



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

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

In Re: 26530291

Date: MAY 22, 2023

Appeal of California Service Center Decision

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

The Petitioner, an importer and exporter of clothing and footwear, seeks to temporarily employ the Beneficiary as a chief executive officer 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 the record did not establish that the Beneficiary would be employed 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 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. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue we will address is whether the Petitioner established that the Beneficiary would be employed in an executive capacity in the United States. The Petitioner does not claim that the

Beneficiary would be employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary would 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.

When examining the executive capacity of a given beneficiary, we will review 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 an executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

#### A. Duties

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 its 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.

The Petitioner, the Beneficiary’s foreign employer, stated that it formed a fashion design and sales business in [ ] 2020 called [ ]. The Petitioner indicated that the Beneficiary would be tasked with overseeing and developing the U.S. company’s operations as its chief executive officer. The Petitioner submitted duties for the Beneficiary in support of the petition, but the Director later issued a request for evidence (RFE) indicating that his duties were generic and lacked adequate detail as to what specific tasks he would perform daily. The Director requested that the Petitioner submit documentary evidence sufficiently describing the Beneficiary’s typical executive-level duties and the percentage of time he would devote to each task.

In response, the Petitioner submitted a letter from the president of the U.S. company stating that the Beneficiary would be “responsible for developing our [ ] location into a fully functioning sales, fulfillment, processing, product design, and procurement office for the company.” The president further indicated that the Beneficiary would be tasked with “implementing strategic plans,” establishing the office, hiring managers, and “educating, training and guiding them on company

policy, missions, and strategy.” Further, the president of the U.S. company explained the Beneficiary would be responsible for creating accounting, tech and e-commerce integration, sales and marketing, human resources and administration, and production departments using “a proven formula for leadership.” The RFE response letter stated that the Beneficiary would devote his time to the following duties:

1. Strategic Planning and Direction– Approximately 40-50%
2. Sales, Marketing, Branding Department– Approximately 25-30%
3. Procurement Department– Approximately 10-20%
4. Budgeting, Accounting and Legal Department– Approximately 15-20%
5. Company Representation and Related Interaction– Approximately 10-20%

In denying the petition, the Director concluded that the Petitioner did not provide sufficient detail in response to the RFE to demonstrate the Beneficiary’s typical day-to-day duties nor delineate the actual tasks making up the general categories to which they assigned percentages. The Director further determined that certain assertions in the Beneficiary’s duties did not reflect the U.S. company’s stage of development, such as him “guiding managers and other executives.” The Director concluded that the provided duties did not properly establish he would devote his time primarily to qualifying executive-level tasks.

On appeal, the Petitioner contends that it was improper for the Director to “disparage” the “future-facing responsibilities” included in his duties noting that “there should no doubt that upon hiring new managers and executives, [the Beneficiary] will be guiding them.” Likewise, the Petitioner points to the Beneficiary’s proposed task of developing U.S. company location in [REDACTED] and again suggests it was improper for the Director to not consider this “new and proposed position.” In addition, the Petitioner provides another duty description with percentages, as follows:

Tasks related to brand sales, marketing, branding– 25-30% of time spent:

- Manage design and implementation of new products and services, including brand development and marketing strategies– 15%
- Oversee growth of our brands within the industry, including working with sales managers, identifying new customers, and developing guidelines, targets, and strategies– 5-10%
- Oversee sales and customer growth– 5-10%

Tasks related to procurement– 25-30% of time spent:

- Oversee the sourcing and manufacturing of goods ensuring quality and expense targets are met, consisting of establishing and growing relationships with suppliers and guiding the buying team to set guidelines and expectations– 5-7.5%
- Ensuring regulatory guidelines and company requirements are met for the products we sell, comprising instituting guidelines suppliers follow and ensuring that staff is trained to correct manufactured products that do not pass inspections– 5-7.5%

Tasks related to budgeting, accounting and legal– 15-20% of time spent:

- Oversee financial performance and risk profiles– 7-7.5%
- Ensure timely submission of month-end financial and operational information– 5%
- Monitor firm performance by establish[ing] and measuring analyzed results, including initiating corrective measures and minimizing the impact of variances– 5-7.5%

