U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32769812

Date: AUG. 6, 2024

Appeal of California Service Center Decision

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

The Petitioner, which provides information technology services, seeks to temporarily employ the Beneficiary as its chairman and chief executive officer 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 that: (1) the Beneficiary was employed continuously outside the United States for at least one year during the three years preceding the filing of the petition; (2) the Beneficiary has been employed abroad in a managerial or executive capacity; (3) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity; and (4) the Beneficiary's employment will be temporary. The matter is now before us on appeal under 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 determined that the Petitioner did not establish that the Beneficiary has been employed abroad, and will be employed in the United States, in a managerial capacity. The Petitioner did not claim that the Beneficiary's position qualifies as an executive capacity. On Form I-129 and in an accompanying letter, the Petitioner indicated that the Beneficiary's "job duties [in the United States] will continue to remain the same as his Canadian role." Therefore, the following discussion relates both to the Beneficiary's past employment abroad and his intended employment in the United States.

"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 show that a beneficiary is eligible for L-1A nonimmigrant visa classification as a manager, a petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then 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). In determining whether the beneficiary's duties will be primarily managerial, we consider the description of the job duties, 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 the business.

The Petitioner stated that the Beneficiary "will continue to oversee the overall execution, company vision, strategy aligning to all vertical business units. He will oversee all operations of [redacted] through its operational subsidiaries [redacted], which is affiliated with the Petitioner and the Beneficiary's Canadian employer because the Beneficiary is the ultimate sole or majority owner of each company.[1]

A key element of a managerial capacity is supervision and control of supervisory, managerial, or professional employees.[2] As explained below, we agree with the Director's conclusion that the Petitioner has not met its burden of proof to establish that the Beneficiary's position abroad and his

[1] The record contains little additional information about [redacted] Regarding the name [redacted] the record indicates that the larger organization includes similarly-named but separate companies with that name in the United States and in Canada. There are some mentions of [redacted] in the record where it is not clear whether the Petitioner refers to the Canadian or U.S. entity by that name.

[2] In the alternative, a manager can manage an essential function within the organization or a department or subdivision of the organization. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*). But the Petitioner has not claimed that the Beneficiary has served, and will serve, as a function manager in this way.

intended position in the United States primarily involve supervising and controlling the work of supervisory, managerial, or professional employees.

The Petitioner submitted evidence showing that the petitioning U.S. entity has one employee, and the Petitioner claimed that its affiliate [redacted] has ten employees in the United States. Most of the larger organization's claimed staff is in Canada. Such an arrangement is permissible provided that the overseas staff supports the Beneficiary's work in the United States. *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 6 (AAO Apr. 14, 2016). But the burden remains on the Petitioner to establish that the organization employs those employees, and to show how they support the Beneficiary's work in the United States.

The Petitioner stated that its affiliate in Canada "currently employs 100+ employees on a full-time basis." The Petitioner submitted an organizational chart showing 111 positions subordinate to the Beneficiary, including 27 positions at [redacted] The Petitioner also submitted a list of general responsibilities, divided into four categories. For example, the Petitioner stated that the Beneficiary spends 30% of his time "[o]verseeing sales and marketing," adding:

> For this, [the Beneficiary] oversees a total of 25 employees, 6 of which are managers, as they complete the day-to-day hands on tasks needed for:
> - Sales and marketing strategy and execution
> - Working with world class vendors and partners
> - Aligning GTM strategy

The Petitioner also stated:

> For each of the job duties listed . . . , [the Beneficiary] oversees that department by discussing [via virtual meetings] what needs to be done with the team so that the desired outcomes are achieved. . . . He monitors the tasks . . . by tracking progress via email and secured intranet websites. . . . [The Beneficiary] does not complete any tasks on his own; all hands-on work is completed by subordinate employees.

In a request for evidence (RFE), the Director stated that the job description did not include enough specific "details and documentation concerning the beneficiary's managerial duties." The Director acknowledged the organizational chart but observed that the Petitioner:

> did not provide a description of duties for the beneficiary's subordinate staff and describe how the subordinate staff supported the beneficiary's managerial position and relieved him from performing the day-to-day, non-qualifying duties of the business. As such, the evidence . . . does not establish that the beneficiary supervised the work of other supervisory, professional, or managerial employees.

The Director stated that a favorable determination would not be possible "[w]ithout more detailed information accompanied by probative material documentation," such as a "summary of duties" for the claimed subordinate staff.

