U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8977840

Date: AUG. 3, 2020

Appeal of California Service Center Decision

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

The Petitioner, a newspaper and magazine distributor, seeks to temporarily employ the Beneficiary as its chief executive officer (CEO) 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 record did not establish, as required, that: (1) the Beneficiary would be employed in a managerial or executive capacity in the United States, and (2) the Beneficiary has been employed abroad in a managerial or executive capacity.

On appeal, the Petitioner asserts that the Director did not apply the preponderance of the evidence standard to the facts presented.

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. 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 their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The primary issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity. The Petitioner does not claim that it will employ the Beneficiary in an executive capacity.

"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.

When examining the managerial capacity of a given beneficiary, we will review the petitioner's description of the proposed position, which must clearly describe the duties to be performed by the beneficiary. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine 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. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

To be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. 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 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).

The Petitioner is engaged in the distribution and circulation of magazines in [redacted] California and has distribution centers in [redacted] and [redacted] In addition, the Petitioner states that it provides parcel deliveries for Amazon and other Internet retailers. It seeks to employ the Beneficiary in the position of CEO, which appears to be a newly created position.

The Petitioner submitted a letter outlining the Beneficiary's proposed duties, indicating that he will allocate 70% of his time to "[d]aily operational and managerial works, supervising the overall operation of the company's two distribution centers." The description identifies the following responsibilities within this broad area:

- He will supervise the logistics flows of each distribution center to make sure that the daily distribution of the newspapers and magazines run smoothly and timely from our receipt of the newspapers and magazines, sorting, staging, picking and distributing, during the busiest period of 1 am to 6 am.
- From 6 am to 11 am, [he] also needs to supervise and control the works of some after-distribution and customer services performed by our independent contractors in the centers.

The Petitioner further noted the Beneficiary's authority to "arrange the manpower at each location if necessary" and explained that he would need to "go to the locations alternatively to supervise the logistics and operations."

In addition, the Petitioner indicated that the Beneficiary would spend an additional 20% of his time on personnel duties, noting that he "will have the absolute power and authority to terminate, promote or demote the senior level staff – the two managers and three full-time assistant managers, and three contract based assistant managers." The Petitioner also discussed the Beneficiary's responsibilities for performance evaluations, approval of leave, promotions, and salary increases, and creation of new departments, if necessary. Finally, the Petitioner stated that the Beneficiary would spend 10% of his time on "certain functional duties" including budgeting and financial planning, developing and implementing marketing and promotional plans, representing the company in customer meetings, and signing contracts.

In a request for evidence (RFE), the Director advised the Petitioner that the Beneficiary's position description lacked sufficient detail to establish that he would be performing primarily managerial duties. We agree with this assessment as the initial description was overly broad and did not adequately convey the nature of the specific tasks the Petitioner would perform on a day-to-day basis. The Petitioner indicated that the Beneficiary would allocate 70 percent of his time to "daily operational and managerial works" and supervise the "overall operations" but did not describe the specific tasks associated with this primary area of responsibility, other than stating that the Beneficiary would supervise "logistics flows" and "after-distribution and customer services." 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).

In response to the RFE, the Petitioner explained that "the CEO is responsible for operations, personnel, contracts, and revenue management primarily based at two warehouses." With respect to personnel, the Petitioner stated that the CEO "holds personnel accountable to written quality standards, then supervises and manages to ensure the standards can be met," noting that he may use incentives (bonuses, promotions, paid time off) and disciplinary tools (counseling, reprimands, demotions, termination). The Petitioner further stated that the CEO must "ensure that revenue streams are sufficient to cover all expenses and provide a profit that is at least five percent of gross revenue." Finally, the Petitioner explained that the CEO must meet regularly with vendors to ensure that confidence in the company's delivery services remains high so that the company is positioned for additional business in its market.

The Petitioner's response to the RFE did not further clarify the nature of the Beneficiary's primary day-to-day tasks. It described how personnel and contractors would be evaluated based on performance and briefly explained the Beneficiary's general profit and loss goals and contract-related responsibilities. However, the initial description indicated that personnel, finance and contract-related duties would account for only 30 percent of the Beneficiary's time. The letter submitted in response to the RFE did not elaborate on the "daily operational and managerial works" that would require 70 percent of the Beneficiary's time and therefore did not meet the Petitioner's burden to clearly describe the proposed duties and to establish that the Beneficiary's actual duties would be primarily managerial in nature. Reciting a 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. *Fedin Bros.*, 724 F. Supp. at 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's proposed activities in the course of his daily routine.

The fact that a beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial 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. Here, the Petitioner indicates that the Beneficiary will exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making and personnel matters. However, due to the deficiencies discussed, the submitted position descriptions do not establish that his actual duties would be primarily managerial in nature.

B. Staffing and Organizational Structure

At the time of filing in June 2019, the Petitioner indicated that it had 28 employees, including five full-time workers, and "over 100 independent contractors" working at its two distribution centers. The Petitioner submitted a copy of its most recent California state quarterly wage report confirming that it had 28 employees on its payroll as of March 2019. The Petitioner also provided copies of IRS Forms W-2, Wage and Tax Statement, for 2018, but did not submit evidence to document its payments to staff identified as independent contractors.

