



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

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

In Re: 10106724

Date: OCT. 1, 2020

Appeal of California Service Center Decision

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

The Petitioner, describing itself as a food production company, seeks to continue¹ the Beneficiary's employment as its chief executive officer (CEO) in the United States under the L-1A nonimmigrant classification for intracompany transferees. 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 the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity under an extended petition. On appeal, the Petitioner asserts that the Director's inquiry as to its staffing levels was inappropriate and contends the Director failed to take into the account its reasonable needs as required by the regulations.

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. Upon *de novo* review, we will dismiss the appeal.

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 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

¹ The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period from October 19, 2017, to October 18, 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.

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 A MANAGERIAL OR EXECUTIVE CAPACITY

The sole issue we will address is whether the Petitioner established that the Beneficiary would act in a managerial or executive capacity under an extended petition.

“Managerial capacity” means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

“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 or 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 a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

A. Duties

To be eligible for L-1A nonimmigrant visa classification as a manager or 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)(A)(i)-(iv) and section 101(a)(44)(A)(i)-(iv)(B) 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 managerial or 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 managerial or 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). In determining whether a given beneficiary's duties will be primarily managerial or 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 indicated that it "produces [a] different variety of Italian cheese in accordance with high-quality standards and trusted traditional recipes" and noted that these products "are distributed by wholesale to retailers, such...famous restaurants." The Petitioner submitted the following duties for the Beneficiary during what it described as a typical workday:

1. Formulating [Petitioner's] short- and long-term policies, goals, strategies, procedures and programs to ensure the continuous growth and profitability of the business (10%);
2. Planning and directing the Company's financial, governance, and commercial operations at the highest level of management, with limited review from the affiliate company, and with the help of subordinate managers and professionals (20%);
3. Overseeing negotiations with banks, bakeries, restaurants, and product suppliers to ensure the most favorable terms and conditions (5%);
4. Coordinating the setting of accurate budgets for administration and marketing and monitoring these on a biweekly basis (10%);
5. Launching and directing [the Petitioner's] implementation of personnel management, recruitment, and training and development procedures and programs;
6. Determining with stakeholders a marketing and promotion strategy and, if necessary, entering into agreement with a marketing company (5%);
7. Directing and overseeing financial and accounting procedures and policies (8%);
8. Supervising and exercising direction over subordinate employees and subcontractors who perform day-to-day work with authority to hire and fire the employees (15%);
9. Monitoring staff performance through annual evaluations and ensuring highest level of customer/client service (15%); and
10. Reviewing production reports and financial statements to determine progress and status in attaining objectives and revising objectives and plans in accordance with current conditions (2%).

The Petitioner submitted supporting documentation on the record indicating that the Beneficiary was substantially involved in non-qualifying operational duties as of the date the petition was filed. For instance, the Petitioner submitted emails from September 2018 showing the Beneficiary communicating directly with a client and sending them price lists and technical sheets on its products.² The Petitioner also provided an email from February 2018 reflecting the Beneficiary coordinating with a chef on visiting a hotel location to provide cheese samples and another from January 2018 again related to his provision of samples to a client. Likewise, the Petitioner submitted a letter from the president of a client indicating that the Beneficiary would "join efforts with [the client] to develop and produce several dairy products," suggesting his direct involvement in the cheese production and development process. This is particularly noteworthy since none of the Beneficiary's subordinates appear to have duties related to developing new cheese products. In addition, the Petitioner also provided foreign employer invoices dated near the date the petition was filed including the Beneficiary's name and showing the sale of office trailers abroad. Although we acknowledge that these invoices relate to the foreign employer's operations, the Beneficiary's apparent involvement in

² The petition was filed on October 18, 2018.

these foreign operational matters while in the United States suggests his likely engagement in these same activities while employed in the United States.

Whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are “primarily” managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary’s duties would be managerial or executive functions and what proportion would be non-qualifying. The Petitioner submitted evidence indicates that the Beneficiary’s duties include administrative or operational tasks but it does not quantify the time he spends on these duties as compared to qualifying managerial or executive-level duties. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of a manager or an executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In contrast, the Petitioner provided a generic duty description including few credible details regarding the actual managerial or executive-level tasks the Beneficiary was performing after its first year of operation. The Petitioner also did not submit any supporting documentation to substantiate the Beneficiary’s performance of managerial or executive level duties or his primary delegation of duties to his asserted subordinates. For example, the Petitioner did not detail or document the policies, goals, strategies, procedures, and programs the Beneficiary implemented, the budgets he set, or the personnel management, recruitment, and training and development procedures and programs he put in place. Similarly, the Petitioner did not credibly describe the marketing and promotion strategies the Beneficiary established, the accounting procedures and policies he managed, or the “innovative and creative strategic sales plans” he formulated. 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 managerial or 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 a managerial or 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” managerial or 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 managerial or executive in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or 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 submitted an organizational chart in support of the petition reflecting that the Beneficiary supervised an office manager overseeing an administrative assistant and an operational

manager supervising six production workers. In this initial organizational chart, the Petitioner did not identify any of its asserted employees by name. In response to the request for evidence (RFE), the Petitioner submitted a similar organizational chart showing its employees by name, again indicating that the Beneficiary oversaw an office manager supervising an administrative assistant. The chart also indicated that the Beneficiary oversaw an operational manager supervising one production employee.

