



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

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

In Re: 8418891

Date: JULY 7, 2020

Appeal of California Service Center Decision

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

The Petitioner, a beauty and med spa business, seeks to employ the Beneficiary temporarily 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.¹ 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 would be employed in a managerial or executive capacity in the United States. 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). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same

¹ Although the Petitioner filed this petition seeking treatment as a "new office," the Director did not treat the Petitioner as a new office in rendering this decision, nor does the Petitioner offer evidence to show that it warrants such treat. *See* 8 C.F.R. § 214.2(l)(1)(ii)(F) (for definition of "new office"). As such, we will make our determination in line with the Director's interpretation of the record and we will not treat the Petitioner as a new office.

employer or a subsidiary or affiliate thereof in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The primary issue to be addressed is whether the Petitioner provided sufficient evidence to establish that the Beneficiary's position with the U.S. entity would be in an executive capacity.²

"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 managerial capacity of a given beneficiary, we 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 a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a 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.

Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

In a supporting cover letter, the Petitioner stated that the Beneficiary was recognized for creating "one of the top beauty salons in Russia" and seeks to achieve similar success in the United States by developing and expanding the U.S. entity. The Petitioner claimed that at the time of filing it had seven full-time employees, three independent contractors, and three service providers and stated that it plans to expand to a 23-person staff as the company develops. However, the employment contracts the Petitioner offered in support of the petition stated that its purchasing manager and both administrators were contracted to provide their services "on a part-time basis."³ The Petitioner must resolve this discrepancy 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 also provided a projected organizational chart depicting its current staff and the positions it looks to fill as the company expands. The chart shows the Beneficiary at the top of the hierarchy overseeing a commercial director, who would oversee seven outsourced specialists, four beauty specialists, six certified cosmetologists, and five administrator positions. The chart shows that the commercial director position was vacant at the time of filing, thereby indicating that the

² The Petitioner does not claim that the Beneficiary would be employed in a managerial capacity.

³ Employment contracts for the administrator positions both indicate that the employees may work "up-to forty (40) hours per week." Despite the potential to work a 40-hour work week, which may constitute full-time employment, both contracts referenced to the administrator positions as "part-time."

Beneficiary would directly oversee the salon operation and its existing staff, which included six cosmetologists, a purchasing manager, two salon administrators, and an outsourced medical director.

The Petitioner also provided a job duty breakdown, which allocated 30% of the Beneficiary's time to "designing corporate goals and strategies," managing the "overall business" by networking with beauty salon service providers, business partners, and prospective clients, and working with the medical director to distinguish the Petitioner among its "target market(s)" through "additional programs and opportunities." The Petitioner did not specify the Beneficiary's role in collaborating with the medical director to increase its market share. Further, the Petitioner did not establish that networking with service providers and prospective customers is an executive-level task, nor did it identify specific job duties that are indicative of setting "corporate goals" or establish that setting these goals is a routine activity to be carried out in the regular course of business. Moreover, the Petitioner did not identify specific goals or strategies the Beneficiary intends to plan within the scope of its business operation.

The Petitioner allocated another 20% of the Beneficiary's time to "setting all company goals and policies," stating that this would entail setting both long- and short-term goals. Although the Petitioner explained that short-term goals may include offering "lower cost" service options while long-term goals may include expanding the types of services offered and the number of business locations, it did not explain the practical difference between the types of duties the Beneficiary would perform in setting short- and long-term goals versus those she would perform in the course of "designing corporate goals," as stated above. Broadly stating that the Beneficiary would set a range of business goals does not clarify the specific activities she would perform in meeting her goal-setting responsibilities, nor does it establish that the underlying job duties would be executive in nature.

The Petitioner also stated that the Beneficiary would allocate 15% of her time to budgeting and fund allocation, 5% to ensuring compliance with licensing and certification requirements, and 10% to each of the following: "Empowering" management and employees to work diligently by offering incentives; assessing and mitigating potential liabilities, preventing injuries, and using "full discretion" to hire and contract qualified employees and service providers; and keeping apprised of all employee activities to determine whether "alternative solutions or replacement services" are required to improve customers' experiences. Despite the implied discretionary authority inherent to many of the Beneficiary's responsibilities, it is unclear that her underlying job duties would be executive in nature, as it appears that the Beneficiary would be directly involved in various operational activities, including licensing and certification requirements, risk mitigation and injury prevention, employee hiring, and collaborating with employees to find alternative services.

In a request for evidence (RFE) the Director informed the Petitioner that the provided job description did not impart detailed information about the Beneficiary's job duties or clarify how the Beneficiary would direct the management of the organization. The Director further noted that the Petitioner did not establish that it was adequately staffed and could support the Beneficiary in an executive position.

