



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

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

In Re: 25965822

Date: MAR. 14, 2023

Appeal of California Service Center Decision

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

The Petitioner, a window cleaning business, seeks to temporarily employ the Beneficiary as its chief executive officer 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 California Service Center denied the petition, concluding that the record did not establish that the Petitioner will employ the Beneficiary 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.*

II. ANALYSIS

The sole issue to be addressed is whether the Petitioner established that the Beneficiary’s proposed position is in an executive capacity. The Petitioner did not claim that the Beneficiary would be employed in a managerial capacity.

The term “executive capacity” is defined as 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 establish that a beneficiary is eligible for L-1A classification as an executive, a petitioner must show that the beneficiary will perform 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 offered position meets all four elements set forth in the statutory definition, the petitioner must then 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 beneficiary’s duties will be 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 personnel 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.

The Petitioner provides window cleaning services to businesses in the [redacted] Florida area. The record establishes that the Beneficiary acquired a majority interest in the company in April 2022 and the Petitioner intends to employ him as its chief executive officer. The Beneficiary is also the majority owner and general manager of the Petitioner’s affiliate, a commercial cleaning services business in Peru. The Petitioner stated in a supporting letter that his transfer to the United States will present an opportunity for it to increase its sales volume and expand its clientele and supplier relationships, noting that he will be coordinating with its current head of operations (the Petitioner’s president and minority owner) to transfer knowledge he gained while operating a similar, but larger, business overseas.

The Petitioner indicated that the Beneficiary will perform the following duties:

He will analyze opportunities offered by the American market, both current and future, from both the public and private sectors (*dedicating 25% of his time to this job duty*).

He will analyze the competition and how it is positioned in the South Florida market. He will analyze opportunities to introduce services that [the Petitioner] does not carry in the U.S. but that [the foreign entity offers] in Peru (*dedicating 25% of his time to this job duty*).

Once the market analysis has been done, [the Beneficiary] will establish, together with [the Petitioner’s president and co-owner], the commercial strategy that will accelerate the sales growth. And once the new sales strategy is approved, [the Beneficiary] will accompany [the president] in its implementation (*dedicating 30% of his time to this job duty*).

Much of his work, by its nature, will be oriented outside the company. He will be in contact with potential clients and with potential partners. He will attend conferences, seminars, congresses where it [sic] will generate new contacts and business opportunities (*dedicating 20% of his time to this job duty*).

The Petitioner stated that the Beneficiary's duties would be 100% executive in nature as he will delegate the day-to-day functions of the business to his direct and indirect subordinates. An organizational chart included in the support letter shows that he will directly oversee a supervisor (who oversees two high rise window cleaners) and an operations assistant (who will supervise an administrative assistant to be hired in the future). The letter also included a personnel table with information regarding each employee's qualifications, salary information and summaries of their duties. Although the Beneficiary's job description indicates he would work closely with the company president, the Petitioner did not include the president position on the organizational chart or personnel table.

The Petitioner indicated that its personnel are paid as independent contractors and provided copies of their IRS Forms 1099-NEC for 2021. In that year, it paid \$35,210 to the president, \$11,100 to the supervisor, \$18,900 to the operations assistant, and \$22,100 and \$11,600, respectively, to the window cleaners. The Petitioner did not provide evidence of wages paid to its staff in 2022.

The Director issued a request for evidence (RFE) advising the Petitioner that additional evidence would be needed to establish that the Beneficiary would be employed in an executive capacity. The Director requested that the Petitioner provide: a more specific description of the nature of its business; an explanation of the Beneficiary's specific daily duties and the percentage of time he would allocate to each task; a more detailed organizational chart including additional information about the company personnel; and evidence of wages paid to personnel in the first two quarters of 2022, the period immediately preceding the filing of the petition.

Although the Petitioner submitted a new supporting letter in response to the RFE, it did not provide additional information regarding the Beneficiary's proposed duties as chief executive officer; rather, the new letter was substantively identical to the letter provided at the time of filing. Further, the RFE response did not include the requested evidence of payments made to the Petitioner's claimed personnel in 2022. The Petitioner resubmitted copies of the 2021 Forms 1099-NEC that it provided with the initial submission.

The Petitioner's response to the RFE included a business plan that provides the company's five-year financial projections and describes its strategy to increase its sales and geographical reach within Florida. For example, the business plan indicates that the company currently has five major customers and states that it has developed strategies to double its customer base within one year, expand to 20 customers within two years, and begin offering additional services within three years. These plans include establishing relationships with suppliers, buying pressure washing equipment, recruiting additional employees, obtaining industry training and certifications, creating a website and social media accounts, leasing larger premises, and eventually opening a second office in

In denying the petition, the Director emphasized that the Petitioner's response to the RFE did not include the requested detailed description of the Beneficiary's proposed duties, noting that the description

provided is too vague to establish that he would primarily perform executive-level tasks. The Director also discussed the Petitioner's staffing and structure, noting that the record did not establish how the four independent contractors would sufficiently relieve the Beneficiary from involvement in the non-executive, day-to-day operations of the company.

