U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10792752

Date: FEB. 12, 2021

Appeal of Texas Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as principal technical manager-information security under the L-1A nonimmigrant 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 Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's foreign employment or his proposed U.S. work 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 dismiss the appeal.

I. L-1A MANAGERS AND EXECUTIVES

An L-1A petitioner must demonstrate that, within the three years before a petition's filing, the petitioner or a parent, branch, affiliate, or subsidiary employed a beneficiary abroad for at least one continuous year in a full-time capacity that was managerial, executive, or involved specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(i), (ii), (iv). A petitioner must also establish a beneficiary's qualifications for an offered position, and his or her proposed employment in the United States in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii), (iv).

II. THE FOREIGN EMPLOYMENT

The term "managerial capacity" means employment that "primarily" involved: 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 of the organization, department, or subdivision; 3) having authority to hire/fire employees or to recommend other personnel actions, or, if not directly supervising others, functioning at a high level within the organizational hierarchy or regarding the function managed; and 4) exercising 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; 8 C.F.R. § 214.2(l)(1)(ii)(B).

The job duties of an intracompany manager must meet all four elements of the definition of the term "managerial capacity." A petitioner must also demonstrate that a beneficiary *primarily* performed managerial duties, as opposed to operational tasks. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).[1]

In determining the managerial nature of a foreign position, USCIS considers descriptions of the job duties. USCIS also considers: the organizational structure and nature of the foreign business; the existence of other employees who relieved a beneficiary from performing operational tasks; the job duties of subordinate employees; and other factors that affected a beneficiary's business role abroad.

The Petitioner states that the Beneficiary most recently worked in India as principal technical manager-information security, the same position offered to him in the United States. Like the Petitioner, its Indian affiliate provides information technology (IT) services, including turnkey systems integration solutions, custom application development, upgrades, and support. The Petitioner states that the Beneficiary managed a five-member team in India.

A. Personnel Manager

The definition of the term "managerial capacity" recognizes both personnel and function managers. A personnel manager must have primarily supervised and controlled the work of other supervisory, professional, or managerial employees. *See* section 101(a)(44)(A)(ii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*). "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." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(ii)(B)(*4*).

The Director found insufficient evidence of the foreign affiliate's employment of the Beneficiary's claimed subordinates and his claimed authority to recommend personnel actions. In response to the Director's written request for additional evidence (RFE), however, the Petitioner provided copies of e-mail messages of the Beneficiary. Some of the messages are to, from, or copying accounts with the same names as those on a list of the Beneficiary's subordinates submitted with the petition. The Petitioner also provided copies of university degrees in the names of listed subordinates. A preponderance of evidence therefore supports the foreign affiliate's employment of the Beneficiary's claimed subordinates. Also, some of the e-mail messages refer to performance issues and revisions to salaries of the claimed subordinates and to the potential hiring of new employees. The record therefore also supports the Petitioner's claims that the Beneficiary recommended personnel actions.

As the Director found, however, the Petitioner's descriptions of the Beneficiary's foreign job duties do not indicate that he "primarily" supervised and controlled the work of others as a personnel manager. The Petitioner states that, as principal technical manager-information security, the Beneficiary spent the following percentages of his time on the following duties:

[1] Unlike this case, *Family* involved an immigrant visa petition for a multinational manager. *See* section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). The job duties of both nonimmigrant L-1A managers and immigrant multinational managers, however, must meet the same definition of the term "managerial capacity." *See* section 101(a)(44)(A) of the Act (defining the term "managerial capacity"); *also compare* 8 C.F.R. § 214.2(l)(ii)(B) *with* 8 C.F.R. § 204.5(j)(2) (providing the same definition of the term for L-1A and multinational managers).

- 50%. Managing the five-member team supporting information security. Overseeing the company's security operations center. Maintaining and reviewing policies and procedures. Establishing and enforcing an information security program for all client projects. Reporting periodically to top management. Managing licensing of various security products. Developing new initiatives and long-term goals and objectives. Planning security projects.
- 20%. Reviewing results of audits and planning remediation of any gaps in security. Liaising with external auditors to test effectiveness of information security controls. Coordinating with clients on security teams and responding to due diligence reviews and queries. Assessing, mitigating, and reviewing project risks and reporting periodically to top management. Conducting information security workshops. Establishing and maintaining an information security awareness training program.
- 10%. Recommending hiring, firing, and other personnel decisions. Responsible for recruitment of information security employees in consultation with senior management.
- 20%. Evaluating information security products and reviewing implementations and security incident reports. Providing insight on critical security incidents and driving implementation and upgrading of information security products. Submitting budget forecasts and allocating time spent by team on various projects.

The descriptions of the Beneficiary's foreign duties indicate his management and training of employees and his control of the time spent by his team on projects. But the descriptions do not sufficiently specify how much time the Beneficiary spent on these duties. The descriptions include other job duties - such as: maintaining and reviewing policies and procedures; reporting periodically to management; and reviewing audit results - that the record does not establish as involving supervision and control of others. Thus, the job-duty descriptions do not demonstrate that the Beneficiary *primarily* supervised and controlled the work of others abroad. The record therefore does not establish his employment as a personnel manager in India.

