



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

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

In Re: 22395873

Date: SEP. 14, 2022

Appeal of California Service Center Decision

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

The Petitioner¹ operates a fast-food restaurant and seeks to employ the Beneficiary temporarily as its “President” 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 was employed and 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 because the Petitioner did not establish that the Beneficiary would be employed in an executive capacity.² 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 as to whether the Beneficiary was employed abroad in an executive capacity. *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. 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

¹ The Petitioner states that it is a Florida business entity that is doing business as [REDACTED]

[REDACTED] Although the Petitioner provided documents showing its use of this alternate business name, there is no formal documentation showing that the alternate name has been registered and is recognized by the state or federal government.

² Although the Petitioner referred to the Beneficiary’s position as that of “executive/manager,” the Petitioner’s appeal brief states that the Beneficiary “only functions in the executive capacity” and restates the definition of “executive capacity.”

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 primary 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.

"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.

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 regarding 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 described the Beneficiary as "perfect decision making, excellent communication skills and the right eye to recruit the team needed." The Petitioner also provided a percentage breakdown of the Beneficiary's job responsibilities, emphasizing her leadership position and discretionary authority over the Petitioner's goals and policies, budgets and finances, matters concerning negotiations with banks and vendors, and the company's "governance" and staff

performance. The Petitioner also stated that the Beneficiary would analyze “strategic alliances” and “identify new opportunities” to ensure the company’s success.

The Director determined that the offered job description was overly vague and therefore issued a request for evidence (RFE) notifying the Petitioner of the deficiency and asking for the submission of a more detailed description of the Beneficiary’s proposed daily activities within the context of the Petitioner’s business operation. The Director stated that the job description should include a percentage breakdown of the Beneficiary’s typical managerial or executive job duties, explaining how the proposed position meets the statutory criteria of managerial or executive capacity.

In response, the Petitioner provided a statement from the foreign entity’s managing director discussing the Petitioner’s current operation and plans for expansion. The statement refers to the Beneficiary’s position as “senior level” and states that she will “exercise broad discretion over day-to-day operation of the U.S. organization,” which is intended to include “2-3 more stores in the next 18-24 months.” However, the Petitioner must establish that it was eligible for the requested benefit at the time of filing, 8 C.F.R. § 103.2(b)(1). Because the Petitioner was not functioning under the expanded operation at the time of filing, the Beneficiary’s described job duties will be considered within the context of the single fast-food restaurant that comprised the petitioning organization during the relevant time. Specifically, the Beneficiary is said to “directly undertake[] oversight of the production and service delivery machinery of the business through the executive director, Chef, and the unit managers.” However, the Petitioner did not elaborate on the type of “machinery” or explain how production is relevant to the Petitioner’s fast-food operation and how the Beneficiary will execute her oversight authority over “production.” The Petitioner also did not specify who the “unit managers” are or establish a need for “unit managers” within the scope of its fast-food operation.

The response statement also contains a list of vague job duties highlighting the Beneficiary’s discretionary authority. For instance, the list states that the Beneficiary will be responsible for “[d]eveloping, planning and establishing” goals and policies, hiring and firing personnel, reviewing financial statements and reports, having “autonomous control” over “the successful direction of the [Petitioner’s] activities,” maintaining responsibility over development of the “administrative sector,” and “[f]ormulating [] other necessary policies” as needed. However, the Petitioner offered no insight as to the policies the Beneficiary has or will develop and plan, nor did it explain what the “administrative sector” is or how this term is relevant to the Petitioner’s operation; the Petitioner also did not specify the tasks involved in developing the “administrative sector.” In addition, the Petitioner did not clarify how maintaining “autonomous control” over the company’s “successful direction” represents a regularly performed activity, nor did it specify the underlying tasks associated with this responsibility. Likewise, the record does not indicate that hiring and firing personnel, reviewing financial statements, and setting goals are activities that the Beneficiary would perform in the daily or weekly course of the Petitioner’s operation. In other words, the list does not offer meaningful content that would further our understanding of the Beneficiary’s daily or weekly activities and her executive role within the organization.

