U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-C-I-

DATE: FEB. 5, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer and seller of electrical components, industrial harnesses, and cables, seeks to temporarily employ the Beneficiary as its operational purchasing manager 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 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 in a managerial or executive capacity; (2) the Beneficiary would be employed in the United States in a managerial or executive capacity; (3) the Beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition; (4) it has a qualifying relationship with the Beneficiary's foreign employer; and (5) it and the foreign employer are doing business as defined by the regulations.

On appeal, the Petitioner submits additional evidence and asserts that the Director's conclusions were based on an incomplete review of the record and were made in error.

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. AND FOREIGN EMPLOYMENT IN A MANAGERIAL CAPACITY

The first issue we will address is whether the Petitioner has established that the Beneficiary acts in a managerial capacity abroad and would act in such a capacity in the United States. The Petitioner states that the Beneficiary's current foreign and proposed U.S. roles are identical, as such, given the same duties and subordinates in both these capacities, we will not address his foreign and U.S. employment in separate discussions. Further, the Petitioner does not claim that the Beneficiary has been or would be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary has and will 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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) takes 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.

In denying the petition on these grounds, the Director stated that the Beneficiary's foreign and U.S. duties were vague and did not demonstrate his actual tasks on a day-to-day basis. Further, the Director emphasized that the Petitioner did not establish that the Beneficiary has been or would be supervising professional subordinates as asserted. On appeal, the Petitioner submits additional evidence and contends that it demonstrates that the Beneficiary has been and will be employed in a managerial capacity with oversight of professional subordinates. Further, the Petitioner indicates that the Beneficiary qualifies as a function manager overseeing an essential function of the organization.

When examining the managerial capacity of the 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). Beyond the required position descriptions, USCIS examines the companies' respective organizational structures, 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 businesses, and any other factors that will contribute to understanding a beneficiary's actual duties and role in each business. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the businesses and their staffing levels.

A. Duties

Based on the 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 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.

The Petitioner stated that it and the Beneficiary's foreign employer are legal entities part of the same corporate group, which is engaged in "manufacturing wire harnesses and leads, complex harness sub-assemblies, radiant glass heaters, and power cords." The Petitioner indicated that both companies manufacture products "at our facilities worldwide and distribute to top-tier customers in a variety of industries." The Petitioner noted that the greater multinational corporation generates annual income of over $670 million and that it employs more than 14,000 individuals.

The Petitioner stated that the Beneficiary's position abroad "mirrors the senior position he will assume in [the United States]," further noting that the positions are "closely aligned and integrated." The Petitioner indicated that the Beneficiary "will be responsible for guiding the development and management of the company's purchasing function," including "supporting plant production requirements, supplier management, local cost improvement, and functional support for operations support with suppliers." The Petitioner explained that the Beneficiary is, and would be, responsible for overseeing and coordinating the work of a team of "operational buyers," providing guidance to them, issuing them instructions, and handling personnel matters for these subordinates.

In a provided duty description, the Petitioner stated that the Beneficiary devotes 10% of his time to interfacing with "Commodity Directors" on the company's commodity strategy, another 5% on ensuring that commodity director "strategies and Long Term Contracts are adequately disclosed," and 10% on defining and overseeing the development of needed company processes. Further, the Petitioner indicated that the Beneficiary spends 20% of his time on supporting the supply chain organization, including "exercising responsibility for "spot" buys and "supplier-expediting." The Petitioner also explained that the Beneficiary is responsible 20% of the time for "defining key performance indicators (KPIs) to assure that results align with "company strategy," and 10% of the time monitoring these indicators. In addition, the Petitioner stated that the Beneficiary devotes 5% of his time to providing the "right level of training to the Operational Buyer Team," and another 5% providing senior management with actions plans. Lastly, the Petitioner indicated that the Beneficiary spends 5% of his time collaborating with other managers in the company to adjust and modify processes to align with these departments and 10% on "developing plans for exchanging best practices and nurturing the cooperation between the International Team members."

