



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

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

In Re: 22857062

Date: DEC. 16, 2022

Appeal of California Service Center Decision

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

The Petitioner intends to engage in the sale of parts and accessories for high-speed rail. It seeks to temporarily employ the Beneficiary as the president of its new office in the United States 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 on multiple grounds, concluding that the record did not establish that (1) the foreign entity has been doing business; (2) the Beneficiary has been employed abroad in a managerial or executive capacity; (3) the Beneficiary would be employed in a managerial or executive capacity in the United States; and (4) the Beneficiary's stay in the United States would be temporary. The matter is now before us on appeal.

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*. *See 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 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.*

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. Therefore, a 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 Director denied the petition, in part, based on a determination that the Petitioner did not establish that the Beneficiary would be employed in an executive capacity within one year. The Petitioner did not claim, in the alternative, that it would employ the Beneficiary in a managerial capacity as defined at 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.

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 the case of a new office petition,¹ we review a beneficiary’s proposed job duties as well as the petitioner’s business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the evidence must be considered in analyzing whether the proposed managerial or executive position is plausible considering a petitioner’s anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

¹ The record reflects that the Petitioner previously employed the Beneficiary in L-1A classification pursuant to a new office petition that was valid from December 1, 2014, through December 1, 2015. USCIS approved a petition requesting a two-year extension of the Beneficiary’s L-1A status but denied the Petitioner’s subsequent extension request filed in 2017. We dismissed the Petitioner’s appeal of that decision on October 3, 2019. The Petitioner states that the Beneficiary departed the United States and resumed her position as general manager of its Chinese affiliate in March 2020. It further indicates the U.S. office temporarily closed and that its operations had been suspended for over one year at the time it filed this petition in October 2021. The Director granted the Petitioner’s request to adjudicate this petition under the regulations applicable to new offices at 8 C.F.R. § 214.2(l)(3)(v). While we note that the Petitioner did not provide evidence, such as tax returns and business records, in support of its claim that the company remained dormant in 2020 and 2021, we will not disturb the Director’s decision to adjudicate this matter as a “new office.”

A. Nature of Business and Proposed Duties

The Petitioner indicates that it will engage in the international trade of parts and accessories for high-speed rail and bullet trains, noting its primary business will be distributing these products in the U.S. market with its Chinese affiliate serving as its primary supplier. The Petitioner also indicates its intent to procure and export automotive parts and other products for sale in the Chinese market, to cooperate with U.S. companies seeking to distribute products in China, and to engage in online hardware sales through Amazon.com.

The Petitioner seeks to employ the Beneficiary as its president and initially described her proposed duties as follows:

- Map the long-term business development strategies for the US entity. (5%)
- Establish and adjust . . . the US entity's organizational structure and management team, and direct the management team to set the company in an efficient way. (10%)
- Review, approve or direct the revision of the annual business plan proposed by the General Manager (10%)
- Review and approve the annual budget plan and decide to set up and adjust (as needed) the rules and policies on budget control and management (10%)
- Decide to set up and adjust (as needed) the human resources development strategies and decide the human resources management rules and policies. (10%)
- Decide to hire and fire the General Manager, regularly evaluate, and rate his/her performances, and direct him/her in implementing the annual business plan (20%)
- Oversee and regularly review the overall performance of the entire company to ensure the completion of the annual business plans and the realization of the long-term development strategies (35%)

In response to a subsequent request for evidence (RFE), the Petitioner provided the following breakdown of the Beneficiary's duties:

- 1) Strategy development (7%)
- 2) Setup of staffing structure (5%)
- 3) Formulation of corporation policies (10%)
- 4) Direction of the management (28%)
- 5) Hire and fire the general manager, and evaluate his/her performance (20%)
- 6) Oversee the entire company's performance (30%)

The Petitioner's response provided some additional information related to each enumerated responsibility. For example, it stated the Beneficiary's responsibility for "direction of the management" would involve determining the general manager's job duties; reviewing and approving "management rules" and annual work plans proposed by the general manager; coordinating the collaboration between the general manager and sales director; and directing the general manager and sales director to implement the annual business plan and work plan.

In denying the petition, the Director observed that the proposed job duties were described in overly general terms and were therefore insufficient to establish what specific tasks the Beneficiary would

perform in the context of the Petitioner's proposed business plan. The Director further noted significant similarities between the Beneficiary's proposed duties and those attributed to the general manager position she would supervise. On appeal, the Petitioner maintains that it provided detailed position descriptions and sufficient evidence to demonstrate that the company would support an executive position within one year but does not specifically address the deficiencies observed in the Director's decision.

