



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

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

In Re: 25018829

Date: FEB. 22, 2023

Appeal of California Service Center Decision

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

The Petitioner, a foreign law consulting firm, seeks to employ the Beneficiary temporarily as its “Executive Director” 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 that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. The matter is before us on appeal.

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 has not established that it would employ the Beneficiary in an executive capacity.¹ Because the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate regarding the Beneficiary’s foreign employment. 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 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).

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

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.

"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 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 explained that it is a client-driven operation that offers legal, real estate, and financial advising services through a staff of independent contractors and specialized advising institutions. Although the Petitioner described the proposed position at four separate instances throughout the supporting statement, it did not clarify how the various job descriptions correspond to one another. For instance, one of the job descriptions states that the Beneficiary's position as the "highest-ranking representative" will entail the following responsibilities: 1) managing and overseeing "all operations"; 2) evaluating "high impact strategic decisions"; 3) growing the Petitioner's "network of alliances" in various consulting areas; 4) overseeing contractors' respective performances; and 5) providing "key operations leadership." The same supporting statement lists four key responsibilities and assigns the following percentage of time to each: 45% to overseeing company operations, 20% to supervising staff and network alliances, 25% to networking, and 10% to developing business plans and strategy. Because only two of these responsibilities – managing operations and

overseeing the service providers – are common to both lists, it is unclear how networking and developing business plans and strategy, which are part of the percentage breakdown, correspond to three remaining responsibilities itemized in the first list.

The Petitioner provided two more job descriptions, one consisting of an hourly breakdown and the other consisting of 10 job duties without time allocations. The hourly breakdown consists of five sets of job duties comprising a 35-hour work week; multiple job duties are grouped together to comprise each set and a time allocation is assigned to indicate the number of hours the Beneficiary would devote to each set of duties. Ten hours was assigned to the set of duties that would require the Beneficiary provide “ground settings, guidelines, and methodology in preparation of the strategic plan and budget, deliver tactics and support in the design, implementation and monitoring of operations,” optimize resources for achieving set objectives, and “ensure consistency between plans and budgets.” The Petitioner did not specify the types of plans the Beneficiary would review or identify the guideline she would follow or the methodology she would use; nor was there an explanation of how the Beneficiary would optimize resources or which resources the Beneficiary would seek to optimize.

Another nine hours would be allocated to a set of duties that involves leading the expansion of the Petitioner’s operation and capturing new markets, designing operational and financial strategies, supervising “activities of the organization,” training “incorporated individuals,” and following up on maintenance, technical and security procedures.” The Petitioner did not, however, elaborate on the underlying tasks the Beneficiary would perform in meeting the organization’s expansion goals, nor did it describe specific operational or financial strategies or list specific organizational activities the Beneficiary would supervise. The Petitioner also did not elaborate on who the “incorporated individuals” are or establish that training such individuals is an executive-level job duty. And the Petitioner was similarly ambiguous in allocating five hours of the Beneficiary’s time to the group of duties that include aligning strategies, implementing best practices, and evaluating “high impact strategic decisions.” The Petitioner did not describe any strategies or “high impact strategic decisions,” nor did it outline the best practices to be implemented. In sum, this 24-hour portion of the hourly breakdown, which accounts for the majority of the proposed 35-hour work week, is largely comprised of vague job duties that convey no meaningful information about the tasks the Beneficiary would perform in the daily course of business.

Although the Petitioner provided a fourth list of job duties, it did not explain how this list corresponds to the three job descriptions discussed above. Furthermore, this final list similarly lacks insight about the actual tasks the Beneficiary would perform within the scope of a consulting operation. For instance, the Petitioner stated that the Beneficiary would be responsible for ensuring proper filing of documents and compliance with laws and regulations, helping shareholders determine long- and short-term goals, and staying informed about “developments in non-for-profit management and governance, philanthropy and fund development.” However, the Petitioner did not clarify how the Beneficiary would ensure documentary and legal compliance or how she would determine which goals to recommend to shareholders. The Petitioner also did not explain the relevance of “non-for-profit management” and “philanthropy” to an organization whose goal is to expand the operation and generate profit. Other job duties included in this list were similarly ambiguous, broadly stating that the Beneficiary would develop and implement “standards and controls, systems and procedures” to ensure “quality and organizational stability,” as well as “[p]romote programs and services” and “maintain[] an excellent level of quality.” In addition, the Petitioner stated that the Beneficiary would

be responsible for recruiting personnel and negotiating professional contracts, duties that are operational, rather than executive, in nature. Because the Petitioner did not state what portion of the Beneficiary's time would be allocated to individual job duties, we are precluded from determining how much time the Beneficiary would allocate to non-executive 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 an executive capacity. *See, e.g.,* section 101(a)(44)(B) of the Act (requiring that one "primarily" perform the enumerated executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). Further, although two of the Beneficiary's assigned duties are said to involve oversight of the Petitioner's "fiscal activities" and "general activities," it is unclear what actions the Beneficiary would take in the regular course of business to carry out these oversight responsibilities. And despite indicating that the Beneficiary will have authority to make decisions regarding matters concerning the business, most of the stated job duties are vague and do not explain precisely how the Beneficiary will direct the management of the organization, which is a critical component of the statutory definition of executive capacity. *See* section 101(a)(44)(B)(i) of the Act.

