U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 14735067

Date: FEB. 9, 2021

Appeal of California Service Center Decision

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

The Petitioner, a data-as-a-service company, seeks to extend the temporary employment of the Beneficiary in the position of Vice President of Business Development 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 California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity in the United States. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* 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 their 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. EMPLOYMENT IN A MANAGERIAL CAPACITY

The issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity. The Petitioner does not claim that it will employ the Beneficiary in an executive 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, we will review the petitioner's description of the proposed position, which must clearly describe the duties to be performed by the beneficiary. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine 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. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

To be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, 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).

The Petitioner stated that it is an Information As A Service firm that designs and executes short-term cohort-based acceleration programs in [redacted] for senior executives, investors, and entrepreneurs, noting that its services are based in the global training industry. Regarding the Beneficiary, the Petitioner stated that she is responsible for the development of its brand, [redacted] a systematic method of learning in the area of employee training. As vice president of business development, the Petitioner claims that the Beneficiary manages two sales and business development teams (one in the U.S. and one in Russia). Specifically, the Petitioner stated that she supervises recruitment and training of a sales and business development team of two U.S.-based employees and 10 Russia-based employees.

The Petitioner described the duties of the proffered position in further detail as follows:

> **[The Beneficiary] manages the organization, or a department, subdivision, function or component of the organization.**
>
> [The Beneficiary] is tasked with building and leading a U.S.-based sales and business development team that will closely coordinate with our Russia-based sales and business development team, to aid in our expansion efforts to many countries. [The Beneficiary] remotely manages the Russia-based team that is charged with making initial contact with prospective clients, and oversees the U.S.-based sales team as they continue communications with the foreign clients once they arrive in the U.S.

[The Beneficiary] 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.[1]

In addition to Marketing management, [the Beneficiary] is charged with supervising the recruitment process of an additional U.S.-based employees. She determines staff salaries, work assignments, and promotions. She supervises employee performance to ensure revenue and contract targets are met. She develops, improves and implements policies and training programs for the employees she manages.

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

[The Beneficiary] has the authority to hire and fire or recommend personnel actions for the 21 professionals and managers she manages in the U.S. and in Russia. She will advise and counsel company executives and other managers regarding business development and expanding the client base.

[The Beneficiary] Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A breakdown of the Beneficiary's duties as Vice President of Business Development location in our U.S. office follows:

- Recruit, interview, hire and supervise a sales team of 2 U.S.-based employees and 2 Russia-based employees. (20%)
- Manage sales and marketing efforts with a focus on developing a strong client base of entrepreneurs and investors from Russia, Ukraine, Kazakhstan, and Eastern Europe. (20%)
- Provide advice and counsel to [the Petitioner's] executives and other managers regarding expanded client base. (10%)
- Develop, improve and implement policies and training programs for the managed employees. (10%)
- Evaluate employees, and determine staff salaries, work assignments, and promotions. (10%)
- Set priorities and schedule project resources. (10%)

[1] The Petitioner also provided several charts, which identified her direct and indirect reports, their duties, and their educational backgrounds. The Petitioner claimed that the Beneficiary directly supervised three employees in the United States: an Administrative Services Manager/VP of Events; a Sales Manager/Director of Business Development; and a Frontdesk Assistant and Community Associate (under office agreement with Regus Management Group). The Petitioner also indicated that she will remotely manage two Russia-based managers, who in turn would oversee eight professional employees, and that she would also oversee eleven U.S.-based contractors.

- Manage employees to ensure revenue and contract targets are met. For 2020 the goal is to achieve quarterly sales of $400,000. (20%)

[The Beneficiary] manages her team by setting strategic goals and directing her subordinates to achieve these objectives by designing efficient processes and measuring key performance indicators.

The Petitioner further stated that the Beneficiary and her team identified opportunities, developed service offerings to satisfy identified demand, and lead generation and sales process. The Petitioner also provided an hourly breakdown of a typical workday for the Beneficiary, in addition to copies of payroll records and miscellaneous income forms (IRS Form 1099) evidencing payments made to employees and contractors.