The Beneficiary's duty description includes specific examples regarding his non-qualifying operational tasks. For instance, the duty description indicates that the Beneficiary devotes 20% of his time to "spot buys" and "supplier expediting" and another 10% to "monitoring key indicators,"

duties indicative of a focus on non-qualifying operational duties related to the provision of services. Further, the Beneficiary's submitted resume appears to include several other operational level tasks, such as sourcing and purchasing "RM's required for production," "coordinating RM purchases and secur[ing] adequate ETA's for on time implementation of new projects," progress tracking of savings, ensuring that "contracts/quotes are implemented and recorded by closely monitoring on a weekly and monthly basis," and providing support to the procurement department "when suppliers fail to collaborate."

In contrast, the Petitioner provided few specifics and little supporting documentation to demonstrate the Beneficiary's performance of managerial level duties, such as examples of strategies he has implemented for "commodity directors," long term contracts he has communicated to his subordinates, company processes he has developed, training he has provided, action plans he has formulated for senior management, or processes he has aligned with other departments. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

On whole, the lack of detail and supporting evidence related to the Beneficiary's asserted managerial duties leaves question as to whether he primarily performs these tasks. The Petitioner did not provide examples or documentation reflecting his delegation of day-to-day non-qualifying operational tasks to his asserted subordinates. The Beneficiary's duties are not reflective of a higher level of discretion assigned to managerial level position acting at a senior level within the organizational hierarchy or with respect to a function managed. In fact, the Beneficiary's duties indicate that he takes direction on strategy from "commodity directors," that he is responsible for "supporting" the supply chain organization, and for providing action plans to senior managers. These duties are not indicative of a senior level manager who is claimed to be "on the same level as other executive and managers," but of an employee with limited discretion tasked with day-to-day operational level tasks.

Whether the Beneficiary is a managerial 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. Here, the Petitioner does not credibly document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. Even though the Petitioner claims that the Beneficiary holds a senior position within the organization, its claim that he will manage a component of the business 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. We must look beyond the position descriptions to determine that his actual duties would be primarily managerial in nature.

B. Staffing and Operations

In support of the petition the Petitioner provided an organizational chart reflecting that the Beneficiary supervises six employees devoted to the following vaguely stated functions: two employees tasked with "accessory/misc/ two devoted to "term/comm," a material transfer coordinator, and another employee tasked with "wire/cable & misc." The Petitioner clarified in response to the Director's request for evidence (RFE) that the Beneficiary's subordinates are "operational buyers" supporting the company's operations in Mexico, the United States, and Canada. As noted, the Beneficiary would continue to supervise the same employees if transferred to the United States.

A primary assertion of the Petitioner is that the Beneficiary qualifies as a manager based on his supervision of professional subordinates. 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*).

The Petitioner stated that the Beneficiary's subordinate "operational buyers" are professionals who perform "complex job duties" and that these positions involve "a significant degree of sophistication, education, and training." The Petitioner indicated that three of the five operational buyers hold bachelor's degrees, including degrees in economics, psychology, and business administration.

In evaluating 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."

First, we note that the Petitioner has not provided supporting evidence to substantiate that the Beneficiary's subordinates hold their asserted bachelor's degrees or that the foreign entity or Petitioner employ these claimed subordinates. Further, the Petitioner has not provided comprehensive duty descriptions for these subordinates to demonstrate that bachelor's degrees are required for these positions, despite these buyers having different responsibilities such as "accessory/misc/ "term/comm," material transfer coordination, and "wire/cable & misc." It is also noteworthy that not all of the operational buyers subordinate to the Beneficiary hold

bachelor's degrees, and those which do have them in varying fields. This indicates that not only is a bachelor's degree not required for these positions, but that if it were, the degree could be non-specific to the profession. Therefore, the Petitioner has not demonstrated that the Beneficiary supervises professional subordinates holding and requiring specific bachelor's degrees.

