



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

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

In Re: 01888187

Date: SEPT. 28, 2022

Appeal of California Service Center Decision

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

The Petitioner intends to operate a convenience store and gas station.¹ It seeks to temporarily employ the Beneficiary as general manager of its new office² under the L-1A nonimmigrant classification for intracompany transferees, at a salary of \$30,000 per year. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the petitioning U.S. employer has a qualifying relationship with the Beneficiary's employer abroad; (2) the Petitioner has secured sufficient physical premises to house the new office; (3) the Beneficiary accumulated at least one year of continuous qualifying employment abroad during the required three-year period; (4) the Beneficiary was employed abroad in a managerial or executive capacity; (5) the Beneficiary is qualified to perform the duties of her intended position in the United States; and (6) the Petitioner's new office would support a primarily managerial or executive position within one year after approval of the petition. The matter is now 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. 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

¹ An official of the foreign entity stated, in a letter, that the petitioning entity "is a new U.S. corporation created to engage in wholesale trade, and investing in other business ventures." The petition form, however, describes the company as a "Convenience store," and the address provided belongs to a convenience store and gas station. The accompanying business plan describes the operation and staffing of a store that "will offer . . . gas, organic produce, and a deli," with no discussion of "wholesale trade[or] investing on other business ventures."

² 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.

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. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director determined that the Petitioner did not establish that the Beneficiary has been employed abroad in a capacity that is managerial, executive, or involves specialized knowledge. The Petitioner specifically claimed that the Beneficiary's employment abroad was in an executive capacity, and therefore we will limit our discussion accordingly.³

"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 show that a beneficiary is eligible for L-1A nonimmigrant visa classification as an executive, the petitioner must show that the beneficiary performed all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B) of the Act. If a petitioner establishes that the position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary was *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). In determining whether the beneficiary's duties were primarily executive, we consider the description of the job duties, the 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 the business.

A letter from the foreign entity includes the following description of the Beneficiary's claimed responsibilities as an accountant:

- Continuous management of financial systems and budgets;
- Undertaking financial audits and providing financial advice;

³ We note that the Director's request for evidence and denial notice both contain references to specialized knowledge. But because this proceeding relates to a new office petition and the Petitioner seeks to classify the Beneficiary as an L-1A manager or executive, the Beneficiary's past experience must have been in a managerial or executive capacity, not in a capacity involving specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

- Providing financial information and advice; reviewing the company's systems and analyzing risk;
- Performing tests to check financial information and systems;
- Advising on tax planning and tax issues associated with activities such as business acquisitions and mergers;
- Maintaining accounting records and preparing accounts and management information;
- Advising on business transactions, such as mergers and acquisitions;
- Counselling Partners on areas of business improvement, or dealing with insolvency;
- Detecting and preventing fraud;
- Producing reports and recommendations following internal audits;
- Preparing financial statements, including monthly and annual accounts;
- Arranging financial management reports, including financial planning and forecasting; advising on tax and treasury issues;
- Negotiating terms with suppliers. Expert in Day to day accounting, handling all bank matters and transactions;
- Expert in Vat Tax \ CST \ TDS \ Entry Tax \ Service Tax \ Tax \ balance sheet.

An accompanying organizational chart indicates that the Beneficiary had no subordinates at the foreign company.

In a request for evidence (RFE), the Director requested additional information and documentation regarding the Beneficiary's claimed experience at the foreign company. In response, the Petitioner resubmitted a copy of the same job description quoted above. The Director concluded that the Petitioner had not met its burden of proof to establish that the Beneficiary was employed abroad in a qualifying capacity.⁴

On appeal, the Petitioner states that the Beneficiary "has already demonstrated her executive responsibilities for the foreign entity, [where] she has served as the Accountant."

By statute and regulation, an executive primarily directs management, establishes goals and policies, and exercises wide latitude in discretionary decision-making. *See* section 101(a)(44)(B) of the Act; 8 C.F.R. § 214.2(l)(ii)(C). 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 Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The duties described by the foreign entity do not establish that the Beneficiary directed the management of the company or any major component or function thereof, or that she established goals and policies. Instead, the job description indicates that she performed what appear to be the standard duties of an accountant, which are operational tasks relating to the administration of the entity's finances. Such operational tasks include performing audits, preparing financial statements, and "handling all bank matters and transactions." The submitted organizational chart does not show any

⁴ We note that the Beneficiary filed applications for nonimmigrant visas at overseas consulates during the time of her claimed employment abroad. Although the Director did not cite the information in the RFE or denial notice, we note that information in those applications is not consistent with the claim, in this proceeding, that the Beneficiary worked for the foreign entity as claimed. The information from those filings may be taken into consideration in future filings and proceedings where the Beneficiary's past employment is relevant.

subordinates to whom the Beneficiary could have delegated any of the day-to-day tasks and duties below the executive level.

