U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29867423

Date: FEB. 09, 2024

Appeal of Texas Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a retail jewelry store, seeks to temporarily employ the Beneficiary as its inventory 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 Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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. ANALYSIS

The sole issue addressed by the Director is whether the Petitioner established that the Beneficiary has been employed abroad in a managerial or 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.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B).

To establish that a beneficiary is eligible for L-1A classification based on their employment abroad in managerial or executive capacity, a petitioner must show that the beneficiary performed all high-level responsibilities set forth in the statutory definitions at section 101(a)(44)(A) or (B) of the Act. If a petitioner establishes that the beneficiary's position meets all four elements set forth in the statutory definition, the petitioner must then demonstrate that the beneficiary has been primarily engaged 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).

In determining whether the beneficiary's duties have been primarily managerial or executive, we consider the required description of the job duties, the company's organizational structure, the duties of any subordinate employees, the presence of other personnel to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding the beneficiary's actual duties and role in the business.

A. Job Duties

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on April 4, 2023. The Petitioner stated that its affiliate company in the British Virgin Islands has employed the Beneficiary as its inventory manager since November 2021. It described her current duties as follows on the L Classification Supplement to Form I-129 and included a similar description in a supporting letter:

> [The Beneficiary] is responsible for overseeing the purchasing, storing and sales of valuable and exclusive jewelry pieces. She is specifically responsible for creating and supervising the implementation of inventory control protocols to mitigate losses and effectively track the movement of inventory. She works together with the Senior Sales Manager to review daily sales reports in order to identify available inventory and future purchase needs. She also meets with the Store Manager to discuss the available stock, review past sales, anticipate future purchases, as well as go over issues such as missing inventory. [The Beneficiary] is constantly analyzing and comparing suppliers to ensure the best interest of the company is always reflected.

The Petitioner submitted additional descriptions of the Beneficiary's duties abroad in response to a request for evidence (RFE). This supplemental evidence included a "welcome letter" dated November 2, 2021, which highlighted her "functions as Inventory Manager" with the foreign entity. It also stated she would be assisting the senior sales manager with daily store operations when that employee is unavailable. The Petitioner provided a second letter dated November 2, 2021, which includes a job description for the position of "Inventory Manager/Assistant Manager." The letter indicates that her key responsibilities as inventory manager include:

- Developing and implementing inventory control systems and practices.
- Monitoring inventory levels and replenishing stock as needed.
- Coordinate orders and deliveries.
- Coordinate with customer service and logistics departments.
- Take charge of inventory of the whole store which may involve the counting or checking of stocks, reconciling of cash with sales receipts, keeping store transaction records and ordering merchandise and stock when necessary.
- Direct the store personnel to their specified merchandise.
- Keep track of advertisements and promotions by retaining a copy of such.
- Tracking inbound and outbound orders to prevent overstocking and out of stock.
- Performing regular stock checks and reporting any issues to supervisor.
- Liaising and negotiating with vendors and suppliers to ensure the quality of stock purchases.
- Coordinating the logistics of purchase orders, stock transfers, deliveries, tagging and processing.
- Forecasting supply and demand requirements to ensure stock availability.
- Analyzing and reviewing supply chain data to identify and resolve issues.
- Maintaining and updating records of purchase orders, pricing reports and inventory records.
- Perform counts and ensure all inventory is accounted for and reported according to company policy.
- Maintain adequate inventory levels to meet customer demand.
- Place and receive orders in a timely and accurate manner.
- Perform regular inventory audits and analyses.
- Investigate and correct discrepancies in reported quantities and locations of all inventories.
- Ensure that the store personnel comply with store's security, sales and record taking practices and procedures.

The letter listed several additional duties the Beneficiary would perform in her "manager assistant" role, noting she would assist the store manager with handling daily operations and management of the store, as required; liaise with senior managers on the store's staffing requirements; assist the manager with customer service issues; liaise with senior managers in handling advertising and promotions for the store; and (if required by the store manager), plan work assignments and schedules for store employees.

In addition, the record includes a chart detailing the percentage of time the Beneficiary spends on a list of enumerated responsibilities. According to this description, the Beneficiary spends 55 percent of her time performing duties associated with what was described as her secondary role as an assistant

manager, and only 45 percent of her time on the duties associated with her inventory manager role. Specifically, the chart indicates that she spends the majority of her time "assisting the senior sales manager in directing the daily operations when that person is unavailable or attending to other matters," and "if necessary," interviewing and hiring employees or approving employee schedule changes.

Finally, the Petitioner submitted a copy of the Beneficiary's résumé, in which she states that her "daily duties" as the foreign entity's inventory manager include "jewelry and watch sales to complete a monthly target, promotion and marketing, [and] inventory control."

