U.S. Citizenship and Immigration Services

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

In Re: 15840645

DATE: APR. 15, 2021

Appeal of California Service Center Decision

Form I-129, Nonimmigrant Petition for an Intracompany Transferee

The Petitioner, a digital and information technology services business, seeks to continue the Beneficiary's temporary employment as a technical director 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 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 on the ground that the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity[1] under the extended petition, as required in 8 C.F.R. § 214.2(l)(3)(ii). In particular, the Director determined that the Beneficiary would not be employed as a function manager, and that the Beneficiary would not be employed as a personnel manager because the record did not establish his duties would primarily involve managing subordinate personnel as opposed to performing day-to-day operations of the busines.

On appeal the Petitioner asserts that it has established by a preponderance of the evidence that the Beneficiary will be employed in a managerial capacity, both as a function manager and as a personnel manager. Upon *de novo* review, we will sustain the appeal.

As defined in section 101(a)(44)(A) of the Act, the term "managerial capacity" means 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

[1] Though the Director denied on both managerial and executive capacity grounds, the Petitioner does not actually claim that the Beneficiary will be employed in an executive capacity.

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.

Thus, the definition of "managerial capacity" encompasses both personnel managers, who primarily supervise and control the work of other supervisory, professional, or managerial employees, and function managers who primarily manage an essential function within the organization.

The record indicates that the Petitioner's initial L-1A petition on behalf of the Beneficiary was approved in April 2017. The Beneficiary came to the United States as an intracompany transferee in June 2017 to work in the Petitioner's [redacted] Georgia, office in the position of development team lead. In July 2019 the Beneficiary was transferred to the Petitioner's [redacted] office with augmented job duties and the new title of technical director.[2] The instant petition to extend the Beneficiary's stay in L-1A status was filed in February 2020, and denied by the Director on August 11, 2020, for failure to establish the "managerial capacity" of the Beneficiary's prospective employment in the United States.

In its appeal the Petitioner reviews its previously submitted evidence, takes issue with the Director's interpretation thereof, and provides additional explanations regarding the Beneficiary's duties and the nature of his proposed position. In visa petition proceedings the "preponderance of evidence" standard of proof applies. To establish its eligibility for the immigration benefit it seeks the Petitioner must submit sufficiently probative and credible evidence to establish that its claim is "more likely than not" or "probably" true. *See Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). To sustain this appeal, therefore, the Petitioner must establish that its claim that the Beneficiary will be employed in a managerial capacity in the United States is more likely than not to be true based on the evidence provided. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Based on the additional evidence and argument submitted on appeal, the Petitioner has met its burden and established, by a preponderance of evidence, that the Beneficiary will be employed in a managerial capacity in the United States, within the meaning of section 101(a)(44)(A) of the Act.

**ORDER:** The appeal is sustained.

[2] Three earnings statements from early 2020 show that the Beneficiary was receiving gross pay of $7,083.33 on a biweekly basis, which when allocated over the entire year would amount to an annual salary of $184,166.58. In the current L-1A petition and an accompanying letter from its general counsel the Petitioner stated that it intends to pay the Beneficiary at least $170,000 per year plus standard company benefits including health, life, and disability insurance, as well as participation in the company's 401(k) plan.