U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 5197496

Date: DEC. 18, 2019

Appeal of California Service Center Decision

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

The Petitioner[1] seeks to temporarily employ the Beneficiary in the United States as the showroom manager of its new office[2] 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 record did not establish that (1) the new office will support a managerial or executive position within one year after the approval of the petition; (2) the Beneficiary has been employed abroad in a managerial or executive capacity; (3) the Beneficiary is qualified for the offered position; and (4) the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of this petition.

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

[1] The Petitioner identified itself on the Form I-129, Petition for a Nonimmigrant Worker, as '[redacted] The record reflects that these company names refer to two separate legal entities. Where asked to indicate its Federal Employer Identification Number (FEIN) on the petition, the Petitioner provided the FEIN for [redacted] Accordingly, we consider this entity to be the petitioning U.S. employer.

[2] The Petitioner stated on the Form I-129 that the Beneficiary is coming to the United States to open or to be employed in a "new office." The term "new office" refers to an organization which 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). Neither the Petitioner, which was established in 2011, nor its subsidiary, [redacted] meets the definition of a new office. The Petitioner has been directly doing business in the United States for several years, and the limited liability company, although established in 2017, is part of an organization that has been doing business in the United States through its parent company for more than one year.

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. EMPLOYMENT IN THE UNITED STATES IN A MANAGERIAL CAPACITY

Although the Petitioner, [redacted] stated that the Beneficiary would be working in a new office, specifically, for its subsidiary, [redacted], which was established in 2017, the Petitioner provided its own employer identification number on the Form I-129.[3] As noted above, the Petitioner has been directly doing business in the United States for several years; therefore, it does not qualify as a new office. Rather, we will determine whether the Petitioner has established that it will employ the Beneficiary in the United States 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 assessing the managerial nature of a position, we examine a petitioner's description of the job's duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring an L-1 petitioner to submit "a detailed description of the services to be performed"). 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 the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding the beneficiary's actual duties and role in a business.

### A. Duties

Based on the statutory definition of managerial 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 duties, as opposed to ordinary operational

[3] The Petitioner changed the location of the Beneficiary's proposed worksite in response to a request for evidence (RFE). The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, a petitioner cannot offer a new position to a beneficiary or materially change the position. A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). If significant changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

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.

With the petition, the Petitioner stated that 80% of the Beneficiary's time will be spent "taking decision and act for all administration matters in place of the Owner Manager;" hiring or dismissing appropriate staff; supervising staff; resolving customer complaints and disputes; and exercising discretion over the day-to-day operation of the show and sales department. The remaining 20% of time will be spent as follows:

- Create and participate to the presentation of an internal policy
- Analyze the performance and probability of sales
- Ensure the effectiveness of the promotion
- Project the sales provision according to the trend of the market
- Develop and regularly evaluate the success plan
- See the opportunity of new business favorable with our project
- Apply the new procedures, set up together with the owners the rules for new markets
- Define the work of each of my subordinates
- Identify, evaluate and develop the market strategy
- Study aspects of financial market to launch activities in the United States
- Determine the budget to develop office

The Petitioner has not provided additional details regarding the Beneficiary's proposed job duties. We find that the position description provided for the Beneficiary is insufficient to establish what she will actually do on a day-to-day basis, and does not meet the Petitioner's burden to provide a detailed description of the proposed employment. The duties are stated in vague terms and do not provide insight into the nature of her expected daily tasks. For example, we cannot determine that the Beneficiary's responsibilities to "act for all administration matters," "see" business opportunities, "ensure the effectiveness of the promotion," forecast and analyze sales, evaluate the "success plan," study the market, or resolve customer complaints would involve tasks that are primarily managerial in nature. Reciting a 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. 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). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's proposed activities in the course of her daily routine. Further, the Beneficiary's changed work location, together with the general nature of the duties, create confusion as to where and how the Beneficiary will actually spend her time.

Further, the Beneficiary does not appear to be the Petitioner's senior employee because its organizational chart lists the President and Co-President above the Beneficiary. The Petitioner's business plan states that day-to-day operational management will be conducted by its two owners, not by the Beneficiary. These two "managing partners" will "oversee development, purchasing, pricing and inventory control, including approval of all financial obligations of the company." The business plan states that they will also plan, develop, and establish customer service policies and objectives, and write, explain, and enforce an employee's manual for all employee-related policies." It states that "[r]esponsibilities for hiring and firing employees lie solely with the two operations managers, and

any decisions in these areas will be made jointly." It also states that the two managers will also manage working capital, perform financial forecasting, prepare financial analyses of operations for guiding management, and direct preparation of budgets and financial forecasts and arrange for audits of the company's accounts." Thus, these duties overlap with the proposed duties of the Beneficiary, and it is not clear that the Beneficiary would have authority to make major decisions regarding the Petitioner's operation, administration, policies, finances, hiring, firing, and overall direction. 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. Therefore, a broad overview of her responsibilities is insufficient to establish that her actual duties will be primarily managerial.

