U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7700641

Date: APR. 29, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, an insurance company, seeks to continue temporary employment of the Beneficiary as its "IT Project 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, as required, that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. That matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we conclude that the Petitioner did not establish that the Beneficiary would be employed in a managerial capacity. Therefore, we will dismiss the appeal. 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 foreign employment in a managerial or executive capacity. *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, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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.*

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The primary issue to be addressed in this discussion is whether the Petitioner provided sufficient evidence to support its claim that the Beneficiary's position with the U.S. entity would be in a managerial capacity.[1]

"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. The term "function manager" applies generally when a beneficiary does not primarily 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.

When examining the executive or managerial capacity of a beneficiary, we will review a petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we will review the totality of the evidence when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a 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.

Because the record does not show that the Beneficiary would primarily manage supervisory, professional, or managerial personnel or, alternatively, that she would manage an essential function, the Petitioner has not established that the Beneficiary would be employed in a managerial capacity.

A. Personnel Manager

In a supporting cover letter, the Petitioner claimed 129 employees and a gross annual income of over $37 million. It indicated that within its organization, the Beneficiary will "directly supervise" the work of seven employees and two subcontractors and "report directly to the President." The Beneficiary's job description consisted of a job duty breakdown listing 20 sets of job duties with percentages of time allocated to each set of duties. Of the 20 sets of job duties, two included tasks that totaled 16% of the Beneficiary's time and were associated with personnel management. Namely, the Petitioner stated that 1% of the Beneficiary's time would be spent "maintain[ing] necessary staffing levels by recruiting, selecting, orienting, and training current and future employees . . . and developing personal growth opportunities" and another 15% of her time would be spent "directly supervis[ing] 7 professional employees and 2 subcontractors leading her staff towards required program production

[1] The Petitioner did not consistently classify the Beneficiary's employment as managerial or executive and instead used these terms interchangeably. However, the Petitioner did not demonstrate that the Beneficiary's proposed employment meets the four-prong definition of the term "executive capacity" and instead focused exclusively on elements of "managerial capacity." Therefore, we will not discuss whether the Beneficiary's proposed employment meets the definition of "executive capacity."

goals by communicating job expectations; planning, monitoring, and appraising job results; coaching, counseling, and disciplining employees; [and] initiating, coordinating, and enforcing systems, policies, and procedures." The remaining job duties were related to the Beneficiary's project management role and were said to include the following:

- documenting the project scope, deliverables, risks, and status;
- ensuring proper completion of all stages of the system development cycle;
- continuing to evaluate of system functionality, mitigate risks affecting timely implementation of the project, and make adjustments to ensure that the project meets regulatory requirements;
- providing status updates to "senior management and executive committee";
- overseeing project and department budgets;
- ensuring effectiveness and efficiency through strategic planning and implementation;
- conducting systems audits; overseeing disaster recovery and control structures;
- recommending IT strategies and procedures;
- interacting with IT managers and department heads;
- organizing a monitoring committee and leading "senior employees within the IT Department" comprising that committee; and
- making "daily operational decisions" of the "New Core System" project and document the scope and deliverance to further project objectives.

Although the Petitioner stated that the Beneficiary will also "counsel and discipline employees under her purview," which includes "authority to recommend termination" and to "recommend and undertake disciplinary action," it declined to assign a percentage of time to this aspect of the Beneficiary's proposed employment, stating that it was "not necessary" to do so.

The Beneficiary provided additional insight into her position and skill level in a résumé, which includes an "Executive Profile," a summary of activities in the current position with the U.S. entity, and a list of the Beneficiary's "skills and abilities." In the "Executive Profile" section, the Beneficiary stated that she uses her knowledge of technological tools and methodologies to "attend to high impact projects." She then provided the following list of activities she has performed in the course of her current position as the Petitioner's project manager: defines, plans, and coordinates "all activities related to the execution, implementation[,] and control" of the Petitioner's projects. Lastly, the Beneficiary listed the following "skills and abilities": collaborating with and responding to clients, planning and managing IT projects, coordinating project resources, maintaining knowledge of factors that are relevant to the insurance industry, and managing emails, meeting agenda, and social networking. The Beneficiary did not list personnel management when describing her experience, skills, or executive profile.

Further, the Petitioner provided an organizational chart depicting a limited cross-section of its 129-person organization. Namely, the Petitioner provided a chart depicting the Beneficiary within the scope of a 13-person hierarchy, depicting the president in the top position, followed by the executive vice-president of operations directly overseeing a "Systems Sub Manager" and the Beneficiary, who is depicted as overseeing three subordinates – two in the position of "SW Factor" and a project manager, the latter of which is shown as "vacant." The Petitioner provided a separate information sheet for the personnel in the information systems department, including job descriptions for the "Systems Sub Manager," his subordinates, the Beneficiary, and the vacant project manager position

that was depicted as one of the Beneficiary's three subordinates. The Petitioner did not provide job descriptions for the "SW Factor" nor did it reconcile the conflicting information in the organizational chart and the supplemental job description, which reiterated the Petitioner's claim that the Beneficiary would "directly supervise" seven employees – including system analysts, programmers, and process practice leaders – and two subcontractors. The Petitioner must provide independent, objective evidence to resolve this material inconsistency showing where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After reviewing the record, the Director issued a request for evidence (RFE) seeking clarity about the inconsistency between the above described organizational chart and the information offered in the initial supporting statement, where the Petitioner claimed that the Beneficiary would manage seven employees and two subcontractors. The Director questioned how the Beneficiary would be relieved from having to perform primarily non-managerial duties and instructed the Petitioner to provide line and block organizational charts showing the entire organization's staffing levels. It also asked the Petitioner to list all employees within the Beneficiary's department or team and provide evidence showing the Beneficiary's authority to take personnel actions.

