U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9095378

Date: AUG. 05, 2020

Appeal of California Service Center Decision

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

The Petitioner, a consumer goods retailer, seeks to temporarily employ the Beneficiary as a "Global IT Manager, TPM" 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 California Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner asserts that the Beneficiary would be employed in a managerial capacity and contends that the Director did not adequately consider the Beneficiary's job description or his hire and fire authority with respect to his direct subordinates. It further contends that the Director did not properly apply the law to the facts and supporting evidence presented.

Upon *de novo* review, we will remand the matter for further proceedings because the Director offered an incomplete analysis of the relevant facts and legal standards.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity 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)(3)(v)(B). 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.*

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;

(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

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

II. BASIS FOR REMAND

As noted earlier, we find that the Director's decision did not adequately explain the deficiencies in the evidence. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Despite considering the Beneficiary's job description and subordinates in issuing the adverse decision, the Director did not offer a comprehensive analysis addressing all four prongs of the statutory definition of managerial capacity. Instead, the Director largely focused on the second prong of the definition, finding that the Beneficiary's duties are more akin to those of a "Team Lead rather than of a Manager." However, the Director did not offer a legal basis to support this analysis, nor did she provide an objective definition of a "team lead" to substantiate the finding that a team lead position ought to be deemed non-managerial.

Notwithstanding the lack of analysis, the record is currently insufficient to establish that the Beneficiary would be employed in a managerial capacity, as claimed. 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 record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

In this instance the Petitioner did not demonstrate that the Beneficiary will manage the organization, or a department, subdivision, function, or component of the organization, consistent with section 101(a)(44)(A)(i) of the Act. Although the Petitioner claims that the Beneficiary will manage its "Infrastructure Change Managemet [*sic*] (ICM) team," it provided an organizational chart that depicted two levels of management above the Beneficiary's position. Namely, the chart shows three levels of technical program managers, designating the top level to the "Director [redacted] IT Services," the second level to the "Sr. Manager IT Support," and the third level to the Beneficiary in his position as "Manager Technical Program." Only one level of subordinates is depicted below the Beneficiary, thus indicating that he would be senior only with respect to those subordinates. And despite the professional nature of said subordinates, the chart indicates that the "Director [redacted] IT Services,"

rather than the Beneficiary, would manage this IT department or subdivision. It is unclear where the Beneficiary's position will fall within the greater scope of the organization, as the record contains a single organizational chart that offers a limited cross-sectional view of a large organization.

We further note that there are discrepancies in the record regarding the Beneficiary's pay and position title. Namely, the petition form states that the Beneficiary's position will be that of "Global IT Manager" and that he will be compensated $147,630 annually with "standard corporate employment benefits" listed as part of "other compensation." However, in a job offer letter that was provided for the first time in response to a request for evidence, the Beneficiary's job title was listed as "Mgr, Techn Program Mgmt (Job Level: 6)" and his proffered wage was listed as $152,000 with a monthly "supplemental bonus" of $3730. These discrepancies are relevant in a totality of the evidence analysis of the Beneficiary's proposed position and as such they must be resolved through the submission of independent, objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In light of the above, the record as presently constituted does not show that the Beneficiary meets all four prongs of the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act.

III. CONCLUSION

Although the Petitioner did not submit sufficient evidence to meet its burden of establishing that the Beneficiary will be employed in a managerial capacity, the Director's decision did not adequately analyze the facts of the matter and apply the law. As the Director did not satisfy this condition, we will remand the matter for entry of a new decision. The Director should request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period of time.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.