U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33381133

Date: OCT. 1, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, a provider of planning services for weddings and other events, seeks to employ the Beneficiary as its general manager. The company requests his classification under the employment-based, first-preference immigrant visa category as a multinational executive. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). Businesses may sponsor intracompany transferees for U.S. permanent residence in this category to work in managerial or executive capacities. *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate its proposed employment of the Beneficiary in the claimed executive capacity. On appeal, the company contends that the Director disregarded evidence and the Beneficiary's "functional manager" role.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Director that the company did not establish sufficient staffing or organizational structure to support the Beneficiary's employment in an executive capacity. We will therefore dismiss the appeal.

I. LAW

A noncitizen qualifies as a multinational executive if – in the three years before their U.S. entry as a nonimmigrant – they worked outside the country for at least one year in a managerial or executive capacity. Section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(B). A multinational executive must also seek to provide executive services in the United States for the same foreign employer or its subsidiary or affiliate. *Id.*

II. ANALYSIS

A. The Nature of the Proposed U.S. Work

The term "executive capacity" means work "primarily" involving:

- Directing the management of an organization or a major component or function of it;
- Establishing the goals and policies of the organization, component, or function;
- Exercising wide latitude in discretionary decision-making; and
- Receiving only general supervision or direction from higher level executives, the organization's board of directors, or its stockholders.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B).

When assessing an offered job's nature, USCIS examines the job's duties. *See* 8 C.F.R. § 204.5(j)(5) (requiring a petitioner to "clearly describe the duties to be performed by the [noncitizen]"). Under the Act, a beneficiary is not an executive simply because they have an executive title or would spend time directing an organization as its owner or sole manager. *See generally* 6 *USCIS Policy Manual* F.(4)(C)(3), www.uscis.gov/policy-manual. Rather, a petitioner must demonstrate sufficient staffing to perform the organization's daily operations, thereby freeing a beneficiary to "primarily" perform executive duties. *Id.*

When considering a job's executive nature, USCIS must review the totality of the evidence, including: descriptions of the beneficiary's proposed duties and those of their intended subordinates; the nature of the petitioner's business; employment and remuneration of other employees; and any other factors providing an understanding of a beneficiary's business role. 6 *USCIS Policy Manual* F.(4)(C)(4). A petitioner must demonstrate eligibility for the requested benefit "at the time of filing," continuing "through adjudication." 8 C.F.R. § 103.2(b)(1).

The Petitioner claims that the Beneficiary would continue to work in an executive capacity for the company as general manager. The record, however, supports the Director's finding of insufficient evidence that, at the time of the petition's filing, the Petitioner had adequate staffing and organizational structure to support the Beneficiary in an executive capacity.

First, the company has not established its number of employees, position titles, or organizational structure at the time of the petition's filing in May 2017. On the Form I-140, Immigrant Petition for Alien Worker, the Petitioner "estimated" that it had four employees. Copies of its federal and state payroll tax returns, IRS Forms W-2, Wage and Tax Statements, and an organizational chart in its business plan also indicate its employment of four people in 2017. But a separate organizational chart shows that the company had five employees, including an "administrative assistant." *See Love Korean Church v. Chertoff*, 549 F.3d 749, 754 (9th Cir. 2008) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies); *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (same).

Also, the Petitioner's evidence inconsistently states its position titles and organizational structure. Two of the four jobs listed on the business plan's organizational chart bear the titles "wedding planner"

and "procurement coordinator." The separate organizational chart, however, identifies these jobs as "sales manager" and "purchasing manager." The separate organizational chart also indicates the Beneficiary's direct supervision of two positions: "administrative manager;" and purchasing manager. But the business plan's organizational chart shows that he directly supervised only one position: administrative manager. These discrepancies cast doubt on the company's true organizational structure at the time of the petition's filing. *See Love Korean Church*, 549 F.3d at 754 (requiring a petitioner to resolve inconsistencies); *Matter of Ho*, 19 I&N Dec. at 591 (same).

Further, the Petitioner's evidence does not demonstrate the abilities of the Beneficiary's proposed subordinates to relieve him from having to primarily perform non-executive tasks. For example, the separate organizational chart states that an administrative assistant: sorted and distributed correspondence; entered data and scanned documents; scheduled and coordinated meetings; answered customers' calls; and maintained office supplies. As previously indicated, however, the company's remaining evidence does not demonstrate its employment of an administrative assistant at the time of the petition's filing. Thus, the record does not indicate who performed the administrative assistant's non-executive duties and relieved the Beneficiary from having to primarily perform them. *See Brazil Quality Stones, Inc. v. Chertoff*, 531 F.3d 1063, 1070 (9th Cir. 2008) (in the context of an L-1 nonimmigrant visa petition, affirming our finding that a petitioner "has not yet reached the level of organizational sophistication in which [a beneficiary] could devote his primary attention to managerial duties as opposed to operational ones").[1]

On appeal, the Petitioner contends that USCIS disregarded the amount of time the Beneficiary devoted to executive duties and the company's operation of a viable business since 2014, including during the COVID-19 pandemic.

The record, however, indicates that the Director considered the Beneficiary's duties and the claimed time he devoted to them. But, with insufficient evidence of who performed operational duties at the company, the record indicates that the Director properly found the Beneficiary's claimed duties and devoted time unconvincing. Also, the company's continuous business operations since 2014 show that it has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3)(i)(D). But the continuous operations do not establish the claimed executive nature of the Beneficiary's job.

