U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-T- LLC

DATE: DEC. 7, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a tax preparation and cleaning service business, seeks to continue the Beneficiary's temporary employment as its general manager under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 Beneficiary will be employed in the United States in a managerial capacity under the extended petition.

On appeal, the Petitioner asserts that the Director erred and that the Beneficiary's duties are primarily managerial.

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 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.*

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period February 16, 2016, until February 15, 2017. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

A petitioner seeking to extend an L-1A new office petition must also submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status, evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The Director determined that the Petitioner had not submitted sufficient evidence of the Beneficiary's claimed managerial or executive duties. The Petitioner asserts on appeal that the Beneficiary manages two business lines[2] and her duties are not merely operational but also managerial.[3]

The Act defines the term "managerial capacity" as an assignment within an organization in which the employee primarily manages the organization or a department, subdivision, function, or component; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function; if the employee directly supervises other employees, has the authority to take personnel actions, or if no other employee is directly supervised, functions at a senior-level within the organization 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.

We will address both the Petitioner's description of the Beneficiary's intended duties as well as the Petitioner's staffing to determine whether the Petitioner has established this eligibility requirement. We note that when reviewing staffing levels as a factor in determining whether an individual is acting in a managerial or executive capacity, we 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.

A. Duties

When examining the managerial capacity of a beneficiary, we review a petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The definition of managerial capacity has 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 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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[2] The Petitioner stated that the Petitioner's main business activity continues to be tax preparation but that it has diversified its business to also include commercial cleaning services. The Petitioner noted that the cleaning service is a year-round business which "balance[s] some of the slow months from Taxes Preparation Services." The Petitioner also indicated that it is involved in "an ongoing arbitration for better business practices against [redacted]."

[3] As the Petitioner does not claim that the Beneficiary will perform duties primarily in an executive capacity, we will restrict our analysis to the Beneficiary's claimed managerial capacity.

Second, 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, e.g., Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

In the letter of support, the Petitioner stated that the Beneficiary will continue to manage the U.S. company and that her "tasks involve directing and managing the company and its employees." The Petitioner added that she "established the goals and policies for the company and has authority to hire and fire employees." These described duties do not convey an understanding of what the Beneficiary will actually do for the Petitioner under the extended petition on a daily basis. Rather, the Petitioner re-states the first two elements of the statutory definitions of "managerial capacity" and "executive capacity."[4] *See* sections 101(a)(44)(A) and (B). 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).

In response to the Director's request for evidence, the Petitioner added that the Beneficiary will continue to manage the company and "oversee all business operations, such as hire and fire, promote the company, manage the finances, establish goals and policies, and being the leader, director and supervisor of the business employee." The Petitioner noted that the Beneficiary will dedicate approximately 70 percent of her time to the cleaning business line and approximately 30 percent of her time to the tax preparation business. The Petitioner further allocated the Beneficiary's time as follows (paraphrased):

- Administrative duties – 20%
- Operational decisions and managing and motivating staff – 20%
- Setting organizational direction and strategy for the business as well as reviewing organization's performance against goals – 10%
- Marketing and promoting the business – 20%
- Dealing with customers and managing short-term unexpected issues – 15%, and
- Prospecting new clients – 20%[5]

The Petitioner does not detail the actual tasks involved in these broad categories. Thus, we cannot evaluate and analyze whether the Beneficiary will perform duties that are managerial in nature rather than the non-qualifying duties required to operate the business. We find, for example, that marketing and promoting the business, seeking new clients, and dealing with customers are more likely operational tasks and therefore non-qualifying duties. Reciting the Beneficiary's vague job

[4] The Act defines "executive capacity" as an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function thereof; 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.

[5] The Petitioner's allocation of the Beneficiary's time totals 105 percent.

responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. The Petitioner has not provided the necessary detail or explanation of the Beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Id.*

On appeal, the Petitioner states that the Beneficiary signs the company's legal documents, represents and defends the legal rights of the companies she manages, and adds other lines of businesses. She also supervises and manages, signs checks, and pays the employees. The Petitioner contends that the Beneficiary has a 49 percent interest in the U.S. holding company and also maintains a significant ownership in the foreign entity. The Petitioner further asserts that the Beneficiary's duties are not operational, but rather are managerial duties. However, the Beneficiary's position as an officer or partial owner of the Petitioner does not establish that she is a manager as that term is defined in the Act. The fact that the Beneficiary will manage or direct a department or the operations of the 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) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. While 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, the position descriptions alone are insufficient to establish that her actual duties will be primarily managerial in nature.

