U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-A- CORP.

DATE: AUG. 31, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a provider of data analytics services, seeks to temporarily employ the Beneficiary as a client engagement manager 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, 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.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by disregarding evidence that met the Petitioner's burden of proof.

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 specialized knowledge capacity, for one continuous year within three years preceding the Beneficiary's application for admission into the United States. 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. Section 101(a)(15)(L) of the Act.

A managerial capacity is an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization, and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. If the manager supervises and controls the work of other supervisory, professional, or managerial employees, then the manager must also have the authority to execute or recommend personnel actions such as hiring, firing, and promotions. A manager may instead manage an essential function within the organization, or a department or subdivision of the

organization, and function at a senior level within the organizational hierarchy or with respect to the function managed. Section 101(a)(44)(A) of the Act.

An executive capacity is an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) 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.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director found that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity. On appeal, the Petitioner repeats previous assertions and states that "the team members are involved in the actual delivery of the analytical services to the Petitioner's client, whereas the Beneficiary manages them as they go about their technical duties." We find that the Petitioner has not met its burden of proof, for the reasons explained below.

A. Duties

When examining the managerial or executive capacity of the Beneficiary, we will look first to the Petitioner's description of the job duties. The Petitioner's description of the job duties must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

The definitions of managerial and executive capacity each have two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive 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); *Champion World*, 940 F.2d 1533.

The Petitioner states that the Beneficiary will work offsite, at the main office of a major social media company, while his subordinates will be at the Petitioner's parent company in India. The Petitioner stated that it "typically assigns on-site engagement managers who have an advanced level of knowledge of [the Petitioner's] delivery process/systems, as well as managerial experience on other projects in which [the Petitioner's] on-site/offshore methodology was implemented." The Petitioner stated that the Beneficiary would be a "manager as well as [a] senior executive."

In the denial notice, the Director concluded that the Beneficiary would be "primarily assisting with the day to day non-supervisory duties of the business" and "primarily involved in the performance of routine operational activities."

The record contains several different descriptions of the position the Petitioner has offered to the Beneficiary. The Petitioner's letter to the Beneficiary, informing him of his selection for the engagement manager position, listed four principal duties:

- Be the face of [the Petitioner] in the client location and help define analytics-driven consulting solutions to business problems
- Translate business problem into analytic solution requirements and work with the off-shore . . . team to develop high quality solutions
- Communicate effectively with client/offshore team to manage client expectations and ensure timeliness and quality of insights
- Develop expertise in client's business and help translate that into increasingly high value added advisory solutions to client

The Petitioner prepared longer job descriptions specifically for the petition. In one, the Petitioner listed the responsibilities of the U.S. position and the approximate percentage of time to be devoted to each:

- Function as the onsite face of the [Petitioner] for our client . . . . Interact with [the client's] managers on a regular basis to discuss day-to-day matters and issues. (5%)
- Understand the [client's] business problems and convey them to the offshore team to formulate innovative solutions. (10%)
- Participate in the project estimation exercise; and forecast resource requirements. (10%)
- Prepare project plans and monitor/track the progress of tasks as per the project plan, tracking issues to closure. (5%)
- Liaise with the client's personnel to ensure the availability of adequate hardware, software, communication infrastructure, technical support and other resources for the [Petitioner's] team.
- Ensure that projects are completed on time and on budget. (10%)
- Coordinate weekly and monthly client calls with the stakeholders. Consult with client to get feedback on the deliverables and convey them to the offshore team. Function as the single point of escalation for client matters and resolve issues between the client and the team. (10%)
- Ensure that laid down procedures and processes are followed by the [Petitioner's] employees. (5%)
- Guide the offshore team in understanding and appreciating the importance of the processes when and where required. (5%)
- Prioritize, allocate and monitor tasks for [the Petitioner's] team members. (5%)

- Guide the team members through complex technical requirements; monitor the overall workload and make any changes required to team size. (5%)
- Manage innovation; supervise the team in identifying business problems and developing innovative solutions. (5%)
- Ensure high morale and motivation of the [Petitioner's] whole . . . team; ensure adequate support within [the company] for unforeseen situations. (5%)
- Educate the client about [the Petitioner's] capabilities, work with the offshore team to prepare RFPs and presentations on innovative solutions case studies relating to the pain points of potential clients. (10%)
- Negotiate terms of business with [the client] to achieve win-win results that provide the basis of strong on-going relationships. Serve as the key resource to renew contracts, negotiate price and agree on scope of work for new projects.

