U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30927566

Date: APR. 25, 2024

Appeal of California Service Center Decision

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

The Petitioner, which intends to operate a computer consulting business, seeks to temporarily employ the Beneficiary as vice president of its new office 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 California Service Center denied the petition, concluding that the record did not establish that: (1) a qualifying employer continuously employed the Beneficiary outside the United States for at least one year during the three years preceding the filing of the petition; (2) a qualifying employer employed the Beneficiary outside the United States in a managerial or executive capacity; and (3) the new office would be able to support a managerial or executive position within one year after the approval of the petition. The matter is now before us on appeal under 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.

I. LAW

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 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. 8 C.F.R. § 214.2(l)(3)(v).

II. ANALYSIS

The Beneficiary has been a partner in the Petitioner's foreign affiliate, a precious metals dealership in India, since April 2020. The Beneficiary entered the United States in April 2023 as a B-1/B-2 nonimmigrant visitor.

The Director determined that the Petitioner did not establish that the foreign affiliate employed the Beneficiary outside the United States in a primarily managerial or executive capacity. We agree, as explained below.

"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.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

To show that a beneficiary is eligible for L-1A nonimmigrant visa classification as a manager or executive, a petitioner must show that the beneficiary performed all four of the high-level responsibilities set forth in the statutory definitions at section 101(a)(44)(A) or (B) of the Act. If a petitioner establishes that the position abroad meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary was *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether the beneficiary's duties were primarily managerial or executive, we consider the description of the job duties, the company's organizational structure, the duties of the 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 the beneficiary's actual duties and role in the business.

On the petition form, the Petitioner referred to the Beneficiary as "President/Partner" of the foreign entity, but in an accompanying letter, the Petitioner indicated that the Beneficiary "serve[d] as the Sr. Vice President for the foreign . . . company." Elsewhere in the record the Petitioner referred to the Beneficiary simply as "Partner."

On the petition form, the Petitioner provided the following description of the Beneficiary's claimed duties abroad:

- Establishing and carrying out organizational or departmental procedures, goals and policies
- Directing and overseeing an organization's budgetary and financial activities
- Managing general activities associated with providing services and making products
- Consulting with other board members, executives and staff about general operations
- Negotiating and approving agreements and contracts
- Appointing managers and department heads
- Analyzing performance indicators, financial statements and sales reports
- Identifying areas to cut costs while improving programs, performance and policies

In a separate letter, the Petitioner indicated that the Beneficiary "has the specialized education and knowledge in managing the financial operations and the related activities including but not limited to staffing, training, mentoring, maintaining health, state and city ordinance and compliance, establishing internal procedures, supporting sales, [and] maintaining client relationships."

On his résumé, the Beneficiary listed four "Roles and Responsibilities," indicating that he is "[i]nvolve[d] in having a long term strategic recruitment and selection policy," "[t]akes . . . responsibility to fulfill the firm's training needs, programs and career development needs," "follows and suggests to the firm the areas of requirement to introduce/change the technology," and "[a]ttends exhibitions . . . and brings back all his observations and noteworthy points to the firm."

The Petitioner submitted a copy of the partnership agreement between the Beneficiary and two other partners. The Petitioner also submitted a list of "Partners and Employees Details," listing the Beneficiary as one of three partners, and 42 other employees, including a controller, six branch managers, and five others with leadership titles such as "head" and "incharge." The document did not list the responsibilities or duties of the named employees.

In a request for evidence (RFE), the Director stated that "the description of the beneficiary's duties is too general to determine what he did on a day-to-day basis," and that "[t]he beneficiary's resume also indicates that he may have been extensively involved in operational activities." The Director asked for more information and evidence regarding the company's structure and staffing.

In response, the Petitioner did not submit any new information or evidence regarding the Beneficiary's claimed employment abroad. Instead, the Petitioner described the materials previously submitted, and stated that "creditors, employers, banks, and other service providers generally accept these documents as proof of employment." The Petitioner also asserted that "[t]he Partnership Agreement . . . clearly defines the beneficiary as an executive partner."