We agree with the Director's determination that the Petitioner has not provided a sufficiently detailed description of the Beneficiary's duties within the context of its planned business endeavors. Although the description provided in response to the RFE was lengthier than the initial description, the duties listed therein were general, repetitive, and appear to simply paraphrase the statutory definition of executive capacity. For example, the Petitioner repeatedly states that the Beneficiary will be responsible for the strategies, policies, and goals of the organization, will "oversee the entire company's performance," and will "direct the management" of the company. It also emphasizes that, as the sole owner of the company, she will have "wide latitude in discretionary decision-making in the company's operations." While these are all elements included in the statutory definition of "executive capacity," conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *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). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's proposed activities in the course of her daily routine.

Further, despite the Petitioner's repeated references to the Beneficiary as the "top executive" and claims that she will be responsible for directing the management of the organization and making a broad range of discretionary decisions, these elements alone do not establish that the Beneficiary would primarily perform executive tasks within the context of the U.S. business operation. We acknowledge that the Beneficiary, as the Petitioner's owner and senior employee, would have authority to establish plans, policies, and objectives for the company, supervise any employees hired, 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 in nature. Sections 101(A)(44)(B) of the Act.

On appeal, the Petitioner broadly contends that the job descriptions indicate that the offered position is executive in nature. However, the Director's decision reflects a proper review of the Beneficiary's proposed duties within the context of the totality of the evidence, which includes the Petitioner's business plan, expected staffing and structure, and financial projections. For the additional reasons discussed below, the Petitioner has not met its burden to show that it would have a reasonable need for the Beneficiary to primarily perform the claimed executive duties within one year.

B. Projected Staffing, Finances and Business Plan

A new office petition must include evidence of the proposed nature of the office, describing the scope of the entity, its organizational structure, and its financial goals. 8 C.F.R. § 214.2(l)(3)(C)(v)(I).

The Petitioner submitted a business plan in the form of an “Executive Summary” prepared by its foreign affiliate. It describes the Petitioner’s intended business activities, which, as noted above, include: selling parts and accessories high speed rail in the U.S. market; procuring auto parts and industrial products to be marketed and sold in China; cooperating with U.S. companies seeking to distribute their products in China; and selling hardware through an online store. The Petitioner indicated that the Beneficiary, its sole shareholder, had invested \$150,000 in the company in July 2021 and provided evidence of wire transfers received from her account.

With respect to the company’s financial goals for the first year of operations, the executive summary includes a section titled “Gross Profit Projection” which states that “[t]he US entity is expected to achieve \$1 million revenue in the first year. This estimate is based on the track record of the China entity in the past years.” The document briefly explains that the Chinese affiliate’s annual average revenue over the previous three years was approximately \$3 million, so the annual revenue projection of \$1 million for the newly restarted business is a “reasonable estimate.” The “financial projections” provided in the executive summary include a “payroll and expenses” table with projected amounts for rent, utilities, office expenses, legal and professional fees, and other expenses amounting to \$266,800.

The Petitioner’s proposed organizational chart for the first year of operations indicates that the Beneficiary would directly supervise a general manager, who would in turn supervise a sales director. The chart shows that the sales director would supervise two sales positions.

In the RFE issued in December 2021, the Director acknowledged the initial evidence submitted in support of the new office requirements but advised the Petitioner that the submitted executive summary lacked sufficient detail to support its claim that the company would be capable of supporting an executive position within one year. The Director requested additional evidence regarding the proposed nature of the new office, noting that such evidence may include: a letter from the foreign entity explaining the need for the new office and how it will support an executive position, a copy of a feasibility study or market research study conducted with respect to the U.S. office, and a more detailed business plan for commencing the start-up of the new office. The Director also requested additional financial documentation for both the foreign and U.S. entities to support the Petitioner’s claim that it will have the financial ability to remunerate the Beneficiary and commence doing business in the United States.

In response to the RFE, the Petitioner summarized information from the previously submitted executive summary and requested that the Director review that document. The Petitioner reiterated that “based on the track record of the foreign entity in the past years” the new office “is expected to achieve \$1 million revenue in the first year, and the annual revenue may generate gross profit of about \$250,000.” The Petitioner provided bank records for the foreign entity showing a balance of approximately \$1 million and stated that the foreign entity has sufficient funds to support the U.S. operations and remunerate the Beneficiary, if necessary.

The Director concluded that the Petitioner’s response was insufficient to overcome the evidentiary deficiencies addressed in the RFE. The Director acknowledged that the Petitioner’s executive summary provided a broad overview of the company’s intended marketing activities (such as catalog marketing and attending trade shows) but noted it did not provide any specific information about existing clients, orders, or prospective clients. In this regard, the Director emphasized that the

Petitioner had previously operated in the United States for several years prior to the Beneficiary's return to China in March 2020. The Director's decision also acknowledges the Petitioner's claim that its primary line of business would be selling parts and accessories for high-speed rail and bullet trains in the United States, but observed that the record did not establish that there is currently a market need for these products, given the current stage of development of the U.S. high-speed rail industry.

