



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

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

In Re: 22857078

Date: NOV. 22, 2022

Appeal of California Service Center Decision

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

The Petitioner, an exporter of nuts, seeks to employ the Beneficiary temporarily as its “Manager and Chief Executive Officer” 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 Petitioner did not establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity. The matter is 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, 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 issue to be addressed is whether the Petitioner provided sufficient evidence to establish that the Beneficiary’s position with the U.S. entity would be in an executive capacity.¹

“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

¹ The Petitioner does not claim that the Beneficiary would be employed in a managerial capacity.

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.

Based on the statutory definition of executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. Section 101(a)(44)(B) of the Act. The Petitioner must also 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).

The description of the job duties must clearly describe the Beneficiary's duties and indicate whether such duties are in a managerial or an executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the employing company's organizational structure, the duties of the 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 the Beneficiary's actual duties and role in a business.

Accordingly, we will discuss evidence of the Beneficiary's job duties along with evidence of the nature of the Petitioner's business and its staffing levels.

A. Job Duties

First, we will discuss the duties to be performed by the Beneficiary in the proposed position with the U.S. entity. We note that the actual duties themselves 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).

In a supporting cover letter, the Petitioner stated that the Beneficiary will be "the most senior executive" in the organization where he will "immediately supervise three management level employees" to include a "Manager Operations, an HR and Legal Manager[,] and a Logistics Manager." The Petitioner also provided two job descriptions, one of which contains a list of proposed job duties that highlight the Beneficiary's leadership role with respect to the Petitioner's business strategy and matters concerning its sales and finances. For instance, the Petitioner stated that the Beneficiary will "[d]eliver business plans . . . via Head of Departments and Operation managers," "us[e] performance measurements to guide strategic and operational decision-making," plan for the Petitioner's "financial needs," oversee the preparation of the annual budget and "other necessary financial documents," ensure that production facilities are in compliance with applicable regulations, monitor sales and review activity and sales reports and financial statements, and develop strategies to minimize costs. Other job duties highlight the Beneficiary's discretionary authority over business initiatives, including seeking opportunities for business expansion, researching markets and regions "to identify new channel introduction, existing channel penetration and expansion opportunities," "identify[ing] opportunities for product portfolio expansion and market share coverage," and supporting brand managers by communicating with the merchandising team.

Although this job description indicates that the Beneficiary will have authority to make decisions regarding all matters concerning the business, several job duties are vague and include references to a hierarchy that was not in place at the time this petition was filed. Namely, the Petitioner referred to

“Head of Departments and Operation managers,” even though the organization was comprised of only two U.S.-based employees (one of whom was a “Manager Operations”) and did not include department heads or multiple operations managers. Likewise, the Petitioner’s reference to “brand managers” and a “merchandising team” also appears to involve positions that were not part of the organization at the time of filing. These ambiguities cause us to question whether the listed job duties accurately reflect the Petitioner’s organizational needs and whether Beneficiary would likely have been able to execute his assigned duties given the facts and circumstances that existed at the time this petition was filed. *See* 8 C.F.R. § 103.2(b)(1) (requiring the Petitioner to establish eligibility for the requested benefit at the time of filing).

Although the second job description offers a percentage breakdown, it primarily lists vague job duties which include allocating 20% of the Beneficiary’s time to “HR, Marketing Legal aspects of the existing businesses including goal and policy formulation,” 20% to issues related to quality and procurement strategies, and 20% to “controlling activities including oversight of quality control, financial organization and performance.” The Petitioner did not identify specific goals, policies, or procurement strategies, nor did it specify the types of quality issues the Beneficiary expects to address or explain how he will oversee quality control and financial performance. These job duties, which account for 60% of the Beneficiary’s time, provide little insight as to the actual daily or weekly activities the Beneficiary could expect to perform within the scope of the U.S. organization based on its stage of development at the time of filing.

In a request for evidence (RFE), the Director informed the Petitioner of the deficiency and asked for the submission of a more detailed job description. The Director questioned how the Beneficiary would carry out some of his assigned duties without a support staff in place to perform the underlying operational tasks. Accordingly, the Director asked the Petitioner to list the Beneficiary’s typical executive job duties and states the percentage of time he would allocate to each listed job duty.