In response, the Petitioner reiterated the reporting structure described above, stating that the Beneficiary's subordinates will include systems analysts, programmers, and "process practice leaders." The Petitioner maintained that the Beneficiary would be relieved from having to perform non-managerial tasks and that she would have discretionary authority to assign tasks to subordinates and make them accountable for their respective assignments. In support of these claims, the Petitioner provided printouts of 41 email exchanges between the Beneficiary and employees from various departments within the Petitioner's organization, including claims, "claims property & casualty," finance, "field technology service," etc. Several of the emails originated with the Beneficiary and were instructive on various operational matters within the scope of the Petitioner's business activities. The Petitioner did not explain why the previously submitted organizational chart showed the Beneficiary overseeing a three-person subordinate staff that did not include systems analysts, programmers, and "process practice leaders" or show that the Beneficiary would oversee seven employees and two subcontractors as previously claimed.

Although the Petitioner claimed that the above-mentioned email exchanges establish a "chain of command" between the Beneficiary and her subordinates, the record does not support this claim. Rather, the record includes an organizational chart reflecting the 2019 staffing hierarchy within the Petitioner's information and systems technology department. Despite the Petitioner's claims, this chart does not establish that the various individuals who were named as either recipients or originators of the above-mentioned email exchanges were subordinate to the Beneficiary. In fact, the chart indicates that the Beneficiary's only direct subordinate is a project manager, who is shown as directly overseeing a group of six developers, including three system analysts, one "practice leader," and two analyst positions, the latter of which were indicated as "vacant." The same chart identifies the Beneficiary as "senior project manager" – a position that is depicted three levels below the company's president – and is directly subordinate to the vice president of her department. This information is in vast contrast to the originally submitted organizational chart, which showed the Beneficiary two, rather

than three, levels below the company's president and depicted her as directly subordinate to the executive vice president of operations.

The charts were also inconsistent as to the Beneficiary's position title and subordinate staff. Namely, the original organizational chart identified the Beneficiary as "project manager" overseeing two "SW Factory" employees and one vacant position of project manager. The Petitioner did not provide job descriptions for the "SW Factory" positions or explain why the Beneficiary was depicted as overseeing a project manager, which is the same position title as the one assigned to the Beneficiary herself. As noted above, the more recently submitted chart identifies the Beneficiary as "senior project manager" and has her directly overseeing only one employee. Thus, the only information that both charts consistently conveyed was that the company is headed by a president whose immediate subordinate is the executive vice president of operations. The charts did not, however, offer consistent information about the chain of command immediately above and below the Beneficiary's position, nor did they consistently list the Beneficiary's position title or name the employees within the Beneficiary's department.

It is also worthy to note that neither chart supports the Petitioner's original claims that the Beneficiary will "report directly to the President" and that she will oversee seven employees and two subcontractors. The Petitioner has not offered independent, objective evidence to resolve these material inconsistencies. *See id.* Further, although the Petitioner provided a list of the Beneficiary's claimed subordinates along with letters extending them employment offers, all letters were signed by the company's president and thereby establish his, rather than the Beneficiary's, authority to hire such employees. None of the Petitioner's submissions indicate that the Beneficiary had discretionary authority to hire and fire her claimed subordinates or to make recommendations regarding these or other personnel actions. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

On appeal, the Petitioner reiterates claims that were previously made and references evidence that was previously submitted. As discussed above, however, we find that the Petitioner did not put forth sufficient reliable evidence to adequately support its claims. We further note that the Petitioner's references to unpublished decisions are not sufficient to meet its burden of proof. The Petitioner has not established that the facts of this petition are analogous to those in the unpublished decision it referenced. Moreover, while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on USCIS, unpublished decisions are not similarly binding.

The Petitioner also argues that the Director's denial was arbitrary and capricious, noting that the Director did not specifically reference each of the Petitioner's submissions. We disagree. The Director need not specifically reference and analyze each piece of evidence that the Petitioner submits in order to provide a legally sound decision. Thus, the lack of references to evidence that the Petitioner deems relevant should not be interpreted as the Director's failure to consider that evidence. The record here indicates that the Director properly addressed the Petitioner's claims and adequately conveyed a meaningful understanding of the basis for the denial. The Petitioner has not established that the evidence it previously submitted, either individually or as a whole, adequately supports the claim that

the Beneficiary would be employed in a managerial capacity where she would spend her time primarily managing supervisory or professional subordinates.

B. Function Manager

As noted earlier, a beneficiary who does not primarily supervise and control the work of other supervisory, professional, or managerial employees may still demonstrate that the proposed employment is in a "managerial capacity" if the petitioner shows that the beneficiary will manage an essential function within the organization. *See* section 101(a)(44)(A)(ii) of the Act.

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).

Although the Petitioner stated that the Beneficiary will manage and oversee the daily operations of its "New Core System" project, it did not claim that the Beneficiary would assume the role of a function manager, nor did it establish that managing this project, whose purpose is to "unify all of [the Petitioner]'s operations into a single core system," is synonymous to managing an essential function. As the Petitioner has not adequately defined a function for the Beneficiary to manage, we will not analyze whether the Petitioner has established that the function to be managed is essential, or core to the organization.

In light of the multiple evidentiary deficiencies, ambiguities, and inconsistencies described above, the Petitioner has not adequately supported its claims and thus we cannot conclude that the Beneficiary would be employed in a managerial or executive capacity.

ORDER: The appeal is dismissed.