The Petitioner did not submit a complete organizational chart specific to its staffing levels as of the date the petition was filed as necessary to demonstrate that the Beneficiary would have acted in a managerial or executive capacity as of the date the petition was filed. In support of the petition, the Petitioner provided an organizational chart reflecting a total of nine employees, including six production workers. However, in the Form I-129, Petition for a Nonimmigrant Worker the Petitioner indicated that it only had five employees at this time. Further, as noted by the Director, the Petitioner submitted state employer's quarterly wage forms corresponding with the date of the petition from the fourth quarter of 2018 listing only four employees (beyond the Beneficiary). These employees are not listed by name in its most recent organizational chart provided in response to the RFE. Therefore, the Petitioner has not sufficiently articulated and established its organizational chart as of the date the petition was filed. 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). 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).

On appeal, the Petitioner asserts that the Beneficiary qualified as a function manager stating that "a manager may be managing a function of a company and have a few if any employees." The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A) of the Act. Since the Petitioner only contends on appeal that the Beneficiary would qualify as a function manager, and not as a personnel manager, we will only analyze this issue.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

The Petitioner has not sufficiently demonstrated that the Beneficiary would have acted as a function manager under an extended petition. First, the Petitioner has not clearly defined the Beneficiary's function but only generically indicates that he would be the CEO and head of the company. Further, the Petitioner has not explained how the Beneficiary's function is essential to the company. Lastly, even if the Beneficiary's function were properly defined, the submitted evidence reflects his substantial involvement in the non-qualifying operational aspects of the business and the Petitioner has not adequately detailed and documented how he devoted his time primarily to managerial duties

rather than these non-qualifying tasks. In fact, the Petitioner states on appeal that Beneficiary can qualify despite “few if any employees” or even with no employees, leaving further uncertainty as to whether it had developed sufficiently during the first year to support him in a managerial capacity. As we have noted, there are few specifics as to the Beneficiary’s actual managerial tasks and there is little supporting documentation to substantiate that he was primarily relieved from performing non-qualifying duties as of the date the petition was filed. Therefore, the Petitioner has not sufficiently demonstrated that the Beneficiary would be employed as a function manager under an approved petition.

Furthermore, the Petitioner asserts that the Beneficiary would have qualified 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.*

For similar reasons, 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 did not provide a complete organizational chart specific to the date the petition was filed; for this reason alone, it has not sufficiently substantiated that the Beneficiary was acting in an elevated position within its organizational hierarchy at this time. As noted, the Petitioner did not submit supporting documentation to substantiate the Beneficiary’s primary performance of executive-level tasks; such as him setting the broad goals and policies of the business. However, it did provide documentation of the Beneficiary performing non-qualifying operational tasks such as providing price lists and samples, developing new dairy products, and coordinating customer demonstrations.

Further, even if we consider the Petitioner’s claimed organizational chart relevant to a time after the date the petition was filed, it appears it was still not properly staffed at this time to support the Beneficiary in an executive capacity. For example, this organizational chart provided in support of the RFE included only one production employee to produce its dairy products, leaving significant question as to whether it sustained an asserted level of managers below the Beneficiary as claimed. In fact, given its limited staffing, it appears more likely that the Beneficiary, and his claimed managers, were directly engaged in the dairy production process and the other day-to-day operations of the business rather than overseeing others performing these tasks or setting goals and policies. As such, the Petitioner has not sufficiently established that the Beneficiary would have been employed in an executive capacity under an extended petition.

Lastly, the Petitioner also emphasizes on appeal that the Director “failed to consider [its] reasonable needs” and stage of development in denying the petition. The Petitioner correctly observes that we

must take into account the reasonable needs of the organization and that a company's size alone may not be the only factor in determining whether the Beneficiary is or would be employed in a managerial or executive capacity. See section 101(a)(44)(C) of the Act. However, it is appropriate for us to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company or a company that does not conduct business in a regular and continuous manner. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when United States Citizenship and Immigration Service (USCIS) notes discrepancies in the record. See *Systronics*, 153 F. Supp. 2d at 15.

As we have discussed, the Petitioner provided a generic duty description for the Beneficiary that did not sufficiently demonstrate he would have primarily devoted his time to managerial or executive duties. The Petitioner otherwise submitted documentary evidence reflecting the Beneficiary's direct involvement in the non-qualifying operational aspects of the business. By comparison, the Petitioner provided little supporting documentation to substantiate the Beneficiary's primary performance of qualifying managerial or executive-level duties. Further, the Petitioner did not submit a complete organizational chart relevant to the date the petition was filed, and its most recent organizational chart from August 2019 (approximately ten months after the date the petition was filed) reflected that it only had one employee devoted to the production of its dairy products.

In other words, we are obligated to take into account the Petitioner's reasonable needs, but not bound to approve a petition when the evidence reflects that it has not developed sufficiently to support the Beneficiary is a managerial or executive capacity within one year. See 8 C.F.R. § 214.2(l)(14)(ii). For instance, the Petitioner pointed to its previously submitted business plan, indicating it has followed this plan, and therefore met reasonable expectations. However, this business plan indicated that it would have at least two production employees in place after one year; however, it still only employs one such employee more approximately ten months after the date the petition was filed. Further, its initial organizational chart questionably listed six production employees, suggesting much more substantial staffing was required to operate its business and elevate the Beneficiary to a qualifying managerial or executive capacity.

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

ORDER: The appeal is dismissed.