U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-A-T- CORP.

DATE: DEC. 21, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a specialized printing company, seeks to temporarily employ the Beneficiary as managing director of its new office under the L-1A nonimmigrant classification for intracompany transferees. *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 California Service Center Director denied the petition, concluding that the record did not establish, as required, that the Beneficiary had been employed in a qualifying executive or managerial capacity for the foreign entity. The Director also appeared to conclude, without analysis, that the Petitioner had not established the Beneficiary's one year of continuous employment for the foreign entity within three years preceding the filing of the petition. The Director's decision on this issue is withdrawn.[1]

On appeal, the Petitioner asserts that the Director did not consider all the evidence submitted and mischaracterized the Beneficiary's duties for the foreign entity. The Petitioner contends that the Beneficiary's job duties for the foreign entity were managerial and some of them were that of an executive.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification for a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one

[1] The Petitioner stated that the Beneficiary had been employed by the foreign entity beginning November 1, 2014. The record includes evidence that the foreign entity paid the Beneficiary a monthly salary beginning in November 2014 and continuing to June 2016. U.S. government records show that the Beneficiary entered the United States on April 28, 2016, and has not left. However, the Beneficiary's foreign employment from November 2014 to April 2016 is sufficient to show one year of continuous employment for the foreign entity. The record, however, does not establish that the Beneficiary's employment was in a managerial or executive capacity.

continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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. Section 101(a)(15)(L) of the Act. The petitioner must also establish that the beneficiary's prior education, training, and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

"Managerial capacity" means as 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.

II. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director determined that the Petitioner had submitted a vague description of the Beneficiary's duties for the foreign entity and that her duties appeared to relate to customer service and assisting departments in the performance of the day-to-day non-supervisory duties. The Director concluded that the Petitioner had not established that the Beneficiary had been employed primarily in a managerial or executive capacity for the foreign entity.

We will address both the Petitioner's description of the Beneficiary's foreign duties as well as the foreign entity'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 or executive 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 definitions of managerial and executive capacity have two parts. First, the petitioner must show that the beneficiary performed certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Second, the petitioner must prove that the beneficiary was *primarily* engaged in managerial or executive 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 its letter of support, the Petitioner noted that the foreign entity provides printing on packaging materials and that the Beneficiary as the general/technical manager of the printing operation "supervised a lot of employees, including professionals in the position of Marketing Manager, Factory Manager, Accountant and Designer." The Petitioner added that the Beneficiary "exercised discretionary decision-making authority over the personnel responsible for manufacturing, sales and marketing personnel," and formulated and implemented business strategies for both production and sales departments and managed business development for its products." The Petitioner indicated that the Beneficiary was also responsible for ensuring quality compliance for its products.

These duties do not convey an understanding of the Beneficiary's actual daily tasks for the foreign entity. Rather, the Petitioner paraphrases elements of the statutory definitions of "managerial capacity" and "executive capacity." *See* sections 101(a)(44)(A) and (B). Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *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); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

In response to the Director's request for evidence on this issue, the Petitioner provided a position description for the Beneficiary's position as general manager. The position description described the Beneficiary's responsibilities as follows (bullet points added and paraphrased for clarity):

- Manage and oversee press operations and head office's business and administrative activities;
- Directly supervise the marketing manager, factory manager, accountant and designer;
- Evaluate and decide upon key investment in equipment and infrastructure;
- Manage all aspects of printing press, including looking after finance, accounting, operations, sales, marketing, human resources, and engineering;
- Recruit and select staff with full authority to judge and hire the best potential candidate;
- Formulate and implement business strategies for production and sales;

- Lead and direct all employees by establishing company policies;
- Analyze situations and determine best course of action, including ensuring that business keeps competent employees and eliminates those who do not meet the company standard;
- Coordinate efforts by establishing procurement, production, marketing, field and technical services policies, and coordinate actions with staff;
- Create company's best image by collaborating with customers, vendors, employees, different government departments and enforce ethical business practices;
- Monitor and control production quality and other elements to preserve company's good reputation;
- Monitor wastage and focus on recycling of resources;
- Arrange proprietor meetings with customers every quarter of the year;
- Meet with customers on monthly basis and enquire about any problems with quality and delivery schedules and develop new business opportunities;
- Verify job pricing, order consolidation, and random invoice check;
- Enter into negotiations with vendors and suppliers for material supplies;
- Frequent inspection of work orders, bank account balances, auditing of spending to ensure spending is within budget; and
- Accomplish subsidiary objectives by establishing plans, strategy, budget, structure, financial outcomes and result measurements, allocation resources, reviewing progress, and making midcourse corrections.

The Petitioner also submits a copy of a sales and marketing report prepared by the Beneficiary in December 2015, and copies of emails from the Beneficiary to clients resolving issues, confirming delivery schedules, and advising customers of the foreign entity's capabilities.

On appeal, the Petitioner repeats portions of the duties described above and asserts that the duties described are not vague and are not primarily related to customer service.

We disagree. The position descriptions provided do not include sufficient detail describing what the Beneficiary actually did and the approximate amount of time she spent on the duties described. First, the Petitioner does not clarify whether the Beneficiary will be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. The Petitioner must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are either in an executive or managerial capacity.

This delineation is important because whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. On appeal, the Petitioner appears to claim that the Beneficiary's tasks for the foreign entity were primarily managerial in nature with only "some" executive duties. However, as the Petitioner does not specify the time the Beneficiary spent on specific tasks, the Beneficiary's primary duties have not been established. For

example, although the description references the Beneficiary's involvement in supervising employees, recruiting staff, and establishing company policies regarding employees, it also lists numerous other duties that do not appear related to supervising personnel. Without an indication of the approximate time the Beneficiary spent supervising personnel or spent performing other tasks, we cannot find that the Beneficiary primarily supervises or manages others.

