U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-T-S- INC.

DATE: JAN. 7, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a travel and tourism company, seeks to temporarily employ the Beneficiary as its owner and 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 record did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity.

On appeal, the Petitioner asserts that the Beneficiary's duty description clearly demonstrates that she would perform high level executive duties and, contrary to the Director's conclusion, that there is no indication that she would perform non-qualifying operational duties. Further, the Petitioner contends that the Beneficiary supervises professional subordinates holding bachelor's degrees.

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.* The petitioner must also establish that the 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).

II. DEFINITIONS

"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.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity. Prior to appeal, the Petitioner indicated that the Beneficiary would "manage" the Petitioner; however, on appeal its states that "70% of her duties will be in the capacity of an executive" and that 30% of her time would be devoted to "managerial duties." As such, we will analyze whether the Beneficiary would qualify as a manager or as an executive. The Petitioner must demonstrate that the Beneficiary's responsibilities will meet the requirements of one or the other capacity.

When examining the managerial or executive capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial or executive capacity. *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 or executive 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 or executive 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 1533.

The Petitioner stated in support of the petition that its mission is to "consolidate day-to-day relationships with solid firms, recognized and rooted in the Tourism Sector Worldwide" and to "act as a solid liaison bridge between service/travel agencies and our clients." The Petitioner indicated that the Beneficiary was needed "to ensure that our U.S. operations are aligned to improve [our] employee's objective goals, essential functions, processes, procedures and to increase sales." Further, it explained that the Beneficiary would "manage [the Petitioner] to increase profits and makes [*sic*] sure that the essential functions of the company are being met."

The Petitioner also listed the following duties for the Beneficiary, amongst others:

- manage the organization including everything related to the legal framework, administrative policies and procedures,
- exercise discretionary authority with respect to managing all day-to-day activities of the company,
- make or recommend personnel actions concerning subordinates,
- compensate, motivate and guide the sales forces,
- formulate, execute and evaluate the annual budget,
- review all checks issued such as: payments to suppliers, payments of services, contributions, allocations, advances to justify, increase or creation of fixed funds, special and operating funds, rents, and other special allocations,
- approve and sign the report of professional fees under the modality of man hours and global sum,
- approve and sign the issuance of checks, debit notes, among others, for the acquisition of goods and services,
- support the organization in all legal and regulatory procedures,
- control and record separately the expenses of the work carried out of different contracts that the company maintains,
- control of accounts receivable and payable,
- control of income and expenses in order to manage working capital,
- control of contracts in execution regarding the start, completion and collection of the work carried out,
- elaborate and control the process of recruitment, selection, entry and induction of personnel,
- facilitate with the new worker all the necessary information about the organizational structure, functions, objectives, policy and objectives, and
- project and coordinate training programs for employees.

In a request for evidence (RFE), the Director requested that the Petitioner submit additional information to explain how the Beneficiary would be relieved from performing day-to-day operational tasks, including describing her typical managerial or executive duties. In response, the Petitioner stated that the Beneficiary would spend "70% of her time exercising senior level responsibility with the independent discretion to expand, organize, direct and develop the essential functions" of our operations. It also indicated that this consisted of the following duties:

- develop the overall budget and business objectives,
- exercise independent discretion over all income/expenses, and accounts receivable and accounts payable,
- complete oversight over the accountant,
- develop new methods and processes to make sure employees, specifically travel agents and the office manager have the tools they need to substantially increase sales and revenue,
- establish sales goals for all employees, and
- exercise complete authority to hire and fire employees.

In addition, the Petitioner explained that the Beneficiary would devote the other 30% of her time to performing the duties submitted in support of the petition already listed herein. It stated that the Beneficiary would "supervise, direct, and set goals for everyone" in the organization, "develop new processes and procedures to help Travel Agents achieve greater success and create higher revenue," and "make sure that the office manager stays current on all new process[es] and procedures."

The Petitioner submitted duty descriptions indicating that the Beneficiary would likely be primarily involved in non-qualifying operational level tasks. For instance, the Petitioner stated in support of the petition that the Beneficiary would be involved in various day-to-day operational level duties such as reviewing all checks issued to suppliers for the payment of services, allocations, and professional fees. The Beneficiary's duties also indicated that she would be tasked with signing all checks and debit notes for the acquisition of goods and services, recording expenses of work carried out under different contracts, controlling accounts receivable and payable, and controlling contracts from their start to the work being carried out. In contrast, as requested by the Director, the Petitioner did not detail or document how the Beneficiary would delegate these and other operational duties to her asserted subordinates.

Whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the Petitioner does not sufficiently document what proportion of the Beneficiary's duties would be managerial or executive functions and what proportion would be non-qualifying. The Petitioner claimed that the Beneficiary would be wholly relieved from non-qualifying operational duties, yet it submits duty descriptions that include several administrative or operational tasks and it does not specifically quantify the time she would spend on these duties. This lack of documentation is important because several of the Beneficiary's documented tasks, as discussed above, do not fall directly under managerial or executive duties as defined in the statute. For this reason, we cannot determine whether the Beneficiary would primarily performing the duties of a manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Further, the Petitioner provides insufficient detail and documentation regarding the Beneficiary's asserted qualifying tasks. The Beneficiary's duty descriptions include several generic duties that could apply to any manager or executive acting in any industry and they provide little insight into

her actual day-to-day managerial or executive tasks. For instance, the Petitioner did not detail or document administrative policies or procedures the Beneficiary would manage, budgets she would formulate, legal or regulatory procedures she would support, working capital she would manage, contracts she would negotiate and execute, policies or objectives she would communicate to new employees, or training she would coordinate for the company's employees. Likewise, it did not articulate or document business objectives she would set, new methods and processes she would develop, or sales goals she would establish. The proposed managerial or executive duties submitted for the Beneficiary are overly vague and they do not effectively convey her actual day-to-day managerial or executive tasks. 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).