In response, the Petitioner claimed that the Beneficiary’s “key activity” will be to direct “the team that performs the processes of the [P]etitioner”; it explained that due to the COVID 19 pandemic “it had to be flexible and creative” in terms of creating a workforce, which it claims it was able to do by relying on two U.S.-based employees, third-party contractors, and several employees who work for the Petitioner’s parent entity in Kuwait. The Petitioner described a 10-step process in which the contractors and U.S. and foreign employees participate to ensure the Petitioner’s ability to be a “large-scale exporter of nuts.” The Petitioner also pointed to a previously submitted organizational chart and feasibility study, asserting that these documents “confirm that the [B]eneficiary will oversee the transformation of the [P]etitioner to replace its current workforce . . . with its own in-house workforce.” The Petitioner did not, however, provide a supplemental job description as requested, and instead argued that the job descriptions it originally submitted adequately described the Beneficiary’s proposed employment.

In a denying the petition, the Director reiterated concerns that were previously stated in the RFE and questioned the Petitioner’s ability to support the Beneficiary in an executive capacity within the scope of its organization at the time of filing. The Director questioned the Petitioner’s ability to elevate the Beneficiary to an executive position and determined that the previously provided job description did

not adequately clarify the Beneficiary's proposed role and job duties in an operation that is claimed to rely primarily on a foreign-based support staff.

On appeal, the Petitioner disputes the denial, but does not provide additional information to further our understanding of the Beneficiary's proposed executive job duties; instead, it reiterates the 10-step work process for exporting nuts and again argues that its two U.S.-based employees, foreign employees, and third-party contractors adequately meet the Petitioner's current business needs. The Petitioner also points to an approved petition for one of its other U.S. employees whose position would be subordinate to the Beneficiary with the existing organizational hierarchy. While we acknowledge that USCIS previously approved a nonimmigrant petition filed by the Petitioner, we note that the petition was filed on behalf of a different beneficiary. Furthermore, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a separate petition on behalf of another beneficiary. *See, e.g., Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

In addition, the Petitioner refers to our non-precedent decision in which we sustained an appeal involving a petitioner that relied on a foreign staff that was dedicated to supporting the beneficiary's U.S. position. As noted, this decision was not published as a precedent; as such, it does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Further, in the unpublished case the filing entity had a foreign staff that was specifically dedicated to supporting the growth of the petitioning U.S. entity. In this instance, the Petitioner has not established that the facts are analogous to those in the unpublished decision.

The Petitioner also makes references to plans for expansion of its operation, which includes hiring more staff to support the Beneficiary's position, and it refers to its original description of the Beneficiary's job duties, which included repeated references to departments and managerial positions intended to support the Beneficiary in an executive-level position. However, the Petitioner does not offer a job description that reflects the duties the Beneficiary would perform within the scope of its operation as it existed at the time of filing, nor does it establish that the Beneficiary's time would be primarily allocated to duties of an executive nature. Other than conveying a sense of the Beneficiary's discretionary authority, the Petitioner does not elaborate on the specific actions the Beneficiary's general set of duties would entail within the Petitioner's nut exporting operation.

While the sum of the Beneficiary's responsibilities indicates a heightened level of discretion over the Petitioner's day-to-day operations and the requisite level of authority with respect to discretionary decision-making, the Petitioner offers a job description that is overly broad and does not appear to reflect the duties the Beneficiary would perform within the context of its organizational composition at the time this petition was filed; rather, the Petitioner projects what the Beneficiary's job duties would someday be, once the company has undergone growth and staffing changes. As previously noted, however, eligibility must be based on the facts and circumstances that were present at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). In the meantime, information about a beneficiary's actual daily

tasks is an important indication of whether their 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). Here, however, the Petitioner provides job descriptions that offer little insight as to the specific activities the Beneficiary would undertake within the scope of its operation at the time of filing. Because of the noted ambiguities regarding the Beneficiary's job duties, the Petitioner has not established that the Beneficiary would dedicate his time primarily to performing executive-level tasks.

B. Staffing

Next, we will address the Petitioner's staffing at the time of filing. When staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, the reasonable needs of the organization must be considered in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Petitioner claimed two employees at the time of filing and indicated in the petition that it was "in the process of hiring 2-4." In its initial cover letter, the Petitioner stated that although it is not a new office, it is still "at a relatively early stage in its development" and discussed plans to expand its operation by adding to the ways in which it would generate revenue and increasing its staff to 21 employees by 2024. The Petitioner stated that the Beneficiary will "immediately hire 3 supervisory level and/or professional employees in California" and that in the meantime, he will oversee "2 management level employees at the [P]etitioner's offices in California, namely an Executive & Logistic and Supply Chain Manager and an HR and Legal Manager." Despite claiming that the Beneficiary "will direct the entire multinational organization, including the [P]etitioner and foreign parent company," the Petitioner did not state that it was relying on the foreign entity to fill any staffing gaps or to otherwise compensate for the Petitioner's "early stage in its development."

