U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 33360176

Date: AUG. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a hotel and resort management organization, seeks to employ the Beneficiary temporarily as its "Chef De Cuisine" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. The matter is 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 because the Petitioner did not establish that the Beneficiary's position abroad was in a managerial capacity.[1] Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's proposed employment in the United States. *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).

## I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(1). 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. 8 C.F.R. § 214.2(l)(3)(ii).

[1] The Petitioner's claim rests solely on the definition of managerial capacity. The Petitioner did not claim that the Beneficiary was employed abroad or that he would be employed in the United States in an executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;
(ii) 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;
(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

## II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The issue to be addressed is whether the Petitioner provided sufficient evidence establishing that the Beneficiary's position abroad was in a managerial capacity.

To be eligible for immigrant visa classification as a multinational manager, the Petitioner must show that the Beneficiary performed 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 Beneficiary's proposed position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the position in question meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary *primarily* performed managerial duties, as opposed to ordinary operational activities alongside other employees within the foreign entity. *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 that beneficiary's job duties, the employer'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.

The record shows that the Beneficiary had been employed as a sous chef at the Petitioner's foreign affiliate where he was responsible for "directing the activities of the kitchen staff and ensuring the quality of culinary dishes produced in his assigned kitchen." In a supporting cover letter, the Petitioner stated that the Beneficiary holds "a senior management position" within the foreign entity's food and beverage department where he manages chefs, ensures that food production meets safety and menu guidelines, and develops recipes and menus. The Petitioner also stated that the Beneficiary has the

authority to hire, fire, train, and discipline subordinates who relieve him from having to primarily perform operational tasks.

In addition, the Petitioner provided company generated job descriptions for the kitchen staff, including one for the Beneficiary's position of sous chef, whose objective is to "[a]ssist[] the Executive Sous Chef in monitoring the operation and function of the assigned kitchen." The job description also lists the position's 22 "primary responsibilities" and corresponding reporting structure in which the sous chef "[r]eports to the Executive Sous Chef," thus indicating that the executive sous chef rather than the sous chef is at the top of the departmental hierarchy. Meanwhile, the Beneficiary's position of sous chef is charted with directly supervising "the entire kitchen staff, including the line cooks, prep cooks, and dishwashers."

The Petitioner also provided an organizational chart further illustrating a departmental staffing structure, but that chart is inconsistent with the reporting structure conveyed in the above company generated job description. First, while the latter states that the sous chef reports to the executive sous chef, the organizational chart shows that the direct superior of the Beneficiary's sous chef position is a chef de cuisine and it is that position, not the sous chef position, that is depicted as the direct report of the executive sous chef. Also, while the company job description also states that the sous chef "directly" oversees line cooks, prep cooks, and dishwashers, the organizational chart lists an entirely different set of subordinate positions for the Beneficiary. Namely, the chart shows that the Beneficiary is one of two sous chefs, both of whom are subordinate to a chef de cuisine and are listed at the third tier of this department's hierarchy; the chef de cuisine and executive sous chef are depicted at the two top tiers. The fourth tier, shown as vacant at the time of filing, pertains to a junior sous chef, followed by five individuals occupying the position of "Chef De Partie" at the fifth tier, three individuals occupying the "Commis II" positions at the sixth tier, and two stewards at the bottom tier of the hierarchy. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that inconsistencies in the record must be resolved through the submission of independent, objective evidence).

In response to a request for evidence (RFE), the Petitioner maintained that the Beneficiary managed a department of the foreign organization where he supervised subordinate supervisors and managers, had authority to make decisions concerning subordinate personnel, and exercised discretionary authority over departmental matters. The Petitioner discussed the previously submitted organizational chart and position descriptions, claiming that the Beneficiary is supported by managerial and supervisory staff, which includes a junior sous chef and employees occupying the "Chef De Partie" position, as well as operational staff, which includes the "Commis II" and steward positions who carry out duties associated with food production. The Petitioner also stated that the Beneficiary was charged with overseeing kitchen staff, identifying and analyzing training needs, and performed personnel functions, such as interviewing and hiring employees, assisting with employee orientation, and performing employee appraisals. A sampling of annual employee appraisals for 2023 were submitted showing that the Beneficiary assessed the performances of his "Chef De Partie" subordinates.

