



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

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

In Re: 8421946

Date: JULY 7, 2020

Appeal of California Service Center Decision

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

The Petitioner, a transportation company, seeks to continue the Beneficiary's temporary employment as its "executive" 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 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.

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).

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

¹ The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period March 15, 2017, until March 14, 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.

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 primary issue to be addressed in this discussion is whether the Petitioner provided sufficient evidence to support its claim that the Beneficiary's U.S. position 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.

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 the 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

In a supporting cover letter, the Petitioner described itself as a company that provides "long haul services" and leases commercial car carriers to third parties. It stated that "the Beneficiary's function . . . is to form, develop, and manage" the U.S. entity. Although the petition identifies the Beneficiary's proposed job title as "executive," the supporting documents do not refer to the Beneficiary by that job title. Instead, the Petitioner's supporting evidence refers to the Beneficiary as either the "general manager" or "administrative director." For instance, in both the supporting cover letter and in a 2018 "Declaration" the Beneficiary was identified as the Petitioner's administrative director. However, the Petitioner provided a business plan stating that the Beneficiary would assume the position of "general manager" and that he "has already hired one Administrative Director," thereby indicating that the latter position is subordinate to the general manager within the organization. The Petitioner also provided

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

the minutes of a 2015 meeting during which the Beneficiary was again identified as general manager. The Petitioner did not explain or reconcile its inconsistent references to the Beneficiary by one position or the other, particularly given that the positions occupy different placements within the Petitioner's organizational hierarchy. The Petitioner must resolve these inconsistencies 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).

Further, the Petitioner's cover letter states that the Beneficiary was selected to assume a top position within the U.S. organization because of his "great expertise and experience in the field of transportation." However, the foreign entity where the Beneficiary worked for over four years prior to assuming his position with the Petitioner does not operate in the transportation industry. Rather, its operation involves the installation, mounting, and servicing of air conditioners and refrigeration systems and the business plan's summary of the Beneficiary's professional experience also makes no mention of the Beneficiary's experience in the transportation industry, but rather states that the Beneficiary served as "trainee attorney" and later worked as a law professor at various law schools in Brazil prior to assuming a position with the Petitioner's foreign parent entity. The Beneficiary's employment history thus leads us to question where and how he obtained the "great expertise and experience" in the transportation industry he is claimed to have. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner also provided the Beneficiary's job description stating that he allocate his time as follows: 25% making "short, medium, and long[-]term projections based on customers [*sic*] need [*sic*] and cost efficiency"; 25% "closing contract negotiations with clients and vendors"; 15% approving monthly budgets; 20% dictating an approving progress reports to be sent to the foreign entity; and 15% heading staff meetings to discuss "status and direction of the business."

In a request for evidence (RFE), the Director notified the Petitioner that the original job description was insufficient to describe the Beneficiary's daily job duties and therefore instructed the Petitioner to provide a more detailed job description specifying the duties the Beneficiary performed for the previous year and those he would perform under an extended petition.

In response, the Petitioner provided a statement saying that the Beneficiary "is primarily responsible" for coordinating the Petitioner's operating, commercial, and financial strategies. The Petitioner did not specify any strategies or state how the Beneficiary would coordinate the Petitioner's various strategies, nor did it state who he would collaborate with to ensure successful coordination. The Petitioner also did not explain what is meant by "primarily" with respect to the Beneficiary's other responsibilities, which would include the following:

- Setting strategies and long-term goals;
- Coordinating and supervising "all transportation services and business activities";
- Negotiating freight and third-party contracts;
- Forecasting demand for transportation services;
- Ensuring quality services and customer satisfaction;
- Establishing and maintaining relationships with business partners;
- Analyzing and monitoring the Petitioner's finances;

- Managing costs and ensuring cost effective operations;
- Developing plans and policies to increase profits and improve services;
- Identifying new business opportunities and representing the Petitioner at industry events;
- Communicating with the administrative director regarding matters concerning operations and finances;
- Managing performance indicators and reviewing daily load reports;
- Leading “cross-department meetings” aimed at improving efficiency; and
- Training and supervising employees and evaluating their respective performances.

Again, the Petitioner did not describe any strategies or long-term goals, nor did it elaborate on the coordination process or identify specific “business activities” the Beneficiary would coordinate. The Petitioner also did not describe the process of forecasting the demand for services or analyzing and monitoring the company’s finances; nor did the Petitioner explain how the Beneficiary would manage performance indicators. Likewise, the Petitioner did not elaborate on the Beneficiary’s specific role in ensuring quality service and customer satisfaction or establishing business relationships and it did not specify the actions the Beneficiary would be required to take in executing these broadly stated business objectives. In other words, the Petitioner listed vague job responsibilities that do not reveal the underlying tasks the Beneficiary would perform within the context of a transportation business.

