



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

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

In Re: 7568001

Date: FEB. 26, 2020

Appeal of California Service Center Decision

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

The Petitioner, which imports and sells industrial conveyor belts exported by its foreign parent company, seeks to temporarily employ the Beneficiary in the United States as its president and chief executive officer (CEO) 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 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 record did not establish, as required, that the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity. The Petitioner filed a combined motion to reopen and reconsider and, concurrently, an appeal. The Director granted the motion, reopened the proceeding, and denied the petition for a second time. The appeal remains pending. The record contains no further submission from the Petitioner. Because the Director's second decision superseded the first, we will only consider the second decision here.

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. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity. The Petitioner asserts that the Beneficiary's position is executive, and that the Director erred by considering the requirements for a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary will be employed in an executive capacity.

“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 executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, 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); *Champion World*, 940 F.2d 1533.

When examining the claimed executive capacity of a given beneficiary, we will look to 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). 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. If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, we must 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.

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.

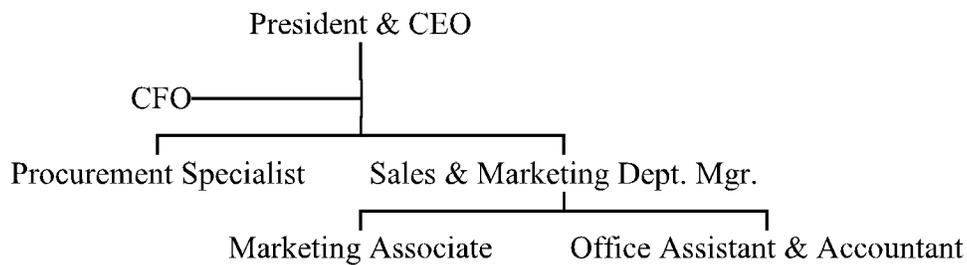
The statutory definition of the term “executive capacity” focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to “direct the management” and “establish the goals and policies” of an organization or major component or function thereof. Section 101(a)(44)(B) 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.*

The Director’s second decision focused on the staffing of the petitioning entity. Under the statute, supervision of supervisors, professionals, and first-line workers is not inherently executive in nature; such employees do not constitute the management of the company.

The Petitioner must meet all eligibility requirements at the time of filing, and continue to meet them throughout adjudication. 8 C.F.R. § 103.2(b)(1). As the Director noted, any subsequent changes to the company’s structure, or to the duties of its employees, cannot show that the petition was approvable when filed. Therefore, we must first consider the company’s structure and staffing at the time of filing. If the initial conditions establish eligibility, only then will we consider subsequent changes, in order to determine whether those changes are consistent with continued eligibility.

In its initial filing, the Petitioner’s chief financial officer (CFO) stated that the company “employ[s] four people . . . in Sales and Marketing, as well as Procurement.” An organizational chart showed the following structure:



The Petitioner listed the duties of the three subordinate employees who would report directly to the Beneficiary:

CFO

- To assess and evaluate financial performance with regard to long-term operational goals, budgets, and forecasts
- To create and establish yearly financial objectives that align with company’s plan for growth and expansion
- To prepare and present monthly financial budgeting reports to president and CEO
- To oversee the preparation and timely filing of all local, state, and federal tax returns and coordinate with CPA in the U.S.
- To manage cash flow planning process and ensure funds availability

Sales & Marketing Department Manager

- To hire and fire sales & marketing department[] personnel as a department manager in order to set up an active and effective sales and marketing department

- To establish sales & marketing department objectives and goals by developing and forecasting annual sales volume and evaluate the effectiveness of all sales and marketing projects and activities
- Preparing, planning and project managing the advertisements and literature of all publicity sales promotion material to maximize brand promotion
- Creating, developing and implementing sales campaigns and working with contractors to see them executed
- Creating and developing innovative ways to communicate the company sales promotion message to existing and prospective customers
- Planning and project managing sales and marketing events and evaluating their results
- To develop and implement new sales initiatives, strategies and programs to capture demographics

Procurement Specialist

- To create and place orders with appropriate vendors and maintain positive relationships with vendors;
- To manage in a number of negotiations with vendors and suppliers;
- To purchase, oversee order placement, and track overall spending;
- To work to find quality goods or services at an acceptable price, the lowest possible prices, and sign contracts for bulk discounts on company's necessary goods;
- To work on financial performance of the products and materials ordered and perform well enough to justify costs; and
- To make company's spending efficiency and overall financial performance in purchasing.