For the above reasons, the Petitioner has not established that the Beneficiary's claimed position abroad qualifies as a primarily executive capacity.

III. SUFFICIENT PHYSICAL PREMISES

A petitioner seeking to open a new office must establish that it has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

The initial submission includes a copy of a six-page lease agreement, dated September 1, 2017, for a property on [] Highway in [] Georgia, from September 1, 2017 to October 1, 2020.⁵

In the RFE, the Director noted anomalies in the lease agreement. The document provides inconsistent names for the lessor, identifying [] on the first page but [] on later pages and the signature line. The lease also refers to "the Laws of the State of Tennessee," although the leased property and the claimed lessor's address are both in Georgia. The Director noted the lack of "an explanation for these conflicting statements," and requested further evidence regarding the arrangements for the Petitioner to rent and occupy the location.

In response, the Petitioner submitted a copy of a second lease agreement, dated September 17, 2017, which consistently identifies the lessor as []. The two-page document makes no reference to the substantially longer lease agreement described above, dated less than three weeks earlier, and the Petitioner did not explain why there are two lease agreements signed by two different claimed lessors. The newly submitted lease covers a term "commencing September 1, 2017 and ending August 31, 2010 [*sic*]."

The Director denied the petition, stating that the Petitioner did not explain why it has two different lease agreements for the property in [] signed by two different individuals each claiming to be the lessor.

On appeal, the Petitioner does not address the issues that the Director raised. The Petitioner states:

USCIS argues that we have not provided a lease agreement for the new U.S. subsidiary business. However, we have negotiated a lease several times with the owner, []. [] is aware that the business will not be operational until the beneficiary is approved for the L1 visa.

Therefore, the space is being renovated at our expense in barter of signing the new lease either [*sic*] at the time of completion of the renovation.

⁵ On the petition form, the Petitioner indicated that the Beneficiary is in the United States, having entered in June 2017 as a B-1/B-2 nonimmigrant visitor. Asked to provide the Beneficiary's "Current Residential U.S. Address," the Petitioner provided the address of the convenience store in [].

Although the Petitioner names [REDACTED] as the lessor in the statement quoted above, the Petitioner also resubmits a copy of the September 17 lease, which names [REDACTED] as the lessor instead of [REDACTED].

The Petitioner's assertions on appeal do not address or resolve the Director's concerns. The Petitioner must resolve inconsistencies 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). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Furthermore, the materials in the record raise questions beyond those that the Director mentioned in the RFE and the denial notice. Both versions of the lease agreement specify the rental rate as \$5000 per month, or \$60,000 per year, but the Petitioner's business plan allocates only \$13,000 per year for rent payments.

Also, the record shows that the Petitioner has not yet begun doing business at the site in [REDACTED]. The Petitioner asserts, on appeal, that startup funds are being held in escrow until the petition is approved, and that "the space is being renovated," and "the business will not be operational until the beneficiary is approved for the L1 Visa." But the Petitioner has submitted photographs showing that a convenience store was already operating at the address shown on the lease at the time of filing in 2017.

The record indicates that another company is operating the store at that address. The Petitioner submitted a photocopy of an alcoholic beverage license issued to [REDACTED] for 2017-2018. The Petitioner does not claim any connection to [REDACTED] or document any arrangements to purchase the convenience store business from that company, and the record does not otherwise explain why that company would no longer operate the store at that location.

In the face of so many discrepancies and questions, we agree with the Director that the Petitioner has not met its burden of proof to establish that it has, in fact, secured sufficient physical premises to house the new office.

The above conclusions are sufficient to determine the outcome of the appeal. Therefore, we reserve the remaining four grounds for denial of the petition.⁶

IV. CONCLUSION

The Director raised a number of serious questions about the Petitioner's planned business, and about the Beneficiary's past and intended future employment, and the Petitioner has not adequately addressed and resolved those concerns. As such, we cannot conclude that the Petitioner has met its burden of proof to establish eligibility for the benefit sought. The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision.

ORDER: The appeal is dismissed.

⁶ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).