



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

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

In Re: 8419434

Date: JULY 7, 2020

Appeal of California Service Center Decision

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

The Petitioner, operating as a childcare center, seeks to continue the Beneficiary's temporary employment as its president 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, as required, that: (1) the Beneficiary was employed abroad in a managerial or executive capacity; and (2) the Beneficiary's proposed position would be in a managerial or executive capacity. The matter is 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 did not establish the Beneficiary's position in the United States would be in a managerial or executive capacity. Since the identified basis for denial 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 in a managerial or executive capacity. *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 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).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The primary issue to be addressed in this discussion is whether the Petitioner provided sufficient evidence to support its claim that the Beneficiary's position with the U.S. entity would be in an executive capacity.¹

"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 managerial capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. Section 101(a)(44)(A) of the Act. The Petitioner must also prove that the Beneficiary will be *primarily* engaged in managerial 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 performed by the Beneficiary 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 regarding 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. 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 stated that the Beneficiary will hold the top-most position with the organization, hold a "key leadership role" and be responsible for the "ultimate success of the business" where she will provide "leadership and guidance" in terms of strategy, business plans, and corporate policies. The Petitioner also provided a job duty breakdown, which allocates 60% of the Beneficiary's time to two categories of broadly stated duties and responsibilities. Namely, the Petitioner allocated 40% of the Beneficiary's time to "strategic planning, direction and management" and stated that this category will involve playing a "key role" and "providing leadership to the

¹ The Petitioner does not claim that the Beneficiary would be employed in a managerial capacity. Therefore, we will limit our discussion to the Petitioner's claim that the Beneficiary will be employed in an executive capacity.

company,” working with the vice president to create a budget and grow revenue, “[c]ontinuously evaluate expansion strategy,” monitor the Petitioner’s “services and programs” to ensure customer satisfaction, and review staff reports to determine where change is necessary. Although these elements emphasize the Beneficiary’s oversight and discretionary authority, they do not identify specific daily or weekly actions the Beneficiary would take to explain how she plans strategy and fulfills her responsibility to direct and manage a childcare center.

The Petitioner allocated another 20% of the Beneficiary’s time to establishing goals, policies, and investment strategies. However, this category was similarly comprised of vague statements that highlight the Beneficiary’s discretionary authority with respect to the business, but do not explain precisely what steps the Beneficiary will take to direct the management of a childcare business. For instance, several components of this category merely paraphrase the general category description, focusing on the Beneficiary’s role in establishing “organizational goals and policies” and directing and implementing policies and objectives. Such statements offer no insight about specific goals or policies or other directives instituted by the Beneficiary in the course of the company’s daily operation. Likewise, vague statements about the Beneficiary’s direction and coordination “budget activities to fund operations” and oversight of “economic, industrial, and corporate developments” also preclude a meaningful understanding about the Beneficiary’s daily or weekly activities within the scope of the Petitioner’s business operation.

The Petitioner also included references to the Beneficiary’s goal to maximize profits and investments in this category, claiming that the Beneficiary will “[i]nterpret data affecting investment programs” and review “financial publications” and information offered by “investment banking firms.” However, the Petitioner did not list any profit maximizing measures the Beneficiary has or plans to implement, nor did it identify specific “investment programs” the Beneficiary has or will pursue or explain how “financial publications” and “investment banking firms” are relevant to the Petitioner’s ability to achieve its financial objectives within the context of a business operation whose main activity is the operation of a childcare center. Further, although the Petitioner indicated that the Beneficiary would allocate 20% of her time to exercising discretionary authority over personnel by setting “performance standards” and “policies for staffing levels,” it did not explain how this exercise of authority translates into tasks the Beneficiary would perform in the regular course of business.

In a request for evidence (RFE), the Petitioner was notified that the job description offered in support of the petition was insufficient and did not demonstrate that the Beneficiary would perform primarily executive job duties. The Petitioner was therefore asked to supplement the record with more detailed information about the Beneficiary’s typical executive job duties explaining how those duties fit the statutory definition of executive capacity.

In response, the Petitioner did not provide the requested additional information about the Beneficiary’s job duties and merely resubmitted the original job description reiterating the same vague claims about the Beneficiary’s “key leadership role” in formulation of the Petitioner’s policies and business strategies. The Petitioner now reiterates those same claims on appeal, again focusing on the Beneficiary’s “leadership, guidance, and vision” in developing and implementing corporate policies and managing the Petitioner’s budget and finances. The Petitioner also points to the Beneficiary’s

majority ownership of the U.S. entity and highlights her autonomy in making decisions as a result of such ownership.

