U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13355824

Date: DEC. 17, 2020

Appeal of California Service Center Decision

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

The Petitioner, describing itself as an "importing and wholesaling business" seeks to temporarily employ the Beneficiary in the United States as its chief executive officer (CEO) 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 the record did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. On appeal, the Petitioner asserts that the Director overemphasized one portion of the Beneficiary's duties as non-qualifying, specifically negotiating contracts, and indicates that a majority of her duties qualify as managerial. The Petitioner further contends that the Director was mistaken as to its asserted organizational structure and states that the submitted evidence demonstrates that the Beneficiary would oversee subordinate supervisors.

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.

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*. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity. The Petitioner does not claim on appeal that the Beneficiary

would be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in a managerial capacity.

"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 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 capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

A. Duties

To be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties will be primarily managerial, we consider the Petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The Petitioner stated that it "engages in international business, primarily import and wholesale" and that it "conducts market research and surveys different business sectors." The Petitioner further indicated that it "contracts with business partners like retailer[s] and distributors to promote sales" and "engage[s] in trade shows" as well as utilizing "other marketing methods to advertise its products and services." The Petitioner explained that the Beneficiary had acted as its CEO since November 2016 and listed the following duties:

> *Establishing Goals and Policies on the Operation of [the Petitioner] (40% of the time)*
> - Establish overall business objectives, formulate financial goals, streamline business processes, and set company guidelines and policy through routine meetings with subordinate managers;
> - Supervise the market research and geographical industry study;

- Develop and revise [the] company business plan, and review reports from subordinate managers to evaluate the effectiveness in implementing the plan;
- Establishing the company's performance goals;
- Direct and review annual and quarterly budgets for the company, including purchases, shipping, labor, marketing, advertising, sales and public relations;
- Establish the policy and system to share marketing and sales data with the parent company to increase revenue, efficiency, and overall customer satisfaction;
- Confer with the [foreign employer's] top management and board of directors to develop and implement optimal operational strategy in the U.S.;
- Establish employment policies including but not limited to hiring, firing, and performance and compensation metrics;

Directing the Management of [the Petitioner] (50% of the time)

- Oversee all subordinate employee's work in the development of key clients, customer service, logistics, and market analysis of industry segments and clients;
- Supervise and direct overall sales strategies, review periodic reports from department managers, and provide guidance and directives;
- Direct the formulation of an effective business transaction procedure and price strategy;
- Inform the [foreign parent company's] top management of significant financial and market trends and recommend appropriate action;
- Establish and implement proper sales guidelines and goals for the company; create and implement effective marketing strategies to help company reach potential clientele;
- Direct subordinate managers to recruit, hire train, dismiss or promote staff and establish training protocols for employees in accordance with company guidelines.

Exercising Wide Latitude in Other Discretionary Decision-Making (10% of the time)

- Exercise discretionary decision-making power on all major financial, budgeting and operational issues concerning [the Petitioner's] growth;
- Exercise discretionary decision-making power on adjust the company structure;
- Keep aware of business opportunities and suggest investments to the [foreign parent company].

The Petitioner submitted generic duties for the Beneficiary that could apply to any manager acting in any business and industry and they add little insight into the actual nature of her asserted role. For instance, the Petitioner vaguely stated that the Beneficiary would be responsible for establishing "overall business objectives," developing "business plans," creating policies and systems, and directing "overall sales strategies." However, the Petitioner submitted few details and little credible supporting documentation to substantiate the Beneficiary's performance of qualifying managerial duties, such as the financial goals she formulated, business processes she streamlined, company guidelines and policies she set, or market research she supervised. Likewise, the Petitioner did not specify or sufficiently document the "performance goals" the Beneficiary established, "marketing, advertising, sales and public relations" she directed, "optimal operational strateg[ies]" she implemented, or "key clients" she developed.

In addition, the Petitioner did not describe or properly document the "business transaction procedure[s] and price strateg[ies]" the Beneficiary formulated, "proper sales guidelines and goals" she implemented, "effective marketing strategies" she put in place, or "major financial, budgeting and operational issues" she decided on. In fact, the actual nature of its business the Petitioner conducts and the products and services it provides is not clear from the Petitioner's vague descriptions of its business and the Beneficiary's duties. For example, the Petitioner indicated that it "contracts with business partners like retailer[s] and distributors to promote sales" and "engage[s] in trade shows," but it is not clear or documented what business, partners, retailers, distributors, or trade shows it discussed.

We acknowledge that the Petitioner submitted some documentation in response to the Director's request for evidence (RFE) meant to corroborate the Beneficiary's managerial role; however, this evidence was not sufficiently credible and specific to substantiate her asserted capacity. For instance, the Petitioner provided two translated reports from April and May 2019 reflecting its claimed sales manager communicating to the Beneficiary the "total value of goods purchased" and receipt of these goods from an unexplained vendor. However, these reports are addressed to the Beneficiary as "general manager" despite her asserted position as CEO of the company; further, these documents are missing credible details such as what goods were purchased.

The Petitioner also provided a "Sales Commission System" document it claims was issued by the Beneficiary to her subordinate sales manager and marketing manager. But again, this document did not credibly demonstrate the Beneficiary's performance of managerial duties. First, this commission system document was undated and included no specifics related to the Petitioner's actual business activities, only vaguely directing that commissions "of the basic business shall be 5%." Likewise, the Petitioner submitted "Rules and Regulations" it asserted were promulgated by the Beneficiary; but these were again undated and made only generic declarations. For example, this generic policy document stated that its objective was "to provide the employees with [a] working environment beneficial to the physical and mental health" and noted that employees should "abide by laws and discipline, maintain the social public order consciously." These rules and regulations the Petitioner claimed were promulgated by the Beneficiary included no specifics or indication as to the actual business it conducts, any business specific policies, and could have applied to any company operating in any industry. In sum, the supporting documentation provided by the Petitioner did not credibly demonstrate the Beneficiary's primary performance of managerial-level duties and her asserted delegation of tasks to subordinate supervisors and managers. The Petitioner must resolve inconsistencies and ambiguities 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).

