



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

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

In Re: 27943360

Date: OCT. 16, 2023

Appeal of Texas Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, an e-commerce business engaged in the resale of handcrafted goods, seeks to extend the temporary employment of the Beneficiary as its vice president and director 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 Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary's proposed U.S. employment would be in a managerial or executive capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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 their services to the same 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 sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in the United States 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.

To be eligible for L-1A nonimmigrant visa classification as an 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)(B)(i)-(iv) 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 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 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 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.

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

The Petitioner’s initial supporting letter claimed that the Beneficiary “has set the U.S. Company’s goals and strategies, directed its key functions and management team, and made final decisions on business strategies and personnel, especially key management personnel.” The Petitioner also summarized the Beneficiary’s previous duties and proposed duties under the extension petition as follows:

¹ On appeal, the Petitioner asserts that the Director erred by relying on the statutory definition of managerial capacity when rendering the decision. Throughout the record and on appeal, the Petitioner does not argue that the Beneficiary would be employed in a managerial capacity; rather, it affirms that the Beneficiary is an executive and claims that she will be performing executive duties. We acknowledge the Director’s erroneous reference to the statutory definition of managerial capacity; however, the decision also applies the statutory definition of executive capacity in the denial and, accordingly, we view this error as harmless. Moreover, we exercise de novo review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). This means that we look at the record anew and are not required to defer to findings made in the initial decision.

- Establishing policies, goals, and plans and directing the management of [the Petitioner], including the Financial and Admin Department, the Operation Department, and the Sales and Marketing Department (60%)
- Establishing and developing [the Petitioner]'s corporate financial strategies and overseeing the budget (10%)
- Making personnel decisions regarding recruiting plans, hiring new staff, etc. (10%)
- Directing marketing and sales activities and negotiating and signing contracts on behalf of [the Petitioner] (10%)
- Exercising broad discretionary authority over the day-to-day operations of [the Petitioner] (10%)

The Director issued a request for evidence (RFE), noting that the initial description of duties and supporting evidence was insufficient to establish that the Beneficiary would be employed in a primarily managerial or executive capacity. In response, the Petitioner provided additional documentation, including an updated description of duties, which described the Beneficiary's U.S. position as follows:

- [The Beneficiary] has established general policies, goals, and plans for the business operation of [the Petitioner]. She has worked to develop the strategic plans to advance [the Petitioner's] missions and to increase revenue, profitability and growth in the US market. As the Vice President and Director of [the Petitioner] as the second highest-level executive, [the Beneficiary] has the authority to make ultimate decisions on company matters, such as which products and services to emphasize in marketing and sales, which locations and customer groups the company should target, the overall dollar sales figures, how many employees to hire and when to hire, etc. if the company failed to meet the goals. [The Beneficiary] commissioned necessary reports and analyzed the relevant department process flows to access the reasons for the failure and subsequently adjust company strategies as needed. [The Beneficiary] has also directed and managed the marketing and branding of [the Petitioner], especially for the new store opened at [redacted] Street in downtown [redacted]. She has directed the Sales & Marketing Manager to handle day-to-day sales and marketing activities, and the outsourced Senior Accountant and IT support team under her management have been in charge of finances and technology of the company... (60%, 24 hours per week).
- [The Beneficiary] has and will continue to develop the company's overall financial strategies and review, evaluate, and improve these strategies, which include capital influx timelines, predictions for occurrence for major expenditures, expansion budgets, desired gross revenue targets, and more. She will also continue to develop comprehensive budgeting and reporting policies for the Financial and Admin Department and Operation Department to follow and enforce, directing what information should be tracked and included in special reports in addition to the standard financial reports companies are required to maintain. Since the outsourced CPA handles external accounting

and the filing of financial reports, and the Accountant handles internal accounting and financial recordings, [the Beneficiary] has and will continue to develop general policies and plans for them to set pay schedules, benefit packages, and retain final approval for all major expenditures or adjustments to the company's budgets and financial plans, and she will continue to oversee execution of her directives in these areas. The day-to-day financial management of the company will be accomplished by the Accountant with the assistance of the Office Assistant/Secretary for administrative tasks. [The Beneficiary] will continue to review the accounting and financial documentation prepared by these employees to make evaluations regarding the current state and trajectory of [the Petitioner], adjusting corporate strategies and providing further guidance to employees to execute as required. [The Beneficiary] will be responsible for deciding when to retain and how to retain other outsourced accounting firms or accountants... (10%, 4 hours per week).