In response, the Petitioner submitted a longer job description that repeated the first version and added several elements within the four categories. For example, below are some of the elements added to "Overseeing sales and marketing":

- Market Research:
  1. Conducting regular market analysis to identify trends and opportunities.
  2. Assessing competitors and market positioning to refine sales strategies.
- Sales Team Management:
  1. Directing and guiding the sales team to achieve revenue targets.
  2. Implementing sales training programs to enhance team performance.
- Client Relationship Management:
  1. Engaging with key clients to understand their needs and ensure satisfaction.
  2. Developing and maintaining strong client relationships.

The Petitioner did not submit job descriptions for the Beneficiary's subordinates or explain the specific tasks that specific subordinates would perform as the Director requested in the RFE. Instead, the Petitioner repeated the general assertion that "all hands-on work is completed by subordinate employees."

The Director denied the petition, stating that the changes to the Beneficiary's list of responsibilities raised questions of credibility, and that the Petitioner "did not provide sufficient details about the subordinate staff." The Director concluded that "the evidence [the Petitioner] submitted does not demonstrate that the beneficiary supervised and controlled the work of other supervisory, professional, or managerial employees."

On appeal, the Petitioner states that it did not change the Beneficiary's job description, it simply added more details. We agree with the Petitioner that the additions do not amount to material changes that conflict with the earlier version of the list of responsibilities. Nevertheless, the list of responsibilities remains deficient because it provides minimal information about the actual tasks that the Beneficiary would perform and it does not say who would perform the lower-level operational tasks. The assertion that such tasks would be delegated to subordinates is not sufficient in this regard.

The Petitioner has submitted an organizational chart that purports to show the Canadian company's structure, but when asked for more evidence to corroborate the chart, the Petitioner only partially addressed the Director's concerns. The Petitioner has provided only fragmentary information about the duties of a small number of claimed subordinates. The Director has the discretion to request additional corroborating evidence. *See* 8 C.F.R. § 214.2(l)(3)(viii). A petition may be denied when a petitioner does not submit requested evidence. *See* 8 C.F.R. § 103.2(b)(14).

In the RFE, the Director requested salary figures for the Beneficiary's claimed subordinates. The Petitioner did not provide that information. The Petitioner did, however, submit an unaudited financial statement for the Canadian company, indicating that the company spent about CA$2.18 million on salaries in the 2022-2023 tax year. Assuming that this statement excludes salaries paid to [redacted] employees, the salary figure averages out to slightly less than CA$26,000 per year for each of the 85 employees shown on the organizational chart. If the figure includes [redacted] employees, the average salary is below CA$22,000 per year. The Petitioner had previously asserted that "100+" of the

employees in Canada work full-time. The record does not establish that the stated salary total is sufficient for a full-time staff of that claimed size, which may raise questions about the accuracy of the claimed number of full-time employees.

On appeal, the Petitioner states that the Director did not give "proper weight" to "[e]mail printouts showing [the Beneficiary] overseeing operations, marketing, partnering, and more. Emails also show him overseeing other supervisory employees." The email messages document conversations between the Beneficiary and individuals named on upper levels of the organizational chart. The messages indicate that the Beneficiary has authority over the other individuals named in the conversations, but they do not fully corroborate the Petitioner's claims about the structure of the Canadian company and establish that the Beneficiary primarily supervises and controls the work of managers, supervisors, and professionals. The messages do not address evidentiary shortcomings that the Director identified in the denial notice.

The Director raised important questions about the organizational structure that the Beneficiary is said to oversee, and the Petitioner has not adequately addressed them. Without an understanding of the organization's true full structure, we cannot fully assess the managerial nature of the Beneficiary's position. We therefore agree with the Director that the Petitioner had not met its burden of proof to establish, by a preponderance of the evidence, that the Beneficiary's position – which is essentially identical abroad and in the United States – qualifies as a managerial capacity in which the Beneficiary primarily supervises and controls the work of other supervisory, professional, or managerial employees.

Because the above issue determines the outcome of the Petitioner's appeal, we need not reach, and hereby reserve, the issues of the continuity of the Beneficiary's employment abroad and the temporary nature of the Beneficiary's intended U.S. employment. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

III. CONCLUSION

The Petitioner has not established that the Beneficiary's position with the organization meets all the requirements of a managerial capacity. Therefore, we will dismiss the appeal.

ORDER: The appeal is dismissed.