U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15235667

Date: FEB. 9, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of broadcast and live event production solutions, seeks to temporarily employ the Beneficiary in the United States as a "Key Accounts Manager" 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 Director of the Texas Service Center denied the petition, concluding the record did not establish that the Beneficiary was employed in a managerial or executive capacity abroad. On appeal, the Petitioner asserts that the Director did not give proper weight to the submitted evidence. The Petitioner submits additional evidence on appeal and contends that this sufficiently establishes that the Beneficiary acted as a personnel manager abroad.

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 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. FOREIGN EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary was employed in a managerial capacity abroad. The Petitioner does not claim that the Beneficiary was employed in an executive capacity abroad. Therefore, we restrict our analysis to whether the Beneficiary was 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.

When examining the managerial capacity of a given beneficiary abroad, we will review the petitioner's description of the foreign job duties. The petitioner's description of the foreign job duties must clearly describe the duties performed by the beneficiary abroad and indicate whether such duties were in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

A. Duties

To be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act in his or her position abroad. If the record does not establish that the foreign position meets all four of these elements, we cannot conclude that it was a qualifying managerial position.

If the Petitioner establishes that the foreign position meets all elements set forth in the statutory definition, it must prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside other foreign employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's foreign duties were primarily managerial, we consider the Petitioner's description of the foreign job duties, the foreign company's organizational structure, the duties of a beneficiary's subordinate employees abroad, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business abroad.

The Petitioner stated that it is a U.S. based affiliate of an international company specializing "in the design, manufacturing, and technical support of a wide range of innovative and proprietary products for use in broadcast, distribution, live event, and production applications.". The Petitioner indicated that these products, used by television stations around the world, include "production switchers, automated production control systems, CG & graphic systems, robotic camera systems, routing systems, video servers, terminal equipment, Nielsen encoders, and social media management solutions." The Petitioner explained that the Beneficiary had been employed abroad as a "Technical Solutions Manager, Asia" since 2010[1] and listed the following duties for this position:

[1] The petition was filed on January 21, 2020.

- Assigning the day-to-day activities to each of the regional Technical Solutions Architects, based on location, skillset, workload, business priorities and timelines. – 20%
- Have regular meetings or calls with the regional Sales Managers to understand their needs for presales support from the Technical Solutions team for their current "must win" sales opportunities. – 8%
- Have regular catch up with each Technical Solution Architect to understand and guide them through their current work status, issues or complaints. – 7%
- Reviewing and approving team's work. – 6%
- Identifying issues in internal processes, mainly SalesForce and Sharepoint team interfaces, and developing plans for process improvements. – 4%
- Run internal systems reports to highlight work that needs to be assigned to a Technical Solution Architect. – 3%
- Organizing team seminars and team-building activities for the Technical Solutions group. – 1%
- Preparing Status reports for Asia Director of Sales for Quarterly Sales Meetings – 1%
- Ensuring that the Solutions Architect team is fully equipped with the appropriate training, professional development, knowledge of tools required to fulfill their current and future responsibilities. – 7%
- Ensure that there is appropriate team coverage to support the various geographic Asia sales territories and market verticals. – 5%
- Perform annual employee performance reviews – 3%
- Responsible for the hiring, promotions and firing. – 3%
- Performing new staff on-boarding. – 2%
- Scope the technical solutions to address customer requirements, assess customers' needs, and recommend solutions that optimize value for both the customer and [the company]. – 10%
- Perform customer facing product presentations, demos, training, and workflow guidance to end-users and business partners at customer premises. – 2.5%
- Educate Asia Business Partners on [company] solutions by giving technical sales presentations and technical training. – 10%
- Coordinate closely with [company's] internal Sales team and business partners to align solutions designed to meet our customers' business requirements. – 3%
- Manage the post sales Project Implementation for large and complex sales. – 2%
- Provide feedback to the Technical Solutions members on their Project Implementations – 1%
- Reviewing Product feature roadmaps and provide feedback to Product Teams – 1%
- Working with Marketing and the Region Sales Managers to plan events, such as Tradeshows, Roadshows and Demos – 3%
- Managing the Marketing event's technical requirements, staffing allocation and equipment logistics. – 3%
- Works as the regional liaison for the Demo & Tradeshow Equipment (DTE) Manager to jointly determine and manage within agreed to performance envelope the regional demo and tradeshow inventory. – 2%

- Coordinates tradeshow technical design, booth setup and demonstration stations. – 2%

The Petitioner submitted a foreign duty description for the Beneficiary and other supporting evidence that does not sufficiently establish he devoted his time primarily to qualifying managerial duties while employed abroad. In fact, the Beneficiary's duties, and other supporting evidence, appear to reflect his primary involvement in the direct provision of products and services to clients, or at minimum, his performance of non-qualifying operational activities alongside his subordinates. For instance, the Beneficiary's duty description includes several non-qualifying tasks appearing to relate to the direct provision of goods and services to clients, including him coordinating with sales managers to understand client requirements, running internal systems reports, preparing status reports for upper management, and scoping technical solutions. Likewise, the Beneficiary's foreign duties also state that he performed several other non-qualifying operational tasks, including performing product presentations and demonstrations for clients, educating business partners on the company's solutions, coordinating with internal sales staff on solution design, implementing solutions, and setting up demonstrations at tradeshows.