- As the Vice President and Director of [the Petitioner], [the Beneficiary] will continue to make personnel decisions and establish recruiting plans, strategies and plans, to decide when to hire, how to hire staff for various departments of [the Petitioner]. [The Beneficiary] will oversee the recruitment campaigns and conduct interview process, exercising the right to determine which positions to fill and what departments to create and populate from time to time. She will review candidates' resumes and interview the candidates to make final hiring decisions, in order to select qualified new staff to support the anticipated increase in business operations. In addition to the Sales & Marketing Manager, Office Assistant, and Accountant, and the outsourced CPA and IT supporting team retained for the company in the past one year, [the Beneficiary] also launched the recruitment of new staff for the next two years for at least five open positions, including the four Sales Associates, and one Marketing Specialist, etc. She will determine the requirements for hiring and adjust the department and positions for the new staff based on their performance... (10%, 4 hours per week).
- As one of the highest-level executives at [the Petitioner], [the Beneficiary] will continue to direct and oversee the marketing and sales activities, promotional campaigns, and represent [the Petitioner] at tradeshow, conferences, presentations and other events to foster the business expansion and brand recognition of the company. [The Beneficiary] will ensure that the work done is according to specifications and meets business goals. While the Sales & Marketing Manager will initiate most contact and solidify those relationship before the Sales Associates are hired, [the Beneficiary] will [step in whenever] a high-profile customer or partner is being pursued and will act as the company representative when interacting with other high-level executives. [The Beneficiary] will ensure that [the Petitioner] builds an extensive network, and she will be ultimately responsible for evaluating [the Petitioner's] reputation. Additionally, [the Beneficiary] established networks with perspective important clients and suppliers with the goal of developing fruitful business relationships

with local and national hand craft and gifts manufacturers, suppliers and enthusiast organizations... (10%, 4 hours per week).

- [The Beneficiary] as the Vice President and Director will continue to have final authority over all decision at [the Petitioner] and will continue to make decisions in the best interest of the company at her discretion. She will continue to be the ultimate authority for the company and thus retain absolute veto power over any decision. She will make changes to the strategic direction of the company and have power to implement any policy she chooses. Most of the decision will be made when a question or concern arises from one of [the Petitioner's] employees or when an unforeseen risk or market trend arises. [The Beneficiary] will continue to dedicate a couple of hours per week to addressing such situations so the company can continue to be flexible enough to respond to changing market conditions in the original hand craft and gift product industries. Having established a clear direction for [the Petitioner] in the last one year, the next two years will be dedicated to marketing and expanding the company brand in the U.S. market. The business strategy will include directives regarding marketing, branding, and the diligent management of customer relationships. [The Beneficiary] will also determine when and where to expand [the Petitioner]'s additional store locations in both [REDACTED] in the next two years, exercising her broad discretionary authority on behalf of [the Petitioner]... (10%, 4 hours per week).

In denying the petition, the Director determined that the Petitioner's description of the Beneficiary's duties was insufficient, noting that the duties as stated were general and vague and did not convey the true nature of the Beneficiary's position. On appeal, the Petitioner asserts that the duty description was sufficient, and again emphasizes the Beneficiary's performance of primarily executive duties. The Petitioner's brief included a discussion of the definition of executive capacity, including the applicable regulations and pertinent information from the Foreign Affairs Manual, in support of its assertion that the Beneficiary will be employed in an executive position.

The Petitioner also claims on appeal that the Director failed to apply the preponderance of the evidence standard and contends that it is clear that the Beneficiary will be employed in a primarily executive capacity. However, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. For the reasons outlined below, the Petitioner did not demonstrate that the Beneficiary's role will be primarily executive in nature, as the job description the Petitioner offered contains generalities that preclude a meaningful assessment of the Beneficiary's actual tasks in the course of the Petitioner's daily operation.

