U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7605180

Date: FEB. 28, 2020

Appeal of California Service Center Decision

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

The Petitioner, a transportation and logistics company, seeks to continue the Beneficiary's employment as its operations manager under the L-1A nonimmigrant classification for intracompany transferees. 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 California Service Center denied the petition, concluding that the Petitioner did establish that it would employ the Beneficiary in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner submits additional evidence and asserts that it established that the Beneficiary will be employed in a managerial capacity.

In these proceedings, it is the Petitioner's burden to establish 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. LEGAL FRAMEWORK

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.*

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The Director found that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity. However, the Petitioner does not claim that the Beneficiary will be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary will be employed in a managerial 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.

When examining the claimed managerial capacity of a given beneficiary, we will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a 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.

Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

Based on the definition of managerial capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

The Petitioner submitted a position description at the time of filing, but the Director determined that it was too general and did not explain the specific tasks the Beneficiary performs on a day-to-day basis. In response to a request for evidence (RFE), the Petitioner submitted a slightly revised job description in which it described the Beneficiary's duties as operations manager as follows:[1]

> 8% **Set goals and objectives and establish policies for different departments of the corporation**. Achieve operational objectives by contributing information and recommendations to strategic plans and reviews; . . . identify trends, determine system improvements; implement changes when needed.
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> 10% **Supervise and help exceed Corporation sales and operational goals**. Meet financial objectives by forecasting requirements, review annual budgets, approve schedule expenditures, analyze variances, initial corrective actions. Develop corporation's policies and discuss them with the Board of Directors for final approval. Develop guidelines of operations for certain processes directly under his authority.

[1] The bolded portions of this description were added to the original job duties the Petitioner had provided previously.

8% **Oversee staff in developing annual budgets that support operating plans and submit budgets to the Board for approval**. Devise and set up annual budget and fiscal plans and present it before the Board of Directors. Prepare elaborate reports of the functioning of all departments under his authority and submit reports to top management for performance review.

8% **Create operating plans that support strategic direction set by the board and correlate with annual operating budgets**. Collaborate with the Board to define and articulate the corporation's vision and to develop strategies for achieving that vision, develop and monitor strategies for ensuring the long-term financial viability of the corporation.

12% **Plan, organize, direct and control the corporation's major functions**. Responsible for the corporation's finances, marketing, and services, in order to achieve the operational goals. Review, analyze, create and/or modify corporate policies, rules, regulations and goals.

8% **Responsible for the development and direction of the Corporation**. Develop operational strategies by identifying human resources issues; contribute information, analysis, strategic thinking and recommendations to the Corporation . . .

12% **Responsible for acting as an advisor for the corporation**. Responsible for being up to date with all custom laws and federal regulations in order for all shipments to be compliant . . . . [C]ommunicate any changes in the respective laws to all branch managers and the Board of Directors . . .

10% **Overseeing hiring, firing and training of personnel for the corporation**. Hire, manage, and fire the human resources of the corporation according to authorized personnel policies and procedures that fully conform to current laws and regulations...

8% **Establish performance goals for the Corporation**. Determine strategies to reduce operational costs and increase revenues by analyzing supply expenses; comparing and negotiating prices with suppliers. Develop improvements to the organization's market positioning and achieve financial growth. Define long-term organizational strategic goals, build key relationships, identify business opportunities, negotiate and close business deals and maintain extensive knowledge of current market conditions.

10% **Decide or guide courses of action in operations by staff**. Develop a comprehensive understanding of competitive environment, understand products, technology and competitive environment to make recommendations for the segment's offering and capabilities to meet customers' needs.

6% **Implement systems to mirror those of the Mexican Affiliate**. Use a management system in order to align all organizations. . . .

We agree with the Director's determination that this description was not responsive to the RFE, as it was lacking the requested level of detail and specificity regarding the Beneficiary's day-to-day duties. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). Here, the Petitioner began with a position description that was already overly vague and, in response to the RFE, added even broader language to describe the Beneficiary's responsibilities, rather than clarifying or adding the requested specificity to the original duties. Responsibilities such as "set goals and objectives and establish policies," "create operating plans that support strategic direction set by the board," "direct and control the corporation's major functions," "establish performance goals," and being responsible for the "development and direction of the Corporation" do not provide any additional insight into what specific tasks the Beneficiary performs on a daily basis as the operations manager for a transportation and logistics company. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the Petitioner maintains that the position description is sufficient to establish the Beneficiary's managerial authority and emphasizes that it must be considered along with the remainder of the evidence in the record. While the Petitioner correctly notes our responsibility to review the totality of the record in determining the Beneficiary's eligibility as a manager, the Petitioner bears the burden of providing a detailed job description of the Beneficiary's actual day-to-day tasks within the context of its particular business. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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). Here, the Petitioner submitted an overly broad and generic description that could describe a senior position at almost any type of company.

