U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF S-USA INC.

DATE: JAN. 4, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a manufacturing and engineering company, seeks to temporarily employ the Beneficiary as its general manager under the L-1A nonimmigrant classification for intracompany transferees. *See* 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 record did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity.

On appeal, the Petitioner submits additional evidence and asserts that it has established by a preponderance of the evidence that the Beneficiary has been employed abroad in a managerial capacity.

Upon *de novo* review, we will sustain 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.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

## II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The Director determined that the Petitioner did not establish that the foreign entity has employed the Beneficiary in a managerial capacity as defined at section 101(a)(44)(A) of the Act. Specifically, the

Director concluded that the Petitioner did not provide a sufficiently detailed description of the Beneficiary's day-to-day tasks or establish that he acts in a capacity above that of a first-line supervisor. Upon review, we disagree with the Director's assessment of the Beneficiary's job description and his placement within the foreign employer's organization. The Petitioner has submitted sufficient evidence to demonstrate that the Beneficiary is more likely than not employed by the foreign employer in a managerial capacity.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act. 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." Section 101(a)(44)(A)(iv) of the Act. 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 Petitioner has submitted a detailed and credible description of the Beneficiary's position with its foreign affiliate, where he serves as general manager of the supply chain department. Letters submitted by the foreign employer's managing director provide details regarding the Beneficiary's managerial level tasks and the duties of his managerial subordinates. Further, the Petitioner has submitted documentary evidence to substantiate the Beneficiary's role as a personnel manager. The submitted evidence indicates that he has substantial authority for personnel actions within his department which includes three managerial subordinates and approximately 18 employees overall.

The evidence credibly establishes that the Beneficiary's subordinates relieve him from performing non-qualifying operational and administrative tasks so that he can perform primarily managerial duties. Further, the record demonstrates that the Beneficiary manages a department for the foreign entity, has authority to hire and fire staff, and that he exercises discretion over his department's day-to-day operations. *See* section 101(a)(44)(A) of the Act.

## III. CONCLUSION

The Petitioner has established that the Beneficiary has been employed abroad in a managerial capacity.

**ORDER:** The appeal is sustained.

Cite as *Matter of S-USA Inc.*, ID# 875776 (AAO Jan. 4, 2018)