U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25492328

Date: FEB. 14, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, which operates a child care center, seeks to permanently employ the Beneficiary as its president under the first preference immigrant classification for multinational managers or executives. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity; (2) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity; and (3) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer. 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

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

II. ANALYSIS

The Beneficiary has been the owner and sole proprietor of a construction company in Pakistan since 2001. In 2014, the Beneficiary entered the United States as an L-1A nonimmigrant intracompany transferee to serve as president of the petitioning entity. The Petitioner asserts that the Beneficiary has continued to run the construction company abroad after she entered the United States.

If a beneficiary is already in the United States working for the foreign employer or its subsidiary or affiliate, then the petitioner must demonstrate that, in the three years preceding entry as a nonimmigrant, the Beneficiary was employed by the entity abroad for at least one year in a managerial or executive capacity. 8 C.F.R. § 204.5(j)(3)(i)(B).

The Petitioner asserts that the Beneficiary has been, and will be, employed in an executive capacity rather than a managerial 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.

The Petitioner's initial description of the Beneficiary's duties abroad listed 13 responsibilities. The Director requested more details, stating that the original description was vague and general. The Petitioner resubmitted the same description, with the same individual elements reorganized into four categories, each with the approximate percentage of time dedicated to duties in each category:

- Overall Management and Direction of Company including Business Development, 50%;
- Financial Analysis, 30%;
- Client Relationship Management, 10%; and
- People Management, 10%.

Apart from the change in order, the two lists of responsibilities are identical, even including the same irregular punctuation in the phrase "[c]onducting, research of conditions" and capitalization of "Hiring and Firing."

Some of the listed elements are of questionable relevance. For instance, the job description indicates that the Beneficiary would "recommend . . . personnel actions," but as the sole owner and highest-ranking official of the business, it is not evident to whom she would have made these recommendations.

The job description included several operational tasks that are not executive-level responsibilities, such as "training and supervising the work done by new and subordinate employees," and a number of duties more suited to a financial analyst, such as "[p]repare plans of action for investment based on financial analysis" and "[i]nterpret data affecting investment programs." These are operational tasks rather than executive-level responsibilities.

The five elements grouped under "Overall Management and Direction of Company including Business Management" relate to authority over a business, but the wording is so generic that they provide little insight into the Beneficiary's specific tasks, duties, and responsibilities:

- Formulate policies and develop business strategy in consultation of the firm.
- Direct and coordinate the business activities of the firm.
- Conducting, research of conditions in local, regional and national areas to determine potential business and investment opportunities.
- Monitor business operations and financial activities and details such as reserve levels to ensure that all legal and regulatory requirements are met.
- Maintain current knowledge of organizational policies and procedures, federal and state policies and directives, and current accounting standards.

The letter containing the job description does not identify any specific "investment opportunities" or "investment program" that the company pursued during the 13 years that the Petitioner led the business in Pakistan. Likewise, a prefatory passage with the reorganized list indicated that the Beneficiary oversaw "acquisitions," but there is no indication of specific acquisitions by the construction company. If the company was not actually engaged in investment and acquisitions, then such activities would not have taken up a significant proportion of the Beneficiary's time as claimed.

In denying the petition, the Director concluded that the "job duties for the foreign entity are overly vague and broadly-stated" and do not "describe the actual duties performed in the course of [the Beneficiary's] daily routine."

On appeal, the Petitioner states that it has established that the Beneficiary was "directing the operations from the top, establishing goals and policies of the organization and exercising wide latitude and discretion in decision making." The issue is not the Beneficiary's location at the top of the hierarchy, but whether the Petitioner has established that the Beneficiary's duties abroad were *primarily* those of an executive capacity. We agree with the Director's conclusion that the Petitioner did not provide sufficient details to meet this burden.

The job description appears to be a general list of business functions and activities. It includes no specific references to the operation of a construction company, and several of the included elements do not appear to apply readily to such a business. 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

On appeal, the Petitioner asserts that a company's "[s]ize is not a relevant consideration when assessing whether a beneficiary is employed as a manger or executive." The Director did not base the denial on the size of the foreign company, and therefore this assertion does not establish or identify error in the Director's decision. Even then, both the statute and regulations both specifically state that "staffing levels [can be] used as a factor in determining whether an individual is acting in a managerial or executive capacity," while taking into account "the reasonable needs of the organization, component, or function, in light of the overall purpose and stage of development of the organization,

component, or function." Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C); 8 C.F.R. § 204.5(j)(4)(ii).

When the Petitioner filed the petition in 2018, it submitted recent salary records and other information about the company's staff. These materials named individual positions within the company, such as "Technical Head," "Senior Surveyor" and "Office Clerk," but they did not establish the organizational structure. Information about that structure is necessary to determine whether the company has a level of organizational complexity that would warrant a primarily executive position at the top of the hierarchy. Also, the submitted materials were from 2017 and 2018, and did not depict the organization while the Beneficiary was running the company during the statutorily defined three-year period preceding her entry in 2014.

The Director requested additional details about the Beneficiary's subordinates and their duties, and "the exact productive and administrative tasks" involved in the operation of the overseas business. The Petitioner's response to the request did not directly address these issues. As a result, the record does not provide enough information about the company's operation and structure to establish that the Beneficiary worked in a primarily executive capacity in the three years preceding her 2014 entry into the United States.

U.S. Citizenship and Immigration Services (USCIS) had previously approved two petitions to classify the Beneficiary as an L-1A nonimmigrant in 2014 and 2017. The Petitioner asserts that these approvals "confirmed that USCIS has already made a determination as to the managerial/executive nature of the position." USCIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988) (citations omitted).

Based on the deficiencies discussed above, the Petitioner has not met its burden of proof to establish that the Beneficiary was employed in a primarily executive capacity abroad.

Because the above issue decides the outcome of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the claimed executive capacity in the United States and the qualifying relationship between the Beneficiary's two employers. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (holding that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

ORDER: The appeal is dismissed.