U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10273697

Date: DEC. 8, 2020

Appeal of California Service Center Decision

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

The Petitioner, a company engaged in freight forwarding logistics, seeks to temporarily employ the Beneficiary as its "logistics 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 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 Petitioner did not establish, as required, that: (1) the Beneficiary was employed abroad for one year during the relevant three-year period; (2) the Beneficiary's employment abroad was in a managerial or executive capacity; and (3) the Beneficiary's proposed employment would be in a managerial or executive capacity. The matter is now 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 because the Petitioner did not establish that the Beneficiary's employment abroad was in a managerial capacity. Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding the two remaining issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

I. 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.*

II. EMPLOYMENT ABROAD IN AN EXECUTIVE CAPACITY

The issue to be addressed in this decision is whether the Petitioner established that the Beneficiary was employed abroad 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 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.

When examining the managerial capacity of a given beneficiary, we review the submitted description of the job duties. The description of the job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were 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 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 foreign entity's business, its staffing levels, and its organizational structure.

A. Duties

Based on the definition of managerial capacity, the Petitioner must first show that the Beneficiary performed certain high-level responsibilities. *See* section 101(a)(44)(A) of the Act. Second, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the foreign entity's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

The Petitioner indicated that during the Beneficiary's employment abroad, he was the Logistics Manager and had "complete responsibility for all aspects of import/export operations as well as logistics and fleet management which included shipping, quality control and inventory management responsibilities within the shipping area and associated storage facilities." In addition, the Beneficiary carried out the following job functions:

- Plan, organize, and execute logistics support activities such as maintenance planning, repair analysis and test equipment recommendations;
- Plans, directs, and coordinates the storage and distribution operations with the company;
- Direct availability and allocation of materials, supplies and finished product;

[1] The Petitioner does not claim that the Beneficiary was employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary was employed in a managerial capacity.

- Develop and implement technical project management tools such as plans, schedules and responsibility and compliance matrixes;
- Develop transportation & logistics operations systems improvements by analyzing process workflows manning and space requirements and layout;
- Ensure that import/export process is in compliance with company and industry quality assurance standards;
- Review logistics performance with customers against targets, benchmarks and service agreements;
- Maintain and develop positive business relationship with a customers' key personnel involved in or directly relevant to a logistics activity;
- Redesign the movement of goods in order to maximize value and minimize costs;
- Protect and control proprietary materials;
- Analyze and identify logistical problems and recommend solutions; and
- Manage the logistical aspects of product life cycles.

After reviewing the record, the Director issued a request for evidence (RFE). The Petitioner was asked to provide, in part, a description of the Beneficiary's job duties and the percentage of time he allocated to each listed duty. The Petitioner was also asked to name the Beneficiary's subordinates and to provide their respective job titles and job descriptions.

In response, the Petitioner stated that the Beneficiary held an "upper-level managerial position" solely reporting to the Executive Director. The Petitioner also provided a breakdown of time spent on the day to day activities as follows:

Daily review of email at the beginning of the day, to check the status of client's merchandise, it could still be at the custom, shipped, at the warehouse, etc.	30 min to 1 hour
Inform the clients about the status of the merchandise, and solve any clarification needed, as well as require some merchandise documentation that we still have in stock or has already been imported.	20 min
Verify the daily review of the forklifts was made, and the report was sent.	5 min
Daily planning with the account executives to verify if there is any urgent shipments, and plan for the shipments that we are still waiting or the ones that still doesn't have an exit time.	30 min
Plan with the transport supervisor, if the vehicles required for the daily shipments are available.	30 min
Plan with the Logistics Supervisor, the arrival and departure of the merchandise.	30 min
Determination of the warehouse expenses through budgets, and send them to account executives.	45 min
Confront the pedimentos and the merchandise revisions to check for any discrepancies.	10 min per pedimento
Check the staff is in daily compliance with the safety regulations.	Through all day
Send all the warehouse expenses of the shipments of invoicing.	45 min

Prepare and send daily the following reports: dispatched trucks, received and dispatched loading orders, the time they were dispatched, the amount of invoices made, number of discrepancies and responsible. In case of discrepancies determine the costs for the company and it the responsible committed a serious mistake, and evaluate whether its their first time they make a mistake and if he/she needs to be removed from the company.	2 hours
Establish the costs of uncommonly services for the customers.	20 min
Coordinate with the receiving clerk that the arrival notices are in compliance with the client instructions.	45 min
Coordinate with the inventory clerk the periodic revision of the inventory.	20 min
Errors evaluation and implementation of measures to prevent recurrence.	Through all day
Give the forklift operators instructions for loading and unloading of the merchandise.	45 min
Attend any need of requirement of the logistics staff.	Through all day

The Petitioner also provided a more detailed organizational chart that showed the Beneficiary supervised the logistics supervisor, who in turn supervised the receiving and shipping clerk, the inventory clerk and three forklift operators.

In the denial decision, the Director discussed the Beneficiary's job duty breakdown finding that several of the listed job duties lacked sufficient detail and several duties did not appear to be managerial in nature. The Director also noted discrepancies in the job duties and time spent on each duty.

On appeal, the Petitioner states that during his employment as a logistics manager with the foreign company, he was "overseeing the supply chain management processes in order to be able to coordinate effective and efficient procedures." Further, the Petitioner states that he was a "high-level manager of the company solely reporting to the executive management team of the company."

