U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30395425

Date: AUG. 05, 2024

Appeal of California Service Center Decision

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

The Petitioner, an Indian cuisine restaurant, seeks to continue the Beneficiary's temporary employment as its executive chef under the L-1A nonimmigrant classification for intracompany transferees. *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 the Beneficiary: (1) was employed abroad by a qualifying entity for at least one year in the three years preceding the filing of the initial L-1A petition on his behalf; (2) was employed abroad in a managerial capacity; (3) has prior education, training and employment that qualifies him to perform the intended services in the United States; and (4) would be employed in a managerial capacity in the United States. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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 will dismiss the appeal.

I. LAW

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*. 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. ANALYSIS

The Director denied the petition, in part, based on a determination that the Petitioner did not establish the Beneficiary would be employed in a managerial capacity in the United States.[1]

"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, 8 U.S.C. § 1101(a)(44)(A).

To establish that a beneficiary is employed in a managerial capacity, a petitioner must show that the beneficiary performs all four of 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 four elements set forth in the statutory definition, it must then prove that the beneficiary is *primarily* engaged in managerial duties, as opposed to operational activities alongside the company's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

In determining whether a given beneficiary's duties are primarily managerial, we consider the petitioner's description of the job duties, the company's organizational structure, the duties of a 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 a beneficiary's actual duties and role in a business.

A. Job Duties

In a letter submitted at the time of filing, the Petitioner stated that the Beneficiary, as executive chef, is responsible for "coordinating the activities of the restaurant's kitchen to ensure optimum efficiency and economy of operations and to maximize profits" and has "discretionary authority on all business decisions." The Petitioner stated that the position entails the following responsibilities:

> [P]lanning and developing organization policies and goals and implementing goals through subordinate restaurant personnel; coordinating activities of the restaurant to effect operational efficiency and economy; interviewing and recommending hiring and training of staff; directing and coordinating promotion of sales to develop the business . . .; assigning and managing staff duties; approving staff hour reports for payroll; analyzing division budget requests to identify areas in which reductions can be made and allocating operating budget; and conferring with restaurant personnel to review activity, operating and sales reports to determine changes in programs or operations required.

[1] The Petitioner did not claim that the Beneficiary would be employed in an executive capacity, as defined at section 101(a)(44)(B) of the Act.

In a request for evidence (RFE), the Director advised the Petitioner the submitted position description was too vague to demonstrate what specific duties the Beneficiary performs and therefore insufficient to demonstrate that his duties would be primarily managerial in nature. The Director further noted that the record lacked independent evidence corroborating that the Beneficiary performs the stated duties. Finally, the Director summarized information obtained by a U.S. Citizenship and Immigration Services (USCIS) immigration officer (IO) during an interview with the Beneficiary at a July 2020 site visit. The Director observed that the Beneficiary stated during his interview that he does not schedule employees, handle payroll or budgetary matters, or order supplies as stated in the submitted position descriptions, and, that he "could not demonstrate basic culinary knowledge."

The Director requested that the Petitioner submit a letter detailing the Beneficiary's typical managerial duties and the percentage of time he spends on each task, as well as an explanation of how his assignment meets all four prongs of the statutory definition of "managerial capacity" at section 101(a)(44)(A) of the Act.

In response, the Petitioner submitted the following position description of the Beneficiary's "day-to-day" duties:

- Planning and developing culinary policies and goals of the restaurant and implementing goals through chefs (18%)
- Study the local produce/ingredient market, analyze the inventory in hand, and design the menu for the location per the organization's standards and requirements for three months (5%)
- Experiment with new menu items . . .. (10%)
- Coordinating culinary activities of the restaurant to effect operational efficiency and economy. (12%)
- Maintaining the kitchen and surrounding areas in conditions that meet the company standards and health code regulations. (5%)
- Interview candidates and recommend hiring/firing and training of staff at the restaurant.
- Assist the management in negotiating business agreements with suppliers and subcontractors to meet the restaurant's supply needs. (10%)
- Monitoring inventory and purchasing supplies and food from approved vendors. (8%)
- Assign and manage the culinary staff duties. (5%)
- Conduct training and orientation of new and existing staff of the restaurant. (15%)
- Analyze the location budget to identify areas in which reductions can be made, make amendments to the operating budget and submit it for approval. (12%)

The Petitioner characterized the position as a function manager, responsible for "managing the culinary function," including the restaurant's "entire kitchen and culinary division." The Petitioner's response did not address or rebut the Director's description of the information obtained by USCIS during the site visit.

