U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30131659

Date: FEB. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a jewelry store, seeks to employ the Beneficiary temporarily as its "Senior Sales 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).

The Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish that the Beneficiary was employed abroad in a managerial capacity.[1] 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 managerial or executive capacity, or in a position requiring specialized knowledge for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(1). 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. 8 C.F.R. § 214.2(l)(3)(ii).

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

> (i) manages the organization, or a department, subdivision, function, or component of the organization;

[1] At the time of filing and in response to the Director's request for evidence (RFE) the Petitioner claimed that the Beneficiary was employed in a managerial capacity and did not make a claim to executive capacity until it filed this appeal.

(ii) 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;

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

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. 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.

II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The issue to be addressed is whether the Petitioner provided sufficient evidence establishing that the Beneficiary's position abroad was in a managerial capacity.

To be eligible for nonimmigrant visa classification as an intracompany transferee in a managerial capacity, the Petitioner must show that the Beneficiary performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the position in question – in this case the foreign position – meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the position in question meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary *primarily* performed managerial duties, as opposed to ordinary operational activities alongside other employees within the foreign entity. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).[2]

The record in this matter shows that the Beneficiary had been employed as a senior sales manager at a jewelry store where his responsibilities included overseeing sales personnel, hiring and training employees, assisting the inventory manager with inventory and sales policies and maintaining vendor relationships, setting and authorizing prices, ensuring employees' adherence to company policies, and meeting with the director monthly to inform about employee performance and company productivity.

The Petitioner did not specifically discuss the foreign entity's reporting structure, but rather it provided an organizational chart showing the foreign company's three shareholders at the top of the hierarchy, followed by one shareholder in the position of "Director/General Manager" overseeing the Beneficiary in his position as senior sales manager. The Beneficiary is depicted as having five subordinates – a sales assistant manager, an assistant floor manager, an administrative assistant, and two sales associates – while two other employees – a floor manager and an inventory manager – are depicted alongside the Beneficiary with no subordinates of their own, despite their managerial position titles.

[2] In determining whether a given beneficiary's duties are primarily managerial, we consider that beneficiary's job duties, the employer's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the 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.

In a request for evidence, the Director informed the Petitioner that it did not provide sufficient supporting evidence to establish that the Beneficiary was employed abroad in a managerial capacity. As such, the Petitioner was asked to further discuss the foreign organization's reporting structure and provide evidence demonstrating that the Beneficiary managed professional or managerial-level employees and had the authority to control their work and to hire and fire or recommend other personnel actions with respect to those individuals.

In response, the Petitioner provided the Beneficiary's job duty breakdown as well as the minutes of team meetings that the Beneficiary headed and layaway contracts, employee schedules, and job offer letters that the Beneficiary signed in his capacity as store manager. However, while the job offer letters contained the respective salaries, assigned job duties, and requirements for the foreign entity's "inventory manager/assistant manager" and sales assistant, they did not list the positions' respective assigned job duties or indicate that either position was supervisory in nature as neither included employee oversight as a component of the job. The offer letters also did not list an educational component as being among those requirements.

The Petitioner also provided one employee's résumé showing that the employee – the foreign entity's administrative assistant – possessed a bachelor's degree. However, the record contains no evidence showing that the degree was actually required of the administrative assistant or of any of the Beneficiary's subordinates.[3] It therefore does not appear that the Beneficiary managed subordinates who were supervisory, professional, or managerial employees. *See* 2 USCIS Policy Manual, L.6(C)(1), https://www.uscis.gov/policy-manual (stating that supervisory duties are not sufficient to establish employment in a managerial capacity unless the employees supervised are professional).

Although the Beneficiary may have exercised discretion over the day-to-day operations of the foreign entity's jewelry store and its employees, the Petitioner must still establish that the position meets all elements of the statutory definition of managerial capacity in the course of performing primarily managerial duties.

In the matter at hand, the Petitioner has not established that the Beneficiary supervised or controlled the work of other supervisory, professional, or managerial employees, as required by section 101(a)(44)(A)(ii) of the Act. Although the RFE notified the Petitioner of the evidentiary deficiency concerning this requirement, the Petitioner did not adequately address this deficiency in the RFE response. Rather, the Petitioner resubmitted the original organizational chart and provided several employee résumés along with evidence showing that the foreign entity's administrative assistant possessed a bachelor's degree. However, as previously noted, the record contains no evidence to show that a bachelor's degree was required for any of the positions that were subject to the Beneficiary's supervisory control to establish that the position supervised was professional or supervisory.

