U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7869881

Date: APR. 29, 2020

Appeal of California Service Center Decision

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

The Petitioner, a machinery manufacturer, seeks to employ the Beneficiary temporarily as its manufacturing manager 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 Director of the California Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary was employed abroad in a managerial or executive capacity or in a position requiring specialized knowledge for at least one year during the three years prior to filing this petition.

On appeal, the Petitioner asserts that the Director did not provide an analysis discussing whether the Beneficiary's employment abroad was in the role of a function manager. The Petitioner also contends that the Beneficiary's employment abroad was not only in a managerial capacity, but that it also qualifies as employment that required specialized knowledge.

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.

I. ANALYSIS

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). 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. 8 C.F.R. § 214.2(l)(3)(ii).

The Petitioner in this matter focuses on two positions that the Beneficiary held abroad, claiming that the position of "Industrial Improvement Engineer," which the Beneficiary held from January 2016 through August 2018, and the position of "Operation Excellence Manager," which he assumed in

September 2018, involved specialized knowledge and also qualified as employment that was in a managerial capacity. We will address these claims in our discussion below.

A. Managerial Capacity Abroad

The first issue to be addressed is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity. The Petitioner has consistently maintained that the Beneficiary has been working abroad in a "senior managerial" position of "Industrial Improvement Engineer" and was subsequently "promoted to his high-level managerial position" of "Operation Excellence Manager" that involves "oversight for significant areas of the company's global industrial production."[1]

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;
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> (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
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> (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.
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> 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.

The Petitioner must show that the Beneficiary performed the high-level responsibilities set forth in the statutory definition. In determining whether a given beneficiary's duties were primarily managerial, we consider the description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees who relieved 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.

As discussed above, the Petitioner claims that the Beneficiary held two different positions during the three years prior to this petition's May 2019 filing date, indicating that both positions qualified as employment in a managerial capacity. Because the Beneficiary did not assume his current position of

[1] The Petitioner does not claim that the Beneficiary's foreign employment has been in an executive capacity.

"Operation Excellence Manager" until September 2018, he only held the latter position for approximately nine months before this petition was filed. Therefore, even if the position of "Operation Excellence Manager" were deemed managerial, it would not establish that the Petitioner is eligible for the benefit sought herein because the Beneficiary did not hold that position for at least one year in the three years that preceded the filing of this petition. The opposite is true of the Beneficiary's former position as "Industrial Improvement Engineer," which he held for over two years during the period in question.[2] As such, in order to determine whether the Beneficiary was employed abroad in a managerial capacity for at least one year within the three years of filing this petition, we will focus exclusively on his former position as "Industrial Improvement Engineer."

In an initial supporting statement, the Petitioner stated that the Beneficiary's former role involved leading "cross-disciplinary teams" and managing "key projects in product development, cost reduction and the improvement of internal processes." The Petitioner also provided the Beneficiary's résumé, which reiterates claims about his role with respect to "cross-disciplinary teams" and "key projects" and states that the Beneficiary served as "Lean Production Trainer across various teams" and was responsible for improving and controlling "the internal processes." Although the Petitioner claimed that the Beneficiary "was given increasing responsibilities at two production sites" and further stated that the Beneficiary "held managerial positions since January 2016," it did not provide a description of the Beneficiary's job duties or explain how his former role as "Industrial Improvement Engineer" was managerial.

The Petitioner also provided an organizational chart titled "General Management" depicting the foreign entity's overall management structure. Although this chart includes a division titled "Industrial," it does not list either the Beneficiary or his superior. As such, it is unclear where the Beneficiary's position falls within the foreign entity's broader organizational hierarchy. Despite claiming that the Beneficiary occupied a "senior managerial" position within the foreign entity's organization, this organizational chart did not corroborate this claim.