Tasks related to company representation and related interaction: Represent company at business functions, community events, networking opportunities– 10%-20% of time spent

Tasks related to strategic planning and direction– 40-50% of time spent

- Making decisions related to all departments to improve company revenues, staff productivity and reducing expenditures– 20-25%
- Operational management of business departments– 5-10%
- Ensure company is staffed with well trained personnel that is engaged and performs at a high level– 5%
- Establish quality metrics and assess whether they've been achieved through establishment of viable business processes following applicable regulatory guidelines– 5%
- Communicating with operational issues with owners, board members and other stakeholders as necessary– 5%

The Petitioner provides few details and little supporting evidence to sufficiently substantiate that he would likely be primarily engaged in executive-level tasks. The Petitioner provides few specifics as to the actual day-to-day tasks the Beneficiary would perform while in the United States, in the context of the company's actual business operations. In fact, the Beneficiary's duties include little specific discussion of the company's type of business and his generic list of executive duties could apply to any individual acting in any executive role with any company in almost any industry. For instance, the Petitioner did not describe the new products or services the Beneficiary would design and implement, the marketing campaigns he would oversee, or the marketing team he would guide. Likewise, the Petitioner did not sufficiently detail the procurement activities the Beneficiary would manage, including the manufactured goods he would ensure the quality of, suppliers he would work with, cost reduction strategies he would implement, or regulations with which he would ensure compliance. In addition, the Petitioner did not adequately explain or document the "risk profiles" the Beneficiary would oversee, the financial performance he would be responsible for, or the events he would attend to represent the company. Lastly, the Petitioner provided little detail as to the strategic direction the Beneficiary would provide, including the asserted budgets he would manage within departments, the revenue he would be tasked with growing, the targets he projected to accomplish, or other "business processes" he would implement.

The Petitioner stated several times on the record that the Beneficiary had "developed a proven formula for leadership" and a method for the operation for the business abroad that he would implement at the U.S. company. However, it did not sufficiently explain this business model or his specific approach. Although we do not expect the Petitioner to detail every daily task the Beneficiary would perform in the United States, it is reasonable to expect that there would be credible specifics relating to its actual business operations to make the duty description sufficiently credible.

Furthermore, in discussing the Beneficiary's duties, the Petitioner leaves question as to whether its operations were sufficient to support an executive-level role as of the date the petition was filed. For example, in support of the RFE, the Petitioner indicated that the Beneficiary would be responsible for "developing our [redacted] location into a fully functioning sales, fulfillment, processing, product design, and procurement office for the company," and "growing each of the departments," including accounting, tech and e-commerce integration, sales and marketing, human resources and administration, and production departments. Likewise, on appeal, the Petitioner contends that it was improper for the Director to "disparage" the "future-facing responsibilities" listed in his duties, including his oversight of managers and other executives, noting that "there should no doubt that *upon hiring* [emphasis added] new managers and executives, [the Beneficiary] will be guiding them." On appeal, the Petitioner points to the Beneficiary's proposed task of developing U.S. company location in [redacted] and again suggests it was improper for the Director to not consider this "new and proposed position."

However, we note that the regulations require that the Petitioner 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). Therefore, the Petitioner's statements on future duties and the hiring of subordinate executives and managers after the date the petition was filed leave uncertainty as to whether the Beneficiary would have acted in an executive-capacity as of the date the petition was filed. The Petitioner must resolve ambiguity 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 sum, the Petitioner provided insufficient information and evidence as to the Beneficiary's proposed executive level-role in the United States, therefore, it is difficult to conclude that he would be primarily engaged in executive-level tasks. Again, whether the Beneficiary is an executive employee turns on whether the Petitioner has sustained its burden of proving that their duties would be "primarily" executive. See section 101(a)(44)(B) of the Act. Specifics are clearly an important indication of whether a beneficiary's duties will be primarily executive 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).

Even though the Beneficiary holds a senior position within the organization, the fact that he 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. *Id.* The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily executive in nature.