[3] 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 possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity.

And despite assigning managerial position titles to the floor manager, inventory manager, sales assistant manager, and assistant manager, the foreign entity's organizational chart does not depict any of these positions as supervisory or managerial with respect to other company employees. Nor did the Petitioner establish that of any of the Beneficiary's subordinates were assigned employee supervision as part of their job duties. In fact, the record contains job descriptions for only two of the Beneficiary's subordinates – the inventory manager and sales assistant – and neither listed employee supervision as a component of the position. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Accordingly, the Director denied the petition finding that the record lacks evidence showing that the Beneficiary supervised and controlled the work of other supervisory, professional, or managerial employees, which we agree with and have discussed above. The Director additionally found that the record lacked evidence of the Beneficiary's supervisory control over his subordinates.

In contrast to this last point, however, the record shows that the Petitioner adequately documented the Beneficiary's supervisory role through its submission of the Beneficiary's job duty breakdown along with minutes of meetings that the Beneficiary headed, and job offer letters, layaway receipts, and employee work schedules that the Beneficiary signed in his capacity as the store manager. Therefore, we disagree with the determination that the Petitioner did not establish that the Beneficiary had supervisory control over the jewelry store employees.

However, for the reasons discussed above, the Director correctly determined that the Petitioner did not establish that the Beneficiary managed other supervisory, professional, or managerial employees. Despite demonstrating the Beneficiary's supervisory role over the jewelry store staff, a first line supervisor is not acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional. 2 USCIS Policy Manual, L.6(C)(1), https://www.uscis.gov/policy-manual. Thus, merely demonstrating that the Beneficiary had supervisory authority is not enough to satisfy the second prong of the statutory definition of managerial capacity. *See* section 101(a)(44)(A)(ii) of the Act.

On appeal, the Petitioner argues that the Beneficiary was employed in a managerial capacity because he supervised the work of "other professionals," but it offers no evidence, aside from what was previously submitted, to show that the Beneficiary's subordinates occupied positions whose job requirements were consistent with those of professional employees. *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"). In fact, the Petitioner does not discuss the job requirements of the Beneficiary's subordinates, but rather focuses on the Beneficiary's supervisory duties and control over the employees he supervised. As previously noted, the fact that the Beneficiary signed certain documents and instructed employees to take certain actions does not establish that the employee supervision he exercised was over other supervisory, professional, or managerial employees, pursuant to the statutory definition. Section 101(a)(44)(A)(ii) of the Act.

Lastly, despite having previously claimed that the Beneficiary was employed abroad in a managerial capacity at the time of filing and in response to the Director's RFE, the Petitioner now asserts that the Beneficiary's position abroad also fits the definition of executive capacity. Because the Petitioner had

the opportunity at the time of filing, and in response to the Director's RFE, but did not previously raise this claim, and now raises it for the first time on appeal, we need not consider this new claim. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).[4]

Regardless, we will dismiss this appeal because the Petitioner did not establish that the Beneficiary's position abroad was in a managerial capacity as defined in the statute governing this classification.

III. BEYOND THE DIRECTOR'S DECISION

In addition, the Petitioner stated that the Beneficiary's role and duties in the proposed U.S. position would be similar to those in his position with the foreign entity. Therefore, although not addressed in the Director's decision, the record does not support the conclusion that the Beneficiary's proposed position will be in a managerial capacity as the record does not show that he would manage other supervisory, professional, or managerial employees.

While this additional deficiency is not a ground for our dismissal of this appeal, the Petitioner will be required to address it, whether in further pursuit of the instant petition or in any future filings where the Beneficiary's position abroad is relevant to eligibility.

IV. CONCLUSION

For the reasons discussed above, the Petitioner has not established the Beneficiary's employment abroad was in a managerial capacity and on the basis of this conclusion the petition cannot be approved.

ORDER: The appeal is dismissed.

[4] We note that the Petitioner addresses only the first component of the statutory definition of executive capacity, claiming that the Beneficiary's "expertise is based on his extensive knowledge of the selling of diamonds and jewels which are essential and a major component of the organization." The Petitioner does not address the three remaining elements of the statutory definition, which requires a showing that the Beneficiary not only directed the management of the organization or its component, but that he also established goals and policies of the organization or its component, that he exercised discretionary decision-making, and that he was only subject to general supervision from those occupying higher-level positions within the organization. Section 101(a)(44)(B) of the Act.