The Petitioner also stated that the Beneficiary would find “a suitable location to establish the retail business,” negotiate the lease for the said location, and “[a]cquire all necessary equipment and furnishings for the facility.” However, the Petitioner did not establish that these are executive-level tasks. Also, although the Petitioner claimed that 85% of the Beneficiary’s time would be allocated to

executive job duties, it neglected to comply with the RFE request for a job duty breakdown with a percentage of time assigned to individual job duties. As a result of the noted deficiencies and ambiguities, the record lacks an adequate description of the Beneficiary's proposed job and does not establish that the Beneficiary would dedicate her time primarily to duties of an executive nature.

The Director subsequently denied the petition, finding that the Petitioner provided a deficient job description listing generic job duties that do not clarify what the Beneficiary would actually be doing or the nature of her role within the context of a fast-food operation.

On appeal, the Petitioner disputes the denial, claiming that the Beneficiary "has grown the business to be profitable" within a year's time, emphasizing the Beneficiary's claimed contributions to the success of its U.S. investment in a fast-food restaurant. However, given that the Petitioner's sole focus at the time of filing was operating a fast-food establishment that was purchased from its prior owner, it is unclear precisely what steps the Beneficiary took to demonstrate that she "has grown the business." Further, despite claiming that the Beneficiary "only functions in the executive capacity," the Petitioner does not offer evidence that furthers our understanding of the Beneficiary's proposed executive job duties; instead, it offers a list of broadly stated job duties that are nearly identical to those listed in a job description that was submitted initially in support of the petition. In this job description, the Petitioner makes general claims about the Beneficiary's responsibilities, which include formulating short- and long-term goals and policies, and planning and directing "the company's financial, governance, and commercial operations." However, aside from referring to plans to expand its operations into [REDACTED] the Petitioner does not identify specific business goals that the Beneficiary set or point to policies she implemented; nor does the Petitioner establish a need for setting goals and policies on a daily or weekly basis within the Petitioner's fast-food operation. Further, other than conveying a sense of the Beneficiary's discretionary authority by stating that the Beneficiary would direct "the company's financial, governance, and commercial operations," the Petitioner does not elaborate on the specific actions this general set of duties would entail within the scope of the Petitioner's business.

The Petitioner also indicates that the Beneficiary will have discretionary authority over the company's future prospects in that she will identify investment opportunities and coordinate "international strategic planning" with its claimed foreign parent entity. However, the Petitioner did not specify the tasks involved in finding investment options or establish that those tasks would be executive in nature. Likewise, the Petitioner did not elaborate on the activities involved in "international strategic planning" or explain the significance of this duty within the context of the U.S. operation. The Petitioner also stated that the Beneficiary will set and monitor budgets, determine a marketing strategy, and assess the need for hiring a marketing company. Although there is likely a need to set budgets and assess marketing needs on an intermittent basis, the Petitioner did not establish a need to have the Beneficiary perform these activities within the course of the company's daily or weekly operation. The same is true of the Beneficiary's responsibility to analyze the online food industry and "strategic alliances" or to hire "management teams" and monitor staff performance, the latter of which was said to be done through "annual evaluations."

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 record does not establish that her actual duties would be primarily executive in

nature. To make this determination, we rely on specific information about a beneficiary's actual daily tasks as 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). As discussed, however, the Petitioner provided a vague job description that offers little insight as to the specific activities the Beneficiary would undertake within the scope of the operation that existed at the time of filing. Thus, although the Petitioner claims that the Beneficiary will focus on the "implementation of its flagship store in [redacted] no evidence was submitted to show that plans for a [redacted] store were under way at the time this petition was filed.

Further, the Petitioner has not established that traveling in search of an expansion location and securing a lease to accommodate a "flagship store" are executive, as opposed to operational, job duties. 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). Because of the noted ambiguities in the Beneficiary's job description, it is unclear how much of her time would be dedicated to performing non-executive tasks, thus precluding the finding that she would primarily dedicate her time to performing executive-level tasks that comprise her "executive senior-level position" as claimed.