In addition, as noted by the Director, the Petitioner's description of the Beneficiary's duties was not only vague, but also repetitive, making it more difficult to ascertain what types of tasks he would primarily perform as a part of his regular and ongoing routine. The Petitioner included a number of general responsibilities related to the company's strategies, plans, and goals throughout the description. Specifically, the Petitioner lists the Beneficiary's responsibilities for contributing recommendations to strategic plans, developing policies for Board approval, defining the company's "vision" and developing related strategies, modifying corporate policies and goals, contributing "strategic thinking and recommendations to the Corporation," and defining "long-term organizational strategic goals" as discrete duties performed under separate areas of responsibility in the job description. However, the Petitioner does not attempt to differentiate these seemingly repetitive duties in any way or provide examples or evidence of strategies, policies or goals the Beneficiary has actually implemented while serving in the operations manager position.

Further, despite the Petitioner's consistent claim that it employs a president and vice president to perform executive functions, and its claim that the Beneficiary will be employed in a managerial capacity, much of the language used in the description merely paraphrases the statutory definition of executive capacity at section 101(a)(44)(B) of the Act. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Given

the repetition of these broad responsibilities throughout the Beneficiary's job description, it is difficult to evaluate how much time he actually devotes to any given area of responsibility.

Moreover, the Petitioner did not explain how responsibilities such as "being up to date with customs laws and regulations," "understanding products, technology and competitive environment," negotiating and closing business deals, maintaining knowledge of current market conditions, and negotiating prices with suppliers, translate to managerial duties. Nor has the Petitioner explained the specific duties the Beneficiary would perform in overseeing shipments for regulatory compliance and timeliness, or overseeing the procedures followed by drivers. Absent further details regarding the nature of these areas of responsibility, we cannot determine whether they would involve managerial duties.

The fact that the Beneficiary will manage a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, the position description is not sufficiently detailed and contains only limited references to the Petitioner's actual business model, which provides us with little context for evaluating the duties and limits the description's probative value. Therefore, for the reasons discussed, the Beneficiary's job description alone is insufficient to establish that he would primarily perform managerial duties.

B. Staffing and Organizational Structure

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Petitioner is self-described as "a leading service provider of freight and logistics services, offering a full range of services for the movement of industrial commercial and retail goods." It further indicates that it "focuses on the needs" of its Mexican affiliate company "by assisting its clients with the transportation of goods in and out of Mexico."

The Petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it had 15 employees at the time of filing in April 2019. The most recent payroll evidence provided, a Texas quarterly wage report, showed that the company had 14 employees as of December 2018. An organizational chart submitted at the time of filing depicted a total of 19 positions in the company, with 11 employees identified by name.

The organizational chart shows that the Beneficiary reports to the company's "VP/General Director" and directly supervises six employees, four of whom are depicted as supervisors. The Petitioner documented its employment of five of the Beneficiary's six direct subordinates, including: a traffic and logistics supervisor, a distribution supervisor, an administrative supervisor, a "classification and sorting" employee with no claimed subordinates, and a "quality control and security" employee with

no claimed subordinates.[2] The organizational chart also depicts four unidentified "traffic executives" reporting to the traffic and logistics supervisor, and four unidentified forklift operators reporting to the distribution supervisor and warehouse supervisor. The chart shows an administrative assistant and office administrator who report to the administrative manager.

Finally, we note that the Petitioner's state quarterly wage report for the fourth quarter of 2018 included four individuals who were not identified on the initial organizational chart. The record does not identify which positions they filled or establish whether they were still employed at the time of filing.[3] Overall, the Petitioner documented its employment of seven of the 16 employees who were claimed to report directly or indirectly to the Beneficiary.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. The Petitioner has not claimed that the Beneficiary manages an essential function and instead focuses on his supervision of subordinate staff. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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."[4] *Id.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

The Director concluded that the Petitioner did not establish that the Beneficiary's subordinates are supervisory, professional, or managerial employees. We agree with that determination for the reasons discussed below.

Although the Petitioner indicates that the Beneficiary supervises six first-line supervisors, only four of his direct reports are claimed to have subordinates of their own. As noted, the Petitioner has not sufficiently documented the ongoing employment of the warehouse supervisor at the time of filing, nor did it identify or document the two employees who were claimed to report to this position. The Petitioner documented its employment of the traffic and logistics supervisor and distribution supervisor, but did not identify or document which individuals, if any, reported to them at the time of

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[2] The sixth employee who is claimed to report to the Beneficiary, a warehouse supervisor, received an IRS Form W-2 for 2018, but was not listed on the state quarterly wage report the Petitioner filed for the fourth quarter of 2018. Based on this evidence, the Petitioner did not establish that it continued to employ this individual [redacted] at the time of filing.

