U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8991007

Date: AUG. 3, 2020

Appeal of California Service Center Decision

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

The Petitioner, a travel services business, seeks to continue the Beneficiary's temporary employment as its "Manager, FITS Tours Operations and Sales," 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 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, as required, that (1) the Beneficiary would be employed in the United States in a managerial or executive capacity, (2) the Beneficiary was employed abroad in a managerial or executive capacity; and (3) the Petitioner and the Beneficiary's foreign employer have the required qualifying relationship.

On appeal, the Petitioner asserts that it submitted sufficient evidence to establish the Beneficiary's eligibility and maintains that the record does not support the Director's adverse findings.

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 will dismiss the appeal. However, we will withdraw the Director's finding that the Petitioner did not establish an affiliate relationship with the Beneficiary's foreign employer.[1]

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.*

[1] The Petitioner has established that it has an affiliate relationship with the Beneficiary's foreign employer based on sufficient common ownership and control of both entities by the same individual, [redacted] *See* 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*).

II. DEFINITIONS

"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.

"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.

To be eligible for L-1A nonimmigrant visa classification as a manager or executive, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definitions at section 101(a)(44)(A) or (B) of the Act. If the record does not establish that the offered position meets all four of these elements of one of these definitions, we cannot conclude that it is a qualifying position. If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The primary issue to be discussed is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity under the extended petition. We note that the Petitioner has used the terms "managerial" and "executive" interchangeably throughout the record. As noted, in order to establish the Beneficiary's eligibility, the Petitioner must demonstrate that her position meets all four elements of one of the statutory definitions at section 101(a)(44) of the Act.

When assessing the managerial or executive nature of an offered position, we examine a petitioner's description of the job's duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring an L-1 petitioner to submit "a detailed description of the services to be performed"). Beyond the required description of the job duties, we examine 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 a business.

A. Job Duties

The Petitioner seeks to continue the Beneficiary's employment as the Manager of its "Department of FIT Tour Operations & Sales." The Petitioner's initial submission included two different descriptions

of the position. One of these descriptions was attached as an addendum to her Appointment Letter when she accepted the position in 2016. The description included many duties that could not be classified as managerial or executive in nature, including: preparing Virtual Brochures for email distribution to existing and prospective clients; developing editorial content for a monthly Tour Package Newsletter; developing and selling ad hoc tour packages for FIT travelers and small groups and invoicing these transactions; conducting sales calls; developing standard tour package offerings and options for all regions; and negotiating rate structures and terms with suppliers.

The description indicated that the Beneficiary would manage at least two employees, create training materials and conduct training to familiarize staff with standard package offerings, and monitor supplier performance and sales, but did not demonstrate that the position would satisfy all elements of either managerial or executive capacity. For example, the description did not indicate that the Beneficiary can hire and fire employees or has the authority to recommend these actions, consistent with section 101(a)(44)(A) of the Act, or that the position is responsible for establishing goals and policies and directing the management of the organization or a component, consistent with section 101(a)(44)(B) of the Act.

The Petitioner also described the Beneficiary's duties in a supporting cover letter. With respect to oversight of staff, the Petitioner indicated that she would supervise employees in the "FIT Tour Operations & Sales department," including: training them to design tour packages, prepare quotes and deal with foreign tour operators; ensure they provide optimum service; motivate them to meet targets, analyze their performance and productivity, and coordinate with them for improvement. This description indicates that some duties the Petitioner was expected to perform when she was first hired may now be assigned to subordinate employees. However, the description included in the Petitioner's letter reflects that there are many operational tasks that the Beneficiary does not delegate to lower-level staff. These include sourcing quotes for itineraries and tours, managing group bookings, handling inquiries on travel services sold to sub-agents and directly to consumers, maintaining relationships with land operators and hotels, negotiating ad-hoc rates with hotels, and designing itineraries.

Whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the Petitioner did not document what proportion of the Beneficiary's duties would be managerial or executive functions and what proportion would be non-qualifying. The Petitioner lists the Beneficiary's duties as including both supervisory or other higher-level tasks, as well as a number of operational tasks required to provide the company's services, but did not quantify the time the Beneficiary spends on individual duties. This is important because several of the Beneficiary's daily tasks, as noted, do not fall directly under managerial or executive duties as defined in the statute. For this reason, the initial descriptions did not establish whether the Beneficiary would be primarily performing the duties of a manager or an executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In response to the Director's request for evidence (RFE), the Petitioner referred to the Beneficiary's position as "Manager Operations & Sales" and indicated that she supervises not only the FIT Tours department, but also all "employees working in the departments of Corporate sales, Retail Sales and [redacted]" which appears to be a separate operating division doing business as [redacted]

Cruise Ship Center." The Petitioner did not indicate that the Beneficiary had received a promotion or otherwise explain this new job title. As discussed further below, the Beneficiary's claimed supervision of employees in multiple departments is not reflected on the Petitioner's organizational charts submitted at the time of filing or in response to the RFE.

With respect to the Beneficiary's duties, the position description submitted in response to the RFE reflects changes indicating a higher level of authority than stated at the time of filing. For example, the initial descriptions of the position indicated that the Beneficiary herself is responsible for developing tour package offerings and options, negotiating ad-hoc rates with suppliers, handling inquiries on services sold to sub-agents and consumers, handling group bookings and sourcing quotes for itineraries and tours. However, in response to the RFE, the Petitioner stated that she "supervises the managers" who assemble the components of tour packages, "supervises the negotiation of ad-hoc rates," "reviews" the sourcing of quotes, "supervises the management" of group bookings," and "monitors the handling" of inquiries about services. The Petitioner also added personnel responsibilities not mentioned previously, including responsibilities for hiring, firing and other actions. Although the Petitioner divided the Beneficiary's duties into three groupings and assigned a percentage to each of them, the description did not credibly expand upon the initial duties and did not provide the amount of time allocated to specific tasks as requested.

The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, a petitioner cannot offer a new position to a beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position. *See* 8 C.F.R. § 103.2(b)(1). The information provided by the Petitioner in its response to the Director's RFE did not clarify or provide more specificity to the original duties of the position, but rather added new language that appeared to change the position's level of authority. Therefore, the focus of our analysis will be based on the job descriptions submitted with the initial petition, which, for the reasons discussed, are insufficient to establish that the position is in a qualifying managerial or executive capacity.

The fact that the Beneficiary will manage or direct a department, component or function of the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. While it appears the Beneficiary would exercise discretion over the "FIT Tour Operations & Sales" department, the record contains inconsistent information about her role, her duties and her level of authority, and the Petitioner has not met its burden to establish that her actual duties will be primarily managerial or executive in nature.

B. Staffing and Organizational Structure

As noted, the position descriptions submitted at the time of filing indicated that the Beneficiary would "manage employees in the FIT Tour Operations & Sales department."

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. The Petitioner has not articulated a claim that the Beneficiary will manage an essential function of its business and therefore, in order to demonstrate her employment in a managerial capacity, must establish that she qualifies as a personnel manager. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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." *Id.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

The Petitioner's initial letter included an organizational diagram showing that the position of "FIT Tours Operation Sales Manager" reports to the company's vice president. The Beneficiary's position is depicted as lateral to four other positions: an accountant, a Retail Sales Manager, a Corporate/Business Sales Manager, and a Project Manager. Lower level positions on the chart include "account executives" reporting to the accountant; "travel consultants" reporting to the Retail Sales Manager and to the Beneficiary's position; and "Corporate Executives" reporting to the Corporate/Business Sales Manager. This chart does not identify employees by name. Based on the information provided in the chart the employees in the "FIT Tour Operations & Sales Department" are the Beneficiary and "travel consultants."

The Petitioner provided another document labeled "organizational chart" which lists employees by name, job title and educational level, but does not depict the management structure or hierarchy within the organization or within the Beneficiary's department.

In the RFE, the Director requested a more detailed organizational chart depicting the company's structure and staffing levels, additional details regarding the positions that report to the Beneficiary, and evidence of salaries and wages paid to employees in the first two quarters of 2019. The Director also requested copies of performance appraisals or reviews conducted by the Beneficiary for her subordinates and "any evidence that demonstrates the beneficiary has sufficient authority over subordinate employees and is engaged in the hiring and firing of subordinates or recommends the hiring and firing of subordinates as well as other personnel actions."