The Director concluded that the Petitioner did not meet its burden to establish that the Beneficiary's duties have been primarily managerial in nature. We agree with the Director's conclusion. There are several inconsistencies in the submitted evidence which preclude a determination that the Beneficiary's actual day-to-day duties have been primarily managerial or executive. First, the Beneficiary herself indicates in her resume that she has been engaged in the day-to-day sales of jewelry and watches to complete a monthly sales target; however, none of the submitted job descriptions from the Petitioner or foreign entity mention her performance of these sales tasks or indicate the amount of time she allocates to them.

Further, the Petitioner's initial letter identified the Beneficiary's job title and role with the foreign entity as "inventory manager" and included only job duties related to this function. However, the breakdown of her responsibilities submitted in response to the RFE indicated that she has spent the majority of her time acting as an assistant manager performing, essentially, the same duties as the person who holds the senior sales manager role. The information provided in the Beneficiary's résumé, like the Petitioner's initial letter, does not indicate that she oversees the daily operations of the store, much less that she spends her time primarily on that responsibility. These inconsistencies undermine the probative value of the submitted breakdown of the Beneficiary's duties. Further, we note that, to the extent that the breakdown includes the Beneficiary's inventory management-related duties, it omits several operational and administrative tasks that are included in the foreign entity's letter dated November 2, 2021, and indicates that she delegates other non-managerial tasks to an administrative assistant whose employment with the foreign entity has not been corroborated.

In support of its claim that the Beneficiary allocates a significant portion of her time to overseeing the daily operations of the foreign entity's store, the Petitioner submitted sample weekly schedules, noting that the Beneficiary is always scheduled to work on the senior sales manager's days off to ensure there is a manager on-site. However, even if the Beneficiary is the acting manager in charge of the foreign entity's store on these days, this would account for only 16 hours of a 40-hour workweek and not 55 percent of her time. In addition, as discussed further below, there are inconsistencies in the record when comparing the foreign entity's organizational chart, payroll records, and weekly schedules. Notably, the organizational chart and payroll records indicate that the foreign entity employs R-A- as director and general manager, in a position that is senior to both the senior sales manager and inventory manager positions. This individual does not appear on the weekly schedules and his absence has not been explained; however, we note it is reasonable to believe that the store's general manager would also have the authority to oversee the store's operations. This raises questions regarding how much time the Beneficiary spends engaged in the "assistant manager" responsibilities and her level of authority within the organization.

Finally, despite the Petitioner's submission of a job description indicating that the Beneficiary spends the majority of her time overseeing the daily operations of the store as its assistant manager, the brief submitted on appeal focuses solely on her role as "the head and manager of the Inventory department within the organization," her management of this "essential function," and her responsibility for directing the management of this "major component 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 manages an essential function, it must clearly describe the duties 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).

We do not doubt that the Beneficiary has the authority to review and implement inventory policies and procedures and to ensure they are understood and followed by the store's staff. However, while inventory control may be an essential function within the company, the record does not establish that the Beneficiary primarily performs managerial or executive duties related to the function. Rather, as noted by the Director, the record reflects that she is responsible for essentially all duties associated with the store's inventory, including operational and administrative tasks such as placing purchase orders, coordinating and processing deliveries, extensive record keeping, reconciling sales receipts, and performing inventory counts and audits, among other non-managerial tasks. Although the Petitioner indicated that she delegates some tasks to an administrative assistant and coordinates with "customer service and logistics departments," the record does not corroborate the foreign entity's employment of the claimed administrative assistant or the existence of the customer service or logistics departments. Therefore, the record does not support the Petitioner's claim that the Beneficiary has been primarily managing or directing the management of an essential function. The actual duties themselves reveal the true nature of the employment. *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).

For the reasons discussed above, the Petitioner did not meet its burden to establish that the Beneficiary primarily performs managerial or executive duties in her role as inventory manager for the foreign entity.

B. Staffing and Organizational Structure

In analyzing a company's staffing and structure, we must consider the reasonable needs of the organization; a company's size alone may not be the only factor in determining whether a beneficiary is or would be employed in a managerial or executive capacity. S*ee* section 101(a)(44)(C) of the Act. However, it is appropriate for USCIS to consider the size of the foreign entity in conjunction with other relevant factors, such as the absence of employees to perform the non-managerial or non-executive operations of the company. *Family Inc.* 469 F.3d at 1313; *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The Petitioner provided an organizational chart for the foreign entity that includes the company's three owners/shareholders and nine employees. The senior employee identified is the director/general manager who is depicted as supervising a floor manager, a senior sales manager, and the Beneficiary (who is identified as "inventory manager" on the chart). The chart also includes a sales assistant manager, an assistant floor manager, an administrative assistant, and two sales associates. The chart does not clearly indicate that the Beneficiary directly supervises the lower-level employees, but a position description for the sales associate position indicates that these employees report to the "directors, sales senior manager, inventory manager, and/or directors' designated representatives."