We acknowledge the Petitioner's stated intent to place the Beneficiary in a position at one of its claimed locations where she may exercise some discretion over day-to-day activities. However, the Petitioner must also establish that higher level managerial responsibilities would primarily occupy the Beneficiary's time and to make this determination, we review the totality of the evidence. The Beneficiary's discretionary authority is only one of several factors we consider in determining whether the Petitioner would employ her in a qualifying capacity.

B. Staffing and Organizational Structure

The Petitioner indicated on the Form I-129 that it has two employees; however, it did not provide evidence of wages paid to any employees at the time of filing. The Petitioner stated that its subsidiary, [redacted] was not yet doing business but had five sites "opened" in the United States. These five sites were described as: a showroom in [redacted] California; a leased house in [redacted] California; a purchased house located in [redacted] Arizona; a leased apartment in [redacted] Arizona; and an office located in [redacted]

A business plan for [redacted] indicated each of its retail locations would have separate "wings" or departments focused on Madagascar tourism, handicrafts, foods and beverages, and industrial stones, with each department staffed by an "associate" and additional employees. The plan states that in year two, it will hire two general managers. Its personnel plan includes four "associates" to handle the industrial stones wing, the food and beverage, ingredients and supplements wing, the handicrafts wing, and the tourism wing. The personnel plan also includes a "TBD-exhaustive list of potential new employees" for each of the four "wings."

In response to the RFE, the Petitioner provided an organizational chart which lists the Beneficiary as a manager in [redacted] Arizona. It shows that she will oversee an assistant to help during the installation of the materials/do secretarial work; a driver who will take care of the pickup and the delivery of the materials; and an unlisted numbers of additional "workers" who will unload containers and do the unpacking and packing.

As noted above, the Petitioner submitted a business plan indicating that each of the [redacted] locations would have four separate divisions specializing in the retail sale of different types of products, with each staffed by an "associate" and other staff. This structure was not reflected in the proposed organizational chart. This ambiguity raises questions regarding the nature of the business, its intended staffing, and the Beneficiary's claimed supervisory duties. The Petitioner must resolve inconsistencies 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). In addition, the record does not establish that the Petitioner or its subsidiary were staffed at the time of filing. 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).

Further, even if the Petitioner could rely on its inconsistent future hiring plans for its subsidiary, the limited information provided would not establish that the Beneficiary would be employed in a managerial capacity based on her supervisory duties. As noted, the statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. Here, the Petitioner indicates that the Beneficiary would supervise employees, and has not articulated a claim that she will primarily manage an essential function of the organization. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. *Id.*

The Petitioner's organizational chart indicates that the Beneficiary would supervise an "assistant," "driver," and "workers," none of which were claimed to be supervisory or managerial positions. 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 Petitioner did not establish that the proposed positions of assistant, driver, or "worker" would require a bachelor's degree. Even if we were to consider the company's vague hiring plans, the record indicates that the Beneficiary's U.S. role would be limited to first-line supervision of non-professional employees.

Here, the Beneficiary's job duty breakdown does not provide a meaningful understanding of how the Beneficiary will spend her time, and as such, we cannot find that she would primarily engage in qualifying managerial duties. Furthermore, the Petitioner's staffing and organizational structure is not sufficient to support a finding that the Beneficiary will be relieved from having to allocate her time primarily to performing non-managerial job duties. Thus, the Petitioner has not established that the Beneficiary will be employed in a managerial capacity.

We note that neither [redacted] nor [redacted] is in good standing with the State of California. The California database lists the status of [redacted] as "forfeited" and [redacted] is not registered to do business in California. Cal. Sec'y State, https://businesssearch.sos.ca.gov/ (last visited Nov. 27, 2019). Further, the Arizona database lists the status of [redacted] as "pending active" and [redacted] is not registered to do business in Arizona. Ariz. Corp. Comm'n, https://ecorp.azcc.gov/EntitySearch/Index (last visited Nov. 27, 2019). Any future submissions, whether relating to this case or another filing, must account for this information and demonstrate that it has been resolved. We note this additional issue for informational purposes; even without considering the company's status, as the issue discussed above warrants dismissal of the appeal.

## III. RESERVED ISSUES

The Director also determined that Petitioner has not established that (1) the Beneficiary has been employed abroad in a managerial or executive capacity; (2) the Beneficiary is qualified for the offered position; and (3) the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of this petition. However, because the issue relating to the Beneficiary's employment in the U.S. in a managerial capacity is dispositive in this case, we need not reach the three remaining issues and therefore reserve them.

**ORDER:** The appeal is dismissed.