Although the record shows that the Beneficiary had discretionary authority over certain personnel matters, the evidence does not establish that he supervised and controlled the work of other supervisory or managerial employees, as claimed. Despite the several layers of subordinates depicted below the Beneficiary in the previously submitted organizational chart, the chart shows that the junior sous chef position, which is depicted as directly subordinate to the two sous chefs, was vacant at the time of

filing. Meanwhile, the job description for the "Chef De Partie," five of which are depicted as directly subordinate to the junior sous chef, does not list employee supervision among that position's "primary responsibilities." Further, the job description states that the objective of the "Chef De Partie" position is to "[a]ct as an extension of kitchen managers to communicate food consistency & quality"; while the "technical responsibilities" of this position include training "the culinary employees in that section of the kitchen," employee supervision is not listed. As such, the "Chef De Partie" employees who were subordinate to the Beneficiary and his fellow sous chef cannot be considered as occupying managerial or supervisory positions. And because a baccalaureate degree is not required of a "Chef De Partie," this position cannot be deemed as that of a professional employee.[2] In sum, the evidence does not show that the sous chef position supervises or controls the work of supervisory, managerial, or professional employees as required to meet the second prong of managerial capacity. Section 101(a)(44)(A)(ii) of the Act.

The Director denied the petition concluding that the record lacks sufficient evidence showing that the Beneficiary supervised and controlled the work of supervisory, professional, or managerial employees and had the authority to hire and fire or recommend personnel actions regarding his subordinates.

On appeal, the Petitioner disputes the Director's decision, asserting that the Director did not properly consider the previously submitted job description of the sous chef and overlooked its submission of the Beneficiary's performance appraisals of his subordinates.

Regarding prong three of the managerial capacity definition, which requires a showing that the Beneficiary had discretionary authority over personnel matters, the Petitioner satisfied this requirement through its submission of performance appraisals which were completed and signed by the Beneficiary in a supervisory capacity with respect to the individuals being appraised. Because the submitted evidence demonstrates that the Beneficiary more likely than not had authority to recommend personnel actions, we will withdraw the Director's adverse finding regarding prong three of the statutory definition. *See* section 101(a)(44)(A)(iii) of the Act.

However, a totality of the evidence analysis indicates that the Petitioner did not adequately address the Director's key points of contention concerning the second prong of the statutory definition of managerial capacity, which requires a showing that the Beneficiary supervised and controlled the work of supervisory, professional, or managerial employees. Section 101(a)(44)(A)(ii) of the Act. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." *Id.*

Here, as previously discussed, the Petitioner submitted a job description and an organizational chart showing several layers of personnel below the Beneficiary, but neither document adequately

[2] To determine whether a 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 U.S. 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."

demonstrates that the employees the Beneficiary managed were supervisory, professional, or managerial employees, as required. *Id.*

Further, while not specifically discussed in the Director's decision, the record shows that neither the organizational chart nor the reporting structure described in the company generated job description of the Beneficiary's position abroad demonstrates that the position meets the first prong of managerial capacity, which requires the Petitioner to establish that the Beneficiary "manages the organization, or a department, subdivision, function, or component of the organization." Section 101(a)(44)(A)(i) of the Act. Despite claiming that the Beneficiary managed the foreign entity's "Kitchen Department," the Petitioner provided evidence which shows that the executive sous chef occupied the top position with the departmental hierarchy. This evidence detracts from the claim that the Beneficiary, whose position as sous chef is two tiers below the executive sous chef, managed a department or component of the organization. *See id.*

For the reasons discussed above, the Petitioner has not established the Beneficiary was employed abroad in a managerial capacity and on the basis of this conclusion the petition cannot be approved.

**ORDER:** The appeal is dismissed.