On appeal, the Petitioner provides a revised organizational chart indicating the Beneficiary's supervision of a much larger organization, including sixteen employees and multiple tiers of management. As noted, the Petitioner previously asserted that the Beneficiary oversaw five or six operational buyers, and in turn, asserted that these represented professional positions requiring a bachelor's degree. The Petitioner made no mention of these employees having subordinates of their own nor did it claim that they perform supervisory duties. This material discrepancy leaves question as to the Beneficiary's claimed capacity and the updated organizational chart submitted on appeal. The Petitioner must resolve discrepancies 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). Therefore, the new chart, by itself, is insufficient to show that the Beneficiary's role involves the supervision of subordinate supervisors or managers. The Petitioner has not shown that the Beneficiary qualifies as a personnel manager.

Furthermore, the Petitioner also indicated on the record that the Beneficiary's role is "multi-faceted" and indicated that he is tasked with overseeing an essential function. 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).

The Petitioner has not demonstrated that the Beneficiary acts, or will act, as a function manager. First, we emphasize that the Beneficiary's duty description, includes a number of specific non-qualifying operational duties, but provides little detail or explanation related to his performance of managerial level duties. As we noted, the duty description suggests that the Beneficiary exercises limited discretion and receives direction on strategy from "commodity directors" and "senior management." As such, there is little corroboration that the Beneficiary acts at a senior level within the organizational hierarchy and that he exercises discretion over his function. In addition, the Petitioner has not clearly defined the Beneficiary's function. Although it states he is tasked with purchasing commodities, the Petitioner also indicates that it is a large multi-million dollar corporation with thousands of employees. Without further explanation and evidence, it is therefore not clear how the Beneficiary's particular sourcing group is essential to the organization. Therefore,

absent additional supporting evidence, we do not find that the Petitioner has demonstrated that the Beneficiary acts, or will act in the United States, as a function manager.

The evidence indicates that the Beneficiary is likely significantly involved in operational matters of the business in his role abroad and it has submitted little evidence to indicate that he delegates or will delegate most of these operational tasks to subordinates. It has also not sufficiently clarified or documented his managerial level tasks. In addition, the Petitioner has not demonstrated that the Beneficiary primarily oversees, or will oversee, managerial, supervisory, or professional subordinates. As such, the evidence does not demonstrate that the Beneficiary has been or would be employed in a qualifying managerial capacity. For these reasons, the appeal will be dismissed.

III. ONE YEAR OF EMPLOYMENT ABROAD

The next issue addressed by the Director is whether the Petitioner established that the Beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) indicates in pertinent part that:

> An alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive *or* involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

In the Form I-129, the Petitioner listed the Beneficiary's foreign employer as [redacted] indicating that he had been working for this company abroad since January 2015.[1] The Petitioner stated in a support letter that it holds a 99% ownership interest in this foreign entity. The Beneficiary's resume reflected that the Beneficiary had been employed by a company called [redacted] from April 2012 to December 2014. In response to the Director's RFE, the Petitioner submitted the Beneficiary's paystubs issued by [redacted] These payment stubs documented payments made to him during four one-week pay periods in January 2016, May 2016, September 2016, and December 2016. The paystubs also indicated that the Beneficiary's "enter on duty date" was April 9, 2012.

[1] We note that the petition was filed on March 2, 2017.

In denying the petition on this ground, the Director emphasized that the Petitioner did not provide evidence of the Beneficiary's employment with the company identified as his foreign employer on the Form I-129. Therefore, the Director found the Petitioner did not demonstrate his one year of employment abroad with a qualifying organization. On appeal, the Petitioner emphasizes that the Director was mistaken as to the foreign legal entities and indicates that the Beneficiary's foreign employer is emphasizing that it and are both part of the same greater corporate structure. On appeal, the Petitioner amends the Form I-129 to reflect that the Beneficiary's foreign employer is

The Petitioner has provided conflicting and incomplete statements regarding the Beneficiary's asserted foreign employer, leaving question that he has been employed by a qualifying entity for the required one year period. The Petitioner indicated in the petition, and elsewhere on the record, that the Beneficiary had been employed abroad by since January 2015. The Petitioner also stated that the Beneficiary had been employed by from April 2012 to December 2014. We note that submitted paystubs indicate that the Beneficiary entered on duty with the company listed in his 2016 paystubs, on April 9, 2012. As such, it is reasonable to conclude that and may be the same company. The Petitioner indicated throughout the record that the Beneficiary had been employed by for several years, but now only asserts on appeal that has employer was in fact However, the Petitioner does not articulate the reasons for these discrepancies. Again, the Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 591-92.