Whether the Beneficiary is an executive employee turns on whether the Petitioner has sustained its burden of proving that her duties are "primarily" executive. *See* sections 101(a)(44)(B) of the Act. Here, the Petitioner has offered competing claims about the Beneficiary's employment. On the one hand, it states that the Beneficiary will perform executive duties, where she will focus on policy, goals and strategy, while on the other hand, it claims that the Beneficiary will manage the Petitioner's marketing activities by overseeing promotional campaigns, representing the Petitioner at trade shows and conferences, and meeting with clients. The Petitioner also claims that she will be responsible for

recruiting and hiring personnel, and will personally conduct interviews and select candidates for available positions. Further, despite providing a job duty breakdown with time allocations, the Petitioner did not clearly describe the Beneficiary's proposed position or convey a meaningful understanding of her actual daily tasks. For instance, the Petitioner stated that the Beneficiary would make and adjust the company's policies, goals and strategies, but it provided no specific information describing these policies, goals and strategies. 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The Petitioner also points to the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and its description of the duties of "Top Executives." In pointing to this description, the Petitioner states that the Beneficiary's duties align with the duties listed for top executives by DOL. Upon review, the Petitioner's description of the Beneficiary's duties appears to be largely composed of language taken from the DOL's definition. Generic job descriptions found in DOL publications have no bearing on an assessment of this Beneficiary's duties within the context of the Petitioner's business, and the Petitioner cannot satisfy its burden of proof by paraphrasing such descriptions. The regulations require the Petitioner to submit a detailed description of the Beneficiary's actual duties. *See* 8 C.F.R. § 214.2(l)(3)(ii).

Although it appears that the Beneficiary, as the U.S. entity's vice president and director, is responsible for directing the company and establishing its goals and policies, 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. Section 101(A)(44)(B) of the Act. While the Beneficiary exercises discretion over the U.S. entity's day-to-day operations and possesses decision-making authority, the position description does not establish that her day-to-day duties would be primarily executive in nature.

B. Staffing and Organizational Structure

Beyond the required description of the job duties, we also 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. Because a petitioner must meet all eligibility requirements at the time of filing, we must consider the state of the company at the time it filed the extension petition in June 2020. *See* 8 C.F.R. § 103.2(b)(1).

On the Form I-129 petition, the Petitioner claimed that it was established in 2017 and had six employees. The Petitioner provided a general overview of its staffing, and claimed that the Beneficiary was supported by a sales and marketing manager, two sales associates, one online sales associate, and an office assistant. The Petitioner also claimed that it outsourced an IT services team

and a certified public accountant, and received remote support from a logistics coordinator and an accountant at the foreign parent company.

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 on its day-to-day operations. An individual will not be deemed an executive under the statute simply because they have an executive title or because they “direct” the organization as the owner or sole managerial or executive employee.

The Petitioner provided a copy of its IRS Form 941, Employer’s Quarterly Tax Return, for the second quarter of 2020, indicating that the Petitioner employed only three people at the time the petition was filed. The record further contains letters from staff members requesting temporary leave from work due to the COVID-19 pandemic and personal reasons. For example, the record contains a letter dated March 16, 2020 from the Petitioner’s online sales associate, notifying the company that she would be out of town until June 2020 and hoped she might be able to return to work for the Petitioner at a later date. The record also contains a letter dated March 24, 2020 from the Petitioner’s office assistant, stating that she would be unable to return to her position with the Petitioner until September 1, 2020. Finally, the record contains a letter dated May 8, 2020 from one of the sales associates requesting indefinite family and medical leave in order to care for ailing relatives. The Beneficiary approved all these requests by annotating her approval on each letter.

Based on these approved requests, it appears that at the time of filing, the Petitioner employed only the Beneficiary, the sales and marketing manager, and one sales associate. However, while the record contains payroll records through April 2020, the Petitioner did not submit pay stubs or payroll records demonstrating how many individuals it employed at the time this petition was filed in June 2020. Therefore, although the Petitioner claimed to employ six individuals at the time of filing, the record contains contradictions and insufficient evidence to support this assertion. 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).