## B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we 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.

As noted, the Petitioner claims the Beneficiary would act in an executive capacity in the United States. 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.*

In support of the petition in June 2022, the Petitioner submitted an organizational chart reflecting a president supervising two sales managers and a warehouse and shipping manager. The warehouse and shipping manager was shown to oversee a warehouse assistant, an e-commerce shipping assistant, and a wholesale shipping assistant. The chart further listed two members, or owners of the U.S. company, acting at a similar level as the president. However, in response to the RFE, the Petitioner submitted a more robust organizational chart showing that the Beneficiary would supervise two “senior sales managers” overseeing a sales coordinator and a sales representative whose “hiring [was] in process.” The chart also reflected that the Beneficiary would supervise a chief financial officer overseeing an accounting employee, to be hired, as well as an office and administration manager. Lastly, the updated organizational chart reflected that the Beneficiary would also oversee a warehouse and logistics manager supervising a warehouse supervisor, who would in turn, oversee a wholesale shipping assistant and two e-commerce shipping assistants.

In the RFE, the Director requested that the Petitioner submit not only a payroll summary, but IRS Forms W-2, Wage and Tax Statements, IRS Forms W-3, Transmittal of Wage and Tax Statements, and/or IRS Forms 1099, Miscellaneous Income showing the wages paid to the U.S. company’s employees. However, the only tax document the Petitioner provided was its 2021 IRS Form 1065, U.S. Return of Partnership Income, reflecting that it paid only \$134,243 in salaries and wages during that year, an amount seemingly not sufficient to support its president and seven other employees listed in its initial organizational chart provided at the time the petition was filed. Although we acknowledge that the Petitioner provided internal payroll documentation, we do not find this alone sufficient to objectively corroborate the U.S. company’s asserted organizational chart as of the date the petition was filed. In addition, we will not consider the expanded organizational chart submitted later with the RFE, since the Petitioner was required to demonstrate the Beneficiary’s eligibility as of the date the petition was filed. As we have also discussed, the Petitioner provided statements on the record, and on appeal, suggest that the Beneficiary’s executive-level role was conditioned of future hiring, again leaving further question as to whether it was sufficiently operational in June 2022 to support him in this proposed executive-level role.

For example, the U.S. company’s organizational chart as of the date the petition was filed reflects two “sales managers.” However, the chart shows that these asserted managerial subordinates reporting to

the Beneficiary had no subordinates of their own, indicating that they were likely first-level sales representatives rather than managers when the petition was filed. The chart otherwise includes only one other claimed managerial level employee, the warehouse and shipping manager, which the Petitioner did not sufficiently corroborate as a subordinate manager. For instance, there is little supporting documentation on the record to substantiate this claimed subordinate manager's role, nor a specific discussion of how the Beneficiary would direct and delegate duties to this claimed manager. Once again, it is also noteworthy that the Petitioner emphasizes on appeal that we should not be considering the Beneficiary's role as of the date the petition was filed, but his "future-facing" role, leaving question as to whether the U.S. company was sufficiently developed as of the date the petition was filed to support him in an executive-level capacity. In fact, in response to the RFE, the Petitioner assertions suggest that the essence of the Beneficiary's position in the United States was to develop the company's [redacted] location and grow each of its departments, departments not reflected in the organizational chart submitted with the petition. The organizational chart provided with the petition also listed two co-owners/members and a president, leaving question that the company would require four executive-level employees at its limited stage of development when the petition was filed.

The Petitioner must demonstrate the Beneficiary's eligibility as of the date the petition was filed, not based on projected growth. Again, the Petitioner must 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). The Petitioner does not supplement the record on appeal with additional evidence to substantiate that it was sufficiently developed as of the date the petition was filed to support him in a role where he would be primarily engaged in executive-level duties.

In sum, the Petitioner submitted a generic duty description for the Beneficiary that does not sufficiently substantiate he would have been employed in an executive-level capacity as of the date the petition was filed. Likewise, the Petitioner made conflicting statements and provided insufficient documentation to establish that it was sufficiently developed as of the date the petition was filed to support the Beneficiary in an elevated position where he would be primarily focused on broad goals and policies, rather than day-to-day operations. Therefore, the Petitioner has not established that the Beneficiary would be employed in an executive capacity in the United States.

**ORDER:** The appeal is dismissed.