B. Function Manager

The Petitioner also argues that the Beneficiary managed the foreign affiliate's "information security function." 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) the function 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) the beneficiary exercised discretion over the function's day-to-day operations. *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8. 2017).

Securing information appears to constitute an essential business function. But the record here does not establish whether the Beneficiary managed the information security of clients or of the foreign affiliate. If the Beneficiary managed the information security of clients, the record does not establish that securing *their* information constitutes a core function of the *foreign affiliate*. The Petitioner has not established provision of information security services to clients as an essential function of the foreign affiliate. The record therefore does not establish the Beneficiary's employment abroad as a function manager.

The Petitioner has not established the claimed managerial nature of the Beneficiary's employment abroad. We will therefore affirm the petition's denial.

C. One Continuous Year Abroad

Although unaddressed by the Director, the record also does not establish the Beneficiary's employment abroad in the claimed managerial capacity for at least one continuous year in the three years before the petition's filing. *See* 8 C.F.R. § 214.2(l)(3)(iv) (requiring evidence that a foreign national's "prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge").

The Petitioner describes the Beneficiary's job duties abroad as a principal technical manager-information security. The record, however, indicates that the Beneficiary did not obtain that position until April 2018, while working for the Petitioner in the United States in L-1A status. The record indicates that the Beneficiary did not begin working in that position outside the United States until October 2019, about a month before the petition's filing. Periods spent in the United States in lawful status do not interrupt the required one year of continuous employment abroad. 8 C.F.R. § 214.2(l)(1(ii)(A) (defining the term "intracompany transferee"). "[B]ut such periods shall not be counted toward fulfillment of that requirement." *Id.* The Petitioner therefore must demonstrate the Beneficiary's employment abroad in a managerial capacity for an additional 11 months before his February 2017 transfer to the United States.

The Petitioner submitted a business plan stating that the company's Indian affiliate employed the Beneficiary as "Manager-Information Security Services" from 2014 until his 2017 transfer to the United States. In response to the Director's RFE and on appeal, however, the Petitioner states that, before his U.S. transfer, the Beneficiary served in India as "*Assistant* Manager-Information Security" since January *2013*. (emphasis added). The inconsistencies in the Beneficiary's prior position title and position start date cast doubt on the accuracy of the Petitioner's information. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies). Moreover, the Petitioner has not described the Beneficiary's pre-transfer job duties.

On appeal, the Petitioner asserts that the Beneficiary "started managing [the group's] IT Security function in January 2013" and, while in L-1A status in the United States, "continued to manage the said program." Thus, the Petitioner suggests the Beneficiary's performance of the same job duties for his entire tenure with the group.

As previously indicated, however, the discrepancies in the Beneficiary's position title and start date cast doubt on the Petitioner's assertions. The record lacks independent, objective evidence of the Beneficiary's prior role with the Indian affiliate. Also, if the Beneficiary has continued to perform the same job duties throughout his time with the group, the Petitioner has not explained the purpose or significance of his promotion to the position of principal technical manager-information security in April 2018. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record).

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's employment abroad in the claimed managerial capacity for the required one-year period. In any future filings in this matter, the Petitioner must explain the inconsistencies in the Beneficiary's foreign employment history. The company must also submit additional evidence of the Beneficiary's claimed, prior one-year period of continuous foreign employment in a managerial capacity.

III. THE PROPOSED U.S. EMPLOYMENT

A. Personnel Manager

As previously indicated, the Petitioner states that the Beneficiary would work in the United States in his current position of principal technical manager-information security. The Petitioner's description of the proposed position mirrors its description of the Beneficiary's current position and suffers from the same defect: it does not demonstrate that the Beneficiary would *primarily* supervise and control the work of others.

The descriptions of the proposed position include job duties involving supervision and control of others, such as: supervising a team of 18 professionals; and leading team members in establishing automation workflow. But the descriptions include other duties that do not appear to involve supervising and controlling the work of others, such as: planning and directing strategic and long-range goals; and negotiating final IT security operations contracts. The record does not sufficiently specify the amounts of time the Beneficiary would devote to the duties involving supervision and control of the work of others. Thus, the record does not establish that the Beneficiary would *primarily* supervise and control the work of others. The Petitioner therefore has not demonstrated the Beneficiary's proposed employment as a personnel manager.

B. Function Manager

The Petitioner states that the Beneficiary would manage the function of information security. But, as discussed in the context of the Beneficiary's employment abroad, the record does not establish whether he would manage the information security of clients or of the Petitioner. If the Beneficiary would manage the information security of clients, the Petitioner has not demonstrated that securing *their* information would constitute an essential function of the *Petitioner*. In a letter with the petition, the Petitioner estimated that the Beneficiary's division would generate about $3 million of the Petitioner's expected revenues of $50 million in its 2019-20 fiscal year. Based on the relatively small percentage of revenues expected of the Beneficiary's division, the record would not establish the Petitioner's provision of information security services to clients as a core function of the company. The Petitioner therefore has not demonstrated the Beneficiary's proposed employment as a function manager.

IV. CONCLUSION

The record does not demonstrate the Beneficiary's foreign or proposed U.S. employment in the claimed managerial capacity. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.