On appeal, the Petitioner contends that the Director misinterpreted the nature of the Beneficiary's duties and erroneously disregarded his placement within the company's organizational structure, noting that the evidence establishes that he "will influence decision-making at the highest level." The Petitioner further asserts that the Director failed to consider the Petitioner's reasonable need for an executive to direct its expansion activities, emphasizing that the Beneficiary is being transferred to direct the implementation of policies, strategies, and goals for growing the company and introducing new services to the market. Finally, the Petitioner asserts that the Director placed undue emphasis on the small size of the company but failed to consider the support that will be provided by its Peruvian affiliate and the reasonable needs of the organization as a whole.

Upon review, the Petitioner has not provided sufficient evidentiary support for its claim that it will employ the Beneficiary in an executive capacity as defined at section 101(a)(44)(B) of the Act. While the record establishes that the Beneficiary is the majority owner of the petitioning company and the submitted organizational chart indicates he will occupy the senior position, the fact that a beneficiary will manage or direct a business as an owner or most senior employee does not necessarily establish eligibility for classification as an L-1A executive. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive.

As noted by the Director, the Petitioner provided only a very broad overview of the Beneficiary's proposed responsibilities that offers little insight into the nature of his anticipated day-to-day tasks. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. *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). Further, the Director notified the Petitioner of the deficiencies in the position description and the Petitioner did not avail itself of the opportunity to provide additional information regarding the offered position and its associated duties. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The Petitioner stated that the Beneficiary would be spending half of his time analyzing "opportunities offered by the American market" and "opportunities to introduce services" that the Petitioner does not currently offer. The Petitioner did not explain the specific executive tasks he would perform in this regard or explain how this type of competitive and market analysis would require 50 percent of his time on an ongoing basis. Additionally, based on the multi-year business plan the Petitioner provided in response to the RFE, it appears that the proposed market and competitive analyses have already been accomplished and the company has already developed short- and long-term strategies for expanding its customer base, offering additional services, and supplementing its current staffing levels. If the Petitioner has already completed the necessary analyses, identified strategies for growth, and developed a plan to implement them, this raises questions about how much time the Beneficiary would reasonably need to spend on these responsibilities. While the Beneficiary's authority to make decisions regarding the company's strategies, policies and goals is consistent with the statutory definition of executive capacity, the Petitioner did not adequately support its claim that he would

continuously spend half of his time performing executive tasks associated with establishing strategies and goals.

In addition, the Petitioner has not clarified how responsibility for the overall direction of the company would be shared by the Beneficiary and the company's current president, who, as noted by the Director, is described as the "head of operations." The Petitioner stated that the Beneficiary would be coordinating with the president to transfer his knowledge gained abroad and that the two of them together would establish and implement a commercial strategy to accelerate the company's growth, a duty that would require 30 percent of the Beneficiary's time. However, the Petitioner did not include the company president on the proposed organizational chart or provide a position description for this individual despite indicating his ongoing involvement in the management of the company. As such, we cannot determine how responsibility for overseeing the implementation of the company's strategies and goals would be shared between the CEO and president positions.

Finally, the Petitioner indicated that the Beneficiary would be directly dealing with potential clients and partners and attending conferences and seminars to generate new contacts and business opportunities. Although the Petitioner indicated that these duties, which relate to promoting, marketing and selling the company's services, would require only 20 percent of his time, it simultaneously stated that "much" of his time would be spent on these responsibilities once he completed his market analysis and developed strategies for growth alongside the company's president. While we do not doubt that the Beneficiary will have authority to finalize contracts and agreements with new customers and partners, it is unclear who, other than the Beneficiary, would be responsible for operational activities associated with the sales and marketing of the Petitioner's services. Although the Petitioner indicates its intent to hire a marketing manager in the future, the company does not claim that it currently employs any sales or marketing staff. Therefore, we cannot determine to what extent this responsibility would require the Beneficiary to perform non-executive tasks.

For all these reasons, we agree with the Director's determination that the Petitioner did not provide sufficient information regarding the Beneficiary's duties to establish that they would be primarily executive in nature. As emphasized above, if a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then demonstrate 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.*, 469 F.3d at 1316. Here, the Petitioner, despite indicating that the Beneficiary's duties will be primarily or even wholly executive in nature, did not submit a position description sufficient to support that claim. Further, we must consider the submitted position description in the context of the totality of the record, including evidence of the nature and scope of the business and its current staffing and personnel structure.

