U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16251658

Date: APR. 16, 2021

Appeal of Texas Service Center Decision

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

The Petitioner seeks to export, distribute, and sell consumer goods and provide logistics services. It intends to temporarily employ the Beneficiary as "Chief Executive Officer" of its new office[1] 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 Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that: (1) it secured sufficient physical premises to house the new office; and (2) the Beneficiary's employment abroad was in a managerial or executive capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner did not establish that the Beneficiary's employment abroad was in a managerial or executive capacity. Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding the remaining issue pertaining to the physical premises requirement. *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. 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

[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.

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.*

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 in this decision is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity.[2]

"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.

Based on the statutory definition of managerial capacity, the Petitioner must first show that the Beneficiary performed certain high-level responsibilities. Section 101(a)(44)(A) of the Act. The Petitioner must also prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the foreign entity's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

The Petitioner's claims will be addressed in the discussion below, which will include consideration of the Beneficiary's job duties along with evidence of the nature of the foreign business, its staffing levels, and its organizational structure.

A. Job Duties

First, we will discuss the duties performed by the Beneficiary in his position with the foreign entity. We note that the actual duties themselves reveal the true nature of the employment. *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 a supporting cover letter, the Petitioner stated that the Beneficiary is the foreign entity's "Executive Director and General Counsel" and that during his employment abroad the Beneficiary led the company's growth, supervised "all aspects of the organization," ensured "efficient and effective

[2] The Petitioner claims that "the [B]eneficiary primarily operated in a managerial capacity" during his employment with the foreign entity. As such, we will limit our discussion to the basis of the Petitioner's claim and we will not discuss whether the Beneficiary's foreign employment fits the definition of executive capacity.

attainment of sales goals," and worked with the board of directors and government officials to obtain notification of product registration and global listings and to enable the foreign entity's distribution of goods imported from the United States.

After reviewing the record, the Director issued a request for evidence (RFE) instructing the Petitioner to address evidentiary deficiencies regarding the Beneficiary's employment abroad. The Petitioner was asked to provide a description of the Beneficiary's job duties and the percentage of time allocated to each listed duty.

In response, the Petitioner provided a letter from the foreign entity's "Managing Director/CEO" stating that the Beneficiary was appointed "Director" in May 2018. The Petitioner did not explain its earlier reference to the Beneficiary as "Executive Director," nor did it establish that "Executive Director" and "Director" are one and the same and involve the same job duties. The CEO's letter also states that prior to May 2018, the Beneficiary was a shareholder and assumed the position of "Company Secretary/General Counsel." However, the Petitioner's initial supporting statement did not include "Company Secretary" as part of the Beneficiary's position title, thus creating another inconsistency concerning the Beneficiary's foreign position. The Petitioner must resolve these inconsistencies 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).

The response letter also lists the following duties as part of the Beneficiary's employment abroad:

- Designing growth and business strategies;
- Managing client relationships and engaging in "creative prospecting and networking" to grow the client base;
- Seeking new business opportunities and developing the business;
- Supporting "management" on matters concerning the board of directors and shareholders, including arranging the "Executive Committee" and board meetings, and "interfacing with statutory and regulatory shareholders";
- Providing "secretarial services" and using "the statutory mandate" to maintain records containing the company's minutes;
- Communicating with "auditors and regulatory examiners" on legal matters and overseeing "legal documentation" related to the company's international expansion effort;
- Ensuring that the company retains "suitable local legal representatives"; and
- Gathering "country requirements for the grant of company status" and protecting the company's "trade and service marks whilst maintaining all statutory registers and records as required by law."

The Petitioner did not assign a percentage of time to the duties and responsibilities listed above, even though the list included several items that are operational in nature and do not readily fit the definition of managerial capacity. For instance, the list indicates that the Beneficiary was directly involved in communicating with clients and engaging in activities to promote and grow the business. However, the Petitioner did not explain how these duties are indicative of managing the organization or a division within the organization. Likewise, tasks such as arranging an "Executive Committee," setting up board meetings, and providing "secretarial services" by maintaining records of the company's meeting minutes, are operational or administrative in nature and do not support the claim that the Beneficiary

was employed in a managerial capacity. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial capacity. *See, e.g.*, section 101(a)(44)(A) of the Act (requiring that one "primarily" perform the enumerated managerial duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). Because the Petitioner did not allocate a percentage of time to these non-managerial job duties as instructed in the RFE, we are unable to gauge how much time the Beneficiary spent performing them and we therefore cannot conclude that the Beneficiary spent his time primarily performing job duties of a managerial nature.

