



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

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

In Re: 20683280

Date: JUNE 7, 2022

Appeal of California Service Center Decision

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

The Petitioner, an importer and wholesaler of pneumatic tools and accessories, seeks to continue the Beneficiary's temporary employment as 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 Beneficiary will be employed in the United States in a managerial or executive capacity.<sup>1</sup> The matter is now 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.

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 Director determined that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity. The Director determined that the Petitioner had overstated the size of its staff, and that the Petitioner had not met its burden of proof to show that the company has enough subordinate staff to relieve the Beneficiary from primarily performing non-qualifying tasks.

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<sup>1</sup> Prior petitions authorized the Beneficiary to work for the Petitioner from January 8, 2018 to January 7, 2019, under the conditions for a "new office" as defined at 8 C.F.R. § 214.2(l)(1)(ii)(F), and from January 8, 2019 to January 7, 2021. The present petition seeks to authorize the Beneficiary's employment from January 8, 2021 to January 7, 2023. The Director acknowledged the earlier approvals, but declined to defer to them, noting that the second approval (covering the period from January 2019 to January 2021) had been revoked.

The Petitioner asserts that it employs the Beneficiary as “a top executive, not a manager,” and therefore we will limit consideration to the requirements for 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.

To show that a beneficiary is eligible for L-1A nonimmigrant visa classification as an executive, the petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then 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 the beneficiary’s duties will be primarily executive, we consider the description of the job duties, the 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.

If staffing levels are used as a factor in determining whether an individual is acting in an 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 Beneficiary’s job description, though four pages long, consists primarily of vague, general statements such as “Develop and adjust high quality business strategies and plans,” “Enhance and/or develop, implement and enforce policies and procedures,” and “Exercise discretionary decisions on business strategies and overall direction of U.S. company.” Some elements of the job description are redundant.

For example, “Oversee investments and operations of organization” is virtually identical to “Oversee budgets, investments, and operations of organization,” and “Oversee performance of each department managers [*sic*]” covers the same ground as “Oversee performance of VP and other department managers.” Some phrases are repeated exactly, such as “Oversee to implement the strategic goals and objectives of the organization” and “Coordinate business activities to achieve company’s goals and objectives.”

After the Director requested more evidence about the Beneficiary’s position in the United States, the Petitioner submitted essentially the same list of claimed duties, along with a sample daily schedule that included such tasks as reviewing reports, attending conferences, and talking to managers.

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). Reciting a beneficiary’s vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary’s daily job duties. The actual duties themselves will reveal the true nature of the employment. *Id.*

The Beneficiary’s job description also includes “samples of Executive decisions,” such as approving organizational structure, presiding over meetings, and attending conferences and trade shows. The record contains correspondence, purchase agreements, and other documents consistent with the Beneficiary’s discretionary authority over the company, but these materials do not inherently show that the Beneficiary’s duties are *primarily* executive in nature. The question is not whether the Beneficiary is running the company, but rather, how much time this responsibility consumes. The vague and repetitive list of general responsibilities does not show that the Beneficiary’s position in the United States is primarily executive in nature.

In the denial notice, the Director emphasized the Petitioner’s staffing. On the petition form, the Petitioner indicated that it had 17 employees in the United States, but payroll documents from July 2020 identify only eight employees; quarterly tax returns from 2019 and 2020 show between seven and nine. The Director concluded, therefore, that the Petitioner had overstated its size.

The record, however, paints a more complicated picture. In a letter submitted with the petition, the Petitioner specified that it has “17 employees in the U.S. (including 9 independent contractors).” If the total of “17 employees” includes nine contractors, then that would leave eight individuals directly employed by the Petitioner in the United States, consistent with the payroll records. Nevertheless, questions remain regarding the company’s staffing and structure.

An organizational chart shows the structure shown below. Where information is available, we have added the monthly salaries for positions held by U.S. employees.

- Board of Directors
  - CEO (the Beneficiary), \$6000
    - Vice President for Business Development, \$2500
    - Accounting Manager [in China]
      - Assistant (1099)
    - Administrative Manager, \$2500

- Supervisor [in China]
- Assistant [salary not shown]
- Purchasing Manager, \$4500
  - Supervisor (1099)
  - Assistant, \$400
- Marketing Manager, \$5000
  - 6 Sales Representatives (1099)
- Logistics Manager, \$3000
  - Supervisor [in Canada]
  - Assistant [in China]
- Quality Assurance/Quality Control (QA/QC) Manager [in China]
  - Assistant, \$300<sup>2</sup>
- Outsourced professional service providers, legal firm, accounting firm, etc.

The number “1099” designates contractors whose payments are typically reported on IRS Form 1099-MISC, Miscellaneous Income, or IRS Form 1099-NEC, Nonemployee Compensation, rather than IRS Form W-2, Wage and Tax Statement. But the burden of proof is on the Petitioner to establish that it engaged the services of contractors as claimed. The Petitioner’s 2019 income tax return, submitted with the petition, does not show any expenses that readily correlate with the continuous engagement of multiple contractors. The Petitioner’s quarterly tax filings from 2019 show \$259,700 paid to the seven to nine employees named on those returns, accounting for the entire amount that the Petitioner reported as salaries and wages on its 2019 income tax return.

