U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8418927

Date: AUG. 10, 2020

Appeal of California Service Center Decision

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

The Petitioner, an importer and distributor of medical supplies, seeks to seeks to continue the Beneficiary's temporary employment in the United States as its general manager 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 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, as required, that the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity.

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. 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.*

II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that it will employ the Beneficiary in a managerial capacity. (The Petitioner does not claim that it seeks to 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.

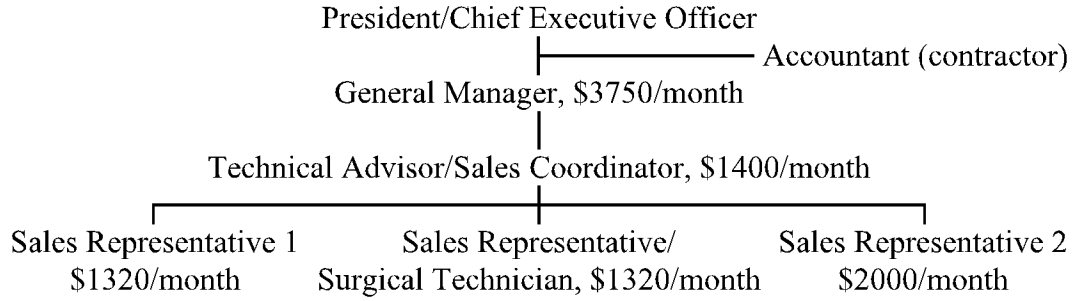
To be eligible for L-1A nonimmigrant visa classification as a manager, a petitioner must show that the beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)–(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

This decision centers on the requirement that a manager 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. *See* 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*). The Petitioner asserts that the Beneficiary meets this requirement because he supervises and controls the work of professional employees.

The Petitioner's organizational chart shows the following structure, with monthly salary amounts taken from 2018 pay receipts in the record:



The Petitioner initially stated: "The 3 Sales Representatives/Surgical Technician report to the Technical Advisor/Sales Coordinator . . . and in turn, they indirectly report to" the Beneficiary. The

Director concluded that the Petitioner had not shown that the "company requires three levels of management to oversee three Sale[s] Representatives," or that the technical advisor/sales coordinator is actually employed in a managerial or supervisory position." The Director noted "numerous references to the beneficiary himself directly controlling the Sales Representatives," such as assigning tasks and reviewing reports. On appeal, the Petitioner does not contend that the technical advisor/sales coordinator is a supervisory employee. Therefore, we need not address that issue. Instead, the Petitioner's appeal is focused on the assertion that the Beneficiary's subordinates are professionals.

To determine whether the 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 United States 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 Petitioner has not shown that the subordinate positions are professional. They key issue is whether the positions *require* at least a bachelor's degree. If they do not require one, then it is irrelevant whether or not the employees *hold* bachelor's degrees.

The technical advisor/sales coordinator's duties include evaluating sales and logistics processes and sales representatives' performance, along with significant non-supervisory duties including maintaining inventory, storage, and sales and shipping documents. She has a bachelor's degree in Nursing. The sales representatives "are responsible for the day-to-day logistics and sales activities of the company," including visiting conventions, collecting payments, and "dispatching . . . products." The Petitioner's office includes a warehouse, but the company's organizational chart does not identify any dedicated warehouse workers to handle storage and shipment of inventory. It appears, therefore, that these non-professional tasks are among the "day-to-day logistics . . . activities" delegated to the sales representatives. The duties described do not appear to be professional in nature.

The Petitioner initially stated that two sales representatives hold bachelor's degrees in nursing, while the third has a master's degree in Business Administration. One of these sales representatives holds occupational certifications not shown to be equivalent to a bachelor's degree; another lists college attendance on her résumé, but the record does not show that she graduated with a bachelor's degree.

Following a request for evidence, the Petitioner indicated that it had replaced one of the sales representatives. The Petitioner stated: "we *prefer* our personnel to hold at least a bachelor's degree," because sales associates should be able to discuss medical equipment with customers, and that "*most* of our salespersons hold at least a bachelor's degree." A preference is not a requirement; the Petitioner acknowledges hiring sales associates who do not hold baccalaureate degrees.[1] The record must establish that the employer requires, rather than prefers, a bachelor's degree.

[1] Acknowledging that one sales associate has no bachelor's degree, the Petitioner states that she accumulated the necessary expertise through years of prior experience in medical equipment sales. This same earlier experience, however, demonstrates that the individual was able to obtain that prior experience with no bachelor's degree. Another sales associate holds degrees in business administration, with no demonstrated background in medical equipment either academically or through past experience.

For this reason, we agree with the Director's finding that the Petitioner has not shown the subordinate positions to be professional.

The Director also determined that the Beneficiary's subordinates do not appear to be paid at a rate commensurate with full-time, year-round employment in a professional occupation. Tax and payroll record show that the Petitioner paid the Beneficiary $14,300 in 2017, and $3750 per month in 2018, significantly below the stated salary of $60,000 per year ($5000 per month).[2]

The monthly wages of the Beneficiary's subordinates appear to be inconsistent with professional-level salaries; three of the Petitioner's four subordinates earned less than minimum wage for full-time employment.[3] The Petitioner states that its sales staff work on commission, but no commission payments are evident on the submitted payroll records or IRS Forms W-2.

The Petitioner's explanation for the low salaries is vague and insufficiently corroborated. The Petitioner has not persuasively established that the Beneficiary's subordinates are full-time employees, with duties and remuneration consistent with professional positions.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[2] The Petitioner only paid $25,304 in salaries in 2017, divided between the Beneficiary, two officers of the company, and one sales representative. There is no direct evidence that the Petitioner paid any salaries between January and September 2017.

[3] In 2018, Florida's minimum wage was $8.25 per hour, equivalent to $1430 per month. *See* https://www.dol.gov/agencies/whd/state/minimum-wage/history (last visited Jun. 25, 2020).