B. Staffing

Beyond the required description of the job duties, we review the totality of the record when examining the claimed managerial 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's organizational chart depicts the Beneficiary as the general manager and identifies a receptionist and two cleaning service staff subordinate to her position. The organizational chart also shows that legal and accounting services are outsourced. The record includes the Petitioner's 2016 fourth quarter state employer's quarterly report. This report identifies employees working for the Petitioner in the quarter before the petition was filed in February 2017. The Petitioner, however, 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 lack of evidence regarding the Petitioner's employees when the petition was filed precludes a determination that the Petitioner had sufficient staff to perform the duties of the business and relieve the Beneficiary from performing operational and administrative duties when the petition was filed and continuing through adjudication.

Even if considering that the Petitioner continued to employ these same individuals in the positions identified on the organizational charts in the record, the record still does not contain sufficient evidence to establish that the Beneficiary's duties include primarily supervising these individuals.

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. 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."[6] Section 101(a)(44)(A)(iv) 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*).

The organizational chart does not depict any individuals employed in a tax preparer position and the Petitioner's fourth quarter employer's report confirms that the Petitioner only employed a receptionist and two cleaning staff, in the quarter prior to the filing of the position. The organizational chart also indicates that the Petitioner outsourced legal and accounting services, but the record does not include evidence of contracts or payments made to these services. Moreover, it is unlikely that the Beneficiary's duties would involve supervising or managing the employees of these services.

The record does not establish that the Beneficiary will primarily supervise other supervisory, managerial, or professional employees, or will be relieved from performing tasks related to marketing, financial planning, and administrative duties. Rather, the record shows that the Beneficiary at most will perform first-line supervisory duties of non-professional employees as well as performing other operational tasks.

The Petitioner has not articulated a specific function that the Beneficiary will manage. 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. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the

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[6] When evaluating whether a beneficiary manages professional employees, we 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 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. The record shows that the Petitioner employed a receptionist and two cleaning staff, the quarter prior to filing the petition. Neither of these positions requires a bachelor's degree to perform them.

essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

We have reviewed the Petitioner's claim on appeal that signing legal documents, serving as the registered agent, and representing and defending the legal rights of the company are "essential" management functions. The Beneficiary, however, is the individual who carries out these duties, she does not assign or delegate these tasks to others. Thus, she performs these duties in her capacity as a representative of the company. Moreover, the Petitioner does not allocate the majority of the Beneficiary's time to carrying out these duties. In this matter, the Petitioner has not described or provided evidence that the Beneficiary primarily manages an essential function.

We have considered the reasonable needs of the organization in light of the overall purpose and stage of development of the organization. To establish that the reasonable needs of the organization justify a beneficiary's job duties, a petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. However, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require U.S. Citizenship and Immigration Services to examine the organizational structure and staffing levels of the Petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. If a business does not have the necessary staffing after one year to sufficiently relieve the beneficiary from performing operational and administrative tasks, the petitioner is ineligible for an extension. The record does not establish that the Petitioner has the necessary staffing to relieve the Beneficiary from performing primarily non-qualifying duties under the extended petition.

III. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director did not address the issue of the Beneficiary's employment in a managerial or executive capacity for the foreign entity. The Petitioner stated that the Beneficiary had been the president and general manager of the foreign entity, a pizza restaurant, since it was founded in 1995. The Petitioner noted that the Beneficiary's responsibilities included managing and overseeing all business activities and supervising employees. Her responsibilities also included "business finances, operations, hiring and firing, as well as to plan, deal, and negotiate with business suppliers and providers." These duties are not sufficiently detailed to determine that the Beneficiary performed primarily managerial or executive duties, rather than non-qualifying duties.

The foreign entity's organizational chart identified nine employees subordinate to the Beneficiary's position of general manager. The subordinate employees included a chef, two chef assistants, two pizza makers, a barman, two waiters, and a cashier. The Petitioner submitted payroll evidence that

the foreign entity employed nine employees subordinate to her position in October and December 2016.[7] The foreign entity's organizational chart also indicated that the company outsourced its accounting services, but did not include evidence of payment for these services. The record does not include probative evidence establishing that any of the positions subordinate to the Beneficiary performed primarily supervisory, managerial, or professional duties. Accordingly, it appears at most that the Beneficiary acted as a first-line supervisor over non-professional, non-supervisory, and non-managerial employees for the foreign entity.

As the record does not contain sufficient evidence establishing that the Beneficiary's employment for the foreign entity satisfied the statutory definitions of executive or managerial capacity, the petition cannot be approved for this additional reason.

IV. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary will be employed in a managerial or executive position for the Petitioner under the extended petition, and the Petitioner has not established that she was employed abroad in a managerial or executive capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of A-T- LLC*, ID# 784848 (AAO Dec. 7, 2017)

[7] The record does not include evidence of the number of employees the Beneficiary supervised when she worked for the foreign entity prior to entering the United States.