There appear to be redundant or overlapping items in the above list. "Understand the [client's] business problems and convey them to the offshore team to formulate innovative solutions" appears to mean something similar to "supervise the team in identifying business problems and developing innovative solutions." Also, several items refer to monitoring and tracking the progress of projects, with no explanation as to how these items differ from one another.

Apart from the percentage breakdown, the Petitioner provided additional information about five facets of the Beneficiary's position: "Client Engagement," "Project Management," "Liaison between U.S. and India offices," "Commercial," and "People Management." Within these descriptions, the information is ambiguous regarding the Beneficiary's direct involvement in various activities. For instance, the Petitioner stated that the Beneficiary "will participate in project estimation and forecast resource requirements and prepare project plans," and "manage the planning, design and implementation of our projects." (The Petitioner listed these elements twice, under "Client Engagement" and again under "Project Management.") The Petitioner has not shown that preparing estimates, forecasts, and project-specific plans are managerial duties.

The Petitioner also stated that the Beneficiary will be "interacting with clients on a regular basis to discuss day-to-day matters and issues." All of the Beneficiary's subordinates will be in India; the Beneficiary will be the Petitioner's only employee at the client's worksite. Front-line customer service is not a managerial duty, nor is the Beneficiary's responsibility for translating business requirements into solution requirements or developing expertise in the client's business. In addition, the Beneficiary "will be responsible for generating and delivering winning contract[] bids." The Petitioner has not explained the extent to which this activity will involve non-managerial tasks such as marketing.

The Petitioner has claimed, in the alternative, that the Beneficiary will be employed in an executive capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish

the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and a beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

In this instance, the Beneficiary's supervision of three subordinates, none of whom are managers, does not constitute directing the management of the organization or a major component or function thereof.[1] Furthermore, the Petitioner states that the Beneficiary would ensure compliance with company procedures, but the Petitioner did not show that the Beneficiary will be establishing the policies or goals of the organization or a component thereof. The Beneficiary's authority to negotiate with one client does not constitute wide latitude in discretionary decision-making consistent with the definition of "executive capacity" as the Petitioner has claimed. Finally, to show that the Beneficiary would receive only general supervision from executives, directors, or stockholders, the Petitioner stated that the Beneficiary has the authority to hire his own subordinates, but local hiring authority does not demonstrate the extent to which higher-level officials control or supervise the Beneficiary.

Finally, the Petitioner's organizational chart does not support the claim that the Beneficiary is a "senior executive." The Beneficiary is on one of the lower tiers of the Petitioner's organizational chart, below the chief executive officer, vice president-west coast, and a director. Most of the positions shown on the chart are of equal or higher rank to the Beneficiary.

The Petitioner also stated that the Beneficiary will manage a department, subdivision, function, or component of the company because he "will manage the Petitioner's major client" and "will not do the routine tasks" associated with the project. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that a beneficiary will manage an essential function, a petitioner must clearly describe the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary's daily duties dedicated to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, a petitioner's description of a beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform the duties related to the function.

Here, data analysis is a function of the petitioning company, but the Beneficiary is not in charge of the Petitioner's data analysis operation. Rather, the Petitioner states that he supervises one team that

[1] The Petitioner did not establish that this client account is a major component or function of the petitioning organization.

performs that function for one client. We will discuss these stated subordinates further below. Furthermore, the Petitioner contends that the Beneficiary will not perform the project's routine tasks, but he will be the Petitioner's only employee at the client's site. The Petitioner has not explained why the Beneficiary will be stationed with the client if he will not be directly providing any services to that client. Several of the duties have only vague descriptions, but they appear to involve non-managerial tasks such as day-to-day customer service, identifying technical problems that require attention, and learning about the client's business requirements.

