U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30668536

Date: APR. 10, 2024

Appeal of California Service Center Decision

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

The Petitioner is a clothing manufacturing and retail business that filed this petition as a new office[1] seeking to employ the Beneficiary temporarily as "Director, Sales, Marketing, and Business Development" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, concluding that the record did not establish that: 1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; 2) the Beneficiary had been employed abroad in a managerial or executive capacity for at least one year in the three years prior to filing the instant petition; and 3) the Petitioner had secured sufficient physical premises to house its operation. In addition, despite the latter conclusion, which concerns a requirement that applies only to new office filings, the Director determined that the Petitioner does not qualify for the new office designation because it had engaged in business activity that resulted in $888,442 in gross receipts or sales in 2022, the year that preceded this petition's filing. The matter is now before us on appeal pursuant to 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 because the Petitioner did not establish that the Beneficiary had been employed abroad in a managerial capacity for at least one year in the three years prior to filing the instant petition.[2] Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining grounds for denial. *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");

[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.

[2] The Petitioner's claim rests solely on the definition of managerial capacity. The Petitioner did not claim that the Beneficiary was employed in an executive capacity.

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).

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge 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)(1). The beneficiary must also be seeking 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. 8 C.F.R. § 214.2(l)(3)(ii).

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

> (i) manages the organization, or a department, subdivision, function, or component of the organization;
> (ii) 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;
> (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
> (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. 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.

In addition, regarding a new office petition, 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 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. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The issue to be addressed is whether the Petitioner provided sufficient evidence establishing that the Beneficiary's position abroad was in a managerial capacity. Considerations in addressing this issue are two-fold, as we must first identify the Beneficiary's time spent abroad working for the foreign

employer. Only then can we turn to the issue of whether the Beneficiary's time during that identified period was spent in a managerial capacity.

First, we agree with the Director's determination regarding the period of employment abroad. Despite the Beneficiary's total period of employment with the foreign entity, any time spent in the United States during that claimed period of foreign employment, from the time of his arrival to the United States in August 2021, does not count in determining whether the Beneficiary "has been employed abroad for one continuous year" within the three years that preceded petition's filing date. 8 C.F.R. § 214.2(l)(1). USCIS has clarified that "[t]he one-year foreign employment requirement is only satisfied by the time a beneficiary spends physically outside the United States. . . ." USCIS Policy Memorandum, PM-602-0167, *Satisfying the L-1 1-Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM)* (Nov. 15, 2018).

In this matter, the Petitioner has claimed and provided evidence which shows that the Beneficiary commenced working for the foreign entity in July 2020, and continued to work abroad until he departed, entering the United States on a B-2 nonimmigrant visa on August 23, 2021, and remaining here through June 2023, when this petition was filed. Therefore, because the Beneficiary was not "physically outside the United States" for the 22-month period from August 2021 until June 2023, his employment during that period, even if deemed as part of his foreign job assignment, cannot be considered in determining whether the Beneficiary had at least one year of employment abroad in a managerial capacity.

We disagree, however, with the Director's determination that the prolonged stay interrupted the one year of continuous foreign employment the Beneficiary had accumulated abroad, prior to his August 2021 departure. *See id.* Regarding the issue of continuity and interruptive events, USCIS has stated the following: " if a beneficiary takes a break in employment with, or stops working for, the qualifying organization as a principal beneficiary for a period of more than two years during the three years preceding the petition filing, then he or she cannot meet the one-year foreign employment requirement and is disqualified for L-1 classification."[3] *Id.* at 5. Thus, while we agree that the Beneficiary's period of stay in the United States as a B-2 visitor for pleasure "does not appear to be brief," the Beneficiary accumulated approximately 13 months of continuous employment abroad prior to his departure, and he did not remain in the United States for more than two years prior to the date this petition was filed. As such, the Beneficiary is not precluded from meeting the foreign employment requirement solely on the basis of his 22-month U.S. stay following a continuous period of foreign employment for approximately 13 months.

Accordingly, pursuant to relevant USCIS policy, we will limit our discussion of the Beneficiary's foreign employment to the time he spent "physically outside the United States," from the time he was hired in July 2020, until his departure to the United States in August 2021.