The Director requested evidence to show that the Petitioner engages the services of the contractors named on the organizational chart. In response, the Petitioner submitted a copy of IRS Form 1099-NEC, showing that the Petitioner paid \$3000 to the individual named as the QA/QC Assistant on the organizational chart in 2020. An accompanying IRS Form 1096, Annual Summary and Transmittal of U.S. Information Returns, shows that this was the only IRS Form 1099 that the Petitioner issued for the 2020 tax year. Thus, the Petitioner claimed to employ nine named contractors in 2020 when it filed the petition, but the Petitioner’s tax documentation from that year shows payments to only one of them.

The Petitioner submitted a revised organizational chart, showing mostly the same structure as before but with the following changes:

- Deletion of the Administrative Supervisor position;
- Administrative Assistant position now listed as a contractor rather than an employee;
- Former contract position of Purchasing Supervisor converted to salaried Sourcing Supervisor, paid \$800 per month;
- Number of contracted Sales Representatives increased to seven; and
- The QA/QC Assistant changed from a contractor in the United States to an employee in China.

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<sup>2</sup> The chart identifies the QA/QC assistant as a contractor, but July 2020 payroll records show a \$300 salary payment. A May 2021 payroll statement is annotated “1099 Compensation.”

Both the sourcing supervisor and purchasing assistant earn salaries consistent with part-time employment. The Petitioner does not show how the purchasing manager is able to perform full-time managerial duties with no full-time subordinate staff.

The Petitioner submits “Independent Contractor Agreements” dated January 2020 for the accounting assistant and the QA/QC assistant, although the positions are swapped when compared to the organizational chart from 2020. While the Petitioner’s revised organizational chart shows that the contracted purchasing supervisor is now a salaried sourcing supervisor, the Petitioner does not submit any prior agreement for the contracted purchasing supervisor position. Furthermore, the contractor agreements indicate that the “[c]ontractor has the sole right to control and direct the means, manner, and method by which the Services required by this agreement will be performed,” a provision that appears to limit the ability of managers within the petitioning company to manage the work of the contractors.

The Petitioner also executed a “Manufacturer’s Sales Representative Agreement” in August 2020 with two individuals, named on the organizational chart respectively as a sales representative and the purchasing supervisor. The agreement showing both names does not specify any difference between the duties of the two individuals.

The Petitioner also submits a copy of a 2019 agreement with a sales agency, naming five sales personnel, corresponding with five names on the original organizational chart. The two agreements specify that the Petitioner is to pay a 10% sales commission monthly, based on the previous month’s sales. The record does not document these claimed commission payments. Neither of the submitted agreements indicates that the Petitioner’s marketing manager has managerial authority over the claimed contracted sales representatives.

Without identified evidence that the Petitioner has actually paid its claimed contractors, the Petitioner has not established that those contractors have actually worked for the Petitioner. To the extent that the record does reflect the work of contractors, it is not evident that the contractors, or the tasks said to be delegated to those contractors, require a layer of management beneath the Beneficiary, such that most of the Petitioner’s employees are said to be managers. The record does not establish that these individuals have primary responsibilities commensurate with their titles. The Petitioner has submitted job descriptions indicating that these managers have delegated tasks to contractors, but these descriptions have little weight given that, as explained above, the record does not sufficiently document the engagement of those contractors.

A revised set of job descriptions, submitted in response to the Director’s request for evidence, lists the following responsibilities for contracted sales representatives:

Report to marketing manager, implement sales plan; Monitor competition by gathering current marketplace information on pricing, products, new products, new projects, delivery schedules, merchandising techniques, recommends changes in products, service, projects and policy by evaluating results and competitive developments, promote company products in the designated areas; etc.

Most of these claimed responsibilities do not appear on the “Manufacturer’s Sales Representative Agreement” in the record, which is designated “the entire agreement” between the Petitioner and its sales representatives.

Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We note that photographs of the Petitioner’s office show a storage area filled with boxes, presumably inventory of the products the company sells. The Petitioner does not show who is responsible for handling and shipping these items. The Petitioner claims to have a Logistics Department with only three workers, two of whom are said to be outside the United States. The job description for the warehouse supervisor includes “Maintain warehouse inventor[y] to ensure customers’ demand is met,” but the Petitioner claims that the warehouse supervisor is in Canada, a country in which the Petitioner claims no other staff.

The record establishes business activity by the petitioning entity, but gaps and inconsistencies in the record do not permit us to conclude that the Petitioner has met its burden of proof with regard to its assertion that the organization is sufficiently complex to warrant executive leadership and the employment of several managers with minimal onsite subordinate staff.

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that it seeks to employ the Beneficiary in an executive capacity under the extended petition.

**ORDER:** The appeal is dismissed.