U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6785293

Date: DEC. 5, 2019

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (L-1A)

The Petitioner, describing itself as an international trading company, seeks to temporarily employ the Beneficiary 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 Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary was employed in a managerial or executive capacity abroad. Further, the Director determined that the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial or executive capacity in the United States.

On appeal, the Petitioner asserts that the Director did not consider the totality of the evidence in denying the petition. The Petitioner states that the Director improperly required that it articulate whether the Beneficiary would act in either a managerial or executive capacity, contending that this requirement is not explicitly stated in the applicable regulations. The Petitioner also asserts that the Beneficiary supervised subordinate managers and supervisors abroad and would do the same in the United States.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal. Because of the dipositive effect of our determination that the Petitioner did not establish that the Beneficiary would act in a managerial or executive capacity in the United States, we will reserve the remaining ground for denial discussed in the Director's decision.

I. LEGAL FRAMEWORK

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 their 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 them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. DEFINITIONS

"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.

"Executive capacity" means 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.

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

The sole issue we will address is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity in the United States. As a preliminary matter, we note that the Petitioner did not, and still does not on appeal, clearly indicate whether the Beneficiary would qualify as an executive or a manager, or both.

On appeal, the Petitioner makes light of the Director emphasizing in the denial that it did not clearly indicate whether the Beneficiary would act in a managerial or executive capacity, and asserts that such a requirement to state this explicitly is not set forth in the regulations. However, as stated, in these proceedings it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner claiming that a beneficiary will perform as a "hybrid" manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity. As such, the Petitioner's continued reluctance to clearly specify whether the Beneficiary would qualify as a manager or executive, or both, leaves initial question as to the petition. The Petitioner must resolve ambiguity 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).

When examining the managerial or executive capacity of a given beneficiary, we will review 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). Beyond the required description of the job duties, we examine 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. 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. Duties

Based on the definition of managerial or executive capacity, the Petitioner must first 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 stated that its foreign parent company, established in 2003, "specializes in research and development, production and marketing of various bicycles, bicycle parts, sporting goods, building material[s], metal and chemical products and mechanical parts." The Petitioner, a wholly owned subsidiary of the Beneficiary's foreign employer, indicated that it is an "international trading company" which had "entered the markets of kids [*sic*] bikes and rare metals." The Petitioner listed the following duties for the Beneficiary as its general manager:

- Determine the general guidelines in overall business operations, such as marketing, international development, and administration, to ensure the company personnel have clear guidelines for different levels of management and development. (5 to 15%)
- Make final decisions in setting various goals and targets for the company development, including short term (six months to one year) and long term (three years to five years) ones to reach the optimal growth of the company business. (5 to 15%)
- Design and define the company's annual strategic plans for the entire company's development in various areas, including define and articulate the company's vision and mission, and analyze the company's strength and focus. Throughout the year, make periodical assessment of the company's current situation and the business environment to make adjustment to the strategic plan when necessary. (5 to 15%)
- Make decisions for the company's organizational structure, set guidelines for adding, merging or deleting departments/sections, establish the current structure of the company, and make necessary changes to the organization to make the operation more efficient and more competitive. (5 to 15%)

- Make final executive decisions in major areas including financial planning and budgeting, marketing development, accounting procedures, administration, and investment. (10 to 15%)
- Attending important business meetings and public functions (5 to 15%)
- Approve/cancel, review and/or sign important correspondence representing the company, including major contracts. (5 to 15%)
- Chair weekly, monthly and quarterly meetings of subordinate managers, assign specific tasks when necessary, review department reports, provide specific guidance when necessary. (5 to 15%)
- Design and encourage employee activities to promote and boost employees' work ethics of loyalty and respect to encourage the subordinates to be part of the company unity, to improve the enterprise culture, to ensure that the work culture and working environment in the company is positive and conducive to promote productive and pleasant work environment. (5 to 15%)
- Conduct monthly, quarterly and annually [*sic*] evaluation of managers and key personnel and determine the quality of their performance. (5%).
- Make final human resources determinations by approving the hiring/firing of managers, professionals, and key personnel. (5 to 15%)

In a later request for evidence (RFE), the Director stated that the Beneficiary's U.S. duty description "lacked sufficient detail" and that it was insufficient to demonstrate his duties on a daily basis. In response, the Petitioner provided no additional U.S. duties for the Beneficiary.

The Petitioner has submitted a vague U.S. duty description and insufficient documentation to substantiate the Beneficiary's daily qualifying managerial and executive level tasks. The Beneficiary's duty description includes several generic duties that could apply to any manager or executive acting in any industry and they provide little insight into his actual day-to-day managerial or executive tasks. In fact, the Beneficiary's generic duty description includes no specific references to its type of business or credible examples of his activities. For instance, the Petitioner did not sufficiently detail or document the "general guidelines" the Beneficiary determined related to marketing, international development, and administration, "final decisions" he made with respect to "various goals and targets," "annual strategic plans" he designed and defined, or vision or missions he set.