USCIS must take into account the reasonable needs of the organization in light of the overall purpose and stage of development of the organization if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity. See section 101(a)(44)(C) of the Act. Here, while the Petitioner claims that the Beneficiary has been and will continue to be employed in a primarily executive capacity, it does not explain how the Beneficiary was relieved from performing non-qualifying duties at the time of filing without subordinate employees to support her. We acknowledge the Petitioner’s assertion that it faced extreme difficulties in conducting routine business transactions and temporarily closed its retail store as a result of the COVID-19 pandemic. Although the Petitioner claims that it focused on online sales after its retail store was closed, the record reflects that the Beneficiary approved the online sales associate’s request for leave, and it is unclear if the online sales associate ever returned to her position with the Petitioner. Because the Petitioner

contends that the company increased its online sales and fulfilled online orders through Shopify, we must conclude that the Beneficiary performed those tasks herself.

Moreover, the Petitioner repeatedly states that the Beneficiary directed the company's marketing and will continue to represent the Petitioner at trade shows and conventions, despite the claim that it employed a sales and marketing manager at the time of filing. The Petitioner further claims that she will personally interview and hire new staff. Again, the Beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. We acknowledge that the COVID-19 pandemic posed challenges for both new and established businesses; however, it appears that the Beneficiary had been primarily responsible for the direction of the company's marketing and personnel prior to the pandemic and intends to continue performing such tasks. While we acknowledge that a portion of its operations was impacted by the pandemic, the Petitioner must nevertheless 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).

Despite claiming to employ at least six employees, the Petitioner did not submit evidence establishing its actual employment of these individuals at the time of filing, and in fact submits evidence that at least three of these claimed employees were absent from their claimed positions within the Petitioner's organizational hierarchy at that time. In the absence of evidence such as pay stubs and payroll records, the Petitioner has not corroborated its claimed organizational structure, nor has it established that it employed a subordinate staff that would relieve the Beneficiary from performing non-qualifying duties. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Additionally, the Petitioner has not explained how the services of her subordinates would obviate the need for the Beneficiary to primarily conduct the Petitioner's online business transactions or direct its marketing and recruiting. While we acknowledge the Petitioner's assertions in response to the RFE and on appeal that it has hired several new employees, these activities occurred after the filing of the extension petition and such evidence may not be considered in determining whether the Petitioner has established that the Beneficiary will be employed in a primarily executive capacity in the United States. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).

While the definition of "executive capacity" does not require the Petitioner to establish that the Beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the Petitioner's burden to establish that someone other than the Beneficiary carries out the day-to-day, non-executive functions of the organization. Here, the Petitioner did not demonstrate that a subordinate staff was available at the time of filing to perform the non-qualifying operational and administrative duties of the business, nor does the submitted position description establish that her duties are primarily

executive in nature. Accordingly, the Petitioner has not established that the Beneficiary would be employed in the United States in an executive capacity as defined at section 101(a)(44)(B) of the Act.

III. DEFERENCE

Lastly, in matters involving an extension request to a previously approved petition, USCIS, where appropriate, defers to its prior decision when the extension request is filed by the same parties and for the same position in the same nonimmigrant classification. *See generally 2 USCIS Policy Manual A.4(B)(1)*, <https://www.uscis.gov/policymanual>; *see also* USCIS Policy Alert, PA-2021-05, *Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity* (Apr. 27, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf>.

Although the matter at hand involves an extension request that was filed by the same Petitioner on behalf of the same Beneficiary, the record contains new information, specifically the Petitioner's diminished staffing and reduced business operations. The new information indicates a change in circumstances that may alter the Beneficiary's job duties and nature of her proposed position. We further note that USCIS is not bound to approve subsequent petitions where eligibility has not been demonstrated strictly because of a prior approval. *Id.*

IV. CONCLUSION

For the reasons discussed above, the Petitioner has not established by a preponderance of the evidence that the Beneficiary would be employed in the United States in an executive capacity. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.