U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9302833

Date: FEB. 12, 2021

Appeal of California Service Center Decision

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

The Petitioner seeks to employ the Beneficiary as a dental laboratory manager under the L-1A nonimmigrant visa classification for intracompany managers and executives. *See* 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. The Director concluded that the Petitioner did not demonstrate the Beneficiary's employment abroad or his proposed U.S. employment in the claimed managerial capacity.

The Petitioner bears the burden of establishing eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. L-1A MANAGERS AND EXECUTIVES

An L-1A petitioner must establish a beneficiary's full-time employment abroad by the petitioner or its parent, branch, affiliate, or subsidiary in a managerial, executive, or specialized knowledge capacity for at least one continuous year during the three years before his or her application for admission to the United States. 8 C.F.R. § 214.2(l)(1)(ii)(A). An L-1A petitioner must also intend to employ a beneficiary in the United States in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii).

II. THE EMPLOYMENT ABROAD

The Petitioner claims that its affiliate in the United Arab Emirates (UAE) has employed the Beneficiary in a managerial capacity as a dental laboratory manager since February 2015. The term "managerial capacity" means employment "primarily" involving: 1) managing an organization or a department, subdivision, function, or component of it; 2) supervising and controlling the work of other supervisory, professional, or managerial employees, or managing an essential function within the organization or a department or subdivision of it; 3) having authority to hire and fire or recommend those as well as other personnel actions, or, if no other employee was directly supervised, functioning at a senior level within the organizational hierarchy or with respect to the function managed; and 4)

exercising discretion over the daily operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(ii)(B).

The Petitioner concedes that the Beneficiary did not supervise and control the work of supervisory, professional, or managerial employees. Rather, the Petitioner has claimed since the initial filing that the Beneficiary managed an essential function of the affiliate: its on-site, dental laboratory.

To establish a beneficiary's employment in a managerial capacity as a "function manager," a petitioner must demonstrate that: (1) the function is a clearly defined activity; (2) it is "essential," *i.e.*, core to the organization; (3) the beneficiary primarily managed, as opposed to performed, the function; (4) the beneficiary acted at a senior level within the organizational hierarchy or with respect to the function managed; and (5) he or she exercised discretion over the function's day-to-day operations. *Matter of G- Inc.*, Adopted Decision 2017-05, 4 (AAO Nov. 8, 2017).[1]

The record clearly defines the activities of the UAE dental laboratory. The Petitioner's managing partner, who is also the founder and chief executive officer (CEO) of the parent dental group, states that the lab makes customized, porcelain "veneers" for patients' teeth using proprietary techniques. The lab also manufactures and customizes prosthodontic devices such as crowns, bridges, dentures, and implants. The record contains descriptions of the veneer-making process and copies of photographs of the Beneficiary working in the lab.

The record also demonstrates the essential nature of the dental laboratory. The Petitioner provided copies of several magazine articles about its managing partner, focusing on the quality and popularity of his veneers, which cost as much as $70,000 per patient. The on-site dental lab allows for quick production of high-quality, customized veneers. The record demonstrates that the lab is critical to the affiliate's reputation and business. The founder/CEO claims that the lab produces $5 million of prosthodontic devices a year.

The Petitioner provided a description of the Beneficiary's job duties, indicating that he spent most of his time managing the lab's operations and assuring the quality of its products. His duties included: prioritizing tasks; preparing and coordinating production plans and schedules; developing and overseeing continuous monitoring processes; establishing procedures for maintaining manufacturing standards; performing quality checks; and reviewing final products. The record demonstrates that he supervised three ceramists who performed most of the lab's operational duties and allowed the Beneficiary to focus on managerial-level tasks. The Petitioner has therefore demonstrated that the Beneficiary primarily managed, as opposed to performed, the activities of the dental laboratory.

The Petitioner has also demonstrated the Beneficiary's senior role with respect to the dental laboratory and his exercise of discretion over its daily operations. The record identifies him as the most senior manager in the dental lab. He also reported directly to the group's founder/CEO. In addition, the record indicates that the Beneficiary had discretion to amend lab processes and procedures, and to order needed equipment.

[1] *G-* involved an immigrant petition for a multinational manager under section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). Both multinational managers and L-1A managers, however, must meet the same definition of the term "managerial capacity." *Compare* 8 C.F.R. § 204.5(j)(2) *with* 8 C.F.R. § 214.2(l)(1)(ii)(B) (defining the term "managerial capacity").

The Director found that "[t]he term 'function[] manager' applies generally when a beneficiary does not supervise or control the work of a subordinate staff." As the Petitioner argues, however, a function manager may supervise others. In *G-*, we approved a petition for a function manager with six direct subordinates and three indirect reports. *Matter of G-*, Adopted Decision 2017-05, at 5. There, we found that the function manager's subordinates performed routine duties associated with the function, enabling the manager to develop policies and goals and to oversee the execution of long-term strategies. *Id.* The Beneficiary's supervision of others therefore does not disqualify him as a function manager.