The record shows that the Petitioner's CFO is also the foreign entity's vice president of finance, human resources, and documentation, and does not draw a salary in the United States. The Director therefore concluded that the CFO's time is divided between duties in the United States and abroad. (The Petitioner later referred to the individual as a "temporary acting chief financial officer.") The job description shows no delegation of duties except for tax preparation by a contracted accountant.

The Director concluded that the CFO's job description is uncorroborated and does not show "any tasks that are primarily supervisory or managerial in nature."

The procurement specialist has no subordinates, and performs, rather than manages, the company's procurement functions. We note that the procurement specialist's stated job duties, said to involve negotiating with vendors and suppliers, do not appear to be consistent with the company's stated purpose to import and sell products exported by the foreign parent company. The record contains a contract between the foreign parent company and a supplier in China, but does not show that the petitioning U.S. company has negotiated or executed any such contracts.

Subsequently, the Petitioner changed the title of this position to "manager of procurement," and changed the job description to add managerial terminology. For example, the Petitioner stated that the manager of procurement would "[d]elegate tasks and supervise the work of purchasing and

procurement agents across all departments,” but these terms describe a company structure that did not exist at the time of filing. The procurement specialist had no subordinates at all, let alone multiple “departments” staffed by “purchasing and procurement agents.”

The only position below the Beneficiary to have subordinates of its own is the sales and marketing department manager. The Director found that the Petitioner did not establish that either the marketing associate or the office assistant and accountant is a professional, supervisor, or manager. This information is relevant because the sales and marketing department manager’s first-line supervision of those positions is not managerial unless the positions are professional. *See* section 101(a)(44)(A)(ii) of the Act.

The job description for the sales and marketing department manager includes some elements of a managerial capacity, such as hiring and firing authority, but it also includes direct operational tasks such as preparing advertising materials and planning marketing events. Also, the position appears to have limited discretion over marketing, because the president and CEO’s own job description indicates that the Beneficiary will “oversee the business operation efforts in marketing development,” “setup operation policy in marketing development,” and “supervise marketing and sales spending.”

The Director determined that the company lacked sufficient organizational complexity to warrant an executive position, and that the company’s minimal staffing indicated that “the beneficiary will be primarily involved in the performance of routine operational activities.”

On appeal, the Petitioner asserts that the Beneficiary “is the highest level executive officer” at the company. The Director, however, questioned the Beneficiary’s duties, not her position atop the company’s hierarchy.

The Petitioner asserts that the duties in the Beneficiary’s job description are consistent with an executive capacity. The record, however, does not sufficiently corroborate those claimed duties. Many of the duties are vaguely and generally worded, without evidence to show how those descriptions conform to the Petitioner’s actual day-to-day tasks. For example, the Petitioner asserts that the Beneficiary will devote 30% of her time to the following:

Plan, determine and direct corporate policies, strategies, and objectives for the business operation

- To formulate and implement the corporate business strategic plan guiding the operation, development and direction of the company
- To setup overall policies, strategies and approaches for the company operation
- To establish business goals and set up company’s structures for business development in marketing, operation and supervision of development
- To prepare and approve operational procedures and management standards
- To develop strategic plan advancing company’s missions, goals and objectives

The above description includes many terms that are consistent with executive-level leadership, but these are vague descriptions of the Beneficiary’s level of responsibility rather than identifiable tasks. The Petitioner has not explained how the above responsibilities translate to concrete actions at a

company with five subordinate workers that appears to function essentially as a sales office for its already-established foreign parent company.

Elsewhere, the job description refers in several places to a subordinate level of unidentified executives, not evident in the organizational chart. To qualify for the classification, a beneficiary need not supervise lower-level executives, but in this case, the Petitioner has made the affirmative claim that such executives exist, and the Petitioner bears the burden of supporting that claim. As with the claimed duties of the “manager of procurement,” the Beneficiary’s job description is worded in a manner that implies greater organizational complexity than actually exists.

As noted above, the arguments and evidence submitted on appeal are essentially the same as what the Petitioner submitted on motion, and the Director took those materials into consideration in the second denial decision. The record contains no further submission from the Petitioner, and therefore no rebuttal to the Director’s latest conclusions. In the second denial decision, the Director advised the Petitioner of its right to file an appeal, but the Petitioner has not done so and the deadline for filing a timely appeal has expired.

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that it will employ the Beneficiary in an executive capacity in the United States.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.