In a request for evidence (RFE), the Director requested additional evidence demonstrating that the Beneficiary would be performing primarily managerial duties, noting that the record did not establish that the Beneficiary would be managing a subordinate staff of managerial, supervisory or professional employees. Specifically, the Director noted that the U.S. contract personnel appeared to work sporadically and earned less than part-time wages based on the low earnings reported on their Forms 1099, thus raising whether the Petitioner's claimed staffing and organizational structure was able to employ the Beneficiary in a primarily managerial capacity.

In response, the Petitioner submitted a letter and additional evidence regarding the day-to-day duties of the Beneficiary's subordinate employees. In its letter, the Petitioner claimed that the Beneficiary was both managing the essential function of developing the Petitioner's brand as well as managing and controlling the work of professional employees, who would in turn supervise other professional employees.

Regarding the Beneficiary's management of an essential function, the petitioner stated:

> [The Beneficiary] is tasked with building and leading a U.S.-based sales and business development team that will closely coordinate with our Russia-based sales and business development team, to aid in our expansion efforts in Russia, Belarus, Kazakhstan, and other countries. [The Beneficiary] remotely manages the Russia-based team that is charged with making initial contact with prospective clients and oversees the U.S.-based sales team as they continue communications with the foreign clients once they arrive in the U.S.

Regarding the claim that the Beneficiary will supervise a subordinate staff of managerial, supervisory, or professional employees, the Petitioner stated that she will supervise three professional employees, and was also charged with "supervising the recruitment process of an additional six U.S.-based employees." Specifically, the Petitioner stated that the Beneficiary "develops, improves, and implements policies and training programs for the employees she manages," and "will oversee employee performance to ensure revenue and contract targets are met."

The Petitioner also provided the following revised breakdown of the percentage of time the Beneficiary would devote to making decisions on the daily operations of the Petitioner:

- Oversee the recruitment, interviewing, and hiring of 6 U.S.-based employees and 2 Russia-based employees. (10%)
- Manage sales and marketing efforts with a focus on developing a strong client base of entrepreneurs and investors from Russia, Ukraine, Kazakhstan and Eastern Europe. (25%)
- Provide advice and counsel to [the Petitioner's] executives and other managers regarding expanded client base. (10%)
- Develop, improve and implement policies and training programs for the managed employees. (10%)
- Evaluate employees, and determine staff salaries, work assignments, and promotions. (10%)
- Set priorities and schedule project resources. (10%)
- Manage employees to ensure revenue and contract targets are met. (25%) For 2020 the quarterly sales goal is $200,000.

The Director denied the petition, concluding that the Petitioner had not demonstrated that the organizational structure of the Petitioner elevated the Beneficiary to where she could function in a primarily managerial capacity. Focusing on the sporadic work of the contract employees,[2] and the administrative and operational duties apparently performed by the Beneficiary's direct subordinates in the United States, the Director determined that the Beneficiary was acting as a first-line supervisor as opposed to working in a capacity that was primarily managerial.

On appeal,[3] the Petitioner asserts that the Director's findings were erroneous. The Petitioner asserts that the Beneficiary is employed as a function manager, and submits arguments and additional evidence in support of this contention. The Petitioner also submits a detailed overview of the roles played by each of the Beneficiary's claimed subordinates, noting that the two subordinate Russia-based employees are responsible for the making initial contact with prospective clients, and the U.S.-based employees continue conversations with clients once they arrive in the United States.

After reviewing the record and the assertions of the Petitioner on appeal, we concur with the Director's conclusions. Preliminarily, we note that the Petitioner abandons its previous assertion that the Beneficiary was acting as a personnel manager and provides arguments solely in support of its assertion that the Beneficiary will serve as a function manager. The Petitioner indicates that the Beneficiary will be responsible for performing the business development function of the Petitioner. However, the current organizational structure of the Petitioner, coupled with the generalized list of the Beneficiary's duties, does not support a finding that the Beneficiary will manage the organization, or primarily manage the business development function of the organization.

