



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

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

In Re: 16317111

Date: JUNE 15, 2022

Appeal of California Service Center Decision

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

The Petitioner operates as a used car dealership¹ and seeks to continue the Beneficiary's temporary employment as "general manager" under the L-1A nonimmigrant classification for intracompany transferees.² See 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, as required, that the Beneficiary was employed abroad by a qualifying organization or that she was employed abroad and would be employed in the United States in a managerial or executive capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner has not established that the Beneficiary's proposed U.S. employment would be in a managerial or executive capacity. Because the identified basis for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's employment abroad. 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. LEGAL FRAMEWORK

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

¹ The Petitioner states that it originally sought to operate as a remodeling and renovation business, but later shifted focus to selling used cars and intends operate as a tour business at a future time.

² The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period August 10, 2017, until August 9, 2018. 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.

application for admission into the United States. 8 C.F.R. § 214.2(l)(1). The prospective U.S. employer must also be a qualifying organization that seeks to employ a beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(i).

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 issue to be addressed in this decision is whether the Petitioner established that the Beneficiary's position under an extended petition would be in an executive capacity.³

"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 definitions of executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. Sections 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 duties to be performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *See* 8 C.F.R. § 204.5(j)(5).

Beyond the required description of the job duties, we examine the 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 address the Petitioner's claims in the discussion below, which will include consideration of the Beneficiary's job duties along with evidence of the nature of the U.S. employer's business, its staffing levels, and its organizational structure.

³ At the time of filing, the Beneficiary's proposed employment was not identified as managerial or executive. However, on appeal, the Petitioner clarifies that the Beneficiary will be employed in an executive capacity. As such, we will apply the statutory definition for executive capacity in assessing whether the Petitioner is eligible for the benefit sought herein.

A. Factual Background

At the time of filing, the Petitioner claimed five employees and listed an anticipated net annual income of \$50,000. In a supporting statement, the Petitioner listed the statutory elements of managerial and executive capacity and stated that it continues to be in an “initial establishment and development stage” and claimed that the Beneficiary “will be critical to the success of the company’s operation.” The Petitioner also provided an organizational chart and job descriptions for the eight positions listed therein; the chart depicts the Beneficiary at the top of the hierarchy overseeing a business analyst and a sales manager. The sales manager is shown as overseeing a vehicle inspector/appraiser and a sales representative, noting that the Petitioner anticipates hiring 2-5 sales representatives in total. The three remaining positions – tour director, tour specialist, and tour guides – are labeled as “to be hired” and are part of the Petitioner’s plan to expand into the travel industry.

After reviewing the record, the Director issued a request for evidence (RFE), which instructed the Petitioner to address, in part, evidentiary deficiencies regarding the Beneficiary’s U.S. position. Namely, the Petitioner was asked to provide a description of the job duties the Beneficiary performed in the previous year as well as a list of her proposed job duties under the extended petition along with the percentage of time she would allocate to each assigned job duty. The Director also asked the Petitioner to describe its staffing structure and provide evidence of employee wages, noting that the originally submitted evidence did not show an organizational structure capable of elevating the Beneficiary to a primarily managerial or executive position.

In its response statement, the Petitioner stated that the Beneficiary’s chief focus is to familiarize herself with the “local market” and work on expanding the business, while ensuring that “operations run smoothly” and instructing “the section or unit supervisors who will then relay what needs to be done to the workers.” The Petitioner also provided a job duty breakdown allocating the Beneficiary’s time as follows: 20% to handling administrative tasks, including sending emails and “working on planning” by “putting strategies in place, helping with employee queries, and attending to operational matters”; 15% to keeping in touch with “the teams” through communication and collaboration to ensure projects are on track; 5% to working with an HR company to hire more employees and creating new positions; 30% to growing the business through planning, seeking opportunities to attract more investors, acquiring more clients, and working to “grow its offering”; and 30% to communicating with and reporting to the foreign parent entity and assisting with “decision making recommendations.”

In addition, the Petitioner provided a new organizational chart, Form W-2s, quarterly tax returns, wage reports for 2018, and a wage report for the first quarter of 2019. The organizational chart depicts the Beneficiary at the top of the hierarchy overseeing two subordinate positions – one in the used car department and the other in the travel and tours department. The Petitioner noted that the individual listed as used car sales manager has a “pending” work permit, and the individual listed as travel and tours department manager “will be the next LIA from China mother company.” The remainder of the travel and tours department includes five more vacant positions – three at the third tier of the chart and two at the fourth tier. The remainder of the used car department also lists positions in the third and fourth tiers: two employees comprise the third tier and include a sales manager and a repair and detail manager; three positions comprise the fourth tier and have been shown as vacant both at the time of filing and at the time of the RFE response. The Petitioner’s third quarterly wage report, which

corresponds with the petition's filing date, shows that the Petitioner paid wages to no more than four employees at any time in 2018.

On appeal, the Petitioner states that it had four employees at the time of filing, claiming that the Beneficiary has direct subordinates who relieve her from having to primarily perform operational job duties.

