U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32421247

Date: AUG. 1, 2024

Appeal of California Service Center Decision

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

The Petitioner is part of a multinational organization that designs, assembles, and sells valves in the energy, water, and industrial sectors. It seeks to employ the Beneficiary temporarily as its "Vice President of Sales (Americas)" 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. *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 the Beneficiary was employed abroad and would be employed in the United States in a managerial capacity.[1] However, it does not appear that the Director adequately considered the supporting evidence, including the Beneficiary's job duties and the scope of the organization within which those duties have been and would be performed.

The Director determined that the Petitioner did not adequately explain how the Beneficiary manages a sales team, even though the Petitioner did not claim that the Beneficiary would be a personnel manager and offered clarifying information in response to the Director's request for evidence (RFE), stating that the Beneficiary "manages an essential function of the business: sales in the Americas."[2] Despite acknowledging the Petitioner's function manager claim, the Director conducted a personnel management analysis in which she determined that the individuals who were contracted to perform various operational duties "do not appear to be managerial or supervisory in nature, nor do they appear

[1] The Petitioner's claim rests solely on the definition of managerial capacity. The Petitioner did not claim that the Beneficiary was or would be employed in an executive capacity.

[2] 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 that 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).

to necessitate a bachelor's degree or higher." The Petitioner also listed the countries and regions included in the Americas territory – the United States, Mexico, Canada, and Central and South America – and discussed the Beneficiary's duties and top-most role with respect to the essential function he is claimed to manage, highlighting that the organization's reporting structure in which the Beneficiary reports directly to the organization's CEO. This reporting structure is further illustrated in several organizational charts. In light of the evidence, we disagree with the Director's finding that the Beneficiary "acts more as a Team Lead, primarily performing tasks independently and reporting results to upper management."

Further, although the Director determined that the Beneficiary cannot be deemed a function manager, she provided no analysis to explain the basis for this conclusion, nor is it apparent that the Director considered the critical nature of the function the Beneficiary has and would continue to manage or his role and reporting structure with respect to that function. The Director also incorrectly faulted the Petitioner for not providing evidence of its organization's "employment" of certain individuals, even though the Petitioner identified such individuals as employees of [redacted] an entity that the Petitioner's parent entity had contracted to provide sales services. A copy of the Petitioner's existing sales development agreement with [redacted] was included with the Petitioner response to a request for evidence (RFE).

We also disagree with the Director's determination that the Petitioner did not adequately show that there are employees to relieve the Beneficiary from non-managerial duties in his foreign and U.S. positions. In an RFE response statement, the Petitioner's CEO discussed the Beneficiary's job duties, noting that they are and would be performed within the context of a multi-level sales strategy that involves generating sales both within and outside the organization. The CEO also pointed to the organization's engineering, field operations, quality control, and technical personnel, who support the sales function and address the needs of existing and prospective customers. And as noted earlier, the record includes organizational charts that further illustrate the staffing as well as the Beneficiary's senior-level position with respect to the Americas sales function, thereby indicating that the Petitioner and its foreign parent are more likely than not capable of adequately supporting the Beneficiary's essential function and relieving him from having perform primarily non-managerial functions.

On appeal, the Petitioner points to errors in the Director's discussion of the Beneficiary's role and job duties and elaborates on his former and proposed positions with respect to the Americas sales function. The Petitioner also provides email communications that further illustrate the Beneficiary's authority over the America sales function and those who carry out the underlying duties of that function.

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 conclude that the Petitioner has met this burden, and we will therefore sustain the appeal.

ORDER: The appeal is sustained.