It is also notable that the Petitioner stated in the Beneficiary's duties that he would "make periodical assessment" of its strategic plan and "make adjustment to the strategic plan when necessary." However, the Petitioner provided no detail with respect to this claimed "strategic plan," submitted no documentation to corroborate its existence, and provided no examples of the Beneficiary's adjustments to this plan. Similarly, the Petitioner refers to the Beneficiary setting guidelines related to marketing, but there are no details with respect to this marketing; in addition, submitted financial documentation from September 2018 and a 2018 IRS Form 1120, U.S. Corporation Income Tax Return both reflected no apparent company expenses related to marketing activities.

Likewise, the Petitioner did not articulate or sufficiently document the decisions the Beneficiary made with respect to the company's organizational structure, departments or sections he added or merged, "final executive decisions" or investment decisions he made, major contracts he approved and signed,

guidance he provided to his subordinates, actions he took to improve "enterprise culture," or "final human resources determinations" he was involved in. This lack of detail and documentation is particularly notable since the Petitioner asserts that the Beneficiary acted in his asserted role under a new office petition from January 2017 through December 2017.[1] Still, the Petitioner does not submit a detailed description of the Beneficiary's duties which credibly conveys his day-to-day tasks within the business. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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).

We acknowledge the Petitioner submitted some supporting documentation related to the Beneficiary's claimed activities with the Petitioner, but this evidence did not credibly establish that he devoted, or would devote, his time primarily to qualifying managerial or executive-level duties. For instance, the Petitioner provided an undated and generic "Employee Handbook" setting forth workplace rules and requirements that could apply to any company in any industry. As noted by the Director, the Petitioner did not explain the Beneficiary's involvement in formulating this generic policy, beyond a brief "project approval form" dated in October 2017 claiming to reflect his approval of this policy. However, there is no explanation of the Beneficiary's involvement in this policy or indication as to how it demonstrates that he would devote his time primarily to managerial or executive-level tasks under an approved petition.

The Petitioner also provided a handful of other "project approval forms" meant to reflect his daily qualifying tasks. However, we did not find these approval forms credible. For instance, the asserted project approval forms included a notable lack of detail, including one dated in October 2017 from his claimed subordinate business development manager stating that they had "completed marketing research," "analyzed consumer needs," and "determined what platforms the sell the bikes and how to sell them." This form lacked credible detail that would be reasonably included in such business correspondence, such as what marketing research was completed, what findings were made, and what bikes would be sold in what markets.

Likewise, two claimed project approval forms from November 2017 also lacked credible specifics. For example, one of the approval forms was from the asserted operation manager and signed by the Beneficiary, this form stated that this employee had "conducted market research to [*sic*] retro handheld gaming systems" and "selected [redacted] product from [redacted] as target for sale," while a second indicated that this employee had also "completed marketing research studies for [redacted] and [redacted] [metals]" and "calculated sales budget[s] for both rare metals." However, there is no indication from these asserted business communications what the results of either market research studies were, why this subordinate decided on those particular gaming products, or what sales budget was calculated for the referenced "rare metals." In addition, it is notable that four of the claimed project approval forms were dated October 9, 2017, while two other were dated on November 27, 2017; as such, they do not appear to represent a reasonable snapshot of the Beneficiary's typical day-to-day activities while employed in his claimed capacity in the United States. In fact, the Petitioner stated in the

[1] The petition was filed on January 22, 2019. The Petitioner indicates in the Form I-129, and United States Citizenship and Immigration Service (USCIS) records confirm, that it was also denied two extension petitions on behalf of the Beneficiary subsequent to the previously approved new office petition.

aforementioned employee handbook that "email is essential to our work," but provided no such probative evidence of the Beneficiary's day-to-day activities. Therefore, the Petitioner did not submit sufficient credible documentation to substantiate the Beneficiary's asserted managerial or executive-level duties.

Even though the Beneficiary holds a senior position within the organization, the fact that they will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44)(A) and (B) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial or executive in nature. *Id.* The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial or executive in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, we 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.

The Petitioner submitted a U.S. organizational chart reflecting that the Beneficiary oversaw an accounting manager and a vice general manager. The chart further reflected that the accounting manager supervised and accountant and that the vice general manager oversaw an operation manager, who in turn, supervised an operation assistant. Meanwhile, the vice general manager was further shown to manage a business development manager overseeing a business development specialist.

As discussed, the Petitioner does not definitively state on appeal whether the Beneficiary qualifies as a manager or an executive; but in fact, contends that it has no obligation to clearly articulate his basis for eligibility. However, the Petitioner does state on appeal that the Beneficiary "was supervising all the other supervisors," suggesting that it claims he qualifies as a personnel manager. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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.* 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 the Petitioner does not explicitly assert that the Beneficiary qualifies as a function manager and emphasizes his management of subordinate supervisors, we will only analyze whether he would qualify as a personnel manager.

