



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

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

In Re: 27992169

Date: AUG. 4, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an e-commerce business, seeks to temporarily employ the Beneficiary as its CEO under the L-1A nonimmigrant classification for intracompany transferees. *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 Texas Service Center denied the petition, concluding that the record did not establish that 1) the Beneficiary's employment abroad was in a managerial or executive capacity, or 2) the Beneficiary's proposed U.S. employment would be 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 because the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity. 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 regarding the remaining issue identified above. *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. LAW

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 their 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 sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in the United States 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 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 be eligible for L-1A nonimmigrant visa classification as an executive, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying executive position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must 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). In determining whether a given beneficiary’s duties will be primarily executive, we consider the petitioner’s description of the job duties, the company’s organizational structure, the duties of a 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 a 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

The Petitioner’s initial supporting letter claimed that the Beneficiary “will be at the very top of the organizational hierarchy, responsible for overseeing all operations of the U.S. company.” It further indicated that the Beneficiary “will serve in the chief executive capacity for the company, directing the management of the organization,” and that he will “be responsible for establishing the policies and goals of the company.” The Petitioner further claimed that the Beneficiary will exercise wide latitude in discretionary decision making, including complete discretionary authority to hire and fire all managers and employees, and will receive only general supervision and direction from other stockholders.

¹ The Director determined that the Beneficiary would not be employed in a managerial or executive capacity. Throughout the record and on appeal, the Petitioner does not argue that the Beneficiary would be employed in a managerial capacity. Rather, it affirms that the Beneficiary is an executive and claims that he will be performing executive duties.

The Petitioner listed the Beneficiary's duties as follows:

- Developing, managing, and directing [the Petitioner] in order to provide our clients and customers with fast, efficient, and effective online brand marketing and sales services;
- Planning, developing and establishing policies and objectives of [the Petitioner];
- Directing and overseeing our company's financial and budgetary activities;
- Negotiating and approving contracts and agreements with brands and suppliers;
- Recruiting, interviewing, hiring, training, and firing all managers of [the Petitioner];
- Establishing sales and employee goals, and working with managers and staff to achieve those goals;
- Monitoring and evaluating budgets, payroll records, and accounts payable and receivable;
- Reviewing financial transactions to ensure that expenditures are authorized and budgeted, and reviewing and approving financial reports;
- Approving marketing strategies to promote brands;
- Meeting with financial institutions to negotiate company loans and meeting with accountants to review annual reports and profit and loss statements;
- Researching and investigating new brands and business opportunities to expand operations.

The Director issued a request for evidence (RFE), noting that the initial description of duties was insufficient to establish that the Beneficiary would be employed in a primarily managerial or executive capacity. In response, the Petitioner provided additional documentation, including an organizational chart, tax returns, contracts and agreements executed by the Beneficiary, and other financial documentation in support of the Beneficiary's claimed qualifying employment. The Petitioner did not provide any additional information regarding the Beneficiary's proposed position or its associated duties.

In denying the petition, the Director determined that the Petitioner's description of the Beneficiary's duties was insufficient, and specifically noted that the Petitioner's failure to provide the percentage of time the Beneficiary would devote to each stated duty precluded a determination that his employment would be primarily executive in nature.

On appeal, the Petitioner does not directly address the Director's determination regarding the deficient position description and lack of information regarding the percentage of time the Beneficiary would devote to his stated duties. Rather, the Petitioner asserts that the Director's decision was arbitrary and capricious. The Petitioner again emphasizes the Beneficiary's performance of executive duties, and asserts that the Beneficiary devotes more than 50% of his time to such duties. No additional supporting evidence was submitted in support of the appeal.

The Petitioner also claims on appeal that the Director failed to apply the preponderance of the evidence standard and contends that it is clear that the Beneficiary will be employed in a primarily executive

capacity. However, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. As discussed above, the Petitioner did not demonstrate that the Beneficiary's role will be primarily executive in nature, as the job description the Petitioner offered contains generalities that preclude a meaningful assessment of the Beneficiary's actual tasks in the course of the Petitioner's daily operation.