On appeal, the Petitioner correctly emphasizes that USCIS must consider a company's reasonable needs in light of the overall purpose and stage of development of the organization if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity. *See* section 101(a)(44)(C) of the Act. However, it is appropriate to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company. *See Family Inc.*, 469 F.3d at 1316; *Systonics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The Petitioner indicates that it currently employs a president, a supervisor, an operations assistant, and two window cleaners. As noted, it did not provide a description of the president's duties or include this position on its organizational chart despite indicating that the Beneficiary would work closely with this employee, who it describes as its "head of operations." The Petitioner indicates that the supervisor's main responsibility is to "supervise the activities of the works with height, cautioning that they perform all of the observations of the technical regulations of security and the use of equipment of personal protection." The Petitioner indicates that this individual is employed as an independent contractor earning \$33,494 in 2022 but did not provide any evidence of payments made to her in 2022 despite the Director's request for this evidence in the RFE. With respect to the operations assistant, the Beneficiary's other direct subordinate, the Petitioner indicated that her duties are to "coordinate with the technical service for the opportune purchase orders that are done for teams" and to "coordinate with internal storage in account of availability and the office of products [sic]." The Petitioner indicates that she earns \$24,000 annually as an independent contractor but did not provide evidence of payments made to her in 2022.

Even if the Petitioner had provided evidence corroborating its ongoing relationship with these independent contractor personnel, their position descriptions are not clearly written, and we cannot determine to what extent they would relieve the Beneficiary from involvement in the day-to-day operational and administrative activities of the company. For example, there is no indication that the Beneficiary would be delegating non-qualifying tasks associated with his responsibilities for performing market and competitive analysis, implementing commercial strategies, or acquiring new customers and partners to either of these employees.

The Petitioner states that it intends to hire an administrative assistant, a marketing manager and additional window cleaners in 2023 and 2024 and contends that the Director did not consider its business plan and the strategies the Beneficiary will implement to expand its services and staffing in the future. However, the Petitioner must establish eligibility for the requested classification at the time of filing. 8 C.F.R. § 103.2(b)(1). As discussed, the record does not contain supporting evidence corroborating the company's staffing levels at the time of filing. Further, the Petitioner has not sufficiently described how the company's current claimed personnel would sufficiently relieve the Beneficiary from involvement in administrative and operational functions necessary for the day-to-day operation of the business.

On appeal, the Petitioner asserts that the Director failed to consider the reasonable needs of its international organization. Specifically, it states that it intends to work closely with and receive support from its Peruvian affiliate. While the Petitioner has consistently stated that the two companies provide similar services and that the Beneficiary will rely on his experience with the foreign entity to guide the expansion of the U.S. company, it did not previously indicate that it would rely on operational or administrative support from the foreign entity's staff to support its window cleaning service operations in the United States. Therefore, the Petitioner has not established that the Director overlooked evidence that the foreign personnel will assist in relieving the Beneficiary from involvement in such operations. Further, despite indicating on appeal that the Petitioner will receive support from staff in Peru, it has not identified those staff with specificity or indicated the duties they would perform.

The Petitioner cites *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570 (N.D. Ga. 1988) and *Brazil Quality Stones v. Chertoff*, 531 F.3d 1063 (9th Cir. 2008) to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act primarily in a managerial or executive capacity. First, we note that the Petitioner has not furnished evidence to establish that the facts of the instant petition are analogous to those in *Mars Jewelers, Inc.*, where the district court found in favor of the plaintiff. With respect to *Mars Jewelers*, we are not bound to follow the published decision of a U.S. district court in matters arising within the same district. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

In *Mars Jewelers, Inc.*, the court emphasized that the former Immigration and Naturalization Service (INS) should not place undue emphasis on the size of a petitioner's business operations when evaluating whether an employee would be employed in a managerial or executive capacity. As noted, section 101(a)(44)(C) of the Act requires us to "take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function." We have long interpreted the statute to prohibit discrimination against small or medium-size businesses. However, we have also consistently interpreted the Act to require petitioners to establish that the beneficiary's position "primarily" consists of managerial or executive duties, and that it has sufficient personnel to relieve a beneficiary from performing operational and administrative tasks. The reasonable needs of a petitioner will not supersede the requirement that a beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *Brazil Quality Stones*, 531 F.3d at 1070 n.10.

Here, the Director's decision discusses several material evidentiary deficiencies in the record, including the lack of a detailed position description for the Beneficiary. The Director also emphasized that the Petitioner did not submit requested evidence that could have clarified the nature of the Beneficiary's proposed duties and corroborated the Petitioner's claims regarding its personnel and organizational structure. Therefore, the record does not support the Petitioner's contention that the Director's decision over-emphasized the company's small size or staffing levels. While the Petitioner established that the Beneficiary is the majority owner of the company and would occupy the senior position (or at least share the senior position with the co-owner and company president), the fact that he will manage or direct a business as an owner does not necessarily establish eligibility for classification as an L-1A executive. Here, the Petitioner did not meet its burden to establish that the Beneficiary will more likely than not primarily perform the high-level duties described at section 101(a)(44)(B) of the Act.

III. CONCLUSION

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

ORDER: The appeal is dismissed.