In addition, the Petitioner provides a job posting on appeal related to the Beneficiary's position including other apparent non-qualifying operational tasks such as scoping technical solutions, working on "highly technical projects," creating drawings for opportunities, as well as preparing customer proposal supplements, responses to request for proposal, and "channel partner product awareness presentations." Similarly, the Petitioner provided examples of the Beneficiary's projects abroad which also listed apparent non-qualifying operational duties, including as his coordination of testing between software development teams. Again, this evidence indicates the Beneficiary's wide-ranging involvement in the direct provision of goods and services to clients, rather than his primary delegation of these duties to subordinates. Despite this evidence of apparent operational tasks on the part of the Beneficiary, the Petitioner contends that he devoted all of his time to managerial duties abroad. Further, as noted by the Director, the Petitioner provides little supporting documentation to substantiate that the Beneficiary primarily delegated non-qualifying duties to his subordinates.

On appeal, the Petitioner submits 2019 performance reviews the Beneficiary completed for a subordinate technical specialist and solution architects. These performance reviews further indicate the Beneficiary likely performance of non-qualifying operational duties alongside these employees, rather than his primary delegation of these tasks. For instance, performance reviews completed by the Beneficiary for a subordinate technical specialist and a solutions architect both state that in the coming year these employees should "manage one…project implementation, start to finish," suggesting that until these employees are self-sufficient, the Beneficiary has and would perform these service related tasks. In addition, each review states that the Beneficiary's subordinates should "create a 1-hour presentation for Business partners on [company] solution[s]." This again indicates that the Beneficiary primarily performed these customer facing sales tasks rather than his subordinates, a responsibility which is also listed in his foreign duty description.

Whether the Beneficiary is a managerial employee abroad turns on whether the Petitioner has sustained its burden of proving that their duties were "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not sufficiently document what proportion of the Beneficiary's foreign duties would be managerial functions and what proportion would be non-qualifying. The Petitioner

lists the Beneficiary's foreign duties as including both managerial tasks and administrative or operational tasks but does not quantify the time he spends on these different duties. This lack of clarity is important because several of the Beneficiary's daily tasks do not fall directly under managerial duties as defined in the statute. For this reason, we cannot determine whether the Beneficiary primarily performed the duties of a manager abroad. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary manages or directs a portion of the foreign business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a foreign position be "primarily" managerial in nature. *Id.* The Beneficiary may exercise discretion over a portion of the foreign employer's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the foreign position descriptions alone are insufficient to establish that his actual duties were primarily managerial in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity abroad, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development. *See* section 101(a)(44)(C) of the Act.

The Petitioner submitted a foreign organizational chart reflecting that the Beneficiary supervised a technical specialist and four solutions architects. On appeal, the Petitioner asserts that the Beneficiary acts in a managerial capacity based on his supervision of subordinate professionals. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) 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." *Id.* 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*). Since the Petitioner does not contend on appeal that the Beneficiary qualifies as a function manager abroad, we will only analyze whether it has established that he qualifies based on his personnel authority over subordinate professionals.

To determine 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." Therefore, we must focus on the level of education required by the position, rather than the degree held by the subordinate employee. 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.

First, we acknowledge that on appeal the Petitioner submits performance reviews appearing to demonstrate the Beneficiary's personnel authority over his subordinates abroad. Further, the evidence provided on appeal appears to indicate that these subordinates have bachelor's degrees. However, as discussed, the possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion the employee is employed in a professional capacity. We must focus on the level of education required by the position, rather than the degree held by subordinate employee.

On appeal, the Petitioner provides job postings for the solutions architect and a technical specialist positions subordinate to the Beneficiary, yet neither job posting indicates that a bachelor's degree is required for minimum entry into the positions under the section "job requirements." For instance, both job postings state these positions require a "minimum [of] 5 years of combined sales, sales engineering, presales experience, systems application or product specialist experience" as well as "technical solution expertise in a customer facing environment." This evidence leaves substantial uncertainty as to whether a bachelor's degree was required for the technical specialist and solutions architect positions the Beneficiary supervised abroad. Further, the Petitioner also does not clearly explain why the positions subordinate to the Beneficiary require bachelor's degrees. The Petitioner must resolve inconsistencies and ambiguities 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).

Furthermore, the performance reviews submitted on appeal only further indicate that a bachelor's degree was not required for the positions subordinate to the Beneficiary and that these positions do not meet the definition of professional as defined by the regulations. For example, a performance review completed for one of the Beneficiary's technical specialists based in Korea notes his attendance at several trainings, including "Ultrix training, Tessera SE training, Piero operations, Xpression basic designing, Salesforce, Apttus, Carbonite, Dashboard, Lightning and Ross Way to Sell." Likewise, a review completed for a solutions architect in the Asia-Pacific region suggests that she "take a training course" on "IP and UHD/HR workflow," while another review mentions a solutions architect taking "several courses this year." Similarly, the performance review completed for a solutions architect based in China noted approximately nine trainings he completed that year and stated that he "performed online training using the [company] University or Webinars for Xpression, Dashboard, Streamline, Mira and Caprica." Although we acknowledge that many jobs require training, these performance review suggest that the positions subordinate to the Beneficiary likely do not require a specific level of education, such as an architect, engineer, or lawyer, but that these positions are wholly learned on the job through technical and sales trainings or through previous sales or technical experience.

Therefore, the Petitioner has not sufficiently established that the Beneficiary's subordinates qualify as professionals as defined by the regulations; and that in turn, that his duties in supervising them can be considered managerial as defined by the regulations. 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 supervisory duties unless the employees supervised are professional." *See* section 101(a)(44)(A) of the Act. Further, as discussed, the Beneficiary's foreign duty description and other supporting evidence reflects that he was likely primarily performing non-

qualifying operational duties related to the provision of services to clients or performing these duties alongside his colleagues.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary was employed in a managerial capacity abroad.

ORDER: The appeal is dismissed.