Further, even if we are to accept that is the Beneficiary's actual foreign employer, it has provided insufficient evidence to demonstrate his employment with this foreign entity for one year in the previous three years preceding the petition. The Petitioner provided only four weeks of paystubs from 2016, documentation that does not sufficiently establish his employment abroad for the required one year. Therefore, the Petitioner has not established that the Beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. For this additional reason, the appeal will be dismissed.

IV. QUALIFYING RELATIONSHIP

The next issue we will address is whether the Petitioner established that it has a qualifying relationship with the Beneficiary's foreign employer.

To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

As noted in the previous section, there is confusion on the record as to the Beneficiary's foreign employer. The Petitioner indicated in the petition and throughout the record that the Beneficiary's foreign employer is [redacted] but now states on appeal that it is [redacted]

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(I) defines the terms "parent" as a "firm, corporation, or other legal entity that has subsidiaries, while 8 C.F.R. § 214.2(l)(1)(ii)(L) defines subsidiary as follows:"

> A "subsidiary" is a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity. 8 C.F.R. 214.2(l)(1)(ii)(K).

Regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities. *See, e.g., Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988); *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). Ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology Int'l*, 19 I&N Dec. at 595.

In concluding that the Petitioner did not demonstrate a qualifying relationship, the Director stated that it did not submit sufficient evidence demonstrating the foreign entity's ownership. We concur with the Director's assessment. As a preliminary matter, as we have noted, there is question as to the actual identity of the foreign employer, and the Petitioner does not submit sufficient explanation or evidence to overcome this concern on appeal. Regardless, the Petitioner provides little evidence establishing ownership in either of the Beneficiary's stated foreign employers. For instance, the Petitioner did not provide stock certificates or membership certificates, articles of incorporation or operating agreements, minutes of relevant annual shareholder or member meetings, or other such relevant corporate documentation. Without full disclosure of all relevant documents, we are unable to determine the elements of ownership and control. *See Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1962).

The Petitioner provides the bylaws for [redacted] on appeal, but this document makes no reference to this entity's ownership.. In total, the Petitioner has not provided sufficient evidence to establish its ownership of the Beneficiary's foreign employer. For this additional reason, the appeal will be dismissed.

V. U.S. AND FOREIGN EMPLOYERS DOING BUSINESS

The Director also denied the petition concluding that the Petitioner did not establish that it and the foreign employer were doing business as defined by the regulations. The regulations define a qualifying organization as one doing business in the United States and in at least one other country. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G). "Doing business," is defined as the regular, systematic, and continuous provision of goods or services. 8 C.F.R. § 214.2(l)(14)(ii)(A) and 8 C.F.R. § 214.2(l)(1)(ii)(H).

Upon review, we determine that the Petitioner has submitted sufficient evidence to demonstrate that the Petitioner, and the Beneficiary's two asserted foreign employers, are more likely than not doing business. For instance, in the case of the Petitioner, it has submitted 2015 and 2016 financial statements indicating that its parent company, and by extension the Petitioner, earns significant revenue. Further, the Petitioner submits Mexican federal corporate tax documentation reflecting that both asserted foreign employers earn substantial revenue. Therefore, the Director's decision as to these issues is hereby withdrawn.

VI. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary acts in a managerial capacity abroad or that he will act in a managerial capacity in the United States, that the Beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition, and that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer.

ORDER: The appeal is dismissed.

Cite as *Matter of E-C-I-*, ID# 959062 (AAO Feb. 5, 2018)