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 did not provide the "current number of employees" in the petition form as requested and instead claimed six employees in its supporting statement, while listing seven total positions – a restaurant manager, an assistant manager, a kitchen manager, two shift leaders/cooks, and two drivers. The Petitioner also provided an organizational chart depicting a five-tier structure comprised of seven employees. Despite stating that the staffing as described in the chart would be "fulfilled by the end of 2020," the organizational chart listed no vacant positions and included the name of the employee assigned to each of the seven listed positions. The chart shows the Beneficiary at the top tier as the president, overseeing a six-person restaurant staff; a manager of front reception and kitchen staff is depicted as the Beneficiary's direct subordinate, followed by an assistant manager who is also listed as pizza cook and in charge of pasta and salads. The assistant manager is depicted as overseeing a "pizza cook & daily prep" employee and a kitchen manager, the latter of which is shown as overseeing two drivers. Because the Petitioner did not clarify the ambiguities concerning the size of its staff or the positions comprising that staff, it is unclear how many employees the Petitioner had and which positions were filled at the time of filing. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988)

(requiring a Petitioner to resolve any inconsistencies in the record with independent, objective evidence).

In the RFE, the Director questioned whether the employees' job descriptions accurately reflect the job duties they would perform and whether the scope of the Petitioner's business activity and its corporate structure are such that would support the Beneficiary in an executive capacity. The Director asked the Petitioner to provide an organizational chart listing all employees by name and job title and summarizing each employee's job duties, educational level, and salary. The Petitioner was also asked to provide evidence of employee wages in the form of a payroll summary and tax documents, such as Forms W-2, W-3, and 1099-MISC.

In response, the Petitioner stated that the Beneficiary, in her capacity as the company's president, "directly undertakes oversight of the production and service delivery machinery of the business through the executive director, Chef, and the unit managers." The Petitioner further stated that the Beneficiary "doubles as the chief quality control fact of the business" and is "assisted . . . by the Executive Director HR/Administrations in all matter's [*sic*] personnel, payroll; book/record keeping and documentation, [*sic*] and by Director Operations on all matters sales, delivery; [*sic*] customer service and business development. Although the Petitioner provided an organizational chart depicting the Beneficiary as head of the organization, the chart did not include the referenced "Executive Director HR/Administrations" or the "Director Operations" positions. Rather, the chart shows the Beneficiary overseeing a 12-person restaurant operation, which includes a general manager and manager of the front reception and kitchen as her two direct subordinates. In turn, the latter is depicted as overseeing a cook and a "kitchen management & pizza cook" position, while the general manager is shown as overseeing an "inventory & marketing controller" employee.

The bottom tier of the chart includes a pasta cook, a salad and wings cook, and a pizza cook, all three under the supervision of the "kitchen management & pizza cook" position. The remainder of the bottom tier consists of four drivers depicted as subordinate to the "inventory & marketing controller" employee. The Petitioner did not acknowledge the exclusion of the "Executive Director HR/Administrations" and the "Director Operations" positions from its organizational chart, nor did it explain how the Beneficiary will be impacted by the lack of employees to fill these positions. In a subsequent portion of the response statement, the Petitioner provided more inconsistent information about the Beneficiary's subordinates. On the one hand, the Petitioner claimed that the Beneficiary will have "three subordinate managers/supervisors," while on the other hand, it stated that the Beneficiary's subordinates will include a general manager, two shift managers, and two shift supervisors, thus totaling five employees; and in a follow-up discussion of the organizational hierarchy, the Petitioner offered a third version, claiming that the general manager would be the Beneficiary's direct subordinate, while the shift manager would be directly subordinate to the general manager, and no further information was provided regarding a reporting hierarchy for the shift supervisors. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. These unresolved discrepancies preclude a meaningful understanding of the Petitioner's reporting structure

and further detract from the claim that the Petitioner has a sufficient support structure capable of relieving the Beneficiary from having to primarily perform non-executive job duties.

