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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF [redacted]

DATE: FEB. 8, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer of electrical components, industrial harnesses and cables, seeks to temporarily employ the Beneficiary as its business process director 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, California Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the Beneficiary's foreign employer, the Petitioner's Mexican subsidiary, has employed her in a managerial or executive capacity or in a position involving specialized knowledge.[1]

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director incorrectly interpreted and applied the legal definition of a "functional manager," and did not correctly consider and appreciate the pertinent evidence it provided in support of the petition.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, 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, executive, or specialized knowledge capacity. *Id.*

[1] The Petitioner asserts that the Beneficiary has been employed in a managerial capacity with its Mexican affiliate, specifically as a function manager. Therefore we restrict our analysis to whether the Beneficiary has been employed in a managerial capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien 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.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as "an assignment within an organization in which the employee primarily":

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) 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;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

Further, "[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 staffing levels are used 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.

II. FOREIGN EMPLOYMENT IN A MANAGERIAL CAPACITY

The Director found that the Petitioner did not establish that the foreign entity has employed the Beneficiary in a managerial capacity. The Director acknowledged the Petitioner's claim that the Beneficiary manages an essential function but found insufficient evidence describing the function managed or illustrating that the Beneficiary manages the function rather than performs the non-managerial duties related to the function. Further, the Director emphasized that the Petitioner did not provide the foreign entity's organizational chart to illustrate the Beneficiary's position within the company's hierarchy or to demonstrate who relieves the Beneficiary from performing the day-to-day duties of the function she is claimed to manage.

On appeal, the Petitioner emphasizes that it submitted substantially similar information for the Beneficiary's current foreign and proposed U.S. positions, and asserts that the Director acted arbitrarily by finding that one position is in a managerial capacity while the other is not. Further, the Petitioner contends that, as there is no regulatory definition of the term "function manager," it should be given deference in detailing the job duties in terms "which it believes to meet the spirit of 'functional management.'" Finally, in response to the Director's finding that it did not provide an organizational chart, the Petitioner asserts that a chart "does not adequately capture the responsibilities of a functional manager." The Petitioner asserts that the submitted letters provided a narrative description of the reporting structure, by indicating that the Beneficiary's role supports executive staff and "may also include direction of professional staff."

Upon review of the petition and the evidence of record, including the Petitioner's statement in support of the appeal, the Petitioner has not established that the foreign entity employs the Beneficiary in a managerial capacity.

When examining the managerial capacity of the Beneficiary, we will look first to the Petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The definitions of managerial and executive capacity each have two parts. First, the Petitioner must show that the Beneficiary performs 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 *primarily* engages in managerial or executive duties, as opposed to ordinary operational activities alongside other company employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner initially provided a broad overview of the Beneficiary's responsibilities as business process manager, noting that the position involves both management of an essential function and oversight of professional personnel. For example, the Petitioner stated that the Beneficiary

"oversees our business analyst team," "oversees cost savings and improvements projects," has the authority to "develop and introduce new tools methods and strategies," and "ensures the integrity of systems that optimize our business processes . . . and supply chain operations." However, the Petitioner did not identify or document the "business analyst team," explain what specific tasks the Beneficiary performs to oversee projects and who carries out the projects, or indicate who develops tools and who performs the day-to-day duties required to ensure systems integrity. Without this information, the description was not sufficiently detailed to establish that the Beneficiary's actual duties are managerial in nature. 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).

The Petitioner stated that the Beneficiary's position is at a senior level, noting that she provides reports to the CEO and CFO and provides "direct analytical and systems analysis support" for the executive VP of global business process, the vice president of purchasing, the operational controller and the director of information systems. However, the Petitioner did not further describe the reports the Beneficiary provides to executives, who collects the data needed to prepare them, or what specific managerial tasks are involved in providing "analytical and systems analysis support" to these managerial and executive staff. The actual duties themselves reveal the true nature of the employment. *Id.* A beneficiary cannot be deemed a managerial or executive employee simply because he or she supports or liaises with executives or managers. The Petitioner did not, for example, submit an organizational chart showing the Beneficiary's actual placement within the foreign entity's hierarchy and the "Global Information Technology" organizational chart submitted did not include the positions mentioned in the Beneficiary's job description or show her placement in relation to these positions.

The Petitioner provided the requested breakdown of the Beneficiary's duties in response to the Director's Request for Evidence (RFE), but again did not identify who carries out the day-to-day tasks of the functions the Beneficiary is claimed to manage. For example, the Petitioner stated that the Beneficiary manages testing operations by "managerially ensuring" the installation, testing, maintenance and monitoring of computer programs and systems, but did not explain how she accomplishes this goal or who carries out these lower-level functions. Similarly, the Petitioner stated that the Beneficiary "directs the development, documentation and revision" of system design and test procedures but did not explain who actually develops and documents the procedures. The Petitioner noted that she "may" direct professional staff as part of her responsibility for coordinating the expansion and modification of systems but did not further identify these staff or how frequently the Beneficiary relies on subordinate staff to perform non-qualifying duties. Finally, the Petitioner stated that the Beneficiary coordinates the explanation and modifications of systems, and "managerially ensures" that correction of system errors, but, once again, did not identify who is tasked with actually troubleshooting and supporting these systems.