The Petitioner submitted two additional division charts with the Beneficiary's name: (1) "Industrial – Industrial Improvements and Service"; and (2) "Industrial – Technologic Unit [redacted]"[3] The chart titled "Industrial – Industrial Improvements and Service" lists the Beneficiary's position title as "Industrial Improvement Technologic Unit [redacted]" and indicates that he, alongside five other employees, was subordinate to the head of that division and had no subordinates of his own. The other chart, titled "Industrial – Technologic Unit [redacted]" appears to provide a more detailed breakdown of the organizational hierarchy within that unit in [redacted] Italy, and lists the Beneficiary, with no subordinates, in the position of "Improvement UTE RN," which is depicted as one of six positions subordinate to the head of this unit. Although the six positions appear to only be subordinate to the head of the unit and do not appear to be subordinate to one another, they are depicted vertically at different levels, thus indicating that there is a hierarchy among these six employees. Specifically, this

[2] Based on the petition's date of filing – May 24, 2019 – the relevant three-year period that preceded that date commenced on May 24, 2016. Taking into account the dates of this three-year period and the Beneficiary's dates of employment as "Industrial Improvement Engineer," it is reasonable to conclude that the Beneficiary held this position for approximately two years and three months as of the date this petition was filed.

[3] The Petitioner also provided two other charts titled, "Business Unit Other Materials" and "Wood Division – Industrial." Because these charts do not include the Beneficiary's name or list his position, they are not relevant in this matter and need not be addressed in the discussion above.

organizational chart depicts the following hierarchy under the head of the unit: (1) "safety"; (2) "quality assurance"; (3) "maintenance"; (4) "Improvement UTE RN" (the Beneficiary's position); and (5) "operations.".

We also reviewed the description of the Beneficiary's duties with respect to his role as "Industrial Improvement Engineer." We agree with the Director's determination that the submitted job description lacked sufficient details and did not allow for a conclusion that the Beneficiary performed primarily managerial job duties. For instance, the job duty breakdown from the foreign entity's human resources director indicated that the Beneficiary allocated 35% of his time to "sites production management," which included managing human and material resources, making decisions about equipment and maintenance, ensuring "that standard operating procedures are adhered to," and expanding and monitoring "appropriate use of Methods Time Management." However, there was no explanation as to who and what comprised the human and materials resources the Beneficiary was claimed to have managed, nor did the Petitioner offer further insight as to the materials he managed or decisions he made. There was also no explanation as to how the Beneficiary ensured adherence to operating procedures or the significance of "Methods Time Management" within the scope of the Beneficiary's former position.

Further, the job duty breakdown indicates that 20% of the Beneficiary's time was allocated to managing human resources, including selecting personnel, conducting performance evaluations, and providing yearly performance appraisals. However, as discussed above, the Petitioner offered organizational charts that did not support these claims. The Petitioner also broadly claimed that the Beneficiary "led cross-disciplinary teams and managed key projects," but it did not further explain these duties.

On appeal, the Petitioner argues that the Beneficiary need not have managed subordinate employees in order to meet the statutory criteria for "managerial capacity" and asserts that it is erroneous to make a determination of whether the Beneficiary assumed the role of a function manager without conducting an four-prong analysis in line with *Matter of Z-A-, Inc.*, Adopted Decision 2016 (AAO Apr. 14, 2016), which stressed the importance of considering a beneficiary's job duties along with other relevant evidence, including the nature and scope of an employer's business; the employer's organizational structure, staffing levels, and the beneficiary's position within that organization; the scope of the beneficiary's authority; the work performed by other staff within the organization, including whether those employees relieve the beneficiary from performing operational and administrative duties; and any other factors that will contribute to understanding the beneficiary's actual duties and role in the business. Although the Petitioner claims that the Beneficiary's employment abroad was "comprised of exclusively managerial duties," it offered a deficient job description that does not state precisely what job duties the Beneficiary performed in his former position as "Industrial Improvement Manager" and provided insufficient evidence to show that the Beneficiary's placement within the foreign entity's organizational hierarchy was consistent with that of someone employed in a managerial capacity.

