



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

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

In Re: 22602789

Date: OCT. 20, 2022

Appeal of California Service Center Decision

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

The Petitioner, a company engaged in the retail sale of religious artwork and goods, seeks to temporarily employ the Beneficiary as its general manager 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 that the Beneficiary has been employed abroad, or would be employed in the United States, in the claimed executive capacity. The Director further concluded that the record did not establish, in the alternative, that the Beneficiary had been or would be employed in a managerial capacity.

On appeal, the Petitioner asserts that the Director placed undue weight on the small size of the U.S. and foreign entities and did not consider the totality of the evidence submitted in support of the petition.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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, 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(1)(3).

II. U.S. EMPLOYMENT

The primary issue we will address is whether the Petitioner established that it would employ the Beneficiary in an executive capacity in the United States. The Petitioner did not claim he would be employed in a managerial capacity.¹

The term “executive capacity” is defined as 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 whether a given beneficiary will be employed in an executive capacity, we will review the petitioner’s description of the proposed position, which must clearly describe the duties to be performed by the beneficiary. *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 and the beneficiary’s placement in that structure, the duties of a beneficiary’s subordinate employees, the presence of other staff to relieve a beneficiary from performing operational duties, the nature and scope 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, its staffing levels, and its organizational structure.

A. Duties

To establish a beneficiary’s eligibility for L-1A nonimmigrant visa classification as an executive, a 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 a petitioner establishes that the offered position meets all elements set forth in the statutory definition, it 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).

The Petitioner, which imports and sells religious goods and artwork produced by artisans in the [redacted] [redacted] seeks to transfer the Beneficiary from its foreign parent company to serve as its general manager. The Petitioner explains that the Beneficiary’s proposed transfer was prompted by the recent retirement of its president and chairman. Its initial evidence included a letter from members of the foreign entity’s board of directors, who emphasize that the Beneficiary was selected for the position because he is “a great salesman” who possesses extensive experience in exporting and marketing religious handicrafts, expertise in the wood carvings sold by the company, and strong relationships with the carvers who create those products. The letter describes the Beneficiary’s proposed U.S. duties as follows:

¹ In a cover letter submitted with its initial evidence, the Petitioner stated “USCIS should note that while the official job title for the Beneficiary is ‘general manager’ the L-1A request is for an executive. Petitioner makes it a point to clarify that the role that Beneficiary seeks in the U.S. is in an executive capacity.”

- Supervising the day-to-day administrative responsibilities of the company. Including: placing orders for inventory, receiving shipments and quality control, pricing, deposits, etc.
- Implementing a Point-of-Sale system through Shopify and adopting a new barcoding system to track inventory and sales.
- Supervising the process of improving sales . . .
- Hiring and training new sales representatives and work on expanding the company sales force.
- Personally lead sales on different craft shows around the Midwest every weekend.
- Studying and finding new ways to expand web sales through our website . . . and social media avenues.

The Petitioner also submitted a letter in which it described the Beneficiary’s proposed duties, noting that he would spend 50% of his time “managing the leadership team to accomplish strategic and organizational plans” and “supervising the management team.” The Petitioner stated that he would allocate the remaining half of his time to developing “the overall business strategy and organizational planning” of the U.S. company and “executing his strategic and organizational plans.” It indicated that the Beneficiary’s time dedicated to “strategy and organization” would be divided as follows:

- 15% Implementing marketing initiatives and providing the necessary executive oversight to ensure the marketing managers and sales representatives carry out the marketing and sales plan
- 5% Determine which markets to focus on
- 5% Determine the pricing strategy for all products
- 10% Production planning and schedule based on an analysis of marketing and sales
- 5% Supply chain responsibility, which will involve creating a production and inventory assessment plan
- 2.5% Decide on all personnel hiring and firing decisions
- 2.5% Budgeting: All sales, production, operating costs
- 5% Make proposals for capital investments in new warehouse, production equipment, etc.

In a request for evidence (RFE), the Director advised the Petitioner that it had not provided a sufficiently detailed explanation of how the Beneficiary’s duties would be primarily executive in nature. Referencing the statutory definition of executive capacity at section 101(a)(44)(B)(i)-(iv) of the Act, the Director also observed that the initial evidence did not explain how the Beneficiary’s role would satisfy each element of the definition. The Director advised that the Petitioner could submit an additional letter describing how the Beneficiary would be employed in an executive position, his expected executive duties, and the percentage of time to be spent on each duty.

