



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

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

In Re: 7906363

Date: JULY 7, 2020

Appeal of California Service Center Decision

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

The Petitioner seeks to operate a convenience store<sup>1</sup> and to temporarily employ the Beneficiary as “General Operations Director” of its new office<sup>2</sup> under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) Section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

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 new office would support the Beneficiary in a managerial or executive position within one year of the petition’s approval. The matter is now before us on appeal.

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 because the Petitioner did not establish that it would support the Beneficiary in an executive capacity<sup>3</sup> within one year of the petition’s approval, as claimed. 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. *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).

---

<sup>1</sup> Although the Petitioner’s response to the request for evidence (RFE) contains copied photographs of a gas station and a statement claiming that gasoline sales would account for 75% of the Petitioner’s revenue, the Petitioner did not provide evidence that a gas station would be part of the operation. 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’s business plan does not mention a gas station and the business lease states that the leased premises cannot be used to store “flammables or other inherently dangerous substance, chemical, thing or device.” Therefore, this petition will be reviewed within the scope of the Petitioner’s claim that it will operate as a convenience store.

<sup>2</sup> The term “new office” refers to an organization which has been doing business in the United States 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 no more than one year within the date of approval of the petition to support an executive or managerial position.

<sup>3</sup> The Petitioner does not claim that the Beneficiary’s proposed position would be in a managerial capacity.

## I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, 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.*

Further, in the case of a new office petition, the petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

## II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The Petitioner claims that it will employ the Beneficiary in an executive capacity. The primary issue to be addressed in this discussion is whether the Petitioner provided sufficient evidence to establish that its operation would support the Beneficiary in an executive capacity within one year of the petition's approval.

"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.

### A. Duties

In a supporting cover letter, the Petitioner stated that the Beneficiary found a location from which to operate its convenience store and is qualified to establish its corporate policies, train its "management staff," and "develop the [business] culture." It also stated that the Beneficiary and will be responsible for establishing "the legal requisites" and "developing relationships with wholesale buyers." In a separate document, the Petitioner stated that the Beneficiary "strategizes the financial goal-setting" and stated that the Beneficiary would use his discretionary authority to put forth directives regarding the following: personnel size and salaries, "debt reduction," setting incentives to meet sales goals, establishing lines of credit and negotiating the purchase of future businesses, adding or eliminating product lines, monitoring finances and "departmental budgets" and approving the annual budget, and creating a "policy and procedures manual for the company" and a training program for "all Managers." However, the Petitioner's references to "departmental budgets" and "all Managers" are at odds with the projected organizational chart, which does not indicate that the Petitioner will be comprised of multiple departments and depicts a single manager – the Beneficiary's only subordinate – overseeing four sales associates. If USCIS finds reason to believe that an assertion stated in the petition is not

true, USCIS may reject that assertion. *See, e.g.,* Section 204(b) of the Act, 8 U.S.C. § 1154(b); *Anetekhai v. INS*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Furthermore, the Petitioner did not specify the job duties the Beneficiary would perform during its initial stage of operation to ensure the company's progression beyond that phase and on to the next state of development during which it would support the Beneficiary in an executive position entailing primarily executive-level job duties within one year of the petition's approval. Although the Petitioner provided a business plan that included a three-year projection of its staffing and operations, the plan indicated that the Petitioner would maintain the same staffing during all three years, thus leading us to question if and how the Beneficiary's position would evolve to include primarily executive job duties.

In an RFE, the Director asked the Petitioner to clarify the Beneficiary's proposed job duties and provide evidence demonstrating that the Beneficiary would not primarily perform operational, non-executive job duties.

In response, the Petitioner provided a vague job duty breakdown containing activities that cannot be readily applied within the context of a convenience store operation. For instance, the Petitioner stated that the Beneficiary would allocate 20% of his time to establishing relationships with banks and negotiating lines of credit, reviewing and approving contracts with vendors, "[e]xecuting the business plan" within the context of organizational goals and budgetary restraints, and developing "new business relationships and customers, while strengthening current relationships." The Petitioner did not list any daily or weekly tasks that would explain how the Beneficiary would "execut[e] the business plan," nor did it explain how developing "new business relationships and customers" within the context of a convenience store amounts to an executive-level task.

The Petitioner claimed that 30% of the Beneficiary's time would be allocated to meeting registration and licensing requirements, analyzing promotional and operating expenses, and managing finances by overseeing preparation and delivery of financial statements, assessing "liquidity needs," and managing "external audits." However, the Petitioner did not state who would prepare the financial statements, nor did it establish that the Beneficiary would be required to assess "liquidity needs" and manage audits on a daily or weekly basis in the course of operating a convenience store. Likewise, despite claiming that another 30% of the Beneficiary's time would be spent keeping abreast of industry trends, conducting market and break-even analysis, and "[a]nalyzing the management of financial development, account planning, [and] trade funds," the Petitioner did not clarify how these broadly stated business objectives are applicable to the specific needs and operations of a convenience store.

