



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

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

In Re: 26139027

Date: MAR. 29, 2023

Appeal of California Service Center Decision

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

The Petitioner, an automotive wholesale company, seeks to temporarily employ the Beneficiary as a 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 the record did not establish 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.

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).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue we will address is whether the Petitioner established that the Beneficiary would be employed in an executive capacity in the United States. The Petitioner does not claim that the

Beneficiary would 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.

The Petitioner stated it was formed in 2019 to export vehicles from the United States and that the Beneficiary “single handedly created the business model and established [the] goals and policies [of] the company.” The Petitioner explained that the Beneficiary had frequently traveled to the United States “for the purpose of meeting with its upper-level staff and ensuring that the company is meeting its objectives.” The Petitioner described the Beneficiary’s duties as follows:

- Manages and directs the company toward its primary goals and objectives.
- Oversees employment decisions at the executive level of the company.
- Presents regular reports on the status of the company’s performance to the management and staff.
- Works to expand both the supplier and customer base in North America.
- Looks to strengthen and grow the US based business, making the most of the opportunities in the automotive industry.

- Oversee and the organization's financial structure, ensuring adequate and sound funding for the mission and goals of the company.
- Reviews the financial results of all operations, comparing them with the company's objectives and taking appropriate measures to correct unsatisfactory performance and results.
- Ensures the company's compliance with all applicable laws, rules, regulations, and standards.
- Negotiates with other companies regarding actions such as mergers, acquisitions, or joint ventures.
- Joins other related duties to benefit the mission of the organization.

The Petitioner provided few details and little supporting evidence to sufficiently substantiate that he would likely be primarily engaged in executive-level tasks. For instance, the Petitioner provided few details as to the actual day-to-day tasks the Beneficiary would perform while in the United States, such as the goals and objectives he would direct, employment decisions he would make, and suppliers and customers he would work with. Likewise, the Petitioner did not describe in detail the opportunities in the automotive industry the Beneficiary would seek out, financial structure he would oversee, law he would ensure compliance with, or the negotiations he would lead. The Petitioner further emphasized that the Beneficiary came to the United States regularly and that he "single-handedly created the company's business model and goals and policies." However, there is little explanation or documentation to support the Beneficiary's establishment of the company's business model or goals and policies in the United States, and given this lack of information, they are left unclear. In sum, the Petitioner provided little information and evidence as to the Beneficiary's proposed executive level-role in the United States, therefore, it is difficult to conclude that he would be primarily engaged in executive-level tasks.

Again, whether the Beneficiary is an executive employee turns on whether the Petitioner has sustained its burden of proving that their duties would be "primarily" executive. See section 101(a)(44)(B) of the Act. Specifics are clearly an important indication of whether a beneficiary's duties will be 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. 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.

As noted, the Petitioner claims the Beneficiary would act in an executive capacity in the United States. 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 Petitioner submitted an organizational chart reflecting that the Beneficiary would supervise a president who in turn would oversee a warehouse manager and a sales account manager. The Petitioner’s limited staffing as of the date the petition was filed leaves substantial uncertainty as to whether the Beneficiary would be primarily engaged in executive-level duties in the United States. For instance, the Petitioner stated that the president would be responsible for “making sure all the day-to-day activities are being handled and that business runs smoothly” and that he would be involved in “purchasing and selling vehicles, preparing customs documentation and managing staff.” The Petitioner also stated that the warehouse manager was tasked with shipments, managing storage, and upkeeping the warehouse facility. Lastly, the Petitioner stated that the sales account manager would be responsible for sustaining and growing the company’s Mexican customer base. First, as noted by the Director, the duties of the claimed president subordinate to the Beneficiary do not reflect the high-level tasks typically accorded to a company president, and the duties of his proposed subordinates are too vague to substantiate that they support him in his claimed role as president. The Petitioner also did not sufficiently articulate the Beneficiary’s proposed executive-level role and how he would be relieved from performing non-qualifying operational tasks by these subordinates.

The operational nature of the duties of the Beneficiary’s proposed subordinates in the United States, including its asserted president, suggests that he would more likely than not work alongside these subordinates and assist them in their duties related to the purchase and shipment of automobiles, rather than focusing on high-level executive tasks related primarily to the establishment of goals and policies. For example, as discussed, the Petitioner indicated that the Beneficiary already came to the United States regularly but did not describe the duties he performed while present. The Petitioner emphasized that the Beneficiary established the business model and goals and policies of the U.S. company but did not explain or document this business model and the company’s goals and policies, how he established them, or would establish them. The lack of explanation as to the Beneficiary’s activities

in the United States, and his proposed duties under an approved petition, leave question as to his asserted executive-level role.

In fact, the Petitioner appears to suggest on appeal that it is not yet sufficiently staffed or operational to support him in an executive-level role, noting that “building a company takes time,” “operations just don’t just appear at the snap of a finger,” and they require the Beneficiary in the United States for this purpose. However, the Petitioner must demonstrate the Beneficiary’s eligibility as of the date the petition was filed, not based on projected growth. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

In sum, the Petitioner did not provide sufficient information and evidence related to the Beneficiary’s proposed role in the United States such that we can conclude that it would likely be primarily executive in nature. Therefore, the Petitioner has not established that the Beneficiary would be employed in an executive capacity in the United States.

ORDER: The appeal is dismissed.