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

[2] The record indicates that the contract employees are promotional speakers that provide services on an as-needed basis.
[3] We note that the Petitioner's submission on appeal is entitled "Motion to Reopen and/or Reconsider." The Petitioner, however, indicated on the Form I-290B, Notice of Appeal or Motion, that it was filing an appeal of the Director's adverse decision dated August 6, 2020. Therefore, we will treat the submission as an appeal despite the title used by the Petitioner.

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). A beneficiary that supervises others may also qualify as a function manager. *Id.*

In this matter, the Petitioner has not provided sufficient evidence that the Beneficiary manages an essential function. In its supporting documentation, the Petitioner indicated that the Beneficiary would be acting as a personnel manager by virtue of her oversight of four professional employees (two in Russia and two in the United States). The Petitioner stated that the Beneficiary "is tasked with building and leading a U.S.-based sales and business development team that will closely coordinate with our Russia-based sales and business development team, to aid in our expansion efforts to many countries." The Petitioner also stated that the Beneficiary "determines staff salaries, work assignments, and promotions," "supervises employee performance to ensure revenue and contract targets are met, and "develops, improves and implements policies and training programs for the employees she manages." The Director found these assertions insufficient, and determined in the denial decision that the Petitioner has not established that the Beneficiary would be employed in a primarily managerial capacity based on her supervision of managerial, professional, or supervisory employees. The Director also determined that the Petitioner's simultaneous assertion that the Beneficiary was a function manager was not supported by the evidence of record.

Upon review, the Petitioner has not demonstrated that the Beneficiary will primarily manage the business development function of the company. In response to the RFE, the Petitioner stated that the Beneficiary will devote 25% of her time to "manag[ing] employees to ensure revenue and contract targets are met," and another 25% of her time to "manag[ing] sales and marketing efforts with a focus on developing a strong client base of entrepreneurs and investors from Russia, Ukraine, Kazakhstan and Eastern Europe." While the stated duties provide a general overview of the requirements of her position, it is unclear exactly what the Beneficiary will do on a day-to-day basis, and how she will primarily manage the business development function of the Petitioner, as opposed to engaging in tasks that equate to performing or contributing to the Petitioner's business development.

For example, the Petitioner provided a breakdown of a typical day for the Beneficiary in its response to the RFE. This breakdown indicated that the Beneficiary "attends a dinner with a client to negotiate a contract to bring more executives to the immersion programs developed by [the Petitioner]," as well as "works on new procedures to onboard key partners – established foreign management travel companies." In addition, the overview of duties indicates that she participates in numerous conference calls, at least one of which the Petitioner claims is arranged by the Beneficiary's executive assistant.[4]

The Petitioner's description of duties is insufficiently detailed to understand the Beneficiary's role within the U.S. organization and that the actual duties are managerial functions and not primarily administrative and operational tasks. Here, despite abandoning its claim that the Beneficiary is a

[4] It appears that the "executive assistant" is the front desk assistant provided to the Petitioner through its agreement with

personnel manager, the claim that she qualifies as a function manager relies heavily on the services of subordinate employees to carry out the business development function of the Petitioner. As discussed previously, the U.S entity employs an administrative services manager/VP of events and a sales manager/director of business development. According to the Petitioner, the two claimed managerial employees are tasked with setting program goals, conducting market research, and implementing promotional campaigns. As noted above, a typical daily task of the Beneficiary is to meet with clients to negotiate contracts, a task which would not typically be considered primarily managerial in nature. The Petitioner's organizational structure within the U.S. entity does not identify any individuals responsible for sales, nor does it explain how the administrative and operational tasks of the Petitioner, such as accounting, payroll, clerical tasks and human resources, are performed. Although the record indicates that a front desk assistant is delegated to the Petitioner through an office agreement with [redacted] the extent of this individual's role within the company is not well defined.