Lastly, despite a projected staffing hierarchy that would include only one manager during the first three years of its operation, the Petitioner claimed that the remaining 20% of the Beneficiary's time would be spent "[c]oordinating the entire operation of the management staff," recruiting and training "the management staff," and meeting "management productivity standards and committed sales goals." As noted earlier, the Petitioner's references to a "management staff" implies that it would employ managers comprising that staff. However, the Petitioner's projected staffing hierarchy as expressed in its business plan is inconsistent with these references and results in a misleading depiction of an organizational complexity that the Petitioner did not anticipate at the time of filing. The

Petitioner must resolve this inconsistency 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).

In the denial, the Director questioned the Petitioner's ability to relieve the Beneficiary from having to primarily perform non-executive job duties within one year of the petition's approval, finding that the Beneficiary's position is more akin to that of a first-line supervisor rather than an executive.

On appeal, the Petitioner asserts that the Director did not apply the correct standard of proof and "may have overlooked or confused evidence." However, the Petitioner does not point to evidence the Director purportedly overlooked or confused, nor does it point to evidence it claims support its claims. Likewise, the Petitioner does not identify a basis for claiming that an incorrect standard of proof was applied in denying the petition. Further, despite claiming that the Beneficiary would interview, hire, and train his "management staff," the Petitioner's staffing projections show that it only planned to fill one manager position for the first three years of its operation and that position was shown as having been filled by the Beneficiary's brother at the time this petition was filed. As such, the record does not support the Petitioner's claim. See *Chawathe*, 25 I&N Dec. at 376. Moreover, the Petitioner did not establish that interviewing, hiring, and training staff, even "management staff," is an executive, as opposed to a human resources, function.

Although the Petitioner also contends that the general manager will oversee the "daily operations of the business," it has not provided a detailed account of the actual daily tasks the Beneficiary will perform within the context of a five-person convenience store. Rather, the Petitioner broadly focuses on the Beneficiary's discretionary authority, stating that the Beneficiary "is the only person qualified to negotiate future acquisitions," negotiate with lenders, and make other decisions about issues concerning the Petitioner's finances and operations. However, the Petitioner says little about the actual tasks the Beneficiary would perform during the various stages of its development and makes no distinction between tasks that the Beneficiary would need to perform during its rudimentary phase and those he intends to perform once the company is no longer in the "new office" stage of development. 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). Although it is reasonable to conclude that the Beneficiary's duties would change to correspond with the Petitioner's operational development and changing needs, the Petitioner did not provide a job description that reflects this likely progression. Without a detailed iteration of the Beneficiary's job duties during the Petitioner's first year of operation, it is unclear how the Petitioner would progress beyond the "new office" phase.

We acknowledge that the Beneficiary would assume a position as the Petitioner's senior employee and that as a result, he would have authority to establish plans, policies, and objectives for the company and make major decisions regarding its finances and overall direction. However, the Petitioner has not established that these types of responsibilities would primarily occupy the Beneficiary's time within one year. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. Therefore, even though the Beneficiary may exercise discretion over the Petitioner's day-to-day operations, a broad overview of his responsibilities is insufficient to establish that his actual duties during the

Petitioner's first year of operation would lead to primarily managerial or executive duties within one year of this petition's approval.

In light of the ambiguities described above, we are unable to ascertain what job duties the Beneficiary would perform to develop the Petitioner beyond the "new office" phase of operation or the job duties he would perform beyond that initial phase.

#### B. Projected Staffing and Business Plan

If staffing levels are used as a factor in determining whether an individual will be acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) takes 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.

At the time of filing, the Petitioner projected that its organization would eventually be comprised of six employees, including the Beneficiary. The organizational chart that was included in the original business plan depicts the Beneficiary at the top of the hierarchy, followed by the general manager as the Beneficiary's subordinate, and four sales associates at the bottom tier of the organization. The Petitioner did not clarify how its staffing structure, within the context of a convenience store operation, would elevate the Beneficiary to an executive position.

In the RFE response, the Petitioner reiterated its plan to operate as a convenience store and further stated its intent to expand its business by using the existing store as a vehicle for exporting "a variety of novelty products from worldwide suppliers" and "specialty" products from India. The Petitioner did not, however, offer more detailed information clarifying when and how it planned to take steps towards the expansion or establish that its staffing plan would be sufficient to meet the business needs of an export business. Further, despite pointing to the Beneficiary's discretionary authority and his position at the top of the hierarchy as supporting factors, we note that an individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. Section 101(a)(44)(B) of the Act. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Chawathe*, 25 I&N Dec. at 376. Although the Petitioner stated that the store manager would oversee the store's daily operations, this claim, without further supporting evidence, is not sufficient to establish that within one year of this petition's approval the Petitioner would be adequately staffed and would have the capacity to relieve the Beneficiary from having to primarily perform non-executive tasks as a routine part of his daily activity.

Accordingly, given the deficient evidence offered to support this petition, we cannot conclude that within one year of the petition's approval, the Petitioner would have the staffing composition to elevate the Beneficiary to an executive position that would require him to perform job duties that would focus primarily on the broad goals and policies of the organization.

**ORDER:** The appeal will be dismissed.