In response to the RFE, the Petitioner provided a third list of duties for the proposed position noting that the Beneficiary’s “executive functions” will include the following:

- Hire and fire employees;
- Clearly communicating goals to the current and new employees;

- Managerial oversight of HR decisions to ensure [the Petitioner] is selecting the right individuals for each task;
- Training new employees and assigning them to the right teams;
- Motivating employees to reach each objective;
- Working closely with and overseeing that Marketing, Sales and Distribution are setting appropriate volumes and deadlines;
- Monitor the totality of operations and check in with employees and their supervisors to ensure they are making progress;
- Weigh in on and assess the review performance metrics;
- Make strategy adjustments as needed;
- Decide the annual budget and approve expenses.

Although this list of duties differed significantly from that provided at the time of filing, the Petitioner referred the Director to review the percentage breakdown of duties provided in its initial letter. The Petitioner emphasized that the Beneficiary will “be responsible for the overall performance of the organization,” ensure that the company is running effectively, make hiring and firing decisions, establish sales and marketing strategies, approve all expenses, and receive only general guidance from the board of directors.

The Director’s decision reflects that she considered each of the submitted job descriptions in concluding that the Petitioner had not met its burden to establish that the Beneficiary would perform primarily executive duties. On appeal, the Petitioner maintains that it met its burden to establish that the Beneficiary would perform the high-level duties described in the statutory definition of “executive capacity” and that he will primarily perform those duties. The Petitioner emphasizes that he is not prohibited from allocating some of his time to hands-on operational tasks that fall outside the statutory definition.

Upon review, we observe that the record contains three distinct lists of duties for the Beneficiary’s proposed role, none of which is sufficiently detailed to establish that he would be expected to primarily allocate his time to the types of high-level responsibilities described in the definition of “executive capacity” at section 101(a)(44)(B) of the Act. The proposed U.S. duties provided by the foreign entity’s board of directors did not describe a position with responsibility for establishing the broad policies and goals of the U.S. company or directing its management. Rather, the description indicated that the Beneficiary would be responsible for directly supervising or performing the operational tasks of the company such as placing orders, receiving shipments, and performing quality control functions. Many of the remaining tasks involved hiring, training or leading sales staff, personally attending to or leading sales activities alongside other staff, and researching and implementing systems to improve sales performance and efficiency. These types of tasks, while they indicate a position that would involve leading or supervising current U.S. staff, are not consistent with the executive functions described in the statutory definition.

The Petitioner’s own initial description of the Beneficiary’s proposed duties bore little resemblance to the description in the foreign entity’s letter and no explanation was provided for the lack of consistency. Further, the Petitioner’s description of the proposed U.S. duties was overly broad, noting the Beneficiary would allocate half of his time to “managing the leadership team,” without identifying the “leadership team” or the specific executive tasks the Beneficiary would be expected to perform to

carry out this function. 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).

The Petitioner indicated that the Beneficiary would allocate the remaining 50% of his time to "organizational and strategic plans." The Petitioner indicated that he would have authority over pricing, marketing and financial/budgetary strategies and decisions, but several of the listed duties are either poorly defined or inconsistent with other information in the record and therefore do not sufficiently describe his proposed executive functions. For example, the Petitioner stated that the Beneficiary will be "implementing marketing initiatives and providing the necessary executive oversight to ensure the marketing managers and sales representatives carry out the marketing and sales plan." This statement implies that the Beneficiary would be overseeing a multi-tiered sales and marketing department, but other evidence in the record indicates that the company has, at most, one "sales and marketing" employee who is also described as an "office controller," and who has no managerial or supervisory responsibilities. The record also lacks information regarding what the Beneficiary's "production planning" and "supply chain" responsibility would entail or how he would delegate tasks associated with these functions.

As noted, the Director issued an RFE to provide the Petitioner with an opportunity to clarify the nature of the Beneficiary's proposed responsibilities. However, rather than adding further specificity to the duty descriptions provided at the time of filing, the Petitioner submitted a third list of generalized duties that heavily focused on the Beneficiary's responsibility for hiring, training, assigning, motivating, and communicating goals to employees without explaining how these duties fall within the statutory definition of "executive capacity" in the context of the Petitioner's business. While the Petitioner indicated that the Beneficiary would have "managerial oversight of HR decisions" and will oversee decisions and goals set by "Marketing, Sales and Distribution," the record reflects that the Petitioner has no subordinate personnel responsible for making "HR decisions" and no dedicated marketing, sales and distribution departments or department supervisors responsible for decision-making or setting goals in these areas. Therefore, the Petitioner has not shown that these proposed responsibilities are consistent with the nature, scope, and structure of its business.

We do not question that the Beneficiary, as the U.S. entity's general manager, would be responsible for overseeing company performance. However, 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. Sections 101(A)(44)(B) of the Act. The Petitioner bears the burden of documenting what portion of the Beneficiary's duties will be executive and what portion will be non-executive. *See Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991).