[3] One of these four individuals, [redacted], is identified as a "traffic executive" on an updated organizational chart submitted in support of the appeal, filed in August 2019.

[4] 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."

Therefore, we must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is working in a professional capacity.

filing. Further, the Petitioner's job descriptions for these two positions do not support its claim that they are supervisory employees. The list of job duties provided for the traffic and logistics supervisor contains no reference to the position's oversight of subordinate staff, while the distribution supervisor job description is almost entirely non-supervisory in nature, with one reference to assigning loading and unloading duties to forklift operators, whose employment has not been documented in the record.

On appeal, the Petitioner submits copies of what it claims are performance evaluations completed by the traffic and logistics supervisor in March 2019 for three employees who report to him. However, the evaluations are printed on a form with a version date of "05/13/2019" and therefore were evidently not completed in March 2019 as claimed. The Petitioner must resolve this discrepancy 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). As the Petitioner did not provide an explanation for the apparently backdated forms, we cannot determine that these performance evaluations provide reliable evidence of the traffic and logistic supervisor's oversight of subordinate staff. Further, as noted, the record does not contain corroborating evidence establishing which lower-level employees were working for the Petitioner at the time the petition was filed.

We acknowledge that the Petitioner has documented its employment of all three employees in its administrative department, including the administrative supervisor, administrative assistant and office administrator. The position description provided for the administrative supervisor, however, does not include any supervisory duties or mention her delegation of duties to other employees in her department. As with the traffic and logistics supervisor, the Petitioner has supplemented the appeal with personnel evaluations ostensibly completed by the administrative supervisor for her direct reports. However, these documents were also dated "03/2019" despite being printed on a form with a version date of "05/13/2019" and therefore lack probative value. We cannot determine that the administrative supervisor, or any of the claimed subordinate supervisors, serve in supervisory positions based solely on their placement on the organizational chart.

Therefore, based on the foregoing discussion, the Petitioner has not established that the Beneficiary's direct subordinates are supervisory employees.

We have also considered whether the Petitioner provided evidence that the Beneficiary will supervise subordinate professional employees. The Petitioner established that the individuals serving in the positions of administrative supervisor and "quality control and security" have bachelor's degrees in business administration and foreign trade, respectively. However, as noted, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is working in a professional capacity. The Petitioner has not indicated that it specifically requires degrees for these two positions. In fact, on appeal, it seeks to rely on several non-precedent decisions in which we determined that an L-1A beneficiary qualified as a manager even if he or she did not supervise professional staff.[5]

[5] These decisions were not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

Overall, the evidence is insufficient to establish that the Beneficiary will be supervising the work of managerial, supervisory, or professional employees. Further, the amount of time the Beneficiary will spend on supervisory duties is not clearly delineated in the Petitioner's overly broad description of his position. While we acknowledge that the record establishes his hiring and firing authority and discretion over personnel matters, this authority alone is not sufficient to establish that he qualifies as a personnel manager.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. On appeal, the Petitioner argues that it currently has 19 employees and emphasizes that most of these employees work under the Beneficiary's supervision. It also maintains that there are nine employees working under his indirect supervision at its Mexican affiliate. The Petitioner contends that the record therefore demonstrates that there are sufficient staff to relieve the Beneficiary from significant involvement in the Petitioner's day-to-day non-managerial functions.

However, as discussed, the Petitioner did not provide a detailed description of the Beneficiary's actual day-to-day duties as required by the regulations, nor did it adequately support its claim that the Beneficiary qualifies as a personnel manager based on his supervision of subordinate supervisors, professionals, or managers. These evidentiary deficiencies are not overcome by a general claim that the company is sufficiently staffed and can therefore support the Beneficiary in a managerial capacity.

Moreover, while the Petitioner submitted an organizational chart with 19 positions, it sufficiently documented its employment of only seven of the 16 positions that are subordinate to the Beneficiary's position on its organizational chart. With respect to the claimed Mexico-based employees, we note that the Petitioner does not identify which foreign employees support the U.S. company, or identify their position titles or job duties. We cannot determine that the Beneficiary will be employed in a qualifying managerial capacity based on an overly broad position description and an organizational chart that has not been adequately corroborated.

For all of the reasons discussed, the Petitioner has not established that it will employ the Beneficiary in a managerial capacity under the extended petition. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.