The Petitioner also claims that the Russia-based staff is responsible for overseeing the daily operations of the company; however, these staff member are not in the United States performing these tasks, and the extent to which they support the U.S. entity either administratively and/or operationally has not been clearly defined. As recognized in *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016), personnel employed by a related entity may be considered in the analysis of whether the Beneficiary is relieved from performing day-to-day non-managerial tasks. In this matter, however, the Petitioner does not provide sufficient evidence to establish that the individuals on the foreign team relieve the Beneficiary from performing the basic operational and administrative tasks necessary to continue the operations of the Petitioner. Although the Petitioner claims the Russian employees are responsible for managing sales, the Petitioner does not provide sufficient evidence establishing that they perform the U.S. sales-based tasks necessary for the Petitioner's business development. Moreover, the Petitioner does not articulate who actually discusses sales with potential U.S. customers or sales brokers in the U.S., and who performs the routine day-to-day operational and administrative tasks of the business. The Petitioner has not demonstrated that the Beneficiary will primarily manage an essential function. Moreover, the Petitioner has not established that the Beneficiary will manage, as opposed to perform, the operational and administrative tasks of the organization.

It is the Petitioner's burden to clearly describe the proposed duties and to establish that the Beneficiary's actual duties would be primarily managerial in nature. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros.*, 724 F. Supp. at 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). While it appears that managing the business development of the Petitioner is an essential function, the Petitioner's description of the Beneficiary's duties, coupled with the deficiencies in its organizational structure, do not establish that she will primarily manage that function, as opposed to engaging in sales, marketing, and other non-managerial services related to that function. Again, the Petitioner indicated that a typical day for the Beneficiary involves meeting clients over dinner to negotiate contracts. The claim that she will directly engage in such tasks, and the absence of employees to perform this underlying task, suggests that she will be directly involved in the sales and marketing required to achieve the Petitioner's business development goals. The actual duties themselves reveal the true nature of the employment. *Id.* at 1108.

Further, although we do not expect the Petitioner to detail and document every managerial task performed by the Beneficiary, the lack of detail and credible documentation related to her asserted managerial duties is noteworthy since it claims she has been acting in this role in the United States for approximately three years prior to the date the petition was filed. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify a beneficiary as long as those tasks are not the majority of a beneficiary's duties, a petitioner still has the burden of establishing that a beneficiary will "primarily" perform managerial duties. *See* section 101(a)(44)(A) of the Act. Whether a beneficiary is a "function" manager turns in part on whether the petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See Matter of Z-A-, Inc.*, Adopted Decision 2016-02.

The record as constituted does not demonstrate that the Beneficiary will primarily perform the claimed duties stated by the Petitioner, and the current organizational structure of the Petitioner strongly suggests that the Petitioner does not possess the organizational complexity to effectively support the Beneficiary in a primarily managerial position. The Petitioner's description of duties and supporting documentation suggests her primary involvement in the non-qualifying operational aspects of the business, such as meeting directly with clients to negotiate contracts. By comparison, there is no supporting documentation to corroborate that the Beneficiary primarily managed an essential function or that she primarily delegated non-qualifying tasks to his claimed subordinates. Therefore, the Petitioner did not adequately demonstrate that the Beneficiary primarily managed a function rather than performed it. The Petitioner has not sufficiently established that the Beneficiary qualifies as a function manager.

The claim that a beneficiary will manage or direct a 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. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial. Here, the Petitioner indicates that the Beneficiary will exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making and personnel matters. However, due to the deficiencies discussed, the submitted position descriptions do not establish that her actual duties would be primarily managerial in nature.

Overall, the record does not contain sufficient evidence regarding the Beneficiary's proposed role or the roles of her subordinates to establish that she would primarily perform qualifying managerial duties. Accordingly, the Petitioner has not established that she would be employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act.

ORDER: The appeal is dismissed.