U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9434292

Date: AUG. 21, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of computing services, seeks to temporarily employ the Beneficiary in the United States as a delivery senior director 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 Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary has been employed abroad, and will be employed in the United States, in a managerial capacity as claimed.

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 remand the matter to the Director for further consideration and entry of a new decision.

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).

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.

"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.

A. Withdrawal of Director's Decision

The Petitioner states that the Beneficiary will work offsite at a client company, "in the managerial role of Delivery Senior Director for a large West Coast account," where he "will manage both a support team and a team of project consultants." The Petitioner divides the Beneficiary's intended duties into three categories, and lists individual elements within each of those three categories. The Petitioner also divides the duties of the Beneficiary's prior employment abroad into four categories. Within each of these broad categories, the Petitioner listed individual elements.

In the denial notice, the Director addressed only the broad categories, stating that, because the Beneficiary will devote 75% of his time to "Delivery Management" and 10% of his time to "Technical and Function Assistance," "[t]he majority of the duties appear to perform the tasks of the operation [sic]." Regarding the Beneficiary's earlier employment abroad, the Director arrived at the same conclusion because the Beneficiary devoted 40% of his time to "Program/Project Delivery Management" and 20% to "Pre-sales and Solution Development." The Director did not elaborate or address the individual elements within the three broad areas of responsibility.

An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. 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). The Director's summary conclusion does not sufficiently explain how the submitted job descriptions are deficient.

Another issue concerns the requirement that a manager must have authority to perform or recommend personnel actions such as hiring and firing. Company officials who did, or will, supervise the

Beneficiary state that the Beneficiary had hiring and firing authority in his position abroad, and will continue to have that authority in the United States. The Director concluded that the Petitioner did not sufficiently establish this authority, although the Director cited no particular reason to doubt the Petitioner's assertions in this regard.

Also, the Director cited the lack of documentary evidence to show that the petitioning organization actually employs the individuals identified as the Beneficiary's past or future subordinates. A request for evidence, issued before the denial decision, did not request such evidence.

For the above reasons, the denial notice was deficient and must be withdrawn. The Director should issue a new decision taking the above factors into account.

B. Basis for Remand

Although we withdraw the Director's decision, issues remain which the Petitioner must address before the petition can properly be approved. Accordingly, the matter will be remanded to the Director for further review and entry of a new decision.

Our remand order rests, in part, on our conclusion that the Director should have considered the Beneficiary's job descriptions in more detail. Review of those descriptions reveal deficiencies that the Petitioner should take this opportunity to address.

With respect to the U.S. job description, the predominant "Delivery Management" category includes several very general items that describe goals rather than the specific tasks that the Beneficiary would perform to achieve those goals. Examples include:

- ∑ Establish a strong foundation on strategic IT partnership with client[redacted]s, project governance, thought leadership, and client relationship management.
- ∑ Responsible for managing transition from incumbent support team and achiev[ing] steady state support successfully.
- ∑ Manage client expectations on all delivery related aspects working closely with client manager.
- ∑ Represent the account's delivery internally and externally.
- ∑ Plan and mitigate risks on the engagement and ensure smooth product delivery.

An accompanying letter includes some elaboration, but does not always shed more light on the specific tasks to be performed. For instance, with regard to the last item on the list above, the Petitioner states:

> [The Beneficiary] will anticipate risks that arise during the project and mitigate them. To do so, [the Beneficiary] will analyze complex situations and staff the appropriate resources to the risk mitigation projects. He must manage his team to continue the process and ensure that deliverables will be timely and satisfactory.

The description of the Beneficiary's earlier employment abroad is similarly deficient, in many cases describing goals and responsibilities rather than specific, identifiable tasks. Such vague assertions do not sufficiently distinguish the Beneficiary from the subordinates who perform the non-qualifying

tasks, such as programming and engineering, associated with providing contracted services to the Petitioner's client. The Beneficiary's job descriptions should describe what he did and will do, rather than the results that he did, and seeks to, accomplish.

Another issue concerns the structure of the companies where the Beneficiary has worked and will work. The Petitioner asserts that the Beneficiary "will serve at a senior level within [the petitioning] company" and will report "directly to the executive management level" of the petitioning company. An organizational chart shows the Beneficiary will report directly to a "Vertical Delivery Executive," elsewhere identified as "Senior Director, Application Services Delivery," and indirectly to a "Client Executive." The chart shows ten direct reports below the Beneficiary, but does not show where this group fits into the company's overall structure and hierarchy. The chart does not establish that the Beneficiary will have managerial authority over a department, subdivision, function, or component of the organization, rather than supervisory authority over one of dozens of project teams dispatched to approximately 100 client companies. The Petitioner claims 16,000 employees in North America and 80,000 employees worldwide. The Petitioner need not submit an organizational chart that shows all these employees, but a broader view is necessary to convey a sense of the Beneficiary's past and intended place in the organization.

A notable deficiency is that the organizational chart does not indicate whether or not the vertical delivery executive has direct reports other than the Petitioner, and if so, how many. The lack of information about the Beneficiary's place in this very large organization, in conjunction with the lack of details about the Beneficiary's specific tasks, makes it difficult to determine whether the Beneficiary has been, and will be, a manager rather than a lower-level team leader who actively participates in the provision of services.

As the Director did not sufficiently address the Petitioner's claims and supporting evidence or provide notice of the evidentiary deficiencies addressed herein, the matter will be remanded for further review and entry of a new decision. At a minimum, the Director should request expanded organization charts and any other evidence deemed necessary to clarify the Beneficiary's placement within the organizational hierarchy, and job descriptions identifying the Beneficiary's tasks rather than areas of responsibility. The Director may also notify the Petitioner of additional, potential grounds of denial if supported by the record.

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