Overall, the Petitioner's descriptions of the Beneficiary's duties do not establish that he would be primarily performing executive duties or primarily managing an essential function of the company.

B. Staffing

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a 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 claims the Beneficiary will be employed in a managerial capacity, in part, because he will supervise subordinate personnel and have the authority to hire and fire his subordinates. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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." Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*4*). If a petitioner claims that a beneficiary directly supervises other employees, those subordinate employees must be supervisory, professional, or managerial, and the beneficiary must have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Sections 101(a)(44)(A)(ii)-(iii) of the Act; 8 C.F.R. §§ 214.2(l)(1)(ii)(B)(*2*)-(*3*).

The Petitioner indicated that the Beneficiary would continue to supervise the same three subordinates, all employed at the Petitioner's foreign parent company, that he already oversees in his current position in India. On appeal, the Petitioner states that the Director cannot properly deny the appeal based solely on the number of subordinates whom the Beneficiary will oversee. The Director, however, did not deny the petition based on the size of the subordinate staff.

The Petitioner submitted the following job descriptions for the Beneficiary's three overseas subordinates:

> Senior Analyst
> Define analytics-driven consulting solutions to business problems. Apply principles of mathematics, statistics, econometrics, computer science and operations research to solve client's business problems. Develop dashboards and other business applications for clients to enable decision-making. Develop proprietary algorithms, statistical modeling and research tools. Participate in analytic modeling process, solution design, data sampling, variable design, segmentation analysis, and development of statistical models.
>
> Analyst
> Extract, process, collate and prepare data from various sources (databases, big data platforms, etc.) and work with large amounts of unstructured data using business intelligence reporting tools such as SAS, MS Office, Tableau and R. Apply statistical modelling techniques/machine learning techniques to understand and derive insights to solve business problems.

In a separate statement, the Petitioner stated that one of the analysts "works on data extraction, data processing, data transformation, modelling and generating business insights," while the other analyst "is responsible for updating the models and monitoring the quality of the models. He also works on [*sic*]" (the description, as submitted, cuts off mid-sentence). The Petitioner stated that the senior analyst "manages interactions with the clients, prioritizes projects, allocates tasks and deliverables to his team, and packages PPTs and insights to be presented to the client." These stated duties appear to overlap with those of the Beneficiary, who would be stationed at the client's site in order to interact with the clients and make determinations about projects and tasks.

In the denial notice, the Director also concluded that the Petitioner had not established that the Beneficiary's subordinates are professionals whose positions require bachelor's degrees. On appeal, the Petitioner submits background information that indicates the positions are professional. The Petitioner has not, however, established that the Beneficiary's *primary* responsibilities would include controlling the work of the overseas subordinates rather than performing work directly for the client.

The Petitioner did state that the Beneficiary would have hiring authority over his subordinates, which would fulfill one element of managerial capacity. The Director found that the Petitioner had not established "the beneficiary's authority to control the work of the subordinates as stated." On appeal, the Petitioner repeats the prior claim that the Beneficiary will remotely supervise three subordinates in India, but provides no new information regarding this issue. The record shows that three overseas employees would work on the Beneficiary's projects, but the available evidence provides little concrete information about the nature of the daily interaction between the engagement manager and the analysts working abroad. The job offer letter issued directly to the Beneficiary stated only that the Beneficiary would "work with the offshore . . . team" and "[c]ommunicate effectively with" those employees.

The record does not support the Petitioner's claim that the Beneficiary will be an executive of the petitioning company, and the Petitioner has not provided enough information and evidence to show that the Beneficiary will be a personnel manager or function manager in his capacity as a client engagement manager.

III. CONCLUSION

The Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of L-A- Corp.*, ID# 557890 (AAO Aug. 31, 2017)