Further, several of the listed job duties are ambiguous and lack detail as to the specific underlying activity the Beneficiary performed. For instance, it is unclear which "legal documents" the Beneficiary reviewed as part of the company's international expansion, nor did the Petitioner elaborate on the specific actions the Beneficiary took to ensure that the company retained "suitable local legal representatives." Further, the Petitioner did not: clarify the nature of the Beneficiary's interactions with the shareholders, which includes the Beneficiary himself; explain what is meant by "statutory and regulatory shareholders"; or specify any actual measures that the Beneficiary took to maintain "all statutory registers and records" and to protect the company's interest with respect to "trade and service marks." Although the Petitioner indicated that the Beneficiary's position and ownership interest allowed him a degree of discretion in performing his job duties, the listed activities used to describe the Beneficiary's foreign position were vague and do not lead to a meaningful understanding of what the Beneficiary was actually doing in the daily course of an import and retail operation that the foreign entity is claimed to have operated. As previously indicated specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or 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. at 1108.

In denying the petition, the Director pointed to deficiencies in the Beneficiary's job description, noting that the duties were brief and generalized, thereby precluding a determination of whether the Beneficiary was employed in a managerial capacity.

On appeal, the Petitioner resubmits the above-referenced letter from the foreign entity's CEO, asserting that the letter establishes the Beneficiary's history of employment with the foreign entity, specifies that the Beneficiary's position was that of "executive director, equity shareholder and Company [S]ecretary/General Counsel," and offers a detailed description of the Beneficiary's duties and functions. Despite the Director's determination that the submitted job description did not include sufficient information about the Beneficiary's job duties, the Petitioner does not elaborate on the prior job description's ambiguities to further our understanding of the duties he performed.

In sum, although the Petitioner maintains that the Beneficiary "primarily operated in a managerial capacity," it does not establish that the primary portion of the Beneficiary's time was spent performing duties of a managerial nature.

B. Staffing

Next, we will address the foreign entity's staffing. When staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, the reasonable needs of the

organization must be considered in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Petitioner's initial submissions did not contain information about the foreign entity's organizational hierarchy or staffing. The Director noted this evidentiary deficiency in the RFE and instructed the Petitioner to provide an organizational chart identifying the Beneficiary and his subordinates and illustrating the foreign entity's organizational structure and staffing levels.

In response, the Petitioner provided an organizational chart depicting a four-tier hierarchy and the positions comprising the foreign entity's staff. The "Board" is depicted at the top of the hierarchy, followed by an "MD/CEO" and "Executive Director/General Counsel" at the second tier, a finance manager, sales manager, and a deputy sales manager at the third tier, and six groups of various supervisory and non-supervisory positions comprising the fourth tier. Two of the groups from the fourth tier – "Sales Team 1 – Mainland" and "Sales Team 2 – [redacted]' – did not list a supervisory position, thereby indicating that these employees were likely subject to oversight by the sales manager or the deputy sales manager, both situated at the third tier. The four remaining groups were comprised of the following: (1) "HR/Administrative Manager" overseeing a business development officer, two HR officers, an "Admin Officer," and two clerks; (2) "Manager – [redacted]' overseeing an accountant, a cashier, and "Sales TM 1" and "Sales TM 2"; (3) "Manager 1004" overseeing an accountant, a clerk, a cashier, and "Sales TM 1" and "Sales TM 2"; and (4) "Corporate Services Head Logistics" overseeing legal officers "1" and "2," a procurement officer, a cleaning supervisor, two cleaners, a chief driver, a senior driver, and three drivers.

The Petitioner also provided a document listing the five employees who were claimed to have reported directly to the Beneficiary's claimed position of "Executive Director/General Counsel." The list of subordinates includes a sales manager, an administrative manager, a business development officer, the head of corporate services, and a senior legal officer. However, the organizational chart described above is not consistent with this reporting structure, which indicates that four of the Beneficiary's five claimed subordinates are situated at the bottom tier of the hierarchy, rather than directly subordinate to the Beneficiary. The Petitioner did it clarify this anomaly regarding its reporting structure. The Petitioner also did not offer insight about the Beneficiary's managerial role, list managerial duties that the Beneficiary performed with respect to his claimed subordinates, or refer to the claimed subordinates in the Beneficiary's job description.

In light of the deficiencies described above, we cannot conclude that either the foreign organization's staffing or the Beneficiary's job duties within that organization adequately demonstrate that the Beneficiary was employed abroad in a managerial capacity.

ORDER: The appeal is dismissed.