However, 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)(B) of the Act. By statute, eligibility for this classification requires that the duties of a position be “primarily” executive in nature. *Id.* 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 alone are insufficient to establish that her actual duties would be primarily executive in nature. As such, we rely on specific information about a beneficiary’s actual daily tasks as an important indication of whether their 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. at 1108.

As discussed above, the Petitioner offered vague information about the Beneficiary’s job duties focusing on her high level of discretionary authority over policies and business strategies, but listing no goals, strategies, or policies that the Beneficiary established. The Petitioner also neglected to specify plans or investment programs the Beneficiary plans to pursue or explain how the Beneficiary will meet the Petitioner’s broadly stated financial objectives within the scope of a childcare business. Further, despite the Petitioner’s references to investments and investment programs, the Petitioner did not identify any investments or clarify how an investment plan is relevant to the operation of a childcare business. In sum, the Petitioner provided broadly stated job description that focused on the Beneficiary’s discretionary authority and made vague claims that did not readily fit the nature of the Petitioner’s business. Moreover, the Petitioner’s broad claims failed to disclose the specific actions the Beneficiary would take on a daily or weekly basis within the specific context of the business operation. As such, we cannot conclude that the Beneficiary’s time would be primarily allocated to tasks of an executive nature.

B. Staffing

Next, we will address the Petitioner’s staffing at the time of filing. As correctly stated on appeal, if 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.

Although the Petitioner claimed 17 employees at the time of filing, it provided an organizational chart depicting a 19-person staff. The Beneficiary is positioned at the top-most level of the hierarchy and is depicted as overseeing the organization’s vice president, who is shown as overseeing the childcare center director. The childcare center itself is divided into two identical halves, each comprised of an assistant director overseeing three lead teachers, three assistant teachers and a “teaching assistant/driver.” Because the Beneficiary was the only employee whom the organizational chart identified by name, it is unclear which of the 19 positions were filled at the time of filing, particularly given that the Petitioner claimed 17, rather than 19, employees in the petition itself. The Petitioner

did not explain this ambiguity between the organizational chart and the number of employees it claimed at the time of filing.

Furthermore, despite being issued an RFE, which instructed the Petitioner to provide an organizational chart containing employee names and job descriptions, the Petitioner did not comply with this request and instead offered wage documents that do not support either the number of employees claimed in the petition or the number of positions depicted in the organizational chart. Namely, the Petitioner provided a quarterly tax return and wage report for the 2019 first quarter claiming 13 and 14 employees, respectively. The Petitioner did not offer an explanation as to why the wage report named 14 employees, while the quarterly tax return indicated that the Petitioner had 13 employees during the same time period. The Petitioner also did not explain why it claimed 17 employees in the petition itself and offered an organizational chart depicting 19 positions, as neither the claim nor the organizational chart is consistent with the quarterly wage report or quarterly tax return. The Petitioner must resolve these discrepancies 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).

On appeal, the Petitioner points out that the Beneficiary took over its ownership in 2014, claiming that it is “relatively new” and that denying the petition without taking into account its “early stages” of operation and the nature of its business would be contrary to the statutory definition of executive capacity. Despite the Petitioner’s claim, we cannot overlook the multiple evidentiary deficiencies, including the unresolved inconsistencies regarding the Petitioner’s staffing composition at the time of filing and the lack of sufficient job descriptions for the Beneficiary and the rest of the Petitioner’s staff. Although the Petitioner is correct to point out that we must consider its reasonable needs, the record contains insufficient information as to what those needs were within the context of the company’s phase of operation at the time of filing.

Furthermore, the Petitioner’s needs will not supersede the requirement that the Beneficiary must “primarily” perform duties in an executive capacity; the Petitioner cannot fulfill this requirement if it is not adequately staffed at the time of filing so that it can relieve the Beneficiary from having to spend her time primarily performing operational and administrative tasks. *See* section 101(a)(44)(B) of the Act. 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).

In light of the deficient evidence of the Petitioner’s staffing and job duties, we are unable to gauge the extent to which the Petitioner was able to relieve the Beneficiary from having to spend her time primarily performing non-executive tasks at the time this petition was filed. Therefore, we cannot conclude that the Beneficiary would be employed in an executive capacity under an approved petition.

ORDER: The appeal is dismissed.