that it would be sufficiently operational within one year to support the Beneficiary in an executive capacity.

Upon *de novo* review, we will dismiss the appeal, as the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of an approval of the petition. 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. Since this issue is dispositive, we decline to reach and hereby reserve its arguments with respect to the Director's other grounds for denial. *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).

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.

I. LEGAL FRAMEWORK

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 his or her 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 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 WITHIN ONE YEAR

The sole issue we will analyze is whether the Petitioner established that it would employ the Beneficiary in an executive capacity within one year of the petition's approval. 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.

"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 determine whether the Petitioner established that its new office would support an executive position within one year, we will review the Beneficiary's proposed job duties, along with the Petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the Beneficiary in the intended executive capacity. The totality of the evidence must be considered in analyzing whether the proposed executive position is plausible, considering 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).

A. Duties

The Petitioner stated in support of the petition that the foreign employer "decided to make an investment in the United States to develop commercial and residential real estate projects." The Petitioner indicated that the Beneficiary had been "managing the projects from Brazil, which has not been very effective." The Petitioner explained that the Beneficiary would be transferred to the United States to be its most senior employee and that he would direct the company, set policies, make executive decisions, develop new strategies and programs, contribute to the expansion of the business, develop and grow real estate deals, and evaluate and review new potential deals. The Petitioner submitted the following duties for the Beneficiary in support of the petition:

- 1) Supervising a team of project and technical support managers who provide services to projects of mining operations.
- 2) Completely handling the responsibilities of all the operations who provide services in the United States:
 - a) Supervising a team of top management personnel who run the day-to-day operations of our FL subsidiary in the United States.
 - b) Providing key strategic technology and project management directives to stay ahead in the developing of business.
 - c) Managing finance operations, personnel and human resources' development policies.
 - d) Set guidelines for quality management and technical support management.
- 3) Report back to the parent company in Brazil.
- 4) Identify potential real estate and development deals. It is essential to point out that [the Beneficiary] has unique experience on handling operations for the last 3 years as Managing Partner in an executive capacity in the parent companies in Brazil.

The Director later issued a request for evidence (RFE) indicating that the Beneficiary's submitted duties were insufficient, noting that they were too broad and general. Therefore, the Director requested that the Petitioner submit a more thorough description of the Beneficiary's proposed executive duties and the percentage of time he would devote on each task. In response, the Petitioner submitted the following duties for the Beneficiary in the United States:

- Land building acquisition;
- Leasing and site location;
- Evaluates new property to ensure it meets the needs of the organization;
- Authorize new property purchases or expansion;
- Manage finance operations;
- Supervise the team of project and technical support managers.

The Petitioner submitted a duty description for the Beneficiary that does not credibly demonstrate he would primarily perform executive-level tasks within the first year. The Petitioner did not sufficiently detail the executive duties the Beneficiary would perform during the first year or the percentages of time he would devote to his various tasks. Although we acknowledge the Petitioner vaguely indicated that the Beneficiary would delegate tasks to claimed subordinate project and technical managers it asserts it will hire, it did not sufficiently explain the asserted executive-level tasks he would complete during the first year to successfully launch the new business operation. For instance, the Petitioner did not specify the "key strategic technology and project management directives" or "development policies" he would put in place. Further, it is not clear what tasks would be involved in setting "guidelines for quality management." Likewise, the Petitioner did not detail the day-to-day tasks inherent in directing the company, setting policies, making executive decisions, developing new strategies and programs, contributing to the expansion of the business, developing and growing real estate deals, and evaluating and reviewing new potential deals.

As noted by the Director, the duty description the Petitioner provided for the Beneficiary in response to the Director's RFE is too generic, vaguely referring to land acquisition, leasing and site location, evaluating new properties, authorizing new purchases, and managing finances. The duty description

does not sufficiently articulate his daily tasks both during and at the end of the first year. In fact, the general tasks listed for the Beneficiary include several apparent non-qualifying operational tasks related to evaluating and acquiring real estate; and leasing and developing new properties. However, the Petitioner did not sufficiently indicate how the Beneficiary would be primarily relieved from performing non-qualifying operational tasks within one year. Although we do not expect to the Petitioner to detail every executive-level task of the Beneficiary during the first year, the lack of these detail leaves substantial uncertainty as to whether he would primarily perform executive-level duties within the first year. Specifics are clearly an important indication of whether a beneficiary's duties would be 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).

B. Business Plan and Projected Staffing

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 executive capacity. A 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 executive in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in analyzing whether the proposed executive 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).

The Petitioner submitted an organizational chart in response to the Director's RFE reflecting that the Beneficiary would oversee a vice president and general, marketing, legal, and sales managers. The chart also showed that the general manager would supervise an accountant, a project manager, and a secretary.