The Petitioner also contends that USCIS disregarded the nature of the Beneficiary's U.S. role as a "functional manager." The company argues that a functional manager "does not require a large number of employees." Citing a 1989 decision of ours, the Petitioner states: "A sole employee can still be considered a Functional Manager if the business is complex or the employee directs contractors." *See Matter of Irish Dairy Bd., Inc.*, A028845421 (AAO Nov. 16, 1989).

The Petitioner compares the Beneficiary's U.S. role to that of the executive in *Irish Dairy Board*. *Irish Dairy Board*, however, is a non-precedent decision. We therefore need not follow it here. *See* 8 C.F.R. § 103.10(b) (requiring USCIS, in all proceedings involving the same issues, to follow precedent decisions).

[1] When determining managerial or executive capacity, USCIS may not solely consider a petitioner's number of employees. Section 101(a)(44)(C) of the Act. Here, besides the Petitioner's number of employees, we have considered the company's organizational structure and the job duties of the Beneficiary's subordinates.

Also, *Irish Dairy Board*'s facts distinguish it from this matter. In *Irish Dairy Board*, we held that a company's sole employee may qualify as an executive for L-1 nonimmigrant visa purposes if their primary function is to plan, organize, direct, and control their organization's major functions through contractors. We recognize that, like a Form I-140 petition for a multinational executive, an L-1 petition for an executive must show that their proposed U.S. work meets the definition of "executive capacity." *See* C.F.R. § 214.2(l)(1)(i). But, unlike in *Irish Dairy Board*, the Petitioner demonstrated that other employees worked with the Beneficiary. Thus, the company must establish that the employees or other non-employees relieved the Beneficiary from having to perform non-executive duties. *See* 6 *USCIS Policy Manual* F.(4)(C)(3). Unlike in *Irish Dairy Board*, the Beneficiary has not explained and documented who performed operational tasks for the Petitioner.

Also, the Petitioner's use of the term "*functional* manager" (emphasis added) suggests that the company asserts the Beneficiary's role as a "*function* manager." (emphasis added). *See* section 101(a)(44)(A)(ii) of the Act (stating that the term "managerial capacity" may include management of "an essential function"). To the extent the Petitioner contends that the Beneficiary is a function manager, the company does not persuade us for multiple reasons.

First, the function manager claim improperly changes the basis of the company's petition. A petition for a multinational manager or executive must demonstrate that a beneficiary would work in the United States "in a capacity that is managerial or executive." Section 203(b)(1)(C) of the Act. Before the Director, the Petitioner consistently stated that it would employ the Beneficiary in solely an executive capacity. By asserting the Beneficiary's U.S. role as a function manager on appeal, however, the company now indicates that it would employ him in a managerial capacity. *See* section 101(a)(44)(A)(ii) of the Act. "[A] petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements." *Matter of Izummi*, 22 I&N Dec. 169, 175 (AAO 1998). Thus, we decline to consider the Petitioner's function manager argument.

Second, even if we could consider the Petitioner's argument, the record would not establish the Beneficiary as a function manager. To establish a proposed function manager position, a petitioner must demonstrate that:

- the function is a clearly defined activity;
- the function is "essential," i.e., core to the organization;
- the beneficiary will primarily manage, as opposed to perform, the function;
- the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and
- the beneficiary will exercise discretion over the function's day-to-day operations.

Matter of G- Inc., Adopted Decision 2017-05, *4 (AAO Nov. 8. 2017).

The Petitioner has not identified what function(s) the Beneficiary would manage. Thus, the company would neither have demonstrated – nor even asserted – that the function is a clearly defined activity and essential to the organization. *See Matter of G-*, Adopted Decision 2017-05 at *4. Also, the company would not have established the Beneficiary's primary management of the function, as opposed to his primary performance of it. *Id.*

For the foregoing reasons, the Petitioner has not demonstrated its proposed U.S. employment of the Beneficiary in the claimed executive capacity. We will therefore affirm the petition's denial.

B. Qualifying Relationship

Although unaddressed by the Director, the Petitioner also has not demonstrated its qualifying relationship with the Beneficiary's foreign employer. As previously indicated, a petitioner for a multinational manager or executive must show that it is the same entity as, or a subsidiary or affiliate of the beneficiary's foreign employer. *See* section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(B).

The Petitioner stated that the Beneficiary's foreign employer in India owns all of the Petitioner's stock shares, making the U.S. corporation the foreign entity's subsidiary. *See* 8 C.F.R. § 204.5(j)(2) (defining the term "subsidiary"). Article VI of the Petitioner's by-laws states that "[t]he shares of the Corporation shall be represented by certificates." The Petitioner submitted a copy of the purported stock certificate it issued to the Indian entity. But, contrary to the law of the Petitioner's home state, the certificate does not state "[t]he number and class of shares." *See* Wash. Rev. Code § 23B.06.250(2)(c). This discrepancy casts doubt on the stock certificate's validity and authenticity. Also, the Petitioner's federal income tax returns for 2017, 2020, and 2021 identify the Beneficiary – not his foreign employer – as the Petitioner's sole owner. *See Love Korean Church*, 549 F.3d at 754; *Matter of Ho*, 19 I&N Dec. at 591 (stating that doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the petition).

The Director did not notify the Petitioner of these evidentiary inconsistencies. Thus, in any future filings in this matter, the company must submit additional evidence of the claimed qualifying relationship between it and the Beneficiary's foreign employer, or otherwise explain the evidentiary inconsistencies.

III. CONCLUSION

The Petitioner has not demonstrated its proposed employment of the Beneficiary in the claimed executive capacity.

ORDER: The appeal is dismissed.