In a request for evidence (RFE), the Director asked the Petitioner to provide a more thorough job description with details about the Beneficiary's executive job duties and an explanation of how those job duties meet the four-prong statutory criteria of executive capacity. The Director asked the Petitioner to list the Beneficiary's typical executive job duties and state the percentage of time to be allocated to each listed job duty.

Although the Petitioner responded to the Director's request, it did not submit additional information. Instead, it reiterated, nearly verbatim, the information provided in the original job descriptions, stating that the original submissions adequately described the Beneficiary's proposed employment. The Director denied the petition, concluding that the Petitioner did not provide a sufficiently detailed job description demonstrating that the Beneficiary would primarily perform executive-level job duties.

On appeal, the Petitioner argues that the Director "failed to consider all relevant responsibilities according to [the Beneficiary's] position and the individual characteristics of the foreign and U.S. companies." However, the Petitioner does not state which "relevant responsibilities" it claims the Director neglected to consider, nor does it identify the "individual characteristics" of the organization that would clarify the Beneficiary's proposed job duties.

The Petitioner also argues that it submitted "extensive supporting documents" showing that the Beneficiary is the highest-paid employee and that she supervises a "staff" of professionals. Although these factors are relevant to the Petitioner's claim, a determination of whether the Beneficiary's proposed position is in an executive capacity requires a comprehensive analysis that includes consideration of the job duties to be performed. *See* 8 C.F.R. § 204.5(j)(5) (requiring each petitioner to submit a job offer statement that "clearly describe[s] the duties to be performed").

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) 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 may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of

authority with respect to discretionary decision-making, these elements are not sufficient to establish that her position will be comprised primarily of executive job duties. To make this determination, we rely on specific information about the actual daily tasks to be performed; 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 above, the Petitioner has not adequately described the Beneficiary's proposed job duties. Instead, the Petitioner has provided multiple incongruent job descriptions that offer little insight as to the specific activities the Beneficiary would undertake within the scope of the Petitioner's operation, whose primary focus appears to be outsourcing consulting services in various business sectors, including law, real estate, finance, and taxation. Because of the noted ambiguities regarding the Beneficiary's job duties, the Petitioner has not established that the Beneficiary would dedicate her 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 one employee at the time of filing and described its staffing arrangement as one that involves "U.S. partners and providers of specialized services" that are not available to its clients abroad. The Petitioner stated that its organization is authorized to practice foreign law in Florida and is licensed to advise its clients in international law, real estate, financial and tax consultancy, and business consultancy. However, the Petitioner did not indicate that it was providing the services it offered its clients; rather, it described its operation as one that relies on consultants operating in various business sectors and with whom the Petitioner has "secured strategic alliances" to meet its clients' business needs. The Petitioner provided an organizational chart illustrating this arrangement; the chart shows the Beneficiary as overseeing three departments – legal, real estate, and finance – and depicts the Beneficiary at the top of a hierarchy where she is subordinate only to the two directors who own the U.S. entity. In other words, despite claiming to be licensed to advise clients in various business sectors, the record does not indicate, nor does the Petitioner claim, that it directly provides consulting services to its clients other than through the U.S. business partners with whom it claims to have forged "strategic alliances."

In denying the petition, the Director determined that the contractors who will provide services to the Petitioner's clients do not constitute "the management of the organization" whom the Beneficiary will direct, oversee, and control. The Director concluded that no evidence was provided to show that the Petitioner has an organizational structure for the Beneficiary to manage in an executive capacity. *See* section 101(A)(44)(B) of the Act.

On appeal, the Petitioner argues that the Director incorrectly excluded the independent contractors from the Petitioner's "count of the overall number of employees," contending that the contractors must be considered "for purposes of analyzing managerial capacity." We note, however, that the Petitioner has not claimed that the Beneficiary would be employed in a managerial capacity, but rather has repeatedly stated that the proposed employment would be in an executive capacity. A petitioner

claiming that a beneficiary's position will consist of a mixture of managerial and executive duties will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each set of criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity.

We further note that the Petitioner provided portions of its company's advertising material, which lists the six types of services it offers – international consulting, professional alliances, financial audit, foreign legal consulting, real estate consulting, and tax consulting – and it listed two law firms, an accounting firm, two real estate agents, and a paralegal whose professional services it claims to employ in providing the listed services. The Petitioner also provided advertising materials for the two law firms and the accounting firm it identified as three of its business partners along with client invoices itemizing the paralegal services it used to address the business needs of several clients. However, the Petitioner provided no formal contractual agreements documenting the claimed business relationships with these service providers, nor did it offer evidence to show the terms of these claimed “strategic alliances.”

Furthermore, we note that to meet the first prong of the statutory criteria for executive capacity, the Petitioner must establish that the Beneficiary will “[d]irect[] the management of the organization.” *See* section 101(a)(44)(B)(i) of the Act. Here, however, the record contains no evidence showing that the businesses and individuals listed as the Petitioner's service providers constitute “the management” whom the Beneficiary would oversee in carrying out her executive role. Likewise, the Petitioner provided no evidence to corroborate the claim that it will rely on “administrative personnel working as independent contractors” and “the international team,” located abroad at affiliate entities, to relieve the Beneficiary from certain operational tasks; nor did the Petitioner explain who, if not the Beneficiary, will solicit clients and market its services in the United States, where it plans to proceed with its expansion plans. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In sum, the Petitioner has not provided sufficient evidence establishing that it has the organizational structure and staffing to support the Beneficiary in a position where the primary portion of her time would be allocated to duties of an executive nature.

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.

ORDER: The appeal is dismissed.