U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-A- CORP.

DATE: FEB. 8, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a data analysis services provider, seeks to employ the Beneficiary temporarily as its "engagement manager" under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 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 the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner provides a brief addressing the Beneficiary's position abroad and his prospective position in the United States. The Petitioner contends that the Beneficiary has been and would be employed in a managerial capacity, focusing on the Beneficiary's leadership position with respect to professional employees.

Upon *de novo* review, we find that the Petitioner has provided sufficient evidence to establish that the Beneficiary has been and would be employed in a managerial capacity. Therefore, we will sustain 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).

The statute defines the term "managerial capacity" as an assignment in which an 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; has the authority to hire and fire or recommend those as well as other 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.

II. EMPLOYMENT IN A MANAGERIAL CAPACITY

As indicated above, the Director determined that the evidence did not establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial capacity as defined at section 101(a)(44)(A) of the Act; 8 U.S.C. § 1101(a)(44)(A). The Beneficiary is currently employed abroad as an assistant manager and is being offered employment by the Petitioner in the position of "engagement manager."

In the denial, the Director determined that the Petitioner did not provide sufficient evidence to establish that the Beneficiary's current position with the foreign employer and his proposed position with the Petitioner involves and would involve overseeing professional employees. The record shows that a request for evidence was issued instructing the Petitioner to provide an organizational chart identifying the Beneficiary's subordinates by "name, job title, summary of duties, education level, and salary." The Petitioner complied with that request and provided a description of the Beneficiary's current and proposed job duties, which demonstrate the Beneficiary's supervisory relationship with respect to the subordinates depicted in the foreign entity's and the Petitioner's organizational charts. Nevertheless, the Director denied the petition, finding that the Petitioner did not submit evidence establishing that a bachelor's degree is among the job requirements of the Beneficiary's subordinates abroad and in the United States. We find that the Director erred in faulting the Petitioner for neglecting to submit educational requirements for the positions subordinate to the Beneficiary's position, as this specific evidence was never requested, and for relying on the lack of such evidence as a contributing factor in finding the Petitioner ineligible for the benefit sought.

On appeal, the Petitioner restates the breakdown of the Beneficiary's job duties and their respective time allocations pointing to the various personnel management elements that are common to the Beneficiary's foreign employment and his proposed position in the United States. The Petitioner also provides the educational backgrounds of the Beneficiary's current and proposed subordinates and explains how the Beneficiary's foreign and proposed positions meet each of the four prongs of the statutory definition of managerial capacity. Upon review of the evidence in the record, we find that the Beneficiary has more likely than not been employed abroad in a managerial capacity and that it is more likely than not that that he would be similarly employed in his proposed position with the U.S. organization.

III. CONCLUSION

As the Petitioner has overcome the stated ground for denial, the appeal will be sustained.

ORDER: The appeal is sustained.

Cite as *Matter of L-A- Corp.*, ID# 875305 (AAO Feb. 8, 2018)