Upon review, we agree with the Director's determination that the job description for the Beneficiary is insufficient. Whether the Beneficiary is an executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" executive. *See* sections 101(a)(44)(B) of the Act. Here, the Petitioner did not sufficiently document what proportion of the Beneficiary's duties would be executive functions and what proportion would be non-qualifying. The Petitioner listed the Beneficiary's duties as including both executive tasks and administrative or operational tasks but did not quantify the time he spends on these different duties. For example, in addition to claiming that the Beneficiary will develop and establish its policies and objectives, the Petitioner also states that the Beneficiary will be responsible for recruiting, training, hiring and firing personnel, as well as monitoring payroll and accounts payable and receivable. Absent a breakdown of the percentages of time the Beneficiary would devote to each duty, we cannot determine whether the Beneficiary would primarily perform the duties of an executive under an approved petition. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

On appeal, the Petitioner points to the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and its description of the duties of "Top Executives," which includes the job title of CEO. In pointing to this description, the Petitioner states that the Beneficiary's duties "are commensurate with the work performed by other executive employees." Upon review, the Petitioner's description of the Beneficiary's duties appears to be largely composed of language taken almost verbatim from the DOL's definition. Generic job descriptions found in DOL publications have no bearing on an assessment of this Beneficiary's duties within the context of the Petitioner's business, and the Petitioner cannot satisfy its burden of proof by paraphrasing such descriptions. The regulations require the Petitioner to submit a detailed description of the Beneficiary's actual duties. *See* 8 C.F.R. § 214.2(l)(3)(ii).

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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990). Here, the Petitioner has not articulated the specific duties that the Beneficiary will perform, has not offered a breakdown of how much time would be devoted to each duty, and only generally indicates that the Beneficiary would be the company's CEO overseeing the entire organization.

Although it appears that the Beneficiary, as the U.S. entity's CEO, is responsible for directing the company and establishing its goals and policies, the fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(44)(B) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive in nature. Section 101(A)(44)(B) of the Act. While the Beneficiary exercises discretion over the U.S. entity's day-to-day

operations and possesses decision-making authority, the position description does not establish that his day-to-day duties would be primarily executive in nature.

B. Staffing and Organizational Structure

Next, we will address the U.S. company's staffing at the time of filing. If 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.

On the Form I-129 petition, the Petitioner claimed that it was established in 2016 and had 100 employees. The Petitioner provided a general overview of its staffing, and claimed that the Beneficiary will direct the Petitioner's upper-level managers, including a supply chain controller, an accounting and finance manager, a head of acquisitions, a procurement and logistic lead, and a finance controller. The Petitioner claimed that these individuals in turn would oversee all of the Petitioner's lower-level managers and employees.

In denying the petition, the Director emphasized that the Petitioner did not support the record with evidence of its employment of the claimed subordinate staff. The Director also noted that the Petitioner declined to provide a description of duties for the Beneficiary's claimed subordinates who would relieve him from performing the day-to-day activities of the U.S. company or otherwise support a position in which his actual duties would be primarily executive in nature.

The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than on its day-to-day operations. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the organization as the owner or sole managerial or executive employee.

On appeal, the Petitioner repeats its assertions from its RFE response, claiming that the Beneficiary's direct oversight of the supply chain controller, accounting and finance manager, head of acquisitions, procurement and logistic lead, and finance controller demonstrates that the Beneficiary is at the top of the Petitioner's hierarchy and that his position is executive in nature. The Petitioner does not acknowledge the Director's determination that the record's lack of payroll records and duty descriptions for the Beneficiary's subordinates precludes a determination that the Beneficiary's position is primarily executive in nature, nor does it provide documentation to refute that finding. The

Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

After review of the record, we agree with the Director's determination. Despite claiming to employ more than 50 individuals,² with five upper-level managers directly under the Beneficiary's supervision, the Petitioner did not submit evidence establishing its actual employment of these individuals. In the absence of such evidence as pay stubs and payroll records, the Petitioner has not established that it employs a subordinate staff that would relieve the Beneficiary from performing non-qualifying duties. Moreover, despite claiming that the five upper-level managers oversee all remaining lower-level managers and employees, the Petitioner has neither presented evidence to document the existence of these employees nor identified the services these individuals provide. Additionally, the Petitioner has not explained how the services of the upper-level managers would obviate the need for the Beneficiary to primarily conduct the Petitioner's business.

Here, the record does not establish that the Beneficiary had staff to relieve him from performing non-qualifying duties, nor does the submitted position description establish that his duties are primarily executive in nature. Accordingly, the Petitioner has not established that the Beneficiary would be employed in the United States in an executive capacity as defined at section 101(a)(44)(B) of the Act.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary would be employed in the United States in an executive capacity. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

² In its initial letter of support, the Petitioner claimed to employ more than 50 individuals. On the Form I-129 petition, however, it claimed to have 100 employees. The Petitioner must resolve this discrepancy 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).