U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 14275354

Date: JAN. 5, 2021

Appeal of California Service Center Decision

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

The Petitioner, a provider of financial services, seeks to continue employing the Beneficiary as an application systems engineer under the L-1A nonimmigrant visa 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 California Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's qualifications for the offered position. The Director also found that the company did not establish the Beneficiary's employment abroad in the claimed specialized knowledge or managerial capacities, 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 C.F.R. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. L-1A MANAGERS AND EXECUTIVES

An L-1A petitioner must demonstrate that it would employ a beneficiary in a managerial or executive capacity in the United States and that the beneficiary has the qualifications for the proposed work. Section 101(a)(15)(L) of the Act; 8 C.F.R. §§ 214.2(l)(3)(i), (iv). An L-1A petitioner must also establish that, for at least one continuous year of the three-year period before a beneficiary's admission into the United States, the petitioner, a branch, parent, affiliate, or subsidiary employed the beneficiary full-time, abroad in a capacity that was managerial, executive, or involved specialized knowledge. Section 101(a)(15)(L) of the Act; 8 C.F.R. §§ 214.2(l)(3)(iii), (iv).

II. THE BENEFICIARY'S QUALIFICATIONS

An L-1A petition must include evidence that a beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3)(iv).

Here, the Petitioner states that, as application systems engineer, the Beneficiary would oversee and lead development and delivery of the organization's "Robotic Process Automation (RPA)"

technology, which uses logic-driven robots to execute pre-programmed rules on data. A copy of a diploma indicates that an Indian university awarded the Beneficiary a bachelor of business management degree. A letter from the Petitioner's Indian affiliate states that the Beneficiary worked for it almost six years, including for more than one year overseeing RPA design, development, and implementation. The Petitioner also stated its employment of the Beneficiary in the offered position since January 2018.

In a written request for additional evidence (RFE), the Director questioned the claimed, specialized-knowledge nature of the Beneficiary's employment abroad. The Petitioner's RFE response did not address the concerns about specialized knowledge, but rather claimed the Beneficiary's employment abroad in only a managerial capacity. The Director found that the company did not demonstrate the Beneficiary's qualifications for the offered position.[1]

Beneficiaries' qualifications for offered positions, however, are separate determinations from the natures of the beneficiaries' employment abroad. Petitioners must demonstrate both the qualifying natures of beneficiaries' employment abroad (executive, managerial, or specialized knowledge) "*and*" the beneficiaries' qualifications for offered positions. 8 C.F.R. § 214.2(l)(3)(iv) (emphasis added). The regulatory inquiry into beneficiaries' qualifications focuses on the suitability of their levels of education, training, and experience "to perform the intended services in the United States." *Id.*

The Director mistakenly confused the Beneficiary's qualifications for the offered position with the nature of his employment abroad. The Beneficiary's bachelor's degree and his years of relevant experience qualify him for the offered position. We will therefore withdraw the Director's contrary finding.

III. THE NATURES OF THE FOREIGN AND U.S. EMPLOYMENT

The term "managerial capacity" means employment that "primarily" involves: 1) managing an organization or its department, subdivision, function, or component; 2) supervising and controlling the work of other supervisory, professional, or managerial employees, or managing an essential function within the organization, department, or subdivision; 3) having the authority to hire and fire subordinates or to recommend those and other personnel actions or, if no employee was supervised, functioning at a senior level within an organizational hierarchy or regarding the function managed; and 4) exercising discretion over daily operations of the activity or function for which the employee had authority. Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B).

The definition of the term "managerial capacity" allows for both managers of personnel and essential functions. A personnel manager must "primarily" supervise and control the work of other supervisory, professional, or managerial employees and have authority to hire and fire subordinates or recommend those as well as other personnel actions. Sections 101(a)(44)(A)(ii), (iii) of the Act; 8 C.F.R. §§ 214.2(l)(1)(ii)(B)(*2*), (*3*). In contrast, a function manager must "primarily" manage an essential

[1] On appeal, the Petitioner states that it no longer claims the Beneficiary's employment abroad in a specialized knowledge capacity. Thus, the Petitioner effectively waives that claim, and we need not consider it. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (declining to address an argument omitted on appeal).

function and work at a senior level within the organizational hierarchy or regarding the function managed. *Id.*

The Petitioner's RFE response seemed to assert the Beneficiary's employment abroad and proposed U.S. work as both a personnel and function manager. On appeal, the Petitioner claims the Beneficiary's prior and proposed employment as only a personnel manager.[2] The Director's decision, however, considers the Beneficiary's employment as only a function manager.

The Director's decision does not consider the Beneficiary's employment abroad or proposed U.S. work in the claimed capacity of personnel manager. We will therefore remand the matter.

On remand, the Director should consider the Beneficiary's prior and proposed employment as a personnel manager. The Director should also ask the Petitioner to explain inconsistencies regarding the Beneficiary's proposed U.S. employment. The company's initial letter states the Beneficiary's proposed supervision of two employees. But the company's initial organizational chart identifies three proposed subordinates, and the firm's later letter and organizational chart indicate his proposed supervision of six employees. The discrepancies in the number of the Beneficiary's proposed subordinates cast doubt on the accuracy of the Petitioner's evidence. *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).

If supported by the record, the Director may notify the Petitioner of any other potential grounds of denial. The Director should afford the company a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, the Director should review the entire record and issue a new decision.

IV. CONCLUSION

Contrary to the Director's decision, the record establishes the Beneficiary's qualifications for the offered position. The Director, however, must consider the nature of the Beneficiary's employment abroad and proposed U.S. work as a claimed personnel manager.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

[2] The Petitioner therefore effectively waives claims of the Beneficiary's employment abroad and in the United States as a function manager. *See Matter of M-A-S-*, 24 I&N Dec. at 767 n.2.