The Petitioner has not submitted sufficient evidence to establish that the Beneficiary oversees subordinate managers as necessary to qualify him as a personnel manager. The Petitioner submitted an organizational chart dated in December 2018, just prior to the petition, indicating that the Beneficiary supervised two subordinate managers; and below them, two other subordinate supervisors

and two operational level employees, or a total of seven subordinates as of the date the petition was filed. However, submitted state quarterly wage tax forms from the first quarter of 2019 reflect that the Petitioner only paid wages to four of its claimed employees listed in the organizational chart, namely the vice general manager, the accountant, the operation manager, and business development specialist. Further, the Petitioner also states on appeal that the claimed "accounting manager" had requested vacation as of the date of the petition, but "was unable to return to work."

As such, the evidence reflects that as of the date the petition was filed the Petitioner employed three asserted managers, but only two employees claimed to focus on the operational matters of the business, or the business development specialist and accountant. This leaves substantial uncertainty as of the Petitioner's assertion that the Beneficiary supervised subordinate managers and supervisors as of the date the petition was filed. The Petitioner must resolve inconsistencies and discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582, 591-92. Further, we note that the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

The Petitioner also submitted generic duty descriptions for the Beneficiary's claimed subordinate managers that did not demonstrate that they acted in their claimed capacities. For example, the Petitioner stated that the vice general manager would be tasked with strengthening the company's business operation, establishing its organization, developing the Petitioner, managing its business activities, reviewing work plans, and making sure that development strategies are carried out. First, the duties of the claimed vice general manager appear very similar to the generic duties provided for the Beneficiary. In addition, it is questionable that with the Petitioner's limited staffing it would require two managerial level employees performing largely the same higher level managerial tasks such as the Beneficiary and the vice general manager. The Petitioner also does not provide sufficient detail to substantiate the vice general manager's duties, such as how they strengthened its operations, established its organization, what business activities they managed, or development strategies they oversaw.

Likewise, the Petitioner indicated that the operation manager was tasked with determining what services were necessary, hiring professional services, applying company rules and policies, reviewing proposals of requested products from U.S. buyers, and supervising production, quality control, and sales and after sales service. However, again, the Petitioner did not sufficiently articulate the services the operation manager implemented, the professional services they hired, rules and policies they applied, U.S. buyers they worked with, or production and sales services they supervised. In fact, there is no evidence on the record to indicate that the Petitioner provides services or produces products, but only a few invoices from 2017 reflecting the company's purchase and shipment of bicycles. As such, the duties of the claimed operation manager were not sufficiently detailed or credible to demonstrate that this employee acted as a subordinate manager to the Beneficiary. Indeed, the operation manager's sole claimed subordinate, the "operation assistant," is also shown as the accountant, and the Petitioner has not sufficiently explained this apparent dual role. Beyond this, the Petitioner did not document that it employed any managers or supervisors subordinate to the Beneficiary. It is also notable that there is little supporting evidence on the record reflecting the Beneficiary's delegation of duties to his asserted subordinate supervisors or documentation demonstrating his personnel authority over them.

On appeal, the Petitioner also appears to suggest that the Beneficiary's subordinates qualify as professionals. 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." Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity. However, the Petitioner does not clearly articulate why Beneficiary's subordinates require bachelor's degrees to perform the duties of their respective positions. Further, as we have discussed, the Petitioner has submitted vague duty descriptions for the Beneficiary's subordinates that do not sufficiently establish that these positions require bachelor's degrees. As such, the Petitioner has not established that the Beneficiary qualifies as a personnel manager based on the supervision of subordinate supervisors or professionals.

Lastly, in the alternative, the Petitioner has not established that the Beneficiary would act in an executive capacity under an approved petition. 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 beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. 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.*

The Petitioner has not provided adequate evidence to establish that the Beneficiary would act in an executive capacity under an approved petition. Again, as we explained at length, the Petitioner submitted little detail and documentation to substantiate that the Beneficiary primarily devoted, or would devote, his time to executive-level duties. Further, the supporting evidence reflects that the Petitioner did not employ the seven asserted subordinates listed in its organizational chart as of the date the petition was filed; instead, it provided evidence indicating that it employed only four individuals beyond the Beneficiary. The Petitioner also provided vague duty descriptions for the Beneficiary's claimed subordinate supervisors that did not properly substantiate their claimed positions. Further, as we have indicated, it is also notable that the Petitioner does not explicitly explain how the Beneficiary qualifies as an executive. Therefore, the submitted evidence does not sufficiently demonstrate that as of the date the petition was filed the Beneficiary acted in an elevated position within a complex organizational hierarchy and that he was primarily establishing the goals and policies of the organization rather than focusing on the day-to-day operations of the enterprise.

For the foregoing reasons, the Petitioner has not established that the Beneficiary would act in a managerial or executive capacity in the United States under an approved petition.

ORDER: The appeal is dismissed.