In a response statement, the Petitioner discussed its plans to expand to a 23-person staff and explained that at the time of filing its staffed consisted of seven employees, three independent contractors, and two service providers who provided legal and account services. The Petitioner also provided an updated organizational chart showing that one of its administrators was promoted to the commercial

director position in July 2019. We note, however, that 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). Because the commercial director position was filled only after this petition was filed in May 2019, we will not consider the staffing change for the purpose of assessing the Petitioner's eligibility at the time of filing. Likewise, any job duties that the Beneficiary was assigned based on the Petitioner's updated staffing composition would similarly be irrelevant in assessing the Petitioner's eligibility, which must be based on facts and circumstances that existed at the time of filing. *See id.* Therefore, despite claiming that the Beneficiary's involvement in the Petitioner's hiring process would have been limited to merely directing and overseeing the commercial director in his or her execution of this human resources function, given that the Petitioner did not employ a commercial director at the time of filing, it is likely that the Beneficiary would have been tasked with the operational job duties associated with staffing the petitioning organization.

Further, the Beneficiary's latest job duty breakdown states that 20% of her time would be allocated to consulting with managers and staff about general operations, which would involve supervising the commercial director, supervising the staff through the commercial director, instructing and authorizing the commercial director to oversee daily salon operations, and working with the commercial director to increase sales. As noted above, however, because this position was not filled at the time of filing, it is reasonable to conclude that instead of directing the management of the Petitioner through a commercial director, the Beneficiary would have been directly involved in performing operational activities, such as hiring and supervising a non-professional staff.

The updated job description also states that the Beneficiary would analyze sales reports and financial statements. However, because the Petitioner has not established that it had employees or service providers capable of generating this performance data, it is unclear how the Beneficiary would have fulfilled this responsibility without being directly involved in performing the underlying operational tasks necessary to generate the data. The Petitioner also did not clarify the Beneficiary's involvement in creating training manuals and training schedules and creating "written protocols for each procedure performed." Rather, the Petitioner stated that the Beneficiary would "create and/or approve" the manuals and protocols, thus indicating that the Beneficiary may be directly involved in these operational tasks.

In addition, despite being greater in length, the updated job description was nevertheless devoid of substantive content regarding the specific tasks the Beneficiary would perform in the course of directing the management of a med spa salon. For instance, the Petitioner broadly stated that the Beneficiary would establish "qualitative and quantitative goals" and design and implement "quality assurance programs." However, the job description does not identify specific goals the Beneficiary would establish, describe programs she would develop, or explain how devising the goals and programs would account for routine daily or weekly tasks that the Beneficiary would carry out within the context of a med spa salon's daily operation. The Petitioner was equally vague in stating that the Beneficiary would establish "company service levels, standards and brand" and analyze the Petitioner's operations. However, the Petitioner did not specify what defines the Petitioner's "service levels, standards and brand" nor did it state which aspects of the business the Beneficiary would consider in conducting an analysis of its operations. 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).

Further, given that the original job description states that the Beneficiary would be responsible for networking with prospective clients, it appears that the Beneficiary would not be relieved from having to market and promote the Petitioner's services to its clientele. We note that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial capacity. *See, e.g.,* section 101(a)(44)(A) of the Act (requiring that one "primarily" perform the enumerated managerial duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

On appeal, the Petitioner points to its original organizational chart, highlighting the Beneficiary's responsibility to expand and direct "the entire" operation in her capacity as the organization's "most senior-level" employee. The Petitioner also emphasizes the Beneficiary's discretionary authority with the most critical aspects of the business, including its budget and finances, goals and policies, and personnel matters.

However, 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 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. Section 101(A)(44)(B) of the Act. While it is likely that the Beneficiary would exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, these factors alone are insufficient to establish that her actual duties would be primarily executive in nature.

As discussed earlier, the Petitioner provided deficient job descriptions consisting of vague job duties that were not readily applicable within the context of a med spa salon. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise, meeting the statutory definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Although the Petitioner contends that the Beneficiary would be unable to perform cosmetology services because she does not qualify for a Florida cosmetology license, this does not lead to the conclusion that the Beneficiary would refrain from performing other operational and/or administrative tasks that are inherent to the Petitioner's business operation. Given the generality of the Beneficiary's job descriptions, we have no insight as to what actual tasks the Beneficiary would perform on a daily or weekly basis.

In sum, despite showing that the Beneficiary would hold the senior-most position within the U.S. organization, the lack of a detailed job description within the context of the Petitioner's staffing at the time of filing precludes us from gaining a meaningful understanding of how the Beneficiary would direct the management of the organization and how the Petitioner would relieve the Beneficiary from having to allocate her time primarily to performing operational and administrative tasks within a med spa business. Therefore, in light of the evidentiary deficiencies described herein, the Petitioner has not established that the Beneficiary would be employed in an executive capacity.

ORDER: The appeal is dismissed.