



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

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

In Re: 25819969

Date: MAR. 23, 2023

Appeal of California Service Center Decision

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

The Petitioner, a construction company, seeks to extend the Beneficiary's temporary employment as its president 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 the record did not establish that the Petitioner had a qualifying relationship with the Beneficiary's foreign employer. The Director further determined that the Petitioner did not demonstrate that the Beneficiary would be employed 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, as the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Since this issue is dispositive, we decline to reach and hereby reserve its arguments with respect to whether the Petitioner had a qualifying relationship with the Beneficiary's foreign employer. 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).

¹ The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for a one-year period ending on September 19, 2022. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

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 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.*

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The Petitioner does not claim that the Beneficiary will be employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed 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.

When examining the executive capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in an executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

A. Duties

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 its 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.

In support of the petition, the Petitioner indicated that during its first year of operations it purchased a "condo/apartment unit," remodeled it, and listed it for sale. The Petitioner further stated that it was close to acquiring another residential property and planned to "actively continue the business of acquiring, constructing and improving "Fixer-Upper" houses...[and] offer[ing] them for sale to people moving to [redacted]" The Petitioner submitted the following duties for the Beneficiary:

1. The establishment and carrying out of organizational procedures, goals and policies;
2. Directing and controlling the organization's budgetary and financial activities;
3. Negotiating and approving agreements and contracts with customers and vendors;
4. Analyzing performance indicators, financial statements, and sales reports;
5. Identifying areas to cut costs while improving programs, performance and policies;
6. Approving of bid requirements and ensure all bid proposals are within company standard;
7. Developing business alliances with clients and vendors to acquire new business opportunities.

In the above areas of his executive functions and duties, herein [the] Beneficiary will spend on a daily basis, an average of 70% of his time actively engaged in the above specific areas of his functions and duties, as the highest executive office of the [Petitioner].

The Petitioner submitted supporting documentation on the record indicating that the Beneficiary was substantially involved in performing non-qualifying operational duties as of the date the petition was filed. For instance, the Petitioner submitted documentation dated in August 2022, just prior to the date the petition was filed², reflecting the Beneficiary's performance of all the operational duties necessary to acquire properties, such as arranging for title insurance, submitting a counteroffer to a seller, and paying for a home inspection in the amount of \$465. The Petitioner also states on appeal that the Beneficiary's main function will be to seek out and purchase properties for renovation and sale, stating that "the act of buying houses, apartments and condominiums which cost hundreds of thousands of U.S. dollars is primarily an executive function, such that it cannot be delegated to managers and employees." The Petitioner's statements and the submitted evidence suggest that the Beneficiary would be involved in all the day-to-day operational tasks of the business, namely its buying and selling of properties, and according to its statements, there is little indication that he would primarily delegate these non-qualifying tasks to subordinates.

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 does not document what proportion of the Beneficiary's duties would be executive functions and what proportion would be non-qualifying operational tasks. The Petitioner submitted evidence indicating that the Beneficiary's duties would very likely include administrative or

² The petition was filed on September 6, 2022.

operational tasks, but it did not sufficiently quantify the time he would spend on these duties as compared to qualifying executive-level duties. For instance, the Petitioner only vaguely asserted that the Beneficiary would devote 70% of his time to executive-level tasks but did not specifically identify which tasks were operational or executive in nature and assign percentages to each, as necessary to give this contention probative value. The Petitioner further stated that the Beneficiary would perform the same duties under the extended petition as he did under the prior new office petition, a questionable statement given that the record reflected his wide involvement in the day-to-day operational matters of the business. For this reason, we cannot determine whether the Beneficiary was primarily performing the duties of an executive as of the date the petition was filed. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In contrast, the Petitioner did not sufficiently articulate or document what executive-level tasks he would perform under an extended petition. The Petitioner did not submit supporting documentation to substantiate the Beneficiary's performance of executive-level duties or his primary delegation of duties to his asserted subordinates. For example, the Petitioner did not describe or document the organizational procedures, goals, and policies he set, the major budgetary decisions he made, performance indicators he established, costs he cut, bid proposals he approved, or business alliances he developed. In fact, it is noteworthy that there are few specific references to the Petitioner's business and industry in the Beneficiary's duty description. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive 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).

Even though the Beneficiary holds a senior position within the organization, the fact that he 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. *Id.* 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; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily executive in nature.

B. Operations and Staffing

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we 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.