Further, 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 we agree with the Petitioner's assertion that one need not manage employees in order to meet the statutory definition of "managerial capacity," we do not find that the Petitioner offered sufficient evidence to satisfy the criteria specified in *Matter of G-*. Despite restating elements of a previously provided job description and claiming that the Beneficiary did not spend a "significant amount of time . . . handling administrative tasks or dealing with the function (manufacturing) itself," the Petitioner did not clearly identify an activity-focused function or establish how that function was essential to the organization. *See id.* Instead, the Petitioner makes a passing reference to "manufacturing or product development" as an essential function, claiming that the Beneficiary did not perform the underlying duties, but rather managed that function. However, the Petitioner does not explain how these two seemingly separate activities – manufacturing and product development – represent a clearly defined activity that is essential to the foreign entity, nor does it define the Beneficiary's role with respect to these activities to explain how he managed manufacturing and product development without performing the underlying operational tasks associated with that function. Furthermore, the Petitioner submitted organizational charts that did not depict the Beneficiary in a position that was at a senior level with respect to the "manufacturing or product development" function. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In light of the deficiencies described above, the Petitioner did not establish that the former position as "Industrial Improvement Engineer" was in a "managerial capacity" as defined in the Act at section 101(a)(44)(A) of the Act.

B. Specialized Knowledge Capacity Abroad

Next, we will address the Petitioner's claim that the Beneficiary's employment abroad qualifies as employment that required specialized knowledge.[4]

The Petitioner did not initially claim that the Beneficiary's foreign employment required specialized knowledge; however, in its RFE response, the Petitioner claimed that "[t]he Beneficiary's experience in Italy also demonstrates the application of specialized knowledge."

As a threshold issue, we must determine whether the Petitioner established that the Beneficiary possesses specialized knowledge. If the evidence is insufficient to establish that he possesses specialized knowledge, then we cannot conclude that the Beneficiary's past employment involved specialized knowledge.

[4] As noted earlier, the Beneficiary only held the position of "Operation Excellence Manager" for approximately nine months during the three-year time period that preceded the filing of this petition. As such, we will only discuss whether the Beneficiary's position of "Industrial Improvement Engineer," which he held from January 2016 through August 2018, was in a specialized knowledge capacity.

A beneficiary is deemed to have specialized knowledge if he or she has: (1) a "special" knowledge of the company product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the company. Section 214(c)(2)(B) of the Act. A petitioner may establish eligibility by submitting evidence that the beneficiary and the claimed position satisfy either prong of the statutory definition.

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others. With respect to either special or advanced knowledge, the petitioner ordinarily must demonstrate that the beneficiary's knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

Once a petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. We cannot make a factual determination regarding a given beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of its products and services or processes and procedures, the nature of the specific industry or field involved, and the nature of the beneficiary's knowledge. The petitioner should also describe how such knowledge is typically gained within the organization, and explain how and when the individual beneficiary gained such knowledge.

Here, the Petitioner has not provided sufficient evidence about the Beneficiary's knowledge to establish that such knowledge is specialized, as claimed. Despite claiming that the Beneficiary's foreign employment "was clearly managerial in nature," the Petitioner made a parallel claim in its RFE response, stating that "[t]he Beneficiary's experience in Italy also demonstrates the application of specialized knowledge." The Petitioner stated that the foreign entity is "devoted to manufacturing machinery and systems" and claimed that the Beneficiary is a "trained engineering manager" with "expertise" in manufacturing solutions. However, when it made this claim in the RFE response, the Petitioner did not identify the Beneficiary's knowledge as either "special" or "advanced." Moreover, the Petitioner did not articulate with specificity the nature of the Beneficiary's knowledge, nor did it either point to a product or service that the foreign entity makes or offers or identify specific processes and procedures that the foreign entity utilizes.

On appeal, the Petitioner points to the Beneficiary's "high level within the organization" as well as previously submitted evidence, such as the Beneficiary's résumé and job descriptions, to support the claim that he possesses specialized knowledge. Although the Petitioner claims that the Beneficiary has advanced knowledge of "these concepts" in industrial technology and process implementation, it does not specifically identify "these concepts" or compare the Beneficiary's knowledge of the undefined "concepts" with that of others within the company. As such, the Petitioner has not established that the Beneficiary's knowledge is advanced.

II. CONCLUSION

In light of the evidentiary deficiencies described above, the Petitioner has not established that the Beneficiary's employment abroad was in a managerial capacity. Further, because the Petitioner did not establish that the Beneficiary possesses specialized knowledge, we cannot conclude that the Beneficiary was employed abroad in a position requiring specialized knowledge.

ORDER: The appeal is dismissed.