



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

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

In Re: 25018348

Date: APR. 13, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a real estate investment company that seeks to operate a hotel through a subsidiary, seeks to temporarily employ the Beneficiary as chief executive officer (CEO) of its new office under the L-1A nonimmigrant classification for intracompany transferees.¹ See 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 that the Beneficiary has been employed abroad in a managerial or executive capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary “in a capacity that is managerial, executive, or involves specialized knowledge,” for one continuous year within three years preceding the beneficiary’s application for admission into the United States. Section 101(a)(15)(L) of the Act. 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 also establish that the beneficiary’s prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

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.

II. ANALYSIS

The Director determined that the Petitioner did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B). We need not discuss managerial capacity, because the Petitioner specifically claims that the Beneficiary has been employed abroad in an executive capacity, and has made no claim to managerial capacity with the initial filing or on appeal.

“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.

If a petitioner establishes that the position abroad 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.

Having discretionary authority and a managerial or executive title does not, in and of itself, mean a person is employed in a managerial or executive capacity. *Matter of Church Scientology Int’l*, 19 I&N Dec. 593, 604 (Comm’r 1988).

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

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.

The Petitioner’s foreign affiliate is a jewelry manufacturer. The foreign entity employed the Beneficiary as an executive supervisor and professional designer from April 2016 to April 2020, and as CEO/executive director since that time. The foreign entity stated that the Beneficiary is an executive with the company, but rather than describe the Beneficiary’s specific duties, the foreign entity listed broad areas of responsibility and authority. For example, the Petitioner stated that the Beneficiary “has overall responsibility and broad-based discretionary authority for leading and managing all corporate aspects with respect to optimizing sales and operations and guiding the company to success”; “directs, controls, and manages the entire operation of [the foreign entity]”; and “provides executive level leadership and direction for maximizing the company’s return on investment.”

The Petitioner submitted copies of resolutions and other documents to establish the Beneficiary's high level of authority in the foreign entity, but these materials do not provide enough details about the Beneficiary's day-to-day duties and tasks to show that the Beneficiary's position abroad is *primarily* executive. The initial submission did not describe the staffing of the foreign entity.

The Director issued a request for evidence (RFE), requesting further evidence and information to show "the beneficiary's typical executive duties, and the percentage of time spent on each," with explanations of how those duties meet the various requirements of an executive capacity. In response, the foreign entity submitted a business plan that includes a longer job description. But this description, like the earlier version, mostly describes responsibilities rather than specific tasks. For instance, under the heading "Establishes the goals and policies of the organization," the new job description reads:

- [The Beneficiary] crafts successful short and long-term strategic organizational goals and objectives. He establishes and maintains company policies and procedures. He provides support for the entire company at the direction of the other members of [the foreign entity], an essential function within the [foreign] organization.
- [The Beneficiary] executes on the company's strategy, determines risk appetite, and develops long-term objectives for the company so it can maintain growth through business development initiatives.

The above assertions provide little information beyond re-stating the statutory requirement that an executive must establish goals and policies. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial 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). The actual duties themselves reveal the true nature of the employment. *Id.*

An organizational chart, discussed below, indicates that the foreign entity has an accountant and an assistant accountant, but the Petitioner's job description for the Beneficiary indicates that the Beneficiary "prepares financial statements, statistics, annual audits, cash flow statements, financial forecasts, budget proposals, and related materials, as well as internal and external financial documents." Preparation of these financial documents is an administrative, not executive, task, and if the Beneficiary performs these tasks, it would not support his working primarily in an executive capacity. Conversely, if the Beneficiary does not actually prepare these statements and documents, then the job description is not correct or accurate. The revised job description also indicates that the Beneficiary "plans the execution of marketing initiatives," but the organizational chart does not show any marketing staff, raising the question of how much time the Beneficiary must devote to marketing activities in the apparent absence of any subordinate staff dedicated to that function, and again whether the Beneficiary works primarily in an executive capacity.

The organizational chart shows the following positions subordinate to the Beneficiary:

- Chartered Accountant
 - Assistant Accountant

- Production Manager
 - 5 Skilled Workers
- Sales Manager
 - Sales Executive
- Research and Development
 - Jewelry Designer
 - 2 Computer-Assisted Design Designers
- Precious Metals Stock Manager
 - Assistant Stock Manager

The Petitioner did not submit the “detailed documentation regarding the subordinate positions” that the Director had requested. This omission in the Petitioner’s response to the RFE supports the Director’s decision to deny the petition. *See* 8 C.F.R. § 103.2(b)(14).