The Director noted that, contrary to the definition of the term "managerial capacity," the record lacks evidence of the Beneficiary's authority to hire and fire his subordinates, or to recommend those and other personnel actions. *See* 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*). We do not interpret the definition of "managerial capacity," however, as requiring a function manager to have authority over personnel actions. We interpret the first clause of 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*) to apply to personnel managers and the provision's second clause to relate to function managers. Thus, personnel managers must have authority over personnel actions. But function managers - even those who supervise others - need only function at a senior level within the organization or regarding the managed function. *See Matter of G-*, Adopted Decision 2017-05 (finding a supervisor qualified as a function manager without requiring him to have authority to take or recommend personnel actions). As previously indicated, the Petitioner demonstrated the Beneficiary's senior level within the organization and regarding the managed function.

For the foregoing reasons, the Petitioner has demonstrated the Beneficiary's employment abroad in a managerial capacity as a function manager. We will therefore withdraw the Director's contrary finding.

III. THE PROPOSED U.S. EMPLOYMENT

Based on our analysis of the Beneficiary's employment abroad, the record would seem to also establish his proposed U.S. employment as a function manager. The Petitioner states that, as in the UAE, the Beneficiary would manage an on-site, dental laboratory in the United States. The lab would be part of the Petitioner's California office, which opened in April 2019, about five months before the petition's filing. The Petitioner states that it needs the Beneficiary to manage a lab to ensure quick production of high-quality, customized veneers for U.S. patients. The Petitioner's organizational chart indicates the Beneficiary's proposed supervision of two ceramists and a dental technician. The Petitioner states that the Beneficiary would perform virtually the same duties as he did as a dental lab manager in the UAE.

The record, however, indicates that, in the United States, the Beneficiary would first have to establish the proposed dental laboratory. In response to the Director's written request for additional evidence, the Petitioner stated that the Beneficiary "is required to set up, oversee, and train the incoming staff." The Petitioner also stated: "He will have authority to hire Ceramists and Dental Technicians. He will help design the lab and select the equipment and materials to be ordered for the lab." The Petitioner stated that, after the lab's establishment, the Beneficiary would then manage it.

A function manager, however, must "primarily" manage the essential function for which he or she has authority. Section 101(a)(44)(A)(ii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*). Here, the record does not establish that the Beneficiary would initially manage the dental laboratory function. Rather, the record indicates that the lab must first be established, with the Beneficiary initially hiring staff, helping to design the facility, and selecting its equipment. The Petitioner has not indicated how long the lab's establishment would take. The record also lacks evidence of the Petitioner's ability to fund the lab's set-up. The record therefore does not demonstrate the Beneficiary's employment in the United States *primarily* as a function manager.

The Petitioner did not choose to be treated as a new office. A "new office" is an organization that has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).[2] Thus, the Beneficiary must perform the duties of the offered position of dental lab manager, rather than establish the U.S. facility that he would manage. The record does not demonstrate that the Petitioner would support him primarily as a function manager during the undetermined period of the lab's establishment.

The Director did not notify the Petitioner of this evidentiary deficiency or provide the business with an opportunity to respond. We will therefore remand the matter. On remand, the Director should issue a written notice informing the Petitioner that the record does not establish the Beneficiary's primary proposed management of a function in the United States. If supported by the record, the Director may notify the Petitioner of any additional, potential denial grounds.

The Director should afford the Petitioner a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

IV. CONCLUSION

The Petitioner demonstrated the Beneficiary's employment abroad in a managerial capacity as a function manager. The record, however, does not establish his eligibility for the same proposed role in the United States.

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[2] The former Immigration and Naturalization Service (INS) found that managers sent to the United States to establish or work at new offices often do not immediately perform managerial duties. Rather, many initially set up the offices, including buying equipment and hiring staff. Final Rule for L-1 Regulations, 52 Fed. Reg. 5738, 5740 (Feb. 26, 1987). The INS stated: "It is expected that a manager or executive who is required to open a new business or office may be more actively involved in day-to-day operations during the initial phases of the business." *Id.* Thus, regulations provide new-office petitioners with an initial, one-year grace period in which they need not demonstrate their abilities to support managers or executives. 8 C.F.R. § 214.2(l)(3)(v)(C) (requiring a new-office petitioner to demonstrate that "[t]he intended U.S. operation, *within one year of the approval of the petition*, will support an executive or managerial position") (emphasis added). After the one-year periods, however, new-office petitioners must demonstrate their abilities to support beneficiaries as managers or executives.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.