U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16063063

Date: APR. 08, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, describing itself as an automobile trading business, seeks to temporarily employ the Beneficiary as the managing director of its new office[1] in the United States 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 Director of the Texas Service Center denied the petition concluding the record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity. On appeal, the Petitioner asserts that it submitted the evidence requested by the Director in his request for evidence (RFE) and contends this demonstrates that the Beneficiary's was employed in a qualifying managerial role abroad.

Upon *de novo* review, we will dismiss the appeal. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, 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 their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. MANAGERIAL CAPACITY WITH THE FOREIGN EMPLOYER

The only issue to analyze is whether the Petitioner established that the Beneficiary was employed abroad in a managerial or executive capacity. The Petitioner does not claim that the Beneficiary was employed abroad in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary was employed in a managerial capacity.

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

A. Duties

To be eligible for the L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act in their position abroad. If the record does not establish that the foreign position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the foreign position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial duties abroad, as opposed to ordinary operational activities alongside the foreign employer's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's foreign duties were primarily managerial, we consider the Petitioner's description of the foreign job duties, the foreign employer's organizational structure, the duties of a beneficiary's subordinate employees abroad, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business abroad.

The Petitioner submitted supporting evidence indicating that the foreign employer was engaged in the sale and servicing of automobiles. The Petitioner stated that the Beneficiary had been employed as a sales manager for the foreign employer since 2006, indicating that he was responsible for "key accounts such as dealing with all clients and employees" and choosing "the appropriate accounts or suppliers." The Petitioner also explained that the Beneficiary had the "sole discretion to end any relationship with any supplier or customer" and that he was responsible for "creating and establishing safety programs," as well as "effective management programs to increase employee productivity." The Petitioner also provided the following duty description for the Beneficiary role abroad:

Managerial Duties 40%

- Managing the overall operations and resources of [the foreign employer];
- Full discretion in hiring and firing of staff;
- Managing [foreign employer] expenditures within the authorized annual budget of the company;
- Ensure effective internal controls and management information systems are in place;
- Ensure that [the foreign employer] has appropriate systems are in place;
- Ensure that [the foreign employer] has appropriate systems to enable it to conduct its activities both lawfully and ethically;
- Ensure that [the foreign employer] maintains high standards of corporate citizenship and social responsibility wherever it does business;
- Act as a liaison between management and the board;
- Managing all material undertakings and activities of [the foreign employer] and all material external factors affecting [the foreign employer] and to ensure that processes and systems are in place to ensure that the management of the company [is] adequately informed;
- Ensure that the directors are properly informed and that sufficient information is provided to the board to enable the directors to form appropriate judgements;
- Request that special meetings of the board be called when appropriate;
- Sit on committees of the board where appropriate as determined by the board; and abide by specific internally established control systems and authorities, to lead by personal example and encourage all employees to conduct their activities in accordance with all applicable laws and [the foreign employer] Repairs Policies, including environmental, safety and health policies.

Operations 20%

- Monitoring admission and sales management's operations and maintain necessary comments levels;
- Review weekly reports, taking appropriate action as needed;
- Manages workflow to assist staff in balancing priorities, providing backup support if needed and otherwise ensuring that all work is accomplished with an appropriate sense of urgency;
- Helps plan/maintain facility layout to promote company's services.

Customers 20%

- Work with key customers, and key suppliers to solve specific challenges and leverage growth opportunities;
- Stay aware of competing markets, development, building, etc. in the community and surrounding areas;
- Makes sure staff maintain contract and friendly relationships with customers and are helping to build a favorable image for [the foreign employer];
- Resolve high level of problems and complaints as they arise.

The Petitioner did not submit a sufficiently detailed duty description describing the Beneficiary's day-to-day managerial level duties abroad to credibly establish that he devoted his time primarily to qualifying tasks. The Beneficiary's duty description includes several generic duties that could apply

to any manager acting in any business or industry and they provide little insight into the actual nature of his role abroad. The Petitioner provided insufficient examples and no supporting documentation to demonstrate the Beneficiary's performance of managerial duties abroad, such as the "operations and resources" he managed, the "internal controls and management information systems" he oversaw, the "material undertakings" he supervised, the "processes and systems he put in place, or the "environmental, safety, and health policies" he established. Likewise, the Petitioner did not adequately detail or document the "admission and sales management operations" the Beneficiary monitored, the services he promoted, the "company policies/procedures" he implemented, the training he oversaw, the key customer and suppliers he worked with, or the "high level problems and complaints" he resolved. In fact, the Beneficiary's foreign duty description includes little if any discussion of the foreign employer's specific business.

Although we do not expect the Petitioner to detail and document every one of the Beneficiary's foreign tasks, it is reasonable to expect the record to include sufficient examples and supporting documentation to substantiate his primary performance of managerial duties abroad. This lack of specificity and supporting evidence is particularly noteworthy since the Petitioner indicates that the Beneficiary has been acting in his managerial role abroad since 2006. Similarly, there is no supporting evidence reflecting the Beneficiary's delegation of tasks to his claimed subordinates abroad or him exercising personnel authority over them. Specifics are clearly an important indication of whether a beneficiary's duties are primarily 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).

