U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7098927

Date: JAN. 8, 2020

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (L-1A)

The Petitioner, describing itself as an importer of wholesale haircare products, filed a Form I-129, Petition for L-1A Manager or Executive seeking to temporarily employ the Beneficiary in the United States as its general manager. 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 concluding that the Petitioner did not establish, as required, that the Beneficiary was employed in a managerial or executive capacity abroad. In addition, the Director determined that the Petitioner did not demonstrate that the Beneficiary would act in a managerial or executive capacity in the United States.

On appeal, the Petitioner contends that the Beneficiary qualified as a personnel manager abroad based on his supervision of professional subordinates and it points to submitted foreign employer invoices reflecting his signature. The Petitioner states that the scope of the foreign employer's business demonstrates that the Beneficiary acted in a managerial capacity abroad. The Petitioner further asserts that the Beneficiary would act in a managerial capacity in the United States, emphasizing submitted invoices, his attendance at tradeshows, and a lease agreement he executed for the company.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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.* 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. MANAGERIAL CAPACITY WITH THE FOREIGN EMPLOYER

The first issue to analyze is whether the Petitioner established that the Beneficiary was employed abroad in a managerial or executive capacity. The Petitioner does not claim that the Beneficiary was employed abroad in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary was employed abroad 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 foreign managerial capacity of a given beneficiary, we will review the petitioner's description of the foreign job duties. The petitioner's description of the foreign job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the foreign employer's organizational structure, the duties of a beneficiary's foreign subordinates, the presence of foreign employees to relieve a beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role abroad. Accordingly, we will discuss evidence regarding the Beneficiary's foreign job duties along with evidence of the nature of the foreign employer'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 performs 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 is *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the foreign employer's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner indicated that the Beneficiary established the foreign employer in 1999, stating that it "specializes in producing various beauty care and body health products" and that it "has a proven record of reliable products as it works with major brands and distributors." The Petitioner further explained that the Beneficiary was employed as the foreign employer's general manager from 1999 until his entry into the United States as a nonimmigrant in August 2016. It indicated that the Beneficiary performed the following duties abroad:

- Design and develop the company's general developmental goals and expansion strategies. Review and approve business plans and goals proposed by department managers (15%);

- Plan and decide annual financial budget. Review proposed financial reports and make improvement instructions. Prepare for the Company's profit distribution plans and plans for making losses for review of the Shareholders (15%);
- In charge of hiring, promoting and firing decisions of key managerial personnel. Review and approve promotion and compensation plans (12%);
- Direct department manager[s] to prepare for competitive quotes of various sizes for entire projects, estimate the cost of materials, labor and equipment and set price aimed at securing a strong profit margin; review and approve reports on formulation of new products, and pricing and client relationship strategies (15%);
- Review and approve performance reports submitted by department managers. Provide guidelines and instructions to department managers on improvement of business performance and efficiency of business operations (15%);
- Plan and direct the creation of company operational policies including but not limited to hiring and promotion policies, compensation policies, manufactory Safety Manual, employee training policies, marketing policies, accounting policies and protocols. Review and approve proposals and protocols presented by department managers (8%);
- Review the recommendation of updated technology for manufacturing; discuss possible technical improvements with Technology Manager; direct department managers to conduct safety trainings and operation trainings to all manufacturing workers and to ensure all machinery in the factories are made to operate safely, properly, efficiently and effectively (8%),
- Supervise and oversee the negotiations and executions of the sales agreements, and maintaining communications with major clients (12%).

The Beneficiary's foreign duty description includes several generic duties, such as stating that he "decided[d] [the] annual financial budget," made "promoting and hiring decisions of key managerial personnel," provided "guidelines and instructions to department managers on improvement of business performance," reviewed recommendations "of updated technology," and supervised and oversaw "negotiations and executions of sales agreements." These duties could apply to any general manager in any business or industry and they do not sufficiently substantiate the Beneficiary's former role abroad. The Petitioner provided insufficient examples and little supporting documentation to demonstrate the Beneficiary's performance of qualifying duties abroad, such as general development goals and expansion strategies he developed, annual financial budgets he planned, profit distribution plans he prepared, key managerial personnel he promoted or fired, or promotion and compensation plans he approved. Likewise, it did not sufficiently detail or document the projects the Beneficiary directed, new products he was involved in formulating, pricing and client relationship strategies he created, or guidelines and instructions he provided to his department managers to improve business performance.

In addition, despite the Director's request for additional detail in the request for evidence (RFE), the Petitioner provided few credible specifics and documents to sufficiently substantiate the Beneficiary's daily tasks, including the hiring, compensation, safety, employee training, marketing, and accounting policies he planned and directed. It also did not articulate or document updated technology the Beneficiary reviewed and approved, technical improvements he implemented, or negotiations and sales agreements he oversaw. The lack of detail regarding the Beneficiary's asserted foreign capacity

is particularly notable given that the Petitioner asserts that he acted in this role for approximately 17 years prior to his entry into the United States in 2016. The Petitioner has not submitted a sufficiently detailed duty description describing the Beneficiary's actual day-to-day managerial level duties abroad or which credibly establishes that he devoted his time primarily to qualifying tasks. Specifics are clearly an important indication of whether a beneficiary's duties are primarily 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 foreign employer, the fact that he manages or directs the business does not necessarily establish eligibility for classification as an intracompany transferee in an 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 foreign position be "primarily" managerial in nature. *Id.* The Beneficiary may exercise discretion over the foreign employer'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 abroad are primarily managerial in nature.

B. Staffing

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

As discussed, the Petitioner asserts that the Beneficiary acted in a managerial capacity abroad. 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*). Since the Petitioner does not specifically assert that the Beneficiary acted as a function manager abroad and states that he supervised subordinate managers and professionals we will only analyze whether he acted as a personnel manager abroad.

The Petitioner submitted an organizational chart indicating that the foreign employer had over 140 employees; and specifically, that the Beneficiary supervised a vice general manager overseeing department managers of general affairs, quality, product, purchase, technology, financial, and business departments. Each one of these department managers was shown to oversee operational subordinates, including the general affairs manager supervising a personnel employee and an administration employee. The chart also reflected that the quality department manager oversaw two feedstock check employees, a process check employee, and product check employees. Meanwhile, the chart showed that the product department manager supervised several technical and manufacturing employees, such as those working in the "wooden cup workshop" and the "assemble workshop." Further, the purchase department manager was shown to oversee three buyers, the technology department manager a

network administrator and a technician, and the financial department manager three subordinates. Finally, the chart indicated that the business department employee supervised three salesman and two vouching clerks.

There is substantial uncertainty as to whether the Beneficiary acted as a personnel manager abroad because the Petitioner submitted a conflicting "staff roster" along with the asserted foreign organizational chart. For instance, the staff roster reflected that the foreign employer employed 15 individuals devoted to "sand machines," while the organizational chart did not reflect this department or these employees. Likewise, the roster showed eight employees working with "milling flutes;" however again, these employees and this department were not apparent on the foreign organizational chart. Furthermore, the