Although we do not expect the Petitioner to detail and document every managerial task performed by the Beneficiary, the near complete lack of detail and credible documentation related to her asserted managerial duties is noteworthy since it claims she has been acting in this role in the United States for approximately three years prior to the date the petition was filed. Specifics are clearly an important indication of whether a beneficiary's duties are primarily 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).

Even though the Beneficiary holds a senior position within the organization, the fact that she will manage or direct a business does not necessarily establish eligibility for classification as an

intracompany transferee in a managerial capacity within the meaning of section 101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial 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 her actual duties would be 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 acts in a managerial capacity based on her oversight of subordinate supervisors. 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*).

Since the Petitioner only contends that the Beneficiary qualifies as a personnel manager on appeal, we will not analyze whether she qualifies as a function manager. Furthermore, the Petitioner does not contend on appeal that the Beneficiary would qualify based on her supervision of professional subordinates[1]; as such we will only consider whether she would qualify as a personnel manager based on her supervision of subordinate supervisors as of the date the petition was filed.

In support of the petition the Petitioner provided an organizational chart reflecting five total employees, including the Beneficiary, while in response to the Director's RFE, it emphasized an expanded chart showing eight total employees as of December 2019.[2] However, 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). Therefore, we will only analyze the Petitioner's asserted organizational structure as of the date the

[1] 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, here, the Petitioner does not assert on appeal that the Beneficiary's subordinates qualify as professionals, nor does it indicate that they hold bachelor's degrees or that they require them to perform their asserted positions.

[2] The petition was filed on September 3, 2019.

petition was filed. At the time the petition was filed, the Petitioner provided an organizational chart reflecting that the Beneficiary oversaw a sales manager and a marketing manager. The sales manager was further shown to oversee two sales technicians.

Upon review, the Petitioner has not provided sufficient evidence to establish that the Beneficiary would qualify as a personnel manager based on her supervision of subordinate supervisors as of the date the petition was filed. First, we note that the Petitioner's organizational chart as of the date the petition reflected only one manager with subordinates, the claimed sales manager. Further, the Petitioner did not clearly articulate or submit supporting documentation to demonstrate the actual nature of its business, only vaguely indicating that it was involved in "international business, primarily import and wholesale." For example, the claimed 2019 reports from the asserted sales manager to the Beneficiary did not clearly indicate the nature of the goods purchased by the Petitioner, nor did any other supporting evidence on the record. As such, it is not clear from the record what the asserted sales manager and the claimed subordinate sales technicians sold or would sell. This lack of clarity and evidence leaves question as to whether the Beneficiary oversees subordinate supervisors as asserted.

In addition, the Petitioner also provided a generic duty description for the claimed sales manager that does not properly corroborate a supervisory position subordinate to the Beneficiary. For example, there is little indication as to the "sales and customer support budgets" the claimed sales manager prepared, "sales goals and set incentives" they worked on, or "pricing and discount policies" they set. Indeed, as we have noted, the goods bought and sold by the Petitioner is not even specifically articulated or documented. In addition, the Petitioner provided no credible evidence reflecting the Beneficiary delegating duties to her asserted supervisory subordinates or to substantiate her personnel authority over them. *See* Section 101(a)(44)(A) of the Act. The Petitioner also did not submit duty descriptions for the claimed sales technicians shown as reporting to the subordinate sales manager. Therefore, the Petitioner has not established that the Beneficiary would qualify as a personnel manager based on her supervision of subordinate supervisors and managers.

On appeal, the Petitioner further cites *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570, 1574 (N.D. Ga. 1988) to stand for the proposition that the small size of a petitioner should not, by itself, undermine a finding that a beneficiary will act primarily in a managerial capacity. First, we note that the Petitioner has not furnished evidence to establish that the facts of the instant petition are analogous to those in *Mars Jewelers, Inc.* With respect to *Mars Jewelers*, we are not bound to follow the published decision of a U.S. district court in matters arising within the same district. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Regardless, in *Mars Jewelers, Inc.*, the courts emphasized that the former INS should not place undue emphasis on the size of a petitioner's business operations when reviewing whether a Beneficiary would act in managerial or executive capacity. We have long interpreted the regulations and statute to prohibit discrimination against small or medium-size businesses. However, consistent with both the statute and regulations, the Petitioner is required to establish that the Beneficiary's position consists primarily of managerial duties and that it would have sufficient personnel to relieve the Beneficiary from performing operational and/or administrative tasks.

Here, our conclusion is based on several evidentiary deficiencies in the record and does not rest solely on the size of the Petitioner. For instance, as we have discussed, the Petitioner submitted a generic duty description for the Beneficiary that did not credibly articulate her actual daily managerial duties. Further, it provided little credible documentation to substantiate the Beneficiary's delegation of duties or her oversight of subordinate supervisors. Likewise, it provided an unclear picture of its actual business operations, namely what it imported and sold in the United States. Lastly, the Petitioner did not submit a sufficient duty description for the Beneficiary's lone claimed supervisory subordinate as of the date the petition was filed, nor did it provide duty descriptions for this sole asserted manager's subordinates.

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

ORDER: The appeal is dismissed.