In fact, to the extent the Petitioner provides specifics and documentation related to the Beneficiary's activities abroad this appears to reflect his performance of non-qualifying operational level duties. For instance, the Petitioner stated in its support letters that the Beneficiary was responsible for "dealing with *all* [emphasis added] clients and employees" of the foreign employer and his submitted resume indicated that he was tasked with ensuring that "*all* [emphasis added] Books of Accounts, Invoices and payroll are up to date." In addition, the Beneficiary's resume also reflected that he was responsible for ensuring "that *all* [emphasis added] parts and supplies have been ordered" and directing "routine and emergency maintenance." The Beneficiary's focus on non-qualifying operational level matters is further demonstrated in several foreign invoices from throughout 2019 showing him as the contact for billing when purchasing automobiles.[2] The Petitioner also emphasized this responsibility on the part of the Beneficiary to purchase automobiles in provided support letters. In other words, the record includes more evidence reflecting the Beneficiary's involvement in and performance of non-qualifying operational tasks rather than his delegation of these duties to his claimed foreign subordinates.

Whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's foreign duties were managerial functions and what proportion were non-qualifying. The Petitioner asserts that the Beneficiary performed managerial duties abroad and submits supporting evidence reflecting his direct engagement in administrative or operational tasks but does not quantify the time he spends on these

[2] The petition was filed on January 17, 2020.

different duties. For this reason, we cannot determine whether the Beneficiary was primarily performing the duties of a manager abroad. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary holds a senior position within the foreign employer, the fact that he manages or directs a portion of the foreign business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a foreign position be "primarily" managerial in nature. *Id.* The Beneficiary may exercise discretion over the foreign employer's day-to-day operations and possess a requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties abroad are primarily managerial in nature.

B. Foreign Employer Staffing

The Petitioner submitted a foreign organizational chart reflecting that the Beneficiary reported to a chief executive officer and indicating that he supervised two assistant managers. One assistant manager was shown to oversee an office assistant, while the chart reflected that the other assistant manager supervised a sales supervisor and a parts supervisor. Lastly, the parts supervisor was shown to oversee "more employees."

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.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*). Since the Petitioner provided a foreign employer organizational chart indicating that the Beneficiary oversaw subordinate supervisors and it does not explicitly contend that he qualifies as a function manager abroad, we will only consider whether he qualifies as a personnel manager.

The Petitioner has not submitted sufficient evidence to establish the Beneficiary was employed as a personnel manager abroad overseeing subordinate supervisors. First, the Petitioner provided a duty description for one of the Beneficiary's assistant managers indicating his title was "accounts representative," and reflecting his performance of accounting and clerical tasks with no apparent supervisory responsibilities. Meanwhile, the claimed sales supervisor was listed generically only as a "supervisor" in the accompanying foreign subordinate duty descriptions and his tasks included providing estimates, running the garage, ordering parts, and maintaining maintenance records, again with no apparent supervisory responsibilities. Further, it is also noteworthy that the Beneficiary's asserted foreign title is sales manager, very similar to his claimed subordinate "sales supervisor." In addition, the duties of the Beneficiary's other claimed subordinate supervisor are generic, noting them assisting in "sales management operation," "ensuring [that] all the work is completed" and that "sale targets are reached," as well as focusing on the "promotion of the company." However, these vague

duties are not reflective of an employee with supervisory responsibilities and again appear to overlap with the Beneficiary's asserted role as the "sales manager."

Further, there is no supporting documentation to substantiate the Beneficiary supervising and exercising personnel authority over subordinate supervisors or managers abroad, nor evidence of him delegating tasks to these foreign subordinates. The Petitioner also did not detail who performs the operational level tasks of the company, such as selling its automobiles or performing maintenance and repairs, as it only vaguely noted that it employed "more employees" underneath the Beneficiary's subordinates. This lack of detail and the apparent operational level tasks of the Beneficiary and his claimed subordinate supervisors leaves uncertainty as to their claimed roles. Lastly, the Petitioner provides no credible supporting evidence to corroborate the employment and payment of any of the asserted members of the foreign employer's organizational chart. For these reasons, the Petitioner has not credibly established that the Beneficiary was employed abroad as a personnel manager overseeing subordinate supervisors. The Petitioner must resolve discrepancies 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).

In the alternative, the Petitioner did not demonstrate that the Beneficiary qualifies as a personnel manager based on his supervision of professional subordinates abroad. To determine whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." Therefore, we must focus on the level of education required by the position, rather than the degree held by the subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity.

The Petitioner only vaguely indicated that the Beneficiary's immediate subordinates abroad held bachelor's degrees. The Petitioner did not explain in detail why the duties of the Beneficiary's subordinates require them to hold bachelor's degrees. As we discussed, the Petitioner provided generic duty descriptions for the Beneficiary's claimed supervisory, and other, subordinates that do not sufficiently corroborate their roles, nor do they demonstrate that these positions would require bachelor's degrees. The Petitioner also does not submit supporting evidence to substantiate that the Beneficiary's foreign subordinates, or any of the other members of its organizational chart, hold bachelor's degrees. In addition, the Petitioner provided no supporting documentation to support the Beneficiary's personnel authority over, or his delegation of duties to, professional subordinates abroad. As such, the Petitioner has not established that the Beneficiary acts as a personnel manager abroad based on his management of subordinate professionals.

For the foregoing reasons, the Petitioner has not established that the Beneficiary was employed abroad in a managerial capacity abroad.

ORDER: The appeal is dismissed.