The duties describe above, which account for 54 percent of her time, imply that there is a need for subordinate IT staff to relieve the Beneficiary from having to perform the non-qualifying duties

associated with her management of the company's computer and software systems. However, in response to the RFE and on appeal, the Petitioner has not claimed that the Beneficiary regularly supervises subordinate employees, even after initially claiming that the Beneficiary performs supervisory duties as a personnel manager and has a subordinate team of professional analysts under her direct supervision. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The remaining duties submitted in response to the RFE include non-managerial duties such as reviewing and analyzing data to locate problems, conferring with clients regarding system requirements, reading manuals and technical reports to keep up to date, providing staff with "senior assistance" in solving computer problems, determining hardware and software needs, and coordinating and linking computer systems to ensure compatibility. Further, we note that, other than indicating that the Beneficiary spends 2 percent of her time on "consult[ing] with management to ensure agreement on system principles," the breakdown of the Beneficiary's duties did not include responsibilities for reporting to, liaising with or otherwise interacting with high-level executives, despite the Petitioner's claim that such duties are a critical indicator of the Beneficiary's managerial position.

Overall, the position descriptions submitted are not adequately specific, contain inconsistencies regarding whether the Beneficiary actually supervises subordinate personnel, and include a number of non-qualifying duties. For these reasons, the descriptions alone are insufficient to support the Petitioner's claim that the Beneficiary performs primarily managerial duties.

Beyond the required description of the job duties, USCIS reviews 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. In the case of a function manager, where no subordinates are directly supervised, these other factors may include a beneficiary's position within the organizational hierarchy, the depth of the petitioner's organizational structure, the scope of the beneficiary's authority and its impact on the petitioner's operations, and the indirect supervision of employees within the scope of the function managed.

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. The Petitioner maintains that the Beneficiary's position with the foreign entity is a "function manager" position. 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. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary will manage an essential function, a petitioner must clearly describe the duties to be performed in managing the essential function, i.e.,

identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of a beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than performs the duties related to the function.

The Petitioner states that the Beneficiary acts as a function manager by overseeing and directing "the company's computer systems" and that her role is "critical to [the company's] supply chain management." As discussed, the Beneficiary's job description indicates that she is responsible for managing or overseeing a number of activities, accounting for more than half of her time, which reasonably imply the need for other personnel to perform non-qualifying tasks associated with these activities. We acknowledge that the Beneficiary is not required to directly supervise personnel in order to qualify as a function manager. However, given the nature of her duties and her responsibility for "directing" and "overseeing" a number of IT data collection, design, development, implementation and support activities, the Petitioner must establish that someone other than the Beneficiary performs the day-to-day, non-managerial duties associated with the "computer systems" function she is claimed to manage. The Petitioner has not met this burden.

As noted the Petitioner initially expressly stated that the Beneficiary's "combines two types of managerial roles" including both function management and "oversight of professional personnel." The Petitioner stated in its letter in support of the petition that she "oversees a team of Analysts (degreed professionals)," that she mentors and motivates this team and directs their activities. The Petitioner did not include these duties in its expanded description submitted in response to the RFE and no longer appears to claim that she oversees this team. In fact, in reviewing the breakdown of the Beneficiary's duties submitted in response to the RFE, the Petitioner stated that one duty requiring 17 percent of her time "may" require supervision of subordinates. We have reviewed the combined organizational chart for the company's Global Information Technology department, but we are unable to locate that Beneficiary's current position and cannot determine where it falls within the Mexican company's hierarchy, or who she may directly or indirectly supervise in Mexico. On appeal, the Petitioner only references "junior analysts" who assist the Beneficiary with duties such as collecting data needed for reports, but again, we cannot determine based on the limited information provided who relieves the Beneficiary from the day-to-day activities of managing her claimed function.

Similarly, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary's position in Mexico is at a senior level within the organizational hierarchy, or to support its claim that the position reports directly to the CEO, CFO and a number of senior vice presidents. Again, the submitted organizational chart does not include the Beneficiary's current position in Mexico and we cannot determine where the position falls within this hierarchy. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For these reasons, we cannot determine that the Beneficiary is primarily managing the claimed essential function or that other staff are performing most of the non-managerial functions associated with the company's computer systems. Accordingly, the Petitioner has not established that the foreign entity employs the Beneficiary as a function manager.

Finally, we acknowledge the Petitioner's claim that it submitted substantially similar position descriptions for the Beneficiary's current and proffered positions. While there is significant overlap in the duties, and the U.S. position will include some non-qualifying duties, the Petitioner specifically stated that the Beneficiary will spend approximately 40 percent of time in the United States directly overseeing, managing and delegating tasks to subordinate personnel who are in fact identified in the record, and has submitted an organizational chart which depicts the placement of her proposed U.S. position within the company's hierarchy along with these subordinate staff. Therefore, the Petitioner was able to establish by a preponderance of the evidence that the Beneficiary would be employed in the United States in a managerial capacity, but for the reasons discussed above, did not meet this burden with respect to her current position within the foreign entity.

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that the Beneficiary has been employed abroad in a managerial capacity.

III. CONCLUSION

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of* ID# 134824 (AAO Feb. 8, 2017)