B. Analysis

We conclude that the Petitioner has not provided sufficient evidence to overcome the denial. Despite the fact that the RFE asked the Petitioner for additional information pertaining to the Beneficiary's proposed job duties as well as the job duties she performed in the year preceding this petition, the Petitioner focused only on the former and did not discuss the Beneficiary's prior year's activities, when the Petitioner was in its first year of operation. It is therefore unclear what steps the Beneficiary took during the Petitioner's new office phase, nor is it apparent that the Petitioner has advanced to the next phase of development, particularly given that it currently claims to be in an "initial establishment and development stage." Although the Petitioner indicates that it plans to hire additional manager and employees in the future, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C), which pertains to new office petitioners, only allows the intended U.S. operation one year within the date of approval of the new office petition to support an executive or managerial position. There is no provision in 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 its beneficiary from performing operational and administrative tasks, that petitioner is ineligible for an extension.

In this instance, the Petitioner did not establish that its operation was sufficiently staffed to relieve the Beneficiary from having to allocate her time primarily to administrative and/or operational tasks at the time of filing. As noted previously, the Petitioner claimed five employees on its petition form. However, the 2018 third quarterly wage report, which corresponds with the petition's filing date, shows that the Petitioner employed no more than four employees at any time during that quarter and that in fact, its staff decreased in size from four employees in July and August 2018 to two employees the following month, after the petition was filed. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, however, the Petitioner has not offered evidence that it ever attained a five-person staff as claimed in the petition form, nor is there sufficient evidence that the staffing structure in place at the time of filing was sufficient to support a primarily executive position. Because the record contains no evidence that would allow us to ascertain each employee's dates of employment, it is unclear which positions, aside from the Beneficiary's, were actually filled at the time of filing. Also, we note that eligibility must be established at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Therefore, while we acknowledge the Petitioner's plans to hire a tour director, tour specialist, and tour guides to staff a tour business as part of an expanded U.S. operation, we will not consider these vacant positions, as they are not relevant to the issue of whether the Petitioner was eligible for the benefit at the time of filing.

Further, although the Petitioner's reference to "section or unit supervisors" indicates that these supervisory positions exist within its organization, the Petitioner did not clarify which positions constitute "section or unit supervisors," nor is there evidence that the Petitioner's staffing structure at the time of filing included sections or units. The evidence must substantiate that the duties of a

beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive position.

Next, we find that the Petitioner provided a deficient job description that it lacked a detailed account of the actual tasks the Beneficiary would carry out on a daily or weekly basis within the context of a used car sales operation. For instance, the Petitioner stated that for 20% of the time daily, the Beneficiary would "handle administrative tasks," including sending emails and "working on planning" by "putting strategies in place, helping with employee queries, and attending to operational matters." However, the Petitioner did not identify specific strategies the Beneficiary has or would implement, nor did it establish that administrative tasks, like the ones listed, are executive in nature.

Likewise, the Petitioner did not establish that "growing the business," which would consume 30% of the Beneficiary's time, would entail primarily executive-level tasks. The Petitioner stated that "growing the business" would involve "a lot of planning," seeking opportunities to attract more investors, acquiring more clients, and working to "grow its offering." However, the Petitioner did not specify any activities that would explain how it would "grow its offering" nor did it specify what the additional "offering" would encompass or what role the Beneficiary would assume with regard to client acquisition. Without a more detailed account of what the Beneficiary's specific activities, we cannot conclude that the duties she would perform to ensure growth of the business would be primarily executive in nature. The Petitioner also did not explain what constitutes "a lot of planning" or what type of activities the Beneficiary will plan to further the Petitioner's objective of "growing the business." Further, although the Petitioner stated that another 30% of the Beneficiary's time will be spent communicating with and reporting to the foreign parent entity and assisting with "decision making recommendations," it did not elaborate on the types of decisions the Beneficiary will make, the underlying job duties she would perform to arrive at a particular recommendation, or the information her reports will convey to the foreign entity and its shareholders.

Although no single job duty represents the primary portion of the Beneficiary's job description, a determination of the Beneficiary's eligibility hinges on a comprehensive analysis, which includes consideration of the entire job description and the organizational hierarchy within which those duties are to be performed. Having applied this wholistic approach in the matter at hand, we find that the record contains evidentiary deficiencies that preclude a favorable determination. As discussed above, the record contains a deficient job description and ambiguities concerning the Petitioner's organizational hierarchy.

In this matter, while the job description highlights the Beneficiary's discretionary authority and autonomy in making decisions for the business, it conveys no meaningful understanding of the Beneficiary's actual activities within the scope of a used car sales operation. The fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or 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" managerial or executive in nature. Sections 101(A)(44)(A) and (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, it is unclear whether the actual duties she will perform will be primarily executive in nature. As noted above, we rely, in part,

on specific information about a beneficiary's actual daily tasks to reach a determination about the proposed position's managerial or executive capacity. 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, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In sum, we find that the Petitioner did not offer sufficient information about the Beneficiary's daily activities in the course of the Petitioner's sales operation and provided deficient evidence pertaining to its staffing composition. Therefore, given the evidentiary deficiencies described above, we cannot conclude that her proposed position would be in an executive capacity.

ORDER: The appeal is dismissed.