U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17326718

Date: AUG. 30, 2021

Appeal of California Service Center Decision

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

The Petitioner is engaged in the business of "financial investment" and seeks to temporarily employ the Beneficiary as its general manager 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 California Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity. The matter is before us on appeal.

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. LEGAL FRAMEWORK

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).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The issue in this proceeding is whether the Petitioner has established that it would employ the Beneficiary in a managerial capacity.[1]

"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

[1] The Petitioner does not claim that the Beneficiary would be employed in an executive capacity.

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, the 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 the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must 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 a given beneficiary's duties will be primarily managerial, we consider the Petitioner's description of the job duties, the company'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 Petitioner must provide a job description that clearly describes the duties to be performed by the Beneficiary and indicate whether such duties are in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine 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 a business.

Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

A. Supporting Evidence

The Petitioner provided a supporting cover letter stating that its foreign parent entity provides investment management services "primarily for high-net-worth individuals and business clients." The Petitioner stated that it is also an investment management operation and that its objective is to "diversify [the foreign entity's] investment portfolio and provide investment vehicles" to its Chinese clientele. The Petitioner discussed its purchase of an 18-person "boutique resort" and stated that it was also "actively investing in other projects and business [*sic*], including real estate development and management, commodity trade, and equity investment." The Petitioner stated that in her role with the U.S. entity, the Beneficiary will oversee the management of the purchased resort as well as the Petitioner's "other business operations and investment projects" along with its "investment portfolio, industrial research, and investment plan evaluations." The Petitioner also provided the Beneficiary's résumé, which shows that she earned a bachelor's degree in Chinese literature and linguistics followed by a master's degree in multilingual education, and that she worked as a teacher, first teaching English

as a second language and later teaching Chinese in a middle school, prior to obtaining a position with the foreign entity as deputy general manager.

The Petitioner also provided the Beneficiary's job duty breakdown and stated that the candidate for the proposed position "must have years of managerial experience, a proven record of success in investment management, and most importantly, deep insight into the development of the financial industry." The job duty breakdown lists job duties under one of three main job categories. The first category – leading the company's investment projects – would consume 40% of the Beneficiary's time and would include duties like establishing investment policies and strategies, directing market research and establishing means of monitoring investments, overseeing annual and quarterly budgets, and identifying investment opportunities by reviewing market reports. The second category – directing the operation and manager of the company – would consume 45% of the Beneficiary's time and includes supervising department managers, overseeing investment evaluations and directing management of investment projects, making decisions about personnel and investment and finance plans, and reviewing the company's financial report. The third category would consume 15% of the Beneficiary's time and would include "other managerial and decision-making tasks," such as managing employee training programs, coordinating operations with the parent entity's investment strategy, and representing the company in financial settings.

In addition, the Petitioner provided an organizational chart showing that its organization consists of a 4-tier staffing hierarchy with the company's CEO occupying the top tier, the Beneficiary at the second tier, the Beneficiary's two subordinates – a hotel manager and a vice president – at the third, followed by the fourth-tier, which would be occupied by an office assistant as the vice president's subordinate and a hotel staff – consisting of room service, front desk, and maintenance employees – as the hotel manager's subordinates.

In a request for evidence (RFE), the Director determined that the Petitioner did not provide sufficient detail adequately describing the Beneficiary's proposed job duties and it did not disclose the percentage of time the Beneficiary will dedicate to each of her assigned tasks. Accordingly, the Director asked the Petitioner to address these, among other, evidentiary deficiencies.

In a response statement, the Petitioner explained that it "primarily" conducts business as a "real estate and equity investment" operation. The Petitioner discussed its 2019 revenue, focusing on its purchase and operation of the previously mentioned resort hotel, which employs 18 out of the Petitioner's 21 employees. The Petitioner also stated that it is "actively investigating and analyzing some new investment proposals" and provided an information packet about two commercial real estate projects in California.

Regarding the Beneficiary's job duties, the Petitioner reiterated portions of the job description contained in the original supporting statement and added that the Beneficiary will: "direct the research of the U[.]S[.] financial market" in an effort to identify investment opportunities; set human resources management policies for determining employee salaries and bonuses and hiring, firing and promoting employees, and revise those policies to meet business needs; "lead the company's investment team" in their analysis of potential investments in commercial real estate; direct the investment management team's training programs regarding corporate policies, regulatory compliance, and investment strategies; review reports from subordinate managers and assess their respective performances; and

adjust the organizational structure of the company as necessary. The Petitioner stated that it would be "unreasonable" for the Beneficiary to perform day-to-day job duties given that the Beneficiary operates within a "sophisticated corporate structure" that includes a hotel resort and projects and transactions totaling over one million dollars.

The Petitioner also provided brief job descriptions for the Beneficiary's subordinates, noting that the hotel manager oversees the hotel employees and manages the hotel's daily operation, while the vice president "directs" market research, reviews proposals for investment opportunities and makes recommendations accordingly, coordinates marketing and industrial analysis, and assigns auditors to perform financial audits.

The Director concluded that the Petitioner provided a deficient job description that contains generalities about the Beneficiary's job duties and lacks sufficient evidence establishing who performs the underlying non-managerial duties, such as market research, conducting investment analysis, creating financial reports, and creating business plans and project proposals. The Director therefore questioned whether the Petitioner had the support personnel at the time of filing to employ the Beneficiary in a managerial or executive capacity.

On appeal, the Petitioner disputes the Director's decision, arguing that the Director "overlooked" critical portions of the Beneficiary's job description in which the Petitioner described the job duties underlying the three functions that were listed in the RFE response as the Beneficiary's key areas of responsibility, i.e., investment projects manager, employee recruiting, and training programs.