Upon review of the record, the Petitioner submitted a vague duty description that does not sufficiently articulate the Beneficiary's day-to-day tasks when employed with the foreign company. For instance, the Petitioner indicated that the Beneficiary was responsible for various duties that could apply to any manager working for any business in this industry including stating that he "plans, directs, and coordinates the storage and distribution operations with the company;" "directs availability and allocation of materials, supplies and finished product;" "develop and implement technical project management tools such as plans, schedules and responsibility and compliance matrixes;" "develop transportation & logistics operations systems improvements by analyzing process workflows manning and space requirements and layout;" and, "ensure that import/export process is in compliance with company and industry quality assurance standards." The Petitioner provided few specifics as to how the Beneficiary performed these duties within the context of the business operations of the foreign company. The Petitioner does not describe or provide supporting documentation regarding the storage

and distribution operations of the foreign company, the technical project management tools the Beneficiary developed; or the operations systems improvements developed by the Beneficiary. Reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. Conclusory assertions regarding a beneficiary's employment capacity are not sufficient. The actual duties themselves will 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).

Further, when reviewing the additional duties submitted in response to the Director's RFE, it appears that several of the duties performed by the Beneficiary may not be managerial in nature. For example, the Beneficiary reviewed email correspondence to check the status of the client's merchandise and informed the clients about the status of the merchandise. In addition, he would "establish the costs of uncommonly services for the customers," and coordinated with the "receiving clerk that the arrival notices are in compliance with the client instructions." Informing clients about the shipping orders and establishing the costs do not appear to be managerial duties. In addition, the Beneficiary "[gave] forklift operators instructions for loading and unloading of the merchandise," "[sent] all the warehouse expenses of the shipments of invoicing;" and, "[planned] with the Logistics Supervisor, the arrival and departure of merchandise." It appears that the Beneficiary was performing non-qualifying duties associated with the foreign entity's shipping and inventory operations of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I & N Dec. 593, 604 (Comm. 1988).

In addition, the Director reviewed the description submitted in response to the RFE that listed the job duties and the time spent on each duty, and noted that it is not clear how the Beneficiary performed those duties while also performing the additional listed duties. Although the Director noted this conflicting issue with the job duties in her decision, the Petitioner did not discuss this issue on appeal and did not provide sufficient evidence to overcome the director's concerns.

The Director also noted that one of the listed duties performed by the Beneficiary with the foreign company was "plan with Transport Supervisor," but the organizational chart did not have a transport supervisor. On appeal, the Petitioner confirmed that the foreign company did not employ a transport supervisor but instead the Beneficiary worked with a transport supervisor employed by a subsidiary company. The Petitioner stated that the companies worked together but did not provide any information regarding this working relationship, or provide more specifics of the Beneficiary's role with the subsidiary company.

Furthermore, although the Petitioner stated that the Beneficiary's title is logistics manager, the Beneficiary's submitted resume listed his job title with the foreign company as logistics supervisor. The description of tasks included on the resume is "control of the merchandise that is received and sent out from different clients, inventory control, exporting forms revision, supervision of shipments from the moment they come in, the coordination of transports through their customs agency and their destination." The Petitioner did not provide an explanation for the inconsistent information regarding the Beneficiary's position when employed by the foreign company.

Even though the Petitioner stated that the Beneficiary may hold a senior position within the foreign employer, and was "overseeing the supply chain management processes in order to be able to coordinate effective and efficient procedures," this does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a foreign position be "primarily" managerial or executive in nature. *Id.* The Beneficiary may exercise discretion over the foreign employer'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 abroad are primarily managerial in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial 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.

On appeal, the Petitioner emphasizes that the Beneficiary oversees a logistics supervisor and five additional employees. 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*).

The Petitioner has not submitted sufficient evidence to establish that the Beneficiary would qualify as a personnel manager based on his supervision of subordinate supervisors. In response to the Director's RFE, the Petitioner submitted a more detailed organizational chart that indicated that the Beneficiary supervised the logistics supervisor who in turn supervised the receiving and shipping clerk, the inventory clerk, and three forklift operators. The Petitioner also submitted the resume for the logistics supervisor; however, the individual did not list a job title for his position with the foreign company. The resume did not list that he was in the role of logistics supervisor. His listed duties were "review and classify customs Account Executives and Customs documents." The record did not provide sufficient information regarding the duties performed by the logistics supervisor.

The Petitioner also appears to assert that the Beneficiary oversees a subordinate professional. 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 a 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 Petitioner has not sufficiently demonstrated that the Beneficiary qualifies as a personnel manager based on his oversight of professional subordinates. The Petitioner does not clearly explain why the position subordinate to the Beneficiary, the logistics supervisor, requires a bachelor's degree. The Petitioner provided generic duty descriptions for the Beneficiary's claimed supervisory, and other, subordinates that do not sufficiently corroborate their roles, nor do they demonstrate that these positions would require bachelor's degrees. In addition, the Petitioner provided no supporting documentation to support his personnel authority over, or his delegation of duties to, professional subordinates. As such, the Petitioner has not established that the Beneficiary acts as a personnel manager abroad based on his management of subordinate professionals.

In the alternative, the Petitioner has not established that the Beneficiary was employed as a function manager abroad. 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 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).

In this matter, the Petitioner has not described or provided evidence that the Beneficiary managed an essential function. Further, as we discussed, the Petitioner provided duties for the Beneficiary and supporting documentation suggesting his primary involvement in the non-qualifying operational aspects of the business, such as emailing clients, giving instruction to the forklift operators, and drafting reports. By comparison, there is no supporting documentation to corroborate that the Beneficiary primarily managed an essential function or that he primarily delegated non-qualifying tasks to his claimed subordinates. Therefore, the Petitioner did not adequately demonstrate that the Beneficiary primarily managed a function rather than performed it. The Petitioner has not sufficiently established that the Beneficiary qualifies as a function manager.

For the foregoing reasons, the Petitioner has not established that the Beneficiary was employed abroad in a managerial or executive capacity.

III. CONCLUSION

The appeal must be dismissed because the Petitioner did not establish that the Beneficiary was employed in a managerial capacity abroad. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.