The description provided also includes tasks that do not fall directly under managerial or executive duties as defined in the statute. For example, the Beneficiary is charged with monitoring and controlling production quality and monitoring wastage and recycling. Similarly, the Beneficiary performs duties related to verifying job pricing, order consolidation, invoice checks, and auditing expenditures for the budget, as well as frequently inspecting work orders and bank account balances. The Beneficiary also arranges meetings with customers, meets with customers monthly to discuss issues and develop new business opportunities, and collaborates with customers, vendors, employees, and government departments to create the company's best image. Neither the foreign entity nor the Petitioner provide sufficient detail regarding these duties to establish that carrying out these duties are managerial or executive duties rather than non-qualifying operational duties. 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. at 1108.

The description also identifies broad categories of responsibilities, such as the Beneficiary managing and overseeing press operations and the head office's business and administrative activities, as well as looking after finance, accounting, operations, sales, marketing, human resources, and engineering. The description also has the Beneficiary coordinating efforts involving procurement, production, field and technical services' policies, and staff. These duties include minimal information or explanation of the Beneficiary's actual activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Id.* Without detail of specific duties and actual tasks related to these broad categories, we cannot evaluate and analyze whether the Beneficiary performed duties that are managerial or executive in nature rather than the non-qualifying duties required to operate the business.

The fact that the Beneficiary managed or directed a department or the operations of the business does not 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 have exercised some discretion over the foreign entity's day-to-day operations and may have possessed the requisite level of authority with respect to discretionary decision-making, the position descriptions alone are insufficient to establish that her actual duties were primarily managerial or executive in nature.

B. Staffing

Beyond the required description of the job duties, we review the totality of the record when examining the claimed managerial or executive 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 record includes two different versions of the foreign entity's organizational structure. The initial organizational chart shows the Beneficiary in the position of technical/general manager reporting to the proprietor. The Beneficiary is depicted as directly supervising a designer, a marketing manager, and an accountant. The marketing manager has two direct subordinates, an office employee and the factory manager. The factory manager supervises six individuals who perform the printing and other factory work.

The organizational chart submitted in response to the Director's request for evidence (RFE) depicts the Beneficiary in the position of "(Formerly) Technical/General Manager/Human Resources." The Beneficiary's position has one subordinate, an accountant. The designer, marketing manager, and factory manager all report directly to the proprietor. The factory manager oversees eight employees. The Petitioner does not offer an explanation for the change in the Beneficiary's position on the organizational chart or when the change occurred.

Even if we considered the Petitioner's initial claim that the Beneficiary "supervised a lot of employees, including professionals in the position of Marketing Manager, Factory Manager,[2] Accountant and Designer," the record is insufficient to establish that the Beneficiary is primarily a personnel manager. 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." 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*).

As discussed above, the Petitioner has not established that the Beneficiary primarily supervised employees. Moreover, although the record includes evidence of the salary paid to the Beneficiary, it does not include evidence of salary paid to the Beneficiary's claimed subordinates. The Petitioner asserted in response to the Director's RFE on this issue, that "it is the general practice in Pakistan to

[2] Neither version of the foreign entity's organizational charts submitted depicts the Beneficiary directly supervising the factory manager. Accordingly, this position is not discussed when we address the Beneficiary's claimed subordinates.

pay salary of the employees in cash. Hence, Petitioner is unable to provide pay records of its employees at this time." We question the Petitioner's assertion as the foreign entity's description of duties for the "accountant" position indicates that she prepares the staff salary and administers the payroll. It also is not credible that the foreign entity would not have some record of its payments to employees, even if such payment was in cash. The lack of corroborating evidence regarding the foreign entity's employees casts doubt on the validity of the foreign entity's actual number of employees.

Further, the brief positions descriptions for the positions of designer, marketing manager, and accountant, do not establish that these positions are professional positions as the Petitioner claimed. 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"). Therefore, we focus on the level of education required by the position, not the degree held by the subordinate employee. Thus, 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.

In this matter, the designer position description indicates that although this position may require technical skills, it does not include sufficient information to establish that the duties require the equivalent of a U.S. baccalaureate degree to perform them. Similarly, the duties for the accountant describe a bookkeeping position, not a position that requires the equivalent of a U.S. baccalaureate degree. Likewise, the general description of duties for the marketing manager position does not describe a professional position. Regarding the marketing manager position we also note that the description does not include any supervisory duties. This raises further questions regarding the accuracy of the initial organizational chart which depicted the marketing manager position as supervising the factory manager. The record does not include probative, consistent evidence establishing that the Beneficiary is primarily a personnel manager.

The Petitioner also has not articulated a specific function that the Beneficiary managed for the foreign entity. 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 manages an essential function.

The Petitioner also has not established that the Beneficiary was primarily an executive. 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 organization must have a subordinate level of managerial employees for a beneficiary to direct and they 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 foreign entity's position descriptions for the Beneficiary's claimed subordinates do not include sufficient probative evidence establishing that the Beneficiary had subordinate managers to direct.

The record does not include sufficient consistent evidence so that we may consider the reasonable needs of the foreign entity in light of its overall purpose and stage of development of the organization. Although the foreign entity was established more than 17 years ago, it has not provided evidence corroborating its staffing or the Beneficiary and her claimed subordinates' actual duties. The record does not establish that the Beneficiary performed primarily executive or managerial duties for the foreign entity.

III. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that a qualifying foreign entity employed the Beneficiary for one continuous year within three years preceding the filing of the petition in an executive or managerial capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of G-A-T- Corp.*, ID# 813362 (AAO Dec. 21, 2017)