The above job duties were incorporated into a job duty breakdown which states that 50% of the Beneficiary’s time would be spent performing job duties related to the “Administrative/Financial Department” and another 50% would be spent on job duties related to the “Logistics Department.” The Petitioner further itemized the job duties within each department and assigned a percentage of time to each one, claiming that the Beneficiary “will be responsible” for these duties, which match exactly with the “Year 3” job duty breakdown in the Petitioner’s new business plan, which includes separate job duty breakdowns for “Year 1” and “Year 3” of the Petitioner’s operation. The Petitioner did not state whether either job duty breakdown, either in whole or in part, should be applied to the Beneficiary’s proposed employment at the time of filing, which took place during the second year of the Petitioner’s operation. It is therefore unclear whether any of the job duty breakdowns that assign a percentage of time to individual job duties represent the Beneficiary’s proposed job duties *at the time of filing*. Rather, the “Year 1” job duty breakdown appears to pertain to the one-year time period that immediately preceded the filing of this petition, while the breakdown for “Year 3” appears to pertain only to a portion, i.e., the second half, of the requested period of employment. As such, neither job description appears to specifically pertain to the Beneficiary’s proposed employment and corresponding job duties at the time of this petition’s filing, which took place during the second year of the Petitioner’s operation.

Furthermore, even if the “Year 3” job duty breakdown were applicable to the Beneficiary’s proposed job description at the time of filing, as discussed earlier, the vague nature of the listed job duties precludes a meaningful understanding of the specific actions the Beneficiary would take in the routine course of a transportation business. For instance, in addition to the previously mentioned duties, the Petitioner also stated that the Beneficiary would “[c]oordinate the [Petitioner]’s expansion,” set “profitability goals” and department goals and strategies. However, as previously stated, the Petitioner’s vague statements do not describe specific goals or strategies or explain what specifically the Beneficiary would coordinate and with whom. Likewise, the Petitioner stated that the Beneficiary would “[e]nforce adherence to legal requirements and in-house policies” and oversee “operations” and

the Petitioner's compliance with "industry regulations." However, the Petitioner did not disclose the applicable "legal requirements," "in-house policies," or "industry regulations," nor did it elaborate on the actual means for overseeing these elements of the business. The Director concluded that the Beneficiary would not be employed in an executive capacity and denied the petition.

On appeal, the Petitioner offers an organizational chart depicting the Beneficiary as its general manager, yet it does not acknowledge or resolve its inconsistent use of different position titles when referring to the Beneficiary.

The Petitioner also resubmits the "Year 3" job duty breakdown, contending that the Beneficiary will perform primarily executive job duties under an extended petition. However, as discussed above, we find that the Petitioner offered a deficient job description that focuses on the Beneficiary's discretionary authority over policies, business strategies, and financial objects, yet conveys little insight about the actual daily or weekly tasks that comprise the Beneficiary's role within the context of a seven-person transportation business.

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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990).

Although the Petitioner contends that the Director only focused on a limited portion of the job duty breakdown, the above discussion offers a comprehensive analysis that adequately describes the deficiencies in the job descriptions offered in support of this petition. In sum, the Petitioner provided broadly stated job descriptions that focused on the Beneficiary's discretionary authority and made vague claims about his proposed job duties without establish how those duties would fit within the context of the Petitioner's business or what specific underlying tasks the Beneficiary would perform on a daily or weekly basis. 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. 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 to have a seven-person staff at the time of filing, it provided an organizational chart depicting a nine-person staff. Namely, the company's president at the top of the hierarchy, followed by the Beneficiary in the position of "Administrative Director" as the direct

subordinate of the president, who is physically located in Brazil. The logistics manager is depicted as one of the Beneficiary's two direct subordinates, overseeing a "dispatcher/driver" and two drivers, and an administrative manager is depicted as the Beneficiary's other subordinate overseeing a secretary and a bookkeeper. Although the Petitioner stated that the bookkeeper is physically located abroad and offers support services from the Petitioner's home office in Brazil, it did not provide supporting evidence to show that this foreign-based employee provided the Petitioner with bookkeeping services or generated financial reports "for tax purposes," as claimed. In fact, the Petitioner submitted an unsigned 2016 tax return with no information as to who assisted in the preparation of this document. Likewise, despite including its president from Brazil as part of its organizational hierarchy, the Petitioner offered no evidence to show what services he provided and would provide to support the U.S. operation. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Chawathe*, 25 I&N Dec. at 376.

In response to the RFE, the Petitioner provided its 2017 tax return showing that it used the services of [redacted] of [redacted] to complete the form. Although the Petitioner continued to claim the Brazilian-based bookkeeper provides support services for its organization, claiming that this individual manages "all account" and provides billing and inventory accounting services, it did not supplement the record with evidence to support this claim. Further, although the Petitioner provided employee job descriptions indicating that the logistics manager will be tasked with "developing relationships with clients," it is not clear that this job duty will involve solicitation of clients. In fact, the Petitioner stated that the logistics manager's "main duties" will be to supervise planned routes and scheduling deliveries. As such, the Petitioner did not establish that it would be able to relieve the Beneficiary from having to market and sell its services.

On appeal, the Petitioner reiterates the claim that it is adequately staffed with support personnel and offers pay stubs showing that the foreign-based bookkeeper was paid by the foreign entity. However, the Petitioner provides no evidence that the payments were issued in exchange for services that the bookkeeper rendered to the U.S. entity. Despite evidence showing that the Petitioner had in-house administrative personnel and contract drivers to relieve the Beneficiary from having to perform certain operational and administrative functions that would be deemed as non-executive, the Petitioner has not provided sufficient evidence demonstrating that its staffing composition at the time of filing was sufficient to support the Beneficiary in an executive position that would require the Beneficiary to devote his time primarily to the performance of executive-level tasks.

In light of the deficient evidence that the Petitioner offered regarding its staffing and the Beneficiary's job duties, we are unable to gauge the extent to which the Petitioner was able to relieve the Beneficiary from having to spend his 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.