U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7512396

Date: FEB. 24, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of IT consulting and "back office" services, seeks to temporarily employ the Beneficiary as its "SAP Business One Manager" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). 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. *Id.* 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 Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner submits a brief and asserts that the Beneficiary "manages IT personnel on projects," claiming that such management includes determining the scope of assigned projects and selecting and supervising personnel. The Petitioner also contends that it previously provided employee academic backgrounds and established that an employee with a degree in microbiology has sufficient work experience to perform "essentially the job of a QA engineer." Upon *de novo* review, we will dismiss the appeal.[1]

I. ANALYSIS

Upon review of the entire record, for the reasons set out below, we have determined that the Petitioner has not demonstrated that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity.

[1] We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

In the denial, the Director determined that the Petitioner did not establish that the foreign organization actually employed the Beneficiary's claimed subordinates or that the Beneficiary's employment abroad involved supervisory authority, such as delegation of tasks and the right to hire and fire subordinate employees. The Director made similar findings regarding the Beneficiary's proposed employment and also found that the Petitioner did not explain how the Beneficiary managed and would manage subordinates who are stationed in different countries. Further, although the Director acknowledged the Petitioner's response to the request for evidence, he determined that the Petitioner did not provide further insight into the nature of the Beneficiary's role and job duties in his current and proposed positions.

Upon consideration of the entire record, we adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

Regarding the Director's discussion of the Beneficiary's role within the foreign organization, we would add that the Petitioner has not provided sufficient evidence to establish that the Beneficiary's position abroad was primarily comprised of managerial job duties. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, the Petitioner previously submitted a copy of the Beneficiary's résumé, which lists 18 of the foreign entity's clients and identifies the Beneficiary as either "functional support consultant" or "functional lead & support" with respect to 16 of the 18 projects. Although the Beneficiary was listed as "functional lead" in two of the projects, the elements that were attributed to this role included coordinating the team, motivating team productivity, setting and maintaining "[p]rocess for [c]lient requirement," and "assigning [t]ask & get it done within stipulated time." Thus, the Beneficiary's role did not involve primarily supervising subordinate personnel, evaluating their respective performances, or having input as to the hiring, firing, or other personnel actions. Although the Petitioner also provided the Beneficiary's performance review, no evidence was submitted to establish that the Beneficiary performed such reviews for his claimed subordinates.

We further note that the Beneficiary's job duty breakdowns for his foreign and proposed positions indicate that the only managerial job duties the Beneficiary performed and would perform include assigning and monitoring project deliverables, "[c]oaching & counseling" the team by providing "verbal feedback" and addressing "performance issues," and performing personnel management tasks, such as time and payroll authorization and approvals for training and vacation. However, these tasks cumulatively consume no more than 30% of the Beneficiary's time in his foreign and U.S. positions.[2] The remainder of his time would be allocated to operational tasks, including analyzing and developing business process documentation, analyzing and documenting user requirements, using "system

[2] The job duty breakdown indicated that coaching and counseling and personnel management would each consume "5-10%" of the Beneficiary's time, thus indicating that these two functions would not consume more than 20% of his time, while assigning and monitoring project deliverables would consume 10% of his time.

analysis techniques and methods" to help specify functional requirements, reviewing and evaluating deliverables, and developing training materials. The job duty breakdown indicates that the Beneficiary allocated and would allocate 85-90% of his time to these non-managerial job duties.[3] An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See, e.g.*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). Although there are some elements of personnel management incorporated into the Beneficiary's foreign and proposed positions, the job duty breakdown shows that these elements have not and would not comprise the primary portion of the Beneficiary's time in either position.

Further, despite providing an organizational chart that depicts the Beneficiary in a managerial role with respect to five employees, the record does not establish that the Beneficiary allocated the primary portion of his time to supervision of professional personnel. In a "Self Appraisal," which instructed the Beneficiary to discuss his "main duties and responsibilities," the Beneficiary stated that he was responsible for using his knowledge and skill "to add value to customer [*sic*]," provide "prompt support to end [the] user," "provide proper presentation [and] demonstration to [the] client," and contribute towards the company's growth. Although the Beneficiary stated that he "handle[d] management tasks" as one of his achievements, neither his self-assessment nor his résumé indicated that managing personnel was or would be his primary responsibility.

On appeal, the Petitioner provides a brief statement claiming that the Beneficiary is tasked with determining the scope of the work and assembling an IT team based on project specifications and employee backgrounds and experience. It also argues that an employee with ten years of experience in performing tasks that are "essentially" those of a "QA Engineer" should be deemed a professional,[4] despite the fact that the employee's degree is microbiology rather than an IT-related field. However, the Petitioner did not provide information about the position itself or the position's requirements to support its claims. *See Chawathe*, 25 I&N Dec. at 376. Moreover, the Petitioner has not provided sufficient evidence establishing that the Beneficiary allocated and would allocate his time primarily to personnel manager duties.

II. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden here, and the petition will remain denied.

ORDER: The appeal is dismissed.

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[3] The Petitioner indicated that "5-10%" of the Beneficiary's time would be allocated to developing training materials.

[4] In evaluating 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.