The Petitioner submitted a proposed organizational chart indicating that the Beneficiary would be responsible for overseeing a "Center Manager" at each distribution center. The [redacted]-based "Center Manager" is depicted as supervising three assistant managers (two employees and one contractor), who in turn supervise 89 newspaper delivery contractors and 24 warehouse support and assembly employees. The [redacted] based "Center Manager" position is depicted as supervising three contracted assistant managers, who supervise eight warehouse and assembly contractors and 40 newspaper delivery contractors.

The organizational chart identifies [redacted] as the company chairman and "corporate security" but depicts his position and area of supervision (a "management services division") as being separate from rest of the company structure. The Petitioner explained that [redacted] is "responsible for the company's security, meaning that he needs to seek more strategic opportunities to secure the company's business" and "does not involve [*sic*] the daily operation of our company." The record reflects that [redacted] founded the petitioning company in 2006 and wholly owned it until selling the Beneficiary a majority share of its stock in June 2019. The Petitioner indicates that the Beneficiary was offered the CEO position because he had invested in the company and as part of a management restructuring.

The definition of "managerial capacity" allows for both "personnel managers" and "function managers." Here, the Petitioner states that the Beneficiary will be employed in a managerial capacity based on his proposed supervision and control of subordinate personnel and does not claim that he will be employed as a function 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."[1] *Id.*

In a statement describing the current staff's duties, the Petitioner indicated that its two center managers currently "share the managerial work" of the company, with each responsible for "supervising the daily operations" of their respective distribution centers. The record reflects that the center managers currently work with minimal supervision but would report to the Beneficiary when he assumes the CEO role. The Petitioner further explained that the assistant managers "assist the center manager to operate the daily works at the center, including assigning and arranging the works to all other center's worker, sorting, packing, loading and delivering." The Petitioner stated that assistant managers currently report to their respective center managers, but "will be directly under [the Beneficiary's] management and supervision" when he joins the company," with him "supervising and controlling their daily works." Finally, the Petitioner indicated that lower level warehouse, assembly and delivery workers report to the assistant managers. However, elsewhere, the Petitioner stated that the assistant managers "are mainly responsible for performing each step of the distribution together with other workers."

In the RFE, the Director requested additional information regarding the duties performed by the Beneficiary's proposed subordinates, and, if applicable, additional evidence to establish they are professional employees. In response, the Petitioner indicated that it had already provided this information and referred the Director to some of the initial evidence exhibits. The Petitioner stated that it was providing resumes for "some senior staff" and emphasized that they should be considered "professional staff" based on their years of industry experience even if they do not have college-level education. The resumes provided for the managers and assistant managers indicate their employment with the Petitioner, but do not provide any further information regarding their job duties.

Based on the above, the record reflects that, with the addition of the new CEO position, the Petitioner's distribution centers would be staffed by: (1) a CEO responsible for "daily operational and managerial works" and the "overall operations," (2) a center manager who is responsible for "supervising the daily operations," and (3) three assistant managers who assist the center managers "to operate the daily works." Although the organizational chart shows three tiers of management or supervision over the lower-level staff, one of the Petitioner's statements, as noted above, indicates that the both the center managers and assistant managers will report directly to the Beneficiary. If this is the case, it is unclear how his role would differ from that of the center managers.

Further, we note that the Petitioner has only documented its payments to the two assistant managers who are on its payroll; it indicates that the other four individuals in this position are contractors, but

[1] To determine whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

the record does not contain evidence of payments to contractors. In fact, the Petitioner has documented its employment of only one of its staff members at the [redacted] distribution center (the center manager), as all other workers at this center are identified as contractors.

Therefore, while the Petitioner has documented its [redacted] based payroll employees, and it appears that the Beneficiary's direct subordinates at this distribution center would be responsible for assigning tasks to the lower-level warehouse workers during the newspaper sorting, assembling, packing and loading process, the evidence as a whole does not establish that they would relieve him from performing other non-managerial duties associated with operating the business. The fact that he will spend some portion of his time overseeing subordinate supervisors is not sufficient to establish that his role is primarily managerial in nature.

As discussed, the Petitioner did not elaborate on what specific tasks the Beneficiary would perform with respect to the centers' "daily operational and managerial works." Because the Petitioner did not provide a detailed description of the Beneficiary's duties, or the requested position descriptions for his direct subordinates, we cannot determine whether the center managers and assistant managers would relieve him from performing other operational tasks that may be required for the business, such as reporting to vendors, handling calls from customers, and day-to-day booking and administrative functions that would be associated with any business.

In addition, the Petitioner indicates that the distribution center's main activities take place between 1 am and 6 am. However, it states that the Beneficiary, from 6 am to 11 am, "needs to supervise and control the works of some after-distribution and customer services performed by our independent contractors." It is unclear whether the managers and assistant managers would assist with these tasks, given the Petitioner's claim that the warehouse is "generally empty" during this time, and the Petitioner has not established that the independent contractors who perform these after-distribution and customer service functions are managers, supervisors or professionals.

Overall, the record does not contain sufficient evidence regarding the Beneficiary's proposed role or the roles of his subordinates to establish that he would primarily perform qualifying managerial duties. Accordingly, the Petitioner has not established that he would be employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act.

III. EMPLOYMENT ABROAD

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its arguments regarding whether the Beneficiary was employed 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).

ORDER: The appeal is dismissed.