In response, as noted, the Petitioner indicated that the Beneficiary is the "Manager of Operations and Sales" and "manages and supervises the departments for Corporate sales, Retail Sales and the [redacted]" despite previously claiming that she managed only the FIT Tours Operations and Sales department. The Petitioner submitted an organizational chart which, like the chart submitted at the time of filing, depicts the Beneficiary's position as lateral to that of the Accountant, Retail Sales Manager, Corporate/Business Sales Manager and Project Manager, and indicates that each of these positions reports to the Vice President. This chart also includes the separate [redacted] division but does not depict the Beneficiary's claimed role within that division.

The Petitioner also submitted a personnel list labeled "Organizational Chart," similar to that provided at the time of filing, which lists the names of employees in the retail sales and corporate/business sales departments. The Petitioner lists the names and qualifications of the Retail Sales Manager and one

travel consultant working in the Retail Sales department, as well as the names and qualifications of eight employees within the Corporate Business/Sales department, including four managers and four corporate executives. Although the Petitioner initially indicated that the Beneficiary is the department manager of the FIT Tours Operations Sales department, and it appears as a department on the separate organizational diagram, the personnel list does not identify any additional employees in this department.

Due to the unexplained inconsistencies between the structure depicted in the organizational charts and the reporting structure described in the Petitioner's own statements, the Petitioner has not met its burden to establish which employees work under the Beneficiary's control and supervision. While the Petitioner indicated that it was providing copies of resumes, IRS Form W-2s, and educational credentials for "some" of the Beneficiary's claimed subordinates,[2] it did not include the requested position descriptions for all staff who report to the Beneficiary as requested. Moreover, the Petitioner did not include the requested evidence of personnel reviews conducted by the Beneficiary or any supporting evidence of her newly claimed hiring and firing authority.

In sum, the position description included in the Petitioner's letter indicated that the Beneficiary supervises "employees in the FIT Tour Operations & Sales department," and these employees have not been identified in the record. The Petitioner's subsequent assertion that she actual oversees multiple departments and subordinate department managers is not adequately supported by the submitted evidence. Further, we note that the Petitioner did not initially indicate that that Beneficiary has hiring and firing authority and claimed this responsibility in response to the RFE without submitting evidence to support this revision to her position description. Based on the above, the Petitioner has not demonstrated which employees the Beneficiary supervises, that she has the authority to hire and fire staff or to recommend these and other personnel actions, or that her subordinates, if any, are managers, supervisors or professionals, Accordingly, the Petitioner has not established that the Beneficiary qualifies as a personnel manager based on her supervisory duties.

As noted, the Petitioner has also claimed at times that the Beneficiary's position is executive in nature. The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the organization, major component, or function as the owner or sole managerial employee.

The Beneficiary's initial position description and placement on the company's organizational diagram depict her as a department manager with an unknown number of "travel consultants" reporting to her. While the Petitioner's subsequent statement indicates that she occupies a higher-level position that manages multiple departments, the Petitioner did not submit any explanation for this change or

[2] The Petitioner submitted these documents for individuals identified as the retail sales manager, a travel consultant in the retail sales department, and two corporate sales managers.

adequately support its revised depiction of the position with evidence. Regardless, none of the submitted descriptions of the Beneficiary's position indicate that she is primarily focused on the broad goals and policies or the organization consistent with the definition of executive capacity. Further, as the Petitioner has not consistently identified which staff work under the Beneficiary, we cannot determine to what extent she is relieved from direct involvement in the day-to-day operations within her area of responsibility. As discussed, the initial descriptions of her job duties indicated her significant involvement in activities required to provide products and services and did not indicate that she would be engaged in primarily executive duties. Accordingly, the Petitioner did not establish that she would be employed in an executive capacity as defined at section 101(a)(44)(B) of the Act.

IV. EMPLOYMENT ABROAD

As 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 employment abroad 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).

V. CONCLUSION

The appeal will be dismissed because the Petitioner did not establish that the Beneficiary will be employed in the United States in a managerial or executive capacity.

ORDER: The appeal is dismissed.