To be eligible for nonimmigrant visa classification as an intracompany transferee in a managerial capacity, the Petitioner must show that the Beneficiary performed the high-level responsibilities set

[3] A qualifying organization is a United States or foreign firm, corporation, or other legal entity that: (1) meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii); and (2) is or will be doing business...as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and (3) otherwise meets the requirements of INA 101(a)(15)(L). 8 CFR 214.2(l)(ii)G).

forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the position in question – in this case 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 position in question meets all elements set forth in the statutory definition, the Petitioner must then prove that the Beneficiary *primarily* performed managerial duties, as opposed to ordinary operational activities alongside other employees within the foreign entity. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).[4] Here, the Petitioner did not establish that the Beneficiary met all four of the statutory criteria.

The record shows that the Beneficiary started working for the foreign entity in July 2020. The Petitioner did not initially specify whether the Beneficiary's role was as a personnel or a function manager,[5] but now clarifies on appeal that indeed the Beneficiary's position abroad was in the role of a personnel manager. We further note that several job duties attributed to the Beneficiary's foreign position as Director of Sales, Marketing and Business Development also corroborate the claim that the Beneficiary's intended role was that of a personnel manager. For instance, the Petitioner stated that the Beneficiary was responsible for "reshuffling and delegating tasks to his subordinates," "soliciting updates and reports from his direct subordinates," and using his "people skills, talent development, and project expertise" to assemble "effective project teams together and assign the most suitable team members tasks that will play to their strengths and lead to an optimal outcome." The Petitioner also stated that the Beneficiary "directs his team to strengthen client engagement and relations by designing a monthly event report." Accordingly, we will discuss whether the Petitioner satisfied the statutory criteria that applies to the Beneficiary's claimed role of personnel manager.

The Petitioner's supporting evidence includes the foreign entity's organizational chart which shows that the Beneficiary was subordinate to a general manager and an assistant general manager and that he had three subordinate assistants – a market research and demand planning assistant, an online business development assistant, and a "CEM and CRM assistant." Although the organizational chart does not identify the Beneficiary's subordinates by name, the record contains three interview forms naming the three individuals whom the Beneficiary interviewed and who were eventually hired for the listed positions; the record also contains corresponding state-issued documents listing each individual's employment start date. The documentation shows that [redacted] and [redacted] assumed their respective positions on June 15, August 2, and October 20, 2021. This information establishes that not only were all three subordinate positions vacant at the start of the Beneficiary's period of employment abroad, but that, in the absence of any contrary evidence, they

[4] In determining whether a given beneficiary's duties are primarily managerial, we consider that beneficiary's job duties, the employer'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.

[5] 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. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

remained vacant until the first position was filled in June 2021, approximately two months prior to the Beneficiary's departure to the United States, while the second position was filled in August 2021, just weeks prior to his departure, and the third position was filled when the Beneficiary was already in the United States.

On appeal, the Petitioner discusses previously submitted evidence, including the foreign entity's organizational chart and the Beneficiary's foreign job duties; the Petitioner also points out that the Beneficiary interviewed and hired his subordinates and offers documents to establish that their respective positions required a bachelor's degree, thus indicating that the Beneficiary had supervisory control over subordinates who were professional employees. However, despite any management job duties the Beneficiary may have been assigned in his position abroad, the record shows that the Beneficiary had no subordinate employees to supervise or control for 11 out of 13 months that he spent working abroad. To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge for one continuous year. Section 101(a)(44)(A)(ii) of the Act requires the Petitioner to establish that the Beneficiary supervised or controlled the work of other supervisory, professional, or managerial employees. Given the absence of any subordinates during most of the Beneficiary's tenure overseas while working for the foreign entity, the Beneficiary cannot be said to have been supervising or controlling the work of supervisory, professional, or managerial employees as the statutory definition requires. Section 101(a)(44)(A)(ii) of the Act.

III. CONCLUSION

In sum, the Petitioner did not establish that the Beneficiary's position abroad was in a managerial capacity as defined in the statute governing this classification. Therefore, this petition cannot be approved.

ORDER: The appeal is dismissed.