U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30663172

Date: APR. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of safety video learning solutions and content, seeks to employ the Beneficiary temporarily as its "National Sales Manager" 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 Texas Service Center denied the petition concluding that the Petitioner did not establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial capacity.[1] 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 has not established that the Beneficiary was employed abroad in a managerial capacity. 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 Beneficiary's proposed U.S. employment. *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"); *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

[1] The Petitioner's claim rests solely on the definition of managerial capacity. The Petitioner did not claim that the Beneficiary was employed abroad or that he would be employed in the United States in an executive capacity.

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.

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 with the Canadian affiliate was in a managerial capacity.[2]

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 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 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).[3]

[2] The record indicates that the Petitioner and [redacted] the Beneficiary's employer in Canada, are affiliates by virtue of both entities being majority owned by [redacted] a common parent entity. See 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*). Although the record shows that the Beneficiary was first employed by the parent entity in Australia, he was later transferred to work for the Canadia affiliate where he held various positions, the latest of which – that of sales manager – is the basis for the Petitioner's claim that the Beneficiary met the foreign employment requirement.

[3] 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.

The record in this matter shows that the Beneficiary had been employed as a sales manager at the Petitioner's Canadian affiliate where he was responsible for leading and training a team of sales representatives "on the proper and consistent use" of the affiliate group's proprietary platform and "strategic sales processes and procedures." The Beneficiary's job duties included setting the team's metrics and goals and evaluating individual performances, managing client accounts and controlling financial risks, helping with recruitment of sales representatives, and improving the company's internal "strategic sales processes and procedures."

The Petitioner did not specifically discuss the foreign entity's reporting structure. Accordingly, the Director addressed this deficiency in a request for evidence (RFE), where the Petitioner was asked to provide an organizational chart or diagram illustrating the Canadian entity's organizational structure and staffing levels and to list the employees subject to the Beneficiary's management, including the employees' respective names, job titles and duties, and levels of education. The Petitioner was further asked to provide evidence establishing that the Beneficiary's subordinates were either assigned management or supervisory duties, or alternatively that the subordinate positions required bachelor's degrees. The RFE explained that in evaluating whether a beneficiary managed professional employees, we look to the level of education required of the subordinate position(s) rather than the degree actually held by the subordinate(s).

In response, the Petitioner provided an organizational chart listing the Canadian affiliate's employees in descending order, which appears to correspond to their respective placements within the company's hierarchy. The Canadian entity's president/general manager (GM) is listed at the top of the hierarchy, followed by the Beneficiary in his position as sales manager. The position below the Beneficiary is listed as "administration" with the employee's initials appearing next to the position title. The remaining tier is comprised of a ten-person sales team whose individual initials were also provided.

In a separate statement, the Canadian entity's GM listed the Beneficiary's job duties, with primary focus on managing and expanding the sales team and working "intensely" with members of that team "to drive the sales forward." Thus, while the organizational chart does not specifically describe a reporting structure, the Beneficiary's list of job duties indicates that his supervisory responsibilities extended to the sales staff but not to the "administration" position. Because the Beneficiary's subordinate sales representatives were depicted as occupying the bottom tier of the hierarchy, there were not employees for them to manage or supervise, thus indicating that the Beneficiary did not supervise or control the work of supervisory or managerial employees; nor does the record show that the Beneficiary supervised or controlled the work of professional employees, as the Petitioner did not comply with the RFE request for a listing of position requirements for the Beneficiary's subordinates. *See* section 101(a)(44)(A)(ii) of the Act.

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.* A beneficiary who directly supervises other employees 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*).

In the present matter, the Petitioner has not established that the Beneficiary supervised or controlled the work of other supervisory, professional, or managerial employees, as required by section 101(a)(44)(A)(ii) of the Act. As discussed earlier, the RFE notified the Petitioner of the evidentiary deficiency concerning this requirement, but the Petitioner did not respond with the requested evidence. We note that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Accordingly, the Director denied the petition finding that the record lacks evidence showing that the Beneficiary supervised and controlled the work of supervisory, professional, or managerial employees.

On appeal, the Petitioner explains that it and its related entities operate with similarly sized staff and within the structure of a similar hierarchy, which includes a GM, a sales manager, sales representatives, and administrative personnel. The Petitioner goes on to summarize the supporting evidence, asserting that the GM's "testimonial" letter describes the Beneficiary's role and establishes that his "level of responsibility in the organization [is] above merely supervising other employees." The Petitioner also lists the Beneficiary's subordinate and asserts that their "testimonial" letters further demonstrate that the Beneficiary's position with the Canadian affiliate was managerial.

We disagree that the written testimonies of the Beneficiary's superior and subordinates are sufficient to establish that the Beneficiary's position with the Canadian affiliate meets the four-prong statutory definition of managerial capacity. While the Petitioner has submitted sufficient evidence of the Beneficiary's supervisory authority over the sales team, satisfying the second prong of the statutory definition of managerial capacity requires the Petitioner to establish that the employees over whom the Beneficiary had supervisory control were supervisory, professional, or managerial employees. *See* section 101(a)(44)(A)(ii) of the Act.

As discussed previously, the record shows that the sales representatives the Beneficiary supervised had no subordinates and thus they cannot be deemed supervisory or managerial employees. The record also lacks evidence showing that the positions comprising the sales team were subject to job requirements that were consistent with those of professional employees. *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"). In fact, the Petitioner does not discuss the job requirements of the Beneficiary's subordinates, focusing instead on his supervisory duties and control over the employees he supervised. However, despite the Beneficiary's authority to hire and train employees and instruct them to take certain actions, the record lacks evidence showing that the employee supervision the Beneficiary exercised was over other supervisory, professional, or managerial employees, pursuant to the statutory definition. Section 101(a)(44)(A)(ii) of the Act.

For the reasons discussed above, the Petitioner has not established the Beneficiary was employed abroad in a managerial capacity and on the basis of this conclusion the petition cannot be approved.

ORDER: The appeal is dismissed.