In the denial notice, the Director stated that the Petitioner had not submitted sufficient evidence to establish “that the beneficiary performed these claimed duties,” “the existence of the subordinates listed on the organizational chart,” and “that the beneficiary’s subordinates are managers.”

On appeal, the Petitioner states that it “provided [the] exact information” that the Director had requested in the RFE, and “there was no request for supporting documentation in addition to what was already provided.” The record does not support this assertion. In the RFE, the Director stated: “you have not submitted sufficient documentation about all the personnel whom the beneficiary manages.” The Director also noted the need for “detailed documentation regarding the subordinate positions,” and “evidence [to] substantiate that the duties of the beneficiary and [his] subordinates correspond to their placement in an organization’s structural hierarchy.” The Director further stated that the Petitioner had not submitted “documentary evidence that demonstrated the executive decisions and/or actions made by the Beneficiary,” and concluded that the Petitioner could not meet its burden of proof through “[a]ssertions without supporting documentation to illustrate the beneficiary’s responsibilities.”

The Petitioner, on appeal, does not establish that its response to the RFE adequately addressed the issues that the Director raised. For example, the Petitioner does not identify any materials in the RFE response that could be deemed “documentary evidence that demonstrated [the Beneficiary’s] executive decisions and/or actions.”

The Petitioner asserts that the Director “incorrectly concluded that the law requires [the Beneficiary’s] subordinates be managers.” While the statute and regulations require that an executive must “direct the management,” the Petitioner argues that the Beneficiary could have accomplished this by “direct[ing] how the organization is managed in terms of the operations, structure, and decision-making.” The burden is on the Petitioner, however, to show how the Beneficiary “directed the management” of the foreign entity if “the management” did not consist of managerial staff.

The Petitioner notes that “the definition of ‘managerial capacity’ includes management of either personnel or a function.” While the statute and regulations recognize a distinction between a “personnel manager” and a “function manager,” as elaborated in *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017), there is no such distinction for executives. The statutory clause at

section 101(a)(44)(B)(i) requires that an executive primarily “directs the management of the organization or a major component or function of the organization.” The Petitioner interprets this clause to mean that “the executive may direct the management of the organization or direct a major component or function of the organization.” But the statute requires that an executive either “directs the management of the organization, or “directs the management of . . . a major component or function of the organization.” The Petitioner does not explain the difference between “managing a function” and “directing a function.”

An executive directs the management of the organization, major component, or essential function of a given organization by controlling the work of managerial or lower-level executive employees. This control could either take the form of direct supervision of those managers or executives or could be more indirect under some circumstances. *See generally* 2 *USCIS Policy Manual* L.6(D), <https://www.uscis.gov/policy-manual>. *See also* *BlueStar Cabinets, Inc. v. Jaddou*, No. 21-10116, 2022 WL 4364734, at *7 (5th Cir. Sept. 21, 2022) (holding that “[d]irect[ing] the management of the organization’ necessarily includes directing managers of the organization.”)

The Petitioner asserts that “the organizational chart . . . shows that [the Beneficiary] is above multiple managers,” and is “direct proof” that the Beneficiary’s subordinates abroad “are managers.” The organizational chart lists job titles, but the Director had requested “detailed documentation regarding the subordinate positions” and “the duties of the beneficiary[’s] . . . subordinates.” Titles alone do not necessarily confer managerial responsibilities. We note that the same organizational chart shows a “sales executive” under the authority of the “sales manager,” but this title does not indicate that the “sales executive” has executive-level authority and responsibilities.

The Petitioner asserts that it had submitted documentary evidence of the Beneficiary’s executive authority and actions. The Petitioner specifically cites “the Articles of Association granting power-making decision to [the Beneficiary], documentation of his duty as creditor, and the Board Resolution [granting] him Power of Attorney.” The evidence indicates the Beneficiary’s wide latitude in discretionary decision-making and his minimal supervision and direction from the foreign entity’s board of directors, but does not establish that his duties are *primarily* those of an executive, such that he spends most of his time directing the management of the organization and establishing its goals and policies. As the Director stated in the denial notice:

First, you must show that the beneficiary performed the level of responsibilities that are specified in the definitions. Second, you must establish that the beneficiary primarily performed these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. An employee who primarily performed the tasks necessary to produce a product or provide services is not considered to be employed in a managerial or executive capacity. Hence, indicating the beneficiary managed a business does not necessarily establish eligibility. . . .

The record contains minimal evidence regarding the day-to-day activities of the Beneficiary and his claimed subordinates at the foreign entity. Also, the record does not establish a level of organizational complexity consistent with one or more subordinate layers of management for the Beneficiary to direct as his primary responsibility at the company.

III. CONCLUSION

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that the Beneficiary was employed in a managerial or executive capacity abroad. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.