After reviewing the Petitioner's response, the Director denied the petition. With respect to the job duties, the Director emphasized that the petitioner did not provide independent evidence indicating that the Beneficiary has been performing managerial duties, and again noted that the Beneficiary's

responses to the USCIS officer conflicted with the position descriptions provided at the time of filing and in response to the RFE.

On appeal, the Petitioner asserts that the Beneficiary, despite speaking "very limited English" was denied access to an English language interpreter during most of his interview with the IO and was unable to fully understand and adequately respond to the questions posed to him. The Petitioner, acknowledging that the Beneficiary provided the IO with an English-language resume, states that it was prepared for him by "a resume preparer based on their experience," and that "nothing stated in the resume was untrue." Notably, the resume to which the Petitioner is referring indicates that the Beneficiary is fluent in English, which tends to undermine the Petitioner's claim that he was not able to understand or adequately respond to any question posed to him, some of which required a "yes" or "no" response.

The Petitioner also emphasizes that the site visit occurred during the height of the COVID-19 pandemic when the restaurant was operating with a reduced staff. For these reasons, the Petitioner contends that any adverse findings resulting from the site visit "must be discarded."

However, we note that even if we wholly excluded the Beneficiary's interview responses relating to his job duties, the record does not contain sufficient information to establish that his day-to-day duties are primarily managerial. The job descriptions the Petitioner submitted in support of the petition lack the necessary detail and, as noted in the Director's decision, are not adequately supported by other evidence in the record. For example, the Petitioner indicates that the Beneficiary spends more than 20 percent of his time on duties that include studying the local ingredient market, analyzing and monitoring inventory, purchasing food and supplies, and assisting management with negotiating business agreements with local suppliers. Without additional explanation, we cannot determine that these inventory and purchasing duties fall within the statutory definition of managerial capacity. Further, the Petitioner's organizational chart depicts a separate department led by a "storekeeper," which suggests that other staff (who do not report to the Beneficiary) may in fact be responsible for the purchasing, storage, and monitoring of supplies and storage of ingredients.

The Petitioner indicated that the Beneficiary spends an additional 30 percent of his time on developing the culinary goals and policies of the restaurant and implementing them through other chefs, as well as "coordinating culinary activities" of the restaurant to ensure "operational efficiency and economy." However, it offered no examples or supporting evidence elaborating on goals and policies he developed, or specific tasks he performs to coordinate these activities in support of its claim that these claimed managerial duties require almost a third of his time on a regular and ongoing basis. Specifics are clearly an important indication of whether a beneficiary's duties are primarily 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).

The Petitioner indicates that the Beneficiary spends only 10% of his time on experimenting with new menu items and performs no other food preparation tasks. However, his resume indicates that in addition to creating new menu items, one of his main tasks is "preparing high quality food items," which raises questions as to whether the Petitioner's description of his duties, and the percentages assigned to those duties, is complete and accurate. In addition, although the Petitioner indicates the Beneficiary spends a significant portion of his time working through lower-level chefs to manage the

culinary function, the record, as discussed further below, does not contain adequate support for the Petitioner's claim that he is relieved from performing the day-to-day operational tasks of this function.

While we acknowledge that the Petitioner places the Beneficiary at a senior level among its kitchen staff on its organizational chart, the position descriptions are not sufficiently detailed to establish that his day-to-day 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. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Further, as noted, we must consider the submitted position descriptions within the context of the Petitioner's business, which requires a review of the nature of the business, its structure, and its staffing levels.