The Petitioner asserts that the Beneficiary would qualify as an executive under an approved extension. 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 the day-to-day operations of such. An individual will not be deemed

an executive under the statute simply because they have an executive title or because they “direct” the organization, major component, or function as the owner or sole managerial employee. A beneficiary must also exercise “wide latitude in discretionary decision making” and receive only “general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.” *Id.*

The submitted evidence and statements of the Petitioner reflect that it had limited operations as of the time the petition was filed leaving substantial uncertainty as to whether it could support the Beneficiary in an executive capacity. For instance, the Petitioner provided financials dated in September 2022, coinciding with the date the petition was filed, indicating that it had yet to generate any revenue and that it only owned one “real estate property in [redacted] which is being developed and available for sale.” The financial statement further stated that the Petitioner “is still setting up for full operations” and that it “plans to increase operations after completing their contract licensing in October 2022.” The Petitioner also stated in response to the RFE that “as of this date [in October 2022], we have no sales yet, though, we are hopeful that anytime this 2022, we can generate sale[s].” In addition, the Petitioner stated in response to the RFE that “we are on our way to success but we need more time,” they “intend to get [their] license as a construction company and builder,” and they will “build houses, condominiums and commercial buildings *in the future* [emphasis added].” Therefore, it is uncertain how the Petitioner would support the Beneficiary in an executive capacity with little operations or revenue in the United States.³ The Petitioner must resolve discrepancies and ambiguities 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).

Furthermore, the Petitioner submitted an organizational chart reflecting that the Beneficiary would oversee a bookkeeper, a chief financial officer, an operations manager, and a business development manager. The chart further showed that operations manager would supervise a project foremen and a independent contracted senior contractor and a junior contractor. The chart also reflected that the business development manager would oversee an independent contractor real estate broker/agent. The organizational chart only identified four asserted employees by name, including the Beneficiary.

However, the Petitioner submitted payroll documentation coinciding with the date the petition was filed reflecting that it only had two employees at that time, one being the Beneficiary and the other the asserted operations manager. Therefore, the submitted documentation does not demonstrate that the Petitioner had sufficient staffing to support the Beneficiary’s claimed executive capacity as of the time the petition was filed. For instance, given that the Petitioner only had one employee beyond the Beneficiary when the petition was filed, it is not clear who performed the operational level-duties of the business and there appeared to be insufficient employees in place to elevate the claimed operational manager into his asserted supervisory role. In addition, although we acknowledge that the Petitioner claimed it would engage independent contractors to support the business, it submitted no supporting evidence to substantiate this assertion and there is no indication it was doing so when the petition was

³ It is also noteworthy that another requirement for eligibility for an L-1A intracompany transferee petitioning for a new office extension is that the Petitioner be “doing business” as defined by the regulations. “Doing business,” is defined as the regular, systematic, and continuous provision of goods or services. 8 C.F.R. § 214.2(l)(14)(ii)(A) and 8 C.F.R. § 214.2(l)(1)(ii)(H). However, there is little evidence to support a conclusion that the Petitioner was providing goods and services regularly, systematically, and continuously when the petition was filed considering it had generated no revenue and had yet to sell a renovated home.

filed. Again, the Petitioner must resolve inconsistencies and ambiguities 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).

The Petitioner further emphasizes that it plans to hire additional employees in the future. However, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the intended U.S. operation one year within the date of approval of the petition to support an executive position. There is no provision in U.S. Citizenship and Immigration (USCIS) regulations allowing for an extension of this one-year period. If the business does not have the necessary staffing after one year to sufficiently relieve the Beneficiary from performing operational and administrative tasks, the Petitioner is ineligible for an extension.

The Petitioner has not established that the Beneficiary would have likely been employed as an executive as of the date the petition was filed. As discussed, the Petitioner submitted evidence reflecting that it had little operations and limited staffing when the petition was filed. The Petitioner did not sufficiently substantiate at this time that the Beneficiary was acting in an elevated position within its organizational hierarchy. As noted, the Petitioner also did not submit supporting documentation to corroborate the Beneficiary's primary performance of executive-level tasks, such as him setting the broad goals and policies of the business. However, as discussed, the Petitioner did provide documentation of the Beneficiary performing non-qualifying operational tasks, such as him identifying properties, purchasing them, and performing other similar day-to-day tasks consistent with acquiring real estate.

Lastly, the Petitioner's claimed organizational chart relevant to the date the petition was filed did not appear properly staffed to support the Beneficiary in an executive capacity. For example, payroll documentation coinciding with the time the petition was filed reflected that the Petitioner only had one employee beyond the Beneficiary. Given the Petitioner's limited staffing, it appears more likely that the Beneficiary, and his claimed manager, were directly engaged in the day-to-day operations of the business rather than overseeing others performing these tasks and primarily setting goals and policies.

For the foregoing reasons, the Petitioner has not sufficiently established that the Beneficiary would be employed in an executive capacity under an extended petition.

ORDER: The appeal is dismissed.