As noted, the Petitioner submitted three different descriptions of the Beneficiary's proposed duties, did not provide further specificity regarding his expected tasks when requested to do so, and therefore did not meet its burden to submit a detailed description of the services he will provide in the United States. 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. *Fedin Bros.*, 724 F. Supp. at 1108., *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, while the Petitioner has consistently indicated that the Beneficiary would exercise discretion over the U.S. entity's day-to-day operations and have decision-making authority, the inconsistent position descriptions alone are insufficient to establish the nature of his expected day-to-day duties or the amount of time he would allocate to qualifying executive tasks. As such, the record does not demonstrate that he would primarily perform duties that are consistent with the statutory definition of "executive capacity" at section 101(a)(44)(B) of the Act.

B. Staffing and Organizational Structure

Next, we will address the U.S. company's staffing and structure at the time of filing in February 2022. If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, the reasonable needs of the organization must be considered in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

On the Form I-129, the Petitioner stated that it had four employees. A submitted organizational chart showed the Beneficiary in the proposed position of general manager with four direct subordinates identified as an administrative assistant, a "sales and marketing" employee [redacted], an accountant, and one additional individual [redacted] whose job title was not provided. The Petitioner submitted a copy of its state quarterly wage reports for all four quarters of 2021. The quarterly wage report for the fourth quarter includes the "sales and marketing" employee (who earned \$2000) and the administrative assistant,² but did not include [redacted] or the accountant.³

The Petitioner indicated that the administrative assistant answers phones, greets visitors, keeps records of sales and purchases, processes customer orders and bills, prepares weekly sales and expense reports, and reconciles monthly bank statements. The Petitioner also provided a job description for the position of "office controller," indicating that this position was held by [redacted] who is identified on the organizational chart as "sales and marketing." The Petitioner stated that the office controller contacts churches, gift shops, religious stores and craft shows to introduce the company and to set up appointments for the Petitioner to sell its merchandise at their businesses or events. In addition, the office controller is responsible for office cleaning, receiving new shipments, keeping a record of goods received, pricing new goods and stocking shelves. Finally, the Petitioner indicated that it employs "weekend sales representatives" who represent the company during weekend sales at churches, festivals, and other scheduled events, but did not identify this position on its organizational chart. As noted, the letter from the foreign entity stated that the Beneficiary would be personally leading sales at these types of weekend events.

In response to the RFE, the Petitioner provided a list of duties performed by the accounting employee, which included quarterly and yearly payroll processing and filing, corporate tax return preparation, preparation of financial statements, reconciliation of accounts, and other tasks. The record reflects that the Petitioner's quarterly tax returns and wage reports and its 2020 federal income tax return were

² The individual identified as the administrative assistant was included on all four quarterly wage reports for 2021 and received variable wages. She earned \$3647 in the first quarter, \$2569 in the second quarter, \$1873 in the third quarter, and \$7404 in the fourth quarter of 2021.

³ During the fourth quarter of 2021, the Petitioner paid wages to a total of six workers, but only two of them appeared on the organizational chart submitted in February 2022.

prepared by the accountant named on its organizational chart, who operates an independent accounting services firm. However, the record does not include evidence of any contracts or agreements between the Petitioner and the accounting firm specifying the nature or scope of services they provide. Further, the Petitioner did not provide evidence of any recent payments to the accounting firm.⁴

In addressing the Petitioner's staffing and structure, the Director observed that the Petitioner provided two different job titles for one individual [redacted] provided no job title or description for M. Ibrahim despite including this individual on its organizational chart, and identified no "weekend sales representatives" on its organizational chart despite providing a position description for this role. Based in part on these inconsistencies, the Director determined that the Petitioner had not sufficiently explained or provided documentation showing how its staffing and structure would support the Beneficiary in an executive capacity as defined at section 101(a)(44)(B) of the Act.

Finally, although the Petitioner consistently claimed the Beneficiary would be employed in an executive capacity, the Director also briefly addressed whether the Beneficiary's position would qualify under the definition of managerial capacity at section 101(a)(44)(A) of the Act.⁵ The Director observed that the Petitioner did not articulate a claim that the Beneficiary would manage an essential function. Further, although the Petitioner stated that the Beneficiary would have the authority to hire and fire staff and spend half of his time supervising the company's employees, the Director observed that the record did not demonstrate that the Beneficiary would supervise and control the work of subordinate managerial, supervisory, or professional employees and therefore would not qualify as a personnel manager.