Although the Petitioner submitted the foreign entity's "payroll edit lists" for the period between November 2021 and February 2023, we note that some employees, including the individuals identified as administrative assistant, assistant floor manager, and sales assistant manager, do not appear on any of the payroll documents. The latest payroll list submitted includes six staff: the general manager, the senior sales manager, the floor manager, the Beneficiary, and two sales associates. The submitted weekly schedule for the same period in February 2023 lists seven employees and includes the administrative assistant and assistant floor manager, but not the general manager. The Petitioner did not explain why the foreign entity's payroll and employee schedule do not reflect the same staffing composition.

There are additional apparent irregularities in the evidence submitted to establish the Beneficiary's supervisory authority. For example, the Petitioner submitted a memorandum from the Beneficiary dated November 10, 2021. The memo, which is addressed to one of the sales associates, indicates that the Beneficiary would be training the new employee in the store's inventory management software on November 15. However, both the Beneficiary's resume and her initial pay statement indicate that she started with the foreign company near the end of November 2021 and was not yet on the payroll as of November 15. On appeal, the Petitioner also submits undated employee evaluation reports as evidence of the Beneficiary's authority over personnel matters. One of the evaluations is for the administrative assistant and indicates that she started with the company in August 2021 and completed her three-month performance evaluation with the Beneficiary. First, as noted above, the individual identified as the administrative assistant does not appear on any of the foreign entity's payroll documentation. There is also insufficient evidence that the foreign entity was even open for business in August 2021, which is the month it signed its retail store lease; the earliest pay date for any of the foreign entity's documented employees is November 15, 2021. The Petition must resolve these inconsistencies 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).

Further, even if the Petitioner had submitted sufficient probative evidence of the Beneficiary's authority to make or recommend personnel decisions, it has not supported its claim that she is eligible for L-1A classification based on her employment as a personnel manager. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. As discussed above, the Petitioner has not established that the Beneficiary primarily manages the inventory function for the foreign entity. Rather, the evidence indicates that she performs essentially all duties related to inventory for the foreign entity's retail store, including non-managerial operational and administrative tasks associated with the function; the Petitioner did not establish that the foreign entity has other personnel who assist with such tasks, despite its reference

on appeal to an "inventory department." The only documented staff below the Beneficiary's position on the foreign entity's organizational chart are sales associates.

Personnel managers are required to primarily supervise and control the work of supervisory, professional, or managerial employees. *See* section 101(a)(44)(A)(ii) of the Act. 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.* While the Beneficiary appears to be one of several employees to whom the foreign entity's sales associates may report, the record does not establish that those employees, who have no subordinate staff of their own, are supervisors or managers. Further, the Petitioner has not established that the position of sales associate for the foreign entity's retail jewelry business is a professional position based on its job duties and requirements.[1]

Overall, the record reflects that while the Beneficiary may hold some managerial authority related to the foreign entity's inventory control function, she was also required to perform routine operational, administrative and first-line supervisory tasks in her role as inventory manager. According to the Beneficiary's résumé, she has also been engaged in retail sales duties. Considered in its totality, the record does not support a conclusion that the Beneficiary has been primarily performing managerial or executive duties, or that she had staff assigned to relieve her from significant involvement in operational tasks necessary for the day-to-day operations of the business. For the reasons discussed above, the Petitioner has not met its burden to establish that the Beneficiary has been employed abroad in a managerial or executive capacity as defined at section 101(a)(44)(B) of the Act. Accordingly, the appeal will be dismissed.

C. One Year of Employment Abroad

The Petitioner must establish that the Beneficiary was continuously employed by a qualifying entity abroad for at least one year in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii). Here, even if the Petitioner had established that her employment abroad was in a managerial or executive capacity, the record does not establish that she had accrued the required one year of employment abroad as of April 4, 2023, when the petition was filed.

The one-year foreign employment requirement is only satisfied by the time a beneficiary spends physically outside the United States working full-time for a qualifying organization. A petitioner cannot use any time that a beneficiary spent in the United States to meet this requirement, even if the qualifying foreign entity paid the beneficiary and continued to employ them during their period of stay in the United States. *See generally* 2 *USCIS Policy Manual* L.6(G) (discussing the one-year foreign employment requirement applicable to L-1 nonimmigrant petitions).

[1] 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."

The record indicates that the Beneficiary commenced employment with the Petitioner's foreign affiliate on or about November 26, 2021, or 494 days prior to filing the petition. Department of Homeland Security arrival and departure records indicate that she spent 171 days in the United States since November 2021 (a brief trip in February 2023 and a longer stay of 168 days between April and September 2022). Although the record indicates that she remained on the foreign entity's payroll, she spent only 323 days working for the foreign entity while physically outside the United States. Therefore, the record indicates that she did not meet the foreign employment requirement as of the date of filing and the petition cannot be approved for this additional reason. *See* 8 C.F.R. § 103.2(b)(1) (requiring that a petitioner establish eligibility for the requested benefit at the time of filing).

III. CONCLUSION

The Petitioner has not established that the Beneficiary has been employed abroad in a managerial or executive capacity and that she had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.