B. Staffing and Organizational Structure

The Petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it had 23 employees at the time of filing on October 26, 2020. An organizational chart submitted with the petition depicts the Beneficiary as executive chef and indicates he directly supervised an executive chef. The chart reflects that this subordinate executive chef supervised four chefs (responsible for appetizers, sauces, pastry and bread/confectionary, respectively), who in turn supervised a total of six "helpers" in these culinary areas.[2] The record also includes a copy of the Petitioner's Texas employer's quarterly report for the fourth quarter of 2020. This evidence indicates the Petitioner paid wages to the individuals identified on the organizational chart as the subordinate executive chef, sauce chef, and five of the six kitchen "helper" staff. However, it does not show that the Petitioner employed the individuals identified as the appetizer chef, pastry chef, bread/confectionary chef, or pastry helper when the petition was filed.

In the RFE, the Director requested that the Petitioner submit an organizational chart listing all employees in the Beneficiary's immediate division by name, job title, summary of duties, education level and salary, along with evidence of wages paid to these employees.

In the RFE response, submitted in June 2023, the Petitioner explained that its business model "is organized in such a fashion that all required day-to-day culinary function activities are directly provided by a team of four chefs and helpers under the supervision of the Executive Chef." The Petitioner stated that those employees support the Beneficiary in accomplishing his function by performing "non-qualifying duties such as the daily required culinary activities."

The updated organizational chart showed that the Beneficiary was directly supervising an appetizer chef, a sauce chef, a pastry chef, and a bread and confectionary chef as of June 2023. The chart shows two staff under each chef, including two appetizer helpers (reporting to the appetizer chef), a sauce chef manager and line cook (reporting to the sauce chef), a pastry chef helper and dishwasher (reporting to the pastry chef), and two confectionary helpers (reporting to the bread and confectionary

[2] Two of the kitchen staff are depicted as holding more than one position within the restaurant. Specifically, the chart indicates that K-S- was working as both a confectionary helper and as a catering planner, while S-G- was working as both sauce chef and storekeeper helper.

chef). The organizational chart was accompanied by brief position descriptions for the four chef positions.

The Petitioner also provided pay statements for the period December 2022 through June 2023 for the kitchen employees depicted under the Beneficiary on the organizational chart. However, the latest pay statements provided for the sauce chef and pastry chef were issued in January 2023 and February 2023, respectively. Therefore, the evidence did not show that the Petitioner continued to employ these staff at the time of the RFE response, notwithstanding their inclusion on the updated organizational chart.

The Director concluded that the Petitioner did not show that the Beneficiary performs the claimed managerial oversight of subordinate employees or that the Beneficiary's direct reports are employed in managerial, supervisory, or professional positions. On appeal, the Petitioner contends the Director overlooked the Petitioner's assertion that the Beneficiary is employed as a function manager and maintains that it did not claim that the Beneficiary qualifies as a manager based on his supervision of subordinate managerial, supervisory, or professional personnel.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections (101)(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of supervisory, professional, or managerial employees. A beneficiary must have authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Sections 101(a)(44)(A)(ii)-(iii) of the Act.

The term "function manager" applies generally when a beneficiary's managerial capacity derives not from supervising and controlling a subordinate staff, but instead from primarily 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).

Here, for the reasons discussed above, the Petitioner did not clearly and consistently describe the duties the Beneficiary performs in managing the culinary function for its restaurant. Further, the Petitioner has not demonstrated that the Beneficiary would primarily manage this function, as opposed to performing the day-to-day duties of the function. Whether a beneficiary is a "function" manager turns in part on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See Matter of Z-A-*, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016).

The Petitioner alleges that, because it seeks to classify the Beneficiary as a function manager, the Director erroneously relied, in part, on the company's staffing. While the Petitioner does not need to demonstrate that the Beneficiary will supervise and control the work of subordinate managers, supervisors, or professionals, it must still show the presence of other employees to relieve him from performing operational duties associated with the culinary function.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, USCIS must consider the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial operations of the company or function. *See Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006). Here, the Petitioner indicates that the Beneficiary relies on a team of chefs and helpers in the kitchen who perform "all required day-to-day culinary function activities" of the restaurant.