The Petitioner also provided a business plan indicating that the goal of the foreign employer was to "develop the basis for new startup real estate companies" in the United States. The Petitioner explained that the foreign employer had established the Petitioner, and a wholly owned subsidiary of the Petitioner [redacted] for this purpose. The Petitioner stated that its "business model will be modest for now" and that its development goals would be "accomplished over the next 1-15 years." The Petitioner indicated that the objective of its U.S. operation was to purchase plots of land in Central Florida and develop commercial and residential real estate projects; and then "sell the commercial and residential properties to third parties" or "rent parcels of the commercial properties and hold them to provide a monthly long-term income." More specifically, the Petitioner stated that it planned to develop and build "street malls at three different locations in central Florida," as well as "a condominium with 80-103 residential units (gated community) to be sold/leased" near one of its proposed commercial developments. The Petitioner explained that this would require around \$8.5 million investment in December 2021 and a projected investment of up to approximately \$37 million when all projected development was completed. The Petitioner submitted photographs of plots of land it claimed to have acquired in the region and detailed its development plans, noting that "all the initial studies are finished (survey, technical traffic, soil and vegetation study)" and that it "is just waiting [on] one last permit from the state of Florida."

The Petitioner further indicated that it required “directors” in the United States to run the business and to “accomplish the 1,5 years schedule of construction, making the project successful and done.” The Petitioner stated that its construction plans would be accomplished without the “directors,” presumably including the Beneficiary, “to negotiate with tenants, contractors, suppliers, financial institutions, clients or business partners.”

On appeal, the Petitioner explains that the Beneficiary would be responsible for managing the “main strategic aspects of the operation,” including selecting properties for purchase and/or sale, lessees, senior managers, business partners and associates, marketing strategies, and investment and financing portfolios.” The Petitioner emphasizes that “the real estate projects idealized by [it] are all large, with the purpose of leasing to large corporations and national brands.” The Petitioner indicates that it would acquire and sell “one to two real estate projects over the next 3 years” and that one to two additional deals could be carried out every three years. The Petitioner set out projections reflecting that from identifying a commercial lot to selling a fully developed property it would take approximately 32 months. The Petitioner emphasizes that it has already invested over \$5.4 million in the development of commercial properties through it and its affiliate and points to evidence demonstrating that it has already acquired plots of land in Florida for this purpose. The Petitioner states on appeal that “the idea is to start and complete one project at a time” sell them and use the capital from these sales to “start a second one, a third one as so on.”

As discussed, the Petitioner asserts that the Beneficiary would act in an executive capacity in the United States within one year. The statutory definition of the term “executive capacity” focuses on a person’s elevated position within an 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 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.*

When a new business is established and commences operations, the regulations recognize that a designated executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive-level and that often the full range of executive responsibility cannot be performed. To qualify for the 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 establish that the proposed enterprise will support an executive 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 an executive who will primarily perform qualifying duties.

The Petitioner has not sufficiently demonstrated that it would develop sufficiently within one year to support the Beneficiary in an executive capacity. The Petitioner submitted an extensive organizational

structure including several subordinate managers and a total of eight positions. However, the Petitioner provides no hiring timeline as to when these subordinates would be hired, nor did it submit duty descriptions and required educations for these positions to credibly demonstrate that they would be required during the first year. The Petitioner emphasizes that the Beneficiary would be tasked with overseeing “project and technical support managers” and other “top management personnel,” however, there is little indication as to when these subordinates would be hired to support the Beneficiary in his asserted executive-level role. The Petitioner’s assertions in its business plan reflect that the Beneficiary would be responsible for all aspects of its proposed real estate projects, and it does not specifically articulate when he would be relieved from performing these non-qualifying operational tasks related to identifying, purchasing, and developing properties.

The Petitioner’s business plans also leave substantial uncertainty as to whether it would be sufficiently operational within one year to support the Beneficiary’s executive level position. The Petitioner states on appeal that the large development projects it is planning would take approximately three years to complete, where it would lead to actual revenue from selling or leasing these properties. Although we acknowledge that the Petitioner submits some evidence to indicate that it has acquired plots of land and that it has begun the process of gaining permits and evaluating the land for development, there is little evidence to support a conclusion that the Petitioner would generate revenue during the first year and commence doing business sufficient to develop an organizational structure to support the Beneficiary in an executive role.

For instance, the Petitioner stated in support of the petition that the foreign employer first decided to invest in real estate development projects in the United States in March 2019, well over two years prior to the date the petition was filed.² The Petitioner stated that this “proved not effective,” leaving question as to how it would be effectuated in within year after the petition was filed. Further, the Petitioner vaguely mentioned a “1,5 years schedule of construction,” appearing to indicate that the construction of its projects could potentially take up to five years. It also expressed plans to develop its real estate projects over a 15-year period. Therefore, in sum, the Petitioner has not credibly demonstrated that it would commence doing business within its first year of operations and develop sufficiently to support the Beneficiary in an executive capacity where he would be primarily relieved from performing non-qualifying operational tasks.³ The Petitioner must resolve 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).

For the foregoing reasons, the Petitioner has not established that the Beneficiary would act in an executive capacity within one year of an approval of the petition.

ORDER: The appeal is dismissed.

² The petition was filed on November 23, 2021.

³ In addition to demonstrating that the Petitioner would support the Beneficiary in an executive capacity within one year, it is further required to establish that it would “commence doing business.” See 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The term “doing business” is defined in the regulations as “the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.” 8 C.F.R. § 214.2(l)(1)(ii)(H).