B. Analysis

In this instance, the Petitioner has not provided sufficient evidence demonstrating that the Beneficiary will be employed in a managerial capacity as claimed.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Section 101(a)(44)(A)(ii) of the Act. If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

As noted earlier, the job description is a critical element in helping us to determine whether the Beneficiary will be employed in a managerial or executive capacity, as the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). After reviewing the record, we agree with the Director's determination that the Petitioner did not provide an adequately detailed job description that clearly delineates the Beneficiary's role and job duties within the context of the Petitioner's business operation and it did not demonstrate that the at the time of filing, its operation was able to support the Beneficiary in a position where the primary portion of her time would be attributed to job duties of a managerial nature.

Although the Petitioner states that the Beneficiary's position chiefly focuses on "investment projects, employee recruiting, and training programs," the job duty breakdown upon which the Petitioner relies as the backbone of this claim is inconsistent with this assertion, given that the three chief areas of responsibility listed in the job duty breakdown include leading investment projects, directing the company's operation and management, and "other managerial and decision-making tasks." As indicated, the job duty breakdown does not include either employee recruitment or training programs as key components of the Beneficiary's proposed position. In fact, no mention at all was made of employee recruitment, nor was it included among the Beneficiary's job duties in any of the three main job categories. Moreover, even if employee recruitment was a key element of the Beneficiary's proposed position, the Petitioner has not established that this element is managerial, as opposed to operational, in nature. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See, e.g.*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Further, although "[m]anages the company's employee training programs" was listed as a job duty comprising the "other managerial and decision-making tasks" category, the job duty breakdown allocates only 15% of the Beneficiary's time to this entire category and does not specifically state how much of that 15% the Beneficiary would allocate specifically to managing employee training programs. Despite the RFE instructions asking the Petitioner to itemize the Beneficiary's proposed job duties and indicate the percentage of time the Beneficiary would allocate to each individual job duty, the Petitioner did not comply with this request and only supplemented the original job description with additional job duties, as previously indicated. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Given the inconsistencies described in this discussion, the original job duty breakdown does not support, but rather contradicts, the RFE response, which categorizes training programs and employee recruitment as two of three critical functions of the Beneficiary's propose position. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the Petitioner elaborates on the Beneficiary's role with respect to employee training, stating that the Beneficiary will "provide training on the parent company's on [*sic*] corporate policies, regulatory compliance, and investment strategies." However, this information does not establish that training subordinate employees is a managerial task, nor does it resolve the above-described inconsistencies between the information provided in the original job duty breakdown and the additional information provided in response to the RFE.

The Petitioner also contends that it relies on the parent entity's "inhouse financial analyst team to guide [] investment in the U[.]S[.] stock, bond, equity, and other financial instruments." However, it is unclear why, if the foreign entity's staff has been integral to supporting the U.S. operation, the Petitioner did not make this claim sooner and why it did not provide supporting evidence or include the foreign entity's staff in its organizational chart. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Furthermore, a petitioner may not make material changes to a petition in an effort to make a

deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

In addition, it is unclear whether the Beneficiary's education and prior work experience qualifies her to meet the demands of her proposed position. As noted earlier, the Petitioner stated that the ideal candidate for the proposed position "must have years of managerial experience, a proven record of success in investment management, and most importantly, deep insight into the development of the financial industry." Although the Petitioner indicates that the Beneficiary is that ideal candidate, the record shows that the Beneficiary's education is in language and literature and that the five years of work experience she received after earning a master's degree in multilingual education was in the teaching profession where she taught English and Chinese in her respective positions. As such, when the Beneficiary joined the foreign entity in 2018 as its deputy general manager, she had no background in investment management or the financial industry and only completed an exam on "the basic laws and regulations of the securities market" and received a "certificate of qualification" approximately one year after assuming her position. Accordingly, it is unclear if, and if so how, the Beneficiary achieved a "proven record of success in investment management" or how she attained "deep insight" of the financial industry as of the date this petition was filed.

Lastly, although the Petitioner claims that it is an "investment management firm," the record indicates that at the time of filing, it had no investments other than a hotel resort, which was therefore the sole focus of its operation. Despite indicating that it was in the process of considering other projects and investment transactions, the record lacks sufficient evidence to support this claim as the only evidence of projects beyond the resort hotel consists of an undated information packet about an opportunity to purchase a retail shopping center in [redacted] California and an undated "Offering Memorandum," which includes an executive summary and investor information regarding an opportunity to purchase commercial property with rentable office space in [redacted] California. The Petitioner did not discuss what, if any, job duties the Beneficiary performed with respect to these projects, nor did it clarify whether either project was part of its business landscape at the time this petition was filed. As indicated earlier, only facts in existence at the time of filing will be considered in determining the Petitioner's eligibility. *See* 8 C.F.R. § 103.2(b)(1). Because the Petitioner has not established that the investment opportunities described herein existed at the time of filing, it is unclear whether they were factored into a determination of the Beneficiary's proposed job duties and whether they are relevant in supporting the claim that the proposed position would be in a managerial capacity.

In sum, the deficiencies described above not only preclude a meaningful understanding of the Beneficiary's proposed job duties within the context of the Petitioner's organization at the time of filing, but they also cause us to question the reliability of the Petitioner's claims regarding the managerial nature of the proposed position and whether the Beneficiary has a "proven record of success in investment management" and "deep insight" of the financial industry, which the Petitioner seeks in its ideal job candidate. In light of the deficiencies, we cannot conclude that the Beneficiary's proposed position with the U.S. entity would be in a managerial capacity.

ORDER: The appeal will be dismissed.