U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9850800

Date: DEC. 22, 2020

Appeal of Texas Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as its Vice President of Global Quality Assurance 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 Texas Service Center denied the petition, concluding that the record did not establish that (a) the Beneficiary was employed abroad in a managerial or executive capacity; and (b) he would be employed in a managerial or executive capacity in the United States.

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 withdraw the Director's decision and remand the matter for entry of a new decision.

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. ANALYSIS

The Petitioner stated on the petition that the Beneficiary had been employed as a Director of Quality Assurance with its subsidiary, [redacted], in India from December 2007 until the date the petition was filed in October 2019. It plans to temporarily employ the Beneficiary in New Jersey in the position of Vice President of Global Quality Assurance.

The Director's decision covered two issues. First, under the heading "Position Abroad," the Director concluded that the record did not establish that the Beneficiary was employed abroad in a managerial, executive, or specialized knowledge capacity.[1] While his analysis indicated that "USCIS cannot conclude that the beneficiary will primarily manage an essential function,"[2] the analysis did not reflect that he meaningfully considered evidence that the Beneficiary served as a function manager over quality assurance for [redacted] in India.[3] 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).

Second, under the heading "Not a Manager or Executive in the United States," the Director concluded that the record did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity.[4] While his analysis indicated that "the beneficiary cannot be deemed a function manager," the analysis did not reflect that he meaningfully considered evidence that the Beneficiary would serve as a function manager over quality assurance for [redacted] in the United States, precluding a fair opportunity to contest the decision and meaningful appellate review. See 8 C.F.R. § 103.3(a)(1)(i).

Accordingly, we will withdraw the Director's decision and remand the matter for issuance of a new decision, which should take into account and fully discuss the Beneficiary's role as a function manager abroad and in the United States.

We note that on the petition, the Petitioner listed its federal employer identification number (EIN) as [redacted] and stated that it was incorporated in 1996, but the Petitioner's tax returns submitted to the record show that its EIN is [redacted] and that it was incorporated on [redacted] 2000. On remand, the Petitioner must resolve these discrepancies with independent, objective evidence. See Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

[1] On appeal, the Petitioner asserts that the Beneficiary was employed abroad in a managerial capacity.

[2] It is not clear why the Director utilized the future tense when describing the Beneficiary's position abroad. We note that the Director repeatedly referred to the Beneficiary's proposed duties and position in the United States in this section, despite the section's emphasis on the Beneficiary's position abroad.

[3] An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. See 8 C.F.R. § 103.3(a)(1)(i); see also Matter of M-P-, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

[4] On appeal, the Petitioner asserts that the Beneficiary would be employed in the United States in a managerial capacity.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.