The Petitioner also provided separate organizational charts for each entity, depicting separate organizational hierarchies and no common personnel, with the exception of the Manager and CEO, held by the Beneficiary, and the manager of operations, held by [REDACTED]. We note that although the foreign organizational chart shows [REDACTED] as subordinate to the Beneficiary, the same is not true of [REDACTED] position within the Petitioner's organizational hierarchy, where he is depicted at the same senior level as the Beneficiary, thus indicating that the Beneficiary will not be the Petitioner's "most senior executive," as he and [REDACTED] would be equally ranked, neither being more senior with respect to the other.

In addition, the proposed organizational chart shows that the Beneficiary will oversee only one, rather than two of the Petitioner's current employees. Namely, the chart shows that the Beneficiary will oversee the employee occupying the HR and Legal Manager position and does not identify an "Executive & Logistic and Supply Chain Manager" position. In fact, the only position title in the chart that resembles that of "Executive & Logistic and Supply Chain Manager" is the position of logistics manager. However, that position is depicted as subordinate to [REDACTED] not to the Beneficiary. Further, as previously mentioned, although the Beneficiary's job description refers to "brand managers" and a "Merchandise team," the proposed organizational chart does not identify these positions as part of the Petitioner's prospective personnel plan. The Petitioner must resolve the noted

staffing and organizational discrepancies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In the RFE, the Director observed that the Petitioner lacked personnel who would perform activities associated with logistics, supply chain, and human resources; he therefore questioned whether the Petitioner was adequately staffed to support the Beneficiary in an executive position. In response, the Petitioner submitted a statement claiming that “it had to be flexible and creative during the COVID pandemic,” which precluded the foreign entity from being able “to send an executive to the U.S. to oversee the creation of an in-house workforce.” The Petitioner further claimed that to carry out the 10-step process involved in being a “large-scale exporter of nuts,” it relied on employees from its foreign parent entity and independent third-party contractors in addition to the two in-house employees based in the United States. In total, the Petitioner listed six foreign employees, including head of procurement, a production manager, regional quality manager, warehouse manager, manager of operations, and a regional financial controller, each of whom was tasked with overseeing various aspects of the exporting process, including locating growers and suppliers, negotiating prices, and overseeing U.S.-based third-party contractors who sort, inspect, store, package, and ship the nuts. However, the Petitioner did not provide evidence that it relied on the foreign entity’s employees to assist with operational tasks at the time of filing. The Petitioner provided no evidence of a formal arrangement between the two entities, nor did any of the foreign employees’ respective job descriptions indicate that their responsibilities included assisting the U.S. entity in any capacity. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The evidentiary deficiency described above is particularly critical, given that the Petitioner’s explanation in the RFE response was a departure from its original claim and supporting documents, which did not indicate that the Petitioner would rely on assistance from the foreign parent organization’s workforce. A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998).

In addition, although the Petitioner stated that its HR and Legal Manager is on the U.S. payroll and is tasked with ensuring the Petitioner’s compliance with U.S. state and federal laws, it is unclear whether this individual can fulfill this responsibility given his work history, which shows that he has worked for the foreign entity from 2016 “Till present” and has used his legal expertise to consult the foreign entity on foreign matters. Despite evidence that this individual obtained a juris doctor degree in the United States, his employment history has involved only foreign matters, such as “local and regional Arabic legal matters,” “all Arabic legal contracts, letters, agreements, etc.,” identifying risk factors in matters concerning “Arabic lease/rental contract,” reviewing social insurance concerns in “hiring of Kuwaitis” and maintaining “proper Kuwaitization [*sic*] quota.” Although this individual’s U.S. job duties are said to include managing human resource compliance, it is worthy to note that the Petitioner’s entire U.S. staff consisted of only one other employee. The record therefore does not show that managing human resource compliance accurately reflects the Petitioner’s needs based on the scope of its operation at the time of filing. Although the Petitioner stated that the HR and Legal Manager would also be responsible for the company’s compliance with local, state, and federal laws

in the United States, it did not adequately explain this position's role within the Petitioner's daily operation or clarify how this employee would help to relieve the Beneficiary from having to primarily focus on operational tasks. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See, e.g.*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

In sum, we find that the Petitioner provided deficient evidence pertaining to its staffing and the Beneficiary's proposed job duties. As such, the Petitioner did not establish that the Beneficiary would allocate his time primarily to executive tasks in his proposed position.

III. CONCLUSION

Given the evidentiary deficiencies described above concerning the Beneficiary's job duties and the Petitioner's staffing, we conclude that the Petitioner has not met its evidentiary burden in establishing that the Beneficiary's proposed employment would be in an executive capacity and the appeal will be dismissed on that basis.

ORDER: The appeal is dismissed.