On appeal, the Petitioner asserts that the Director placed undue emphasis on the size of the company and failed to consider the totality of the evidence, including the proposed job duties, the nature and scope of the organization, the company's staffing and structure, and the duties performed by the subordinate staff. The Petitioner maintains that it described the specific executive duties the Beneficiary would perform; however, as discussed above, the record reflects that the Petitioner submitted three different lists of duties for the proposed position and did not clarify the amount of time the Beneficiary would allocate to specific tasks when provided an opportunity to do so.

Further, the Director's decision reflects that she considered the job descriptions along with evidence of the company's structure and staffing levels; the Director did not deny the petition based on the small size of the company. Rather, the Director noted that there were inconsistencies between the Petitioner's statements regarding its staffing and the submitted organizational chart. As discussed above, the Petitioner identified four subordinate staff members on its organizational chart. However, it provided evidence of payments to only two of those four subordinate employees.

⁴ The Petitioner's 2020 corporate federal tax return shows that it paid \$6,200 in accounting expenses during that year.

⁵ The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." *Id.* The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act.

The record supports the Director's determination that the evidence, when considered in its totality, does not establish that the Petitioner would require the Beneficiary to allocate his time primarily to directing the management of the organization and establishing its broad goals and policies as required by section 101(a)(44)(B) of the Act. The Petitioner has documented its employment of an administrative assistant and a second employee who is described as either an "office controller" or a "sales and marketing" employee. It is unclear based on the evidence submitted whether either individual would be working on a full-time basis. The Petitioner has identified a third employee who does not appear on the submitted payroll documentation, and an accountant who appears to work on a contract basis. However, the Petitioner did not provide recent evidence of payments to the accountant. Therefore, contrary to the Petitioner's assertions, it did not meet its burden to demonstrate that its staffing and structure are sufficient to relieve the Beneficiary from spending a significant portion of his time on duties that fall outside the statutory definition of "executive capacity."

To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization in an executive capacity, a petitioner must show how the organization, component, or function is managed. Typically, an executive directs the management of an organization by directly or indirectly controlling the work of managerial employees.⁶ Although the Petitioner has stated that the Beneficiary will spend half of his time "managing the leadership team" or "supervising the management team," the record, as discussed above, does not establish that his subordinate staff consists of a "management team" or "leadership team," as opposed to employees who perform routine sales, inventory and administrative tasks. 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 sole managerial or supervisory employee.

The Petitioner also objects to the Director's determination that the record did not establish that the Beneficiary would not oversee professional staff. As noted, the Petitioner has emphasized the Beneficiary's hiring and firing authority and indicated that he would allocate at least half of his time to supervising subordinate staff. On appeal, the Petitioner claims that an accountant is a professional position and therefore asserts that the Director incorrectly determined that the Beneficiary's supervisory duties would be those of a first-line manager or supervisor of non-professional personnel. The Petitioner included an accountant on its organizational chart and there is evidence that the company relies on an accounting firm to prepare its state and federal tax filings. However, as discussed, the record does not include a contract or agreement setting forth the scope of the services the accountant provides or establishing that the Beneficiary would control and supervise their work. Further, the Petitioner indicates that the Beneficiary would spend at least half of his time on supervision of lower-level staff and has not claimed that either of its documented payroll employees is a managerial, supervisory, or professional employee. Regardless, the Petitioner was clear in its assertion that it sought to classify the Beneficiary as an L-1A executive, rather than as a manager.

Here, while the record reflects that the Beneficiary would serve as general manager with authority to oversee the operations of the petitioning company, the submitted position descriptions are vague, inconsistent and do not establish that his duties would be primarily executive in nature. Further, the

⁶ See 2 *USCIS Policy Manual* L.6(D), <https://www.uscis.gov/policy-manual/volume-2-part-1-chapter-6> (providing guidance on applying the statutory definition of "executive capacity" and other key concepts in the adjudication of L-1A nonimmigrant petitions)

Petitioner's evidence of its staffing and structure as of the date of filing, when considered with the submitted position descriptions, is insufficient to establish that the company would support an executive position.

We acknowledge the Petitioner's claim that the U.S. company is a "small-scale" business and that executives of smaller companies may reasonably be required to dedicate more time to operational and administrative tasks than those who oversee large organizations. However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes inconsistencies in the record. *See Systronics*, 153 F. Supp. 2d at 15. Furthermore, the reasonable needs of the Petitioner will not supersede the requirement that the Beneficiary must be "primarily" employed in an executive capacity.

Based on the foregoing discussion, 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. RESERVED ISSUE

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 Director's separate determination that the record did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. *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"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

IV. CONCLUSION

For the reasons discussed, the Petitioner has not established that it would employ the Beneficiary in the United States in an executive capacity. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.