Even though the Beneficiary holds a senior position within the organization, the fact that she will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44)(A) and (B) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial or executive in nature. *Id.* 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; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial or executive in nature.

B. Staffing

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 submitted an organizational chart indicating that the Beneficiary would supervise one employee – an office manager supervising an accountant, two travel agents, a receptionist, a desk helper, and a runner.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) 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." *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*). In this matter, the Petitioner does not indicate that the Beneficiary qualifies a

as a function manager[1]; therefore, we will only analyze whether she qualifies as a personnel manager.

The Petitioner has not submitted sufficient evidence to demonstrate that the Beneficiary oversees subordinate managers and supervisors as necessary to qualify her as a personnel manager. As noted, the organizational chart submitted with the petition reflected that the Beneficiary would supervise an office manager and other subordinates reporting to this claimed supervisor. However, despite the Director's direct request, the Petitioner did not submit the duty descriptions, educations, and salaries for the members of its asserted organizational structure, including the Beneficiary's sole supervisory subordinate, the claimed office manager. As such, without detailed duty descriptions for the office manager and her claimed subordinates, the Petitioner has not sufficiently substantiated that the office manager would act as a manager subordinate to the Beneficiary.

Further, other submitted evidence indicates that the office manager would not likely act as a subordinate supervisor. For instance, the Beneficiary's duties state that she would motivate and guide the salesforce, develop new methods and processes for the travel agents to increase their sales, establish sales goals for all employees, and review, track, and exercise discretion over the company's accounting matters. Similarly, the Beneficiary's duties indicate that she would exercise wide authority over all personnel matters, such as hiring and firing, evaluations, instructing all new workers on company policies and objectives, and handling and coordinating all training. Further, as noted, the Petitioner does not specify what duties the Beneficiary would delegate to her claimed subordinate manager. Therefore, the record does not include sufficient evidence to establish that the Beneficiary acts in a managerial capacity supervising subordinate managers and supervisors.

On appeal, the Petitioner asserts that the Beneficiary would oversee professional subordinates and submits supporting documentation indicating that its office manager and accountant have foreign degrees in accounting. In evaluating whether a beneficiary would manage 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,

[1] The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead would be primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017). In this matter, the Petitioner has not described or provided evidence that the Beneficiary manages an essential function.

and teachers in elementary or secondary schools, colleges, academies, or seminaries." However, we must focus on the level of education required by the position, rather than the degrees held by a beneficiary's subordinate employees. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that a beneficiary would be employed in a professional capacity.

The Petitioner has not established that a bachelor's degree is necessary to perform the asserted office manager and accountant positions as it has not submitted duty descriptions for these positions or indicated specifically why a bachelor's degree is required for minimum entry into these positions. Further, it appears questionable that the Petitioner would require a subordinate accountant when the Beneficiary's duties reflect wide ranging responsibilities for bookkeeping and accounting matters, particularly since it earned approximately $383,000 in 2016, its last reported revenues in 2016. Further, submitted payroll documentation from the fourth quarter of 2017 reflects that the company employed only one fulltime travel agent, leaving further question as to whether it would require the Beneficiary and a fulltime accountant devoted to the company's finances. Given the Beneficiary's duties and the Petitioner's level of operations, it appears more likely that the asserted accountant and office manager positions subordinate to the Beneficiary are administrative positions, rather professional positions requiring a bachelor's degree for minimum entry. The Petitioner has not established with sufficient evidence that the Beneficiary would supervise professional subordinates. Therefore, the Petitioner has not demonstrated that the Beneficiary qualifies as a personnel manager.

Lastly, the Petitioner also indicates on appeal that the Beneficiary's duty description clearly establishes that she would act in an executive capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and they must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The Petitioner has not submitted sufficient evidence to establish that the Beneficiary would act as an executive. Again, the Petitioner has provided a generic duty description for the Beneficiary that does not establish that she would spend a majority of her time establishing the broad goals and policies of the organization. As discussed, it has provided few examples of the goals and policies she would establish or focus on. Further, the Beneficiary's duty description includes several non-qualifying operational tasks and the Petitioner does not specifically indicate how much time she would devote to these duties as compared to qualifying executive-level duties. In addition, the Petitioner does not submit duty descriptions for the Beneficiary's subordinates to establish they

would act in their asserted roles as necessary to demonstrate that she would be employed in an elevated position within a complex organizational hierarchy. As such, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary would act in an executive capacity.

IV. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that the Beneficiary would be employed in a managerial or executive capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of R-T-S- Inc.*, ID# 2000634 (AAO Jan. 7, 2019)