Lastly, the Petitioner provided limited wage evidence, including a 2021 quarterly tax return for the second quarter and paystubs for three employees filling the positions of the general manager, inventory and marketing controller, and pasta cook. As no other paystubs were provided, it is unclear who the fourth employee may have been, what position they held, and whether they were employed at the time of filing or were hired at a later date. This lack of wage documents³ underscores the existing ambiguities and inconsistencies regarding the Petitioner's organizational structure and the record's lack of evidence resolving those inconsistencies. *See id.* Thus, although the Petitioner contends on appeal that the Beneficiary "hired the right number of staff even during the difficult times of labor shortage," the record does not support that claim. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (establishing that the Petitioner must support its assertions with relevant, probative, and credible evidence).

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 her time primarily to executive tasks in her proposed position.

III. FOREIGN EMPLOYMENT

In addition, we note that throughout this proceeding the Petitioner has maintained the claim that the Beneficiary is "extremely qualified" for the proposed position based on her "extensive food and beverage background" through prior employment. The Beneficiary's résumé, which was provided in support of the petition, shows a history of continued employment in a management capacity, including employment as a "Country Manager & Business Development Manager" for an Indian restaurant chain from July 2013 to August 2016, followed by a senior financial adviser position from September 2016 to August 2018, and continuing with a management position at [REDACTED] the Petitioner's claimed parent entity. However, in a nonimmigrant visa (NIV) application, which was filed in April 2018, the Beneficiary provided information that is inconsistent with her and the Petitioner's current claims concerning her foreign employment. Namely, when asked about her primary occupation in the NIV application, the Beneficiary identified her occupation as "homemaker." She also responded "no" when asked whether she was previously employed. These responses lead us to question the validity of the Beneficiary's employment history as stated in her résumé, as well as her and the Petitioner's respective claims that the Beneficiary was employed with [REDACTED] and is qualified to assume an executive position with the petitioning organization. *See* 8 C.F.R. § 214.2(l)(3)(iv) (requiring a petitioner to establish that the beneficiary's prior education, training, and employment qualifies them for the intended position). Without further information we cannot tell whether this discrepancy would constitute material misrepresentation.⁴

³ Although the record includes other wage documents that were initially submitted in support of the petition, such documents predate the filing of this petition and therefore do not address the issue of the Petitioner's staffing composition at the time of filing.

⁴ Any foreign person who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act is inadmissible. *See* section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

While the dismissal of this appeal is not based on the information contained in the Beneficiary's NIV application, the Petitioner will need to further address the listed discrepancy in any future filing where the issue of foreign employment is material to eligibility.

IV. QUALIFYING RELATIONSHIP

Lastly, although not discussed in the Director's decision, the record contains inconsistencies regarding the Petitioner's ownership, thus leading us to question whether the Petitioner has a qualifying relationship with [REDACTED] the foreign entity where the Beneficiary is claimed to have been previously employed.

To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or that they are related as a "parent and subsidiary" or as "affiliates." See section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

In the present matter, section 1, item 12 of the L Classification Supplement states that 51% of the Petitioner is owned by [REDACTED] 39% by the Beneficiary, and 10% by [REDACTED]. The record contains three share certificates issued in 2019 that reiterate this ownership breakdown. However, on the first page of the supporting statement, the Petitioner described a different ownership breakdown claiming the following: "India owns 39% of the shares of the USA subsidiary," a claim that is inconsistent with the information provided in the L Classification Supplement and stock certificates and, if true, this claim would indicate that a parent-subsidiary relationship does not exist between the Petitioner and [REDACTED]. Further, in the Articles of Amendment to the Articles of Incorporation, dated in July 2020, the Petitioner described yet another ownership breakdown in section E. Namely, the amendment listed the Beneficiary as owner of 51% of the U.S. entity, [REDACTED] as owner of 39%, and [REDACTED] as owner of the remaining 10%, thereby indicating that the Beneficiary, rather than [REDACTED] is the Petitioner's majority owner.

As with the previously discussed inconsistency concerning the Beneficiary's foreign employment, this inconsistency will not serve as a basis for denial and the appeal will be dismissed based on our determination concerning the Beneficiary's proposed employment with the U.S. entity. However, the Petitioner must further address the listed discrepancy in any future filing where the issue of its ownership is material to eligibility.

V. 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.