The Director denied the petition, stating that the Petitioner had "not specifically addressed the deficiencies noted in the RFE." The Director concluded that "without a more detailed description of

the beneficiary's duties, the evidence of record does not establish that the beneficiary primarily performed qualifying managerial or executive duties." The Director also determined that the Petitioner had not submitted evidence to show that the Beneficiary's primary duties abroad conformed to the statutory and regulatory requirements of a managerial or executive capacity.

On appeal, the Petitioner asserts that the Director "refuses to either refute or acknowledge the evidence," and that the Director cited no regulation or case law to support the conclusion that "the evidence is insufficient." The Director had issued an RFE to give the Petitioner an opportunity to address specified deficiencies in the record. At that time, the Petitioner submitted no further evidence regarding the Beneficiary's duties abroad, asserting, instead, that the initial evidence was sufficient. In the denial notice, the Director quoted the regulatory definition of "executive capacity" and cited case law concerning the burden of proof.

We agree with the Director that the evidence submitted with the initial filing of the petition is not sufficient to meet the Petitioner's burden of proof. The list of duties on the petition form appears to be a generic or template description of the responsibilities of a high-ranking business official. For example, the list refers to "an organization"; the list refers to "making products" but the Petitioner did not identify any products that the foreign company makes, and it refers to a "board" when there is no evidence that the foreign entity has such a board.

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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Id.* The Petitioner has not provided the necessary details and explanation of the Beneficiary's activities in the course of his daily routine.

The Petitioner identified the list of "Partners and Employees Details" as an "Organizational Chart," but it does not establish chains of authority. This employee list is not evidence of the Beneficiary's authority over the listed employees, and it provides no information about the Beneficiary's duties with the foreign company.

Regarding the partnership agreement, the partnership is not equal. The agreement calls the Beneficiary the "Second Party," owning 1% of the foreign entity. The "First Party" to the agreement owns 51% and the "Third Party" owns the remaining 48%. Paragraph 7 of the document includes the general assertion that "All the Parties of this deed shall be . . . actively engaged in the affairs of the firm," but Paragraph 16 reads, in part:

> The management of the business of the firm and its day-today [sic] administration shall be carried out by . . . the Parties One and Three . . . they are entitled to:
> a) To receive amounts due to the firm . . . and generally attend to the financial affairs of the firm.
> b) To execute any deed of document for the purposes of the firm. . . .
> c) To represent the firm in any legal action. . . .

d) To carry on day to day administration of the firm. . . .
e) And generally to do all acts, deeds and things which may be necessary or incidental to the powers herein. . . .
f) To borrow money from the banks or public. . . .

Paragraph 13 is consistent with the above, stating that "Parties One & Three . . . are empowered to borrow funds for the purpose of partnership business." The quoted passages give the other two partners, who together own 99% of the foreign entity, significant administrative authority over financial and other matters, without granting similar powers to the Beneficiary. The document does not specify any particular role or responsibilities for the Beneficiary as the second party to the agreement.

The Petitioner, on appeal, observes that the partnership agreement is "a legally binding contract," but the Petitioner does not address the provision of that contract which specifies that the other two partners, not the Beneficiary, carry out "[t]he management of the business of the firm" and the "day to day administration of the firm." The clause specifying that the First and Third Parties "attend to the financial affairs of the firm" appears to contradict the Petitioner's assertion that the Beneficiary had been "managing the financial operations." The First Party, rather than the Beneficiary, signed an Indian tax return in the record.

The "Roles and Responsibilities" listed on the Beneficiary's résumé are considerably more limited than the other partners' responsibilities shown in the partnership agreement. Even then, the Petitioner did not submit evidence showing the Beneficiary's activities in those areas when asked to do so.

The Petitioner has submitted little information, and no independent evidence, about the Beneficiary's role with the foreign entity. We agree with the Director that the Petitioner has not met its burden of proof to establish that the Beneficiary was employed abroad in a managerial or executive capacity.

Because the above issue determines the outcome of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's claimed continuous employment abroad and whether the Petitioner would be able to support a managerial or executive capacity within one year after approval of the petition. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

III. CONCLUSION

The Petitioner has not established that the Beneficiary was employed abroad in a qualifying managerial or executive capacity. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.