The Petitioner must demonstrate that it was eligible for the requested benefit at the time of filing, and it must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1). Here, the Petitioner has not documented that it employed all the kitchen staff included in its initial organizational chart at the time of filing. The Petitioner claimed to have four "second tier" chefs (responsible for appetizers, sauces, pastry and bread/desserts, respectively) but of the four chefs identified in the initial organizational chart, only one (the sauce chef) received wages in the fourth quarter of 2020.[3] Further, the sauce chef was depicted as serving in two positions on the organizational chart with no explanation of how he allocates his time between his chef duties and his "storekeeper helper" duties.

The evidence submitted in response to the RFE in June 2023 similarly reflects that the Petitioner did not employ a full complement of chefs to relieve the Beneficiary from involvement in the day-to-day tasks of the culinary function at that time. As noted, the evidence did not corroborate the Petitioner's claim that it employed the claimed pastry chef or sauce chef, despite the inclusion of these employees on the organizational chart. The Petitioner also indicated that it employed a second executive chef at the time of filing but no longer depicted this position on the organizational chart when it responded to the RFE. The Petitioner did not explain why it eliminated the position or indicate what duties the second executive chef was performing at the time of filing.

The Petitioner has consistently claimed that its restaurant serves a constantly changing menu of 30 unique dishes per day (900 dishes per month) and that it requires its kitchen staff to freshly prepare everything daily because it does not rely on refrigeration or coolers for storage. Therefore, the absence of two or three of its four claimed "second tier" chefs would reasonably have a significant impact on the Petitioner's ability to ensure that the Beneficiary is relieved from having to perform the day-to-day duties of the restaurant's culinary function. Because the Petitioner did not document its employment of the claimed chefs at the time of filing or in response to the RFE, the Petitioner's assertion that it maintains sufficient kitchen staff to allow the Beneficiary to perform primarily managerial duties associated with the culinary function is not adequately supported by the record. The Petitioner has also submitted detailed information about its menu indicating that its offerings extend beyond the appetizer, bread, pastry and sauce dishes assigned to the claimed "second tier" chefs; this

[3] Although the Petitioner stated at the time of filing that its staffing levels continued to be impacted by the COVID-19 pandemic, the payroll evidence it submitted reflects that the company had returned to pre-pandemic staffing levels as of the fourth quarter of 2020. Specifically, the evidence shows the company reported 22 to 24 employes in the first quarter of 2020, dropped to 2 staff in April 2020, 0 staff in May 2020, employed 18 staff in June 2020, and reported 23 employees for the last quarter of that year.

information further undermines the Petitioner's claim that all or most day-to-day culinary activities are performed by lower-level chefs and other kitchen staff.

While we acknowledge that the culinary function is an essential function for a restaurant, the Petitioner did not meet its burden to demonstrate that the Beneficiary would primarily perform managerial duties related to this function, and therefore did not demonstrate that he would be employed in a managerial capacity. The appeal will be dismissed for this reason.

III. PRIOR APPROVALS

We acknowledge that USCIS approved the Petitioner's previous L-1A petitions filed on behalf of the Beneficiary. We are not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). Rather, USCIS makes a determination on each matter according to the evidence of record on a case-by-case basis. Despite the previous finding of eligibility, the burden of proof in the request for an extension of petition validity remains on the petitioner.

Further, where, as here, there is new material information that adversely impacts eligibility, USCIS is not required to defer to prior approvals. *See* 2 *USCIS Policy Manual* A.4(B)(1), https://www.uscis.gov/policy-manual (discussing the significance of prior USCIS approvals and deference). The Director properly acknowledged the prior approvals and informed the Petitioner of the new material information in the RFE prior to denying the petition. *See* 8 C.F.R. § 103.2(b)(16)(i). For the reasons discussed above, the Petitioner did not demonstrate that the Beneficiary is eligible for the requested extension.

IV. RESERVED ISSUES

Because the issue discussed above is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding the remaining grounds for denial addressed in the Director's decision. *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

For the reasons discussed, the Petitioner has not established that the Beneficiary would be employed in the United States in a managerial capacity. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.