With respect to its other proposed lines of business, the Director noted a lack of explanation and evidence to support the Petitioner's claims that it would cooperate with its foreign affiliate for the sale of automotive parts and other products in the Chinese market. Finally, the Director determined that the Petitioner's submission was not responsive to the RFE's request for more detailed information to corroborate and explain the company's financial projections, including its expected revenue, costs, and expenses during the first year of operations. Accordingly, the Director concluded that the company's business plans and financial projections, when considered in conjunction with the Beneficiary's overly general job description, did not support a determination that that company would more likely than not support an executive position within one year.

On appeal, the Petitioner asserts that the previously submitted evidence is sufficient to demonstrate that the company will have the staffing, structure, and financial ability to support an executive position. It does not specifically address the deficiencies discussed in the Director's decision.

Upon review, we agree with the Director's determination that the Petitioner did not adequately support its claims regarding the proposed nature and scope of the new office, its projected staffing, and its financial goals.

The Petitioner's executive summary is lacking in detail and does not include a description of how the company intends to operate four separate lines of business based on its proposed staffing for the first year of operations. Further, as noted by the Director, the record does not contain the requested specific information supporting the company's projected revenues, and without such evidence, the financial projections are lacking in probative value and insufficient to establish that the company would support the claimed level of staffing.

As noted by the Director, the Petitioner indicates that its primary activity will be the sale of high-speed rail and bullet train parts and accessories in the U.S. market. However, the Petitioner's executive summary, in describing the "big market demand" for such products in the United States, consists of a paragraph about planned high speed rail projects in the United States, which the Petitioner indicates it obtained from Wikipedia. Further, the referenced projects have anticipated completion dates of 2028 and 2040. The Petitioner, despite indicating that it previously operated in the United States for several years prior to temporarily closing its operations, did not provide any information about existing or prospective clients or partners in the United States or otherwise describe its business activities in this industry sector. Therefore, the Petitioner's claim that it will be able to generate most of its projected revenue in this industry is not corroborated by sufficient evidence.

There are similar deficiencies with respect to the level of detail provided in the company's financial projections. The Petitioner's assertion that it is reasonable to project \$1 million in revenue based on the foreign entity's financial results is not adequately explained. Given that the Petitioner previously operated in the United States in the same market for more than three years, it is unclear why it did not

include copies of its prior U.S. tax returns or other evidence of its prior financial results to support its projected revenue. We note that these forms of evidence were specifically mentioned in the Director's December 2021 RFE. Because the Petitioner's projected revenue, cost and expenses figures are not adequately supported in the record, we cannot determine whether the projected staffing levels and organizational structure could reasonably be achieved.

Finally, we observe that there is a lack of correlation between the company's proposed staffing and its proposed business activities, which precludes a determination that the projected staff would sufficiently relieve the Beneficiary from significant involvement in the day-to-day operational and administrative activities of the company. The Petitioner indicates that it will be selling imported parts and accessories for high-speed rail, consulting or cooperating with U.S. companies seeking to distribute their products in China, selling hardware products through an online store, and procuring, exporting and selling automotive parts in foreign markets. The position descriptions submitted for the Beneficiary, the general manager and the sales director are very general and could describe executive, managerial, or supervisory duties performed in the context of any business. The two remaining proposed staff are sales positions with vague duties such as "develop and maintain client relationships," "growing business by selling to existing clients," "grow and maintain sales" and conducting sales through e-mail, catalogues, and client visits.

The evidence does not indicate how the staff would allocate their time with respect to the four different proposed lines of business, or how the goals of each of those lines of business would be accomplished given the anticipated staff and structure of the company. The Petitioner does not claim it will hire staff to perform purchasing, logistics, financial or administrative functions, or to serve as consultants to U.S. companies seeking to distribute their products in China. Therefore, it has not established that the Beneficiary would be relieved from performing non-executive functions in these areas. Further, despite the fact that the Petitioner indicates it was operational and engaged in similar business activities from 2015 until early 2020, it did not provide evidence that it previously supported the staffing levels projected in its current business plan.

For these reasons, we agree with the Director's conclusion that the record contains insufficient evidence to demonstrate that the Beneficiary would be removed from significant involvement in the day-to-day operations of the company by the end of one year. The Petitioner has consistently stated that the Beneficiary will occupy the senior position in its new office but has not submitted a job description or supporting evidence sufficient to demonstrate that she would primarily engage in executive duties, or that the new office would support an executive position, after the initial year of operations.

III. RESERVED ISSUES

As noted, the Director denied the petition on multiple grounds and further concluded that the record did not establish that the foreign entity is doing business, that the Beneficiary has been employed in a managerial or executive capacity abroad, and that the Beneficiary's stay in the United States would be temporary. Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining grounds for denial. *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").

IV. CONCLUSION

The Petitioner has not established that it would employ the Beneficiary in an executive capacity within one year. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.