



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

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

In Re: 34629809

Date: NOV. 21, 2024

Appeal of California Service Center Decision

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

The Petitioner, a describing itself as a “creative marketing agency,” seeks to employ the Beneficiary as its 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 in the United States. The matter is now before us on appeal under 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. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary’s application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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.*

## II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue we will analyze is whether the Petitioner established that it would employ the Beneficiary 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(1)(3)(ii).

#### A. Duties

To be eligible 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 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 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). 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 indicated it is a “creative marketing agency” specializing in “marketing campaigns, content development, events, films, interior design, communications, digital, and training execution for a wide array of customers.” The Petitioner submitted the following duty description for the Beneficiary as its chief executive officer:

- Spearhead the development of new business and contracts with key customers [30%]
  - Meet with executives of existing accounts to ensure continuation of business relationship;
  - Attend conferences to generate new business contracts;
  - Meet with potential investors to gain necessary capital.
- Formulate company policies and strategy within the guidelines set up by board of directors [30%]
  - Conduct all-hand staff meetings to delegate duties, check status, discuss expectations, and provide guidance on respective departmental performances;
  - Represent company at regular board meetings to discuss and advise on personnel issues, business development and company financials;

- Present company initiatives to the board.
- Oversee key performance metrics, operations, and business plan [25%]
  - Oversee the implementation of marketing requirements;
  - Allocate duties among company's departments;
  - Allocate budget across departments.
- Conduct hirings, terminations, and performance evaluations of direct reports [15%]

The Petitioner submitted a duty description and other supporting documentation reflecting his wide involvement in non-qualifying tasks related to the company's provision of services to customers. For instance, the duty description states the Beneficiary would be responsible for developing new business with customers and implementing marketing. Further, the Beneficiary's primary focus on developing new customers and providing professional services to them is reflected in documentation provided on the record, much of it dated near to the date the petition was filed in May 2024.

For example, the Petitioner submitted emails showing him coordinating with a potential client regarding arranging an event planner for an investor conference in April 2024 and another from March 2024 reflecting him discussing potential work on production support at another marketing event in New York City. Likewise, other submitted emails from December 2023 show the Beneficiary responding to a request from a client related to the Petitioner's potential provision of a "custom booth" for another marketing conference, a client sending a purchase order and a statement of work to the Beneficiary and his asserted subordinate manager, and the Beneficiary being asked to revise a statement of work. Beneficiary emails from March 2024 show him discussing client requirements for a project and stating they would "make this happen with style and success." In fact, the Beneficiary stated in an email from January 2024 that he had moved to the United States "to support [his subordinate Managing Director] as we continue to scale our US operations and capabilities." Meanwhile, an email from February 2024 reflects the Beneficiary discussing a meeting with a potential customer and inquiring as to how else the Petitioner could support this customer, including a proposed "content generation workshop." The Petitioner also provided an invoice showing the Beneficiary purchasing a pass to an investor relations and marketing communications forum in April 2024. As such, the Beneficiary's duty description and provided supporting documentation suggest his substantial involvement in performing a wide array of non-qualifying operational tasks related to the company's provision of services, or at the very least, his performance of ordinary operational activities alongside his colleagues just prior to the date the petition was filed.

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* sections 101(a)(44)(B) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties were executive-level functions when the petition was filed and what proportion were non-qualifying operational tasks. The Petitioner submitted a duty description and supporting documentation including tasks related to sales and the provision of services to clients, but it did not sufficiently quantify the time he spent on these duties as compared to qualifying executive-level duties. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of an executive as of the date the petition was filed. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In contrast, the Petitioner did not sufficiently articulate or document what executive-level tasks he was performing when the petition was filed. The Petitioner did not detail or document the capital he generated, policies and strategies he formulated, company initiatives he presented to the board of directors, marketing plans he put in place, or budgets he set. This lack of evidence leaves substantial question as to whether the Beneficiary would primarily perform qualifying executive-level duties when the petition was filed. Specifics are clearly an important indication of whether a beneficiary's duties are 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). The Petitioner must resolve inconsistencies and ambiguities 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).

Even though the Beneficiary holds a senior position within the organization, the fact that he will manage or direct the 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. Operations and Staffing

Pursuant to section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

As discussed, the Petitioner asserted that the Beneficiary would have been employed in an executive capacity when the petition was filed. 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 Petitioner indicated in the Form I-129, Petition for a Nonimmigrant Worker, that it had four employees. The Petitioner provided an organizational chart reflecting that he would oversee a managing director, a vice president- head of production, and a head of finance and operations. The

chart further showed that the managing director would supervise a senior event manager while the vice president would oversee a production coordinator, an executive producer, and an event manager.

The Petitioner's statements and the supporting evidence leave substantial uncertainty as to whether it was sufficiently operational to support him in a qualifying executive capacity when the petition was filed in May 2024. On appeal, the Petitioner acknowledges that it only employed the Beneficiary and his three claimed subordinate managers when the petition was filed. This leaves question as to who would perform the non-qualifying operational aspects of the business when the petition was filed and whether the claimed managers subordinate to the Beneficiary were acting in their asserted management roles. The Petitioner submitted substantial documentary evidence reflecting him and his subordinate managing director performing a wide array of operational duties near to the date the petition was filed, such as communicating with clients on potential events, arranging booths for conferences, working on statements of work for clients, among other non-qualifying operational tasks. As such, the provided documentation suggests that the Beneficiary and his managing director were more likely than not operating the business rather than delegating these non-qualifying tasks to subordinates, such as production coordinators and event managers, who were not employed when the petition was filed. As discussed, the Beneficiary stated in an email that he arrived in the United States to support his managing director in the provision of services until the Petitioner scaled up its operations. It is also noteworthy that the Petitioner provided little evidence to substantiate its finances and revenue as of the date the petition was filed.

In sum, the submitted evidence and statements of the Petitioner reflect that it had limited operations as of the time the petition was filed leaving uncertainty as to whether it could have supported the Beneficiary in an executive capacity. For example, the Petitioner stated it had not hired subordinate employees to sell and provide services to clients when the petition was filed. There is also no supporting evidence reflecting the Beneficiary's delegation of duties to his subordinates, and as discussed, little documentation to support his performance of qualifying executive-level duties. Again, the Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582, 591-92. Therefore, it is questionable given the Petitioner's apparent operations when the petition was filed, the submitted supporting documentation, and the nature of the business, that the Beneficiary would have acted in an elevated executive-level capacity where he would primarily focus on broad goals and policies rather than day-to-day operations.

For the foregoing reasons, the Petitioner has not sufficiently established that the Beneficiary would be employed in an executive capacity.

**ORDER:** The appeal is dismissed.