U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-R-G- INC.

DATE: AUG. 8, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an Omni-channel and supply chain solutions business, seeks to temporarily employ the Beneficiary as senior director of product development 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 on the ground that the Petitioner did not establish that the Beneficiary would be employed in a primarily managerial or executive capacity in the United States. The Director found that the Petitioner's description of the job duties the Beneficiary would perform in the United States were indicative of an employee who will primarily be performing tasks necessary to provide a service or produce a product.

On appeal, we find that the Petitioner has established, by a preponderance of the evidence, that the Beneficiary will be employed in a primarily managerial capacity in the United States. Accordingly, we will withdraw the Director's finding to the contrary. However, we also find that the present record is insufficient to establish that the Beneficiary was employed abroad in a primarily managerial or executive capacity. Therefore, we will remand the matter to the Director for further consideration.

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. As further prescribed in the regulations, a beneficiary must have "one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition." 8 C.F.R. § 214.2(l)(3)(iii). 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.*

II. ANALYSIS

A. Employment in the United States in a Managerial 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.

The Petitioner asserts that the Director erred in finding that the Beneficiary will not be employed in a primarily managerial capacity in the United States as senior director of product development. We agree. The evidence of record includes a detailed description of the Beneficiary's managerial duties, accompanied by the Petitioner's organizational chart which shows that the Beneficiary, as senior director of product development, ranks just below the executive position of "vice president – product" and oversees six subordinate managers who in turn manage 12 employees responsible for the day-to-day tasks of product development. The names, job titles, job duties, and educational credentials of all 18 subordinate managers accompany the organizational chart. We find that the Petitioner has established, by a preponderance of the evidence, that the Beneficiary will primarily manage the Petitioner's product development component; supervise and control the work of other supervisory, professional, or managerial employees; have authority over personnel actions at a senior level within the organization; and exercise discretion over the day-to-day operations of product development. Accordingly, the Petitioner has established that the Beneficiary will be employed in a primarily managerial capacity in the United States, in accordance with the requirements of section 101(a)(44)(A) of the Act. We will withdraw the Director's finding to the contrary.

B. Employment Abroad in a Managerial Capacity

As previously indicated, we find that the current record dos not establish that the Beneficiary was employed abroad in a managerial or executive capacity for one year out of the three years prior to the filing of the instant petition on September 10, 2018, as required in 8 C.F.R. § 214.2(l)(3)(iii). The Petitioner states that the Beneficiary has been employed abroad by [redacted] its subsidiary in [redacted] Russia, since January 30, 2014. According to the Petitioner, the Beneficiary was originally hired as a senior software engineer and since May 2, 2017, has served as director of technical support, allegedly a managerial position. The only evidence of this employment experience is in the letter from the Petitioner's HR director that accompanied the petition. This letter provided a succinct overview of the Beneficiary's duties, but few details about the tasks he actually performed on a day-to-day basis. No evidence has been provided about the size and structure of [redacted]

[redacted] at large, or about its technical support operation and how the Beneficiary exercised his managerial duties vis-à-vis his subordinate employees and/or with respect to the essential function of technical support.

The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). For the reasons discussed above, we will remand this matter to the Director for further consideration of whether the Beneficiary was employed abroad for at least one year in a managerial (or executive) capacity before the filing of the instant petition in September 2018, and any other issue(s) the Director may deem relevant. The Director may request additional evidence from the Petitioner, and consider any new evidence submitted in response to such request, before issuing a new decision.

III. CONCLUSION

We will withdraw the Director's finding that the Beneficiary will not be employed in a managerial capacity in the United States, but remand the matter for the Director to determine whether the Beneficiary was employed abroad for at least one year in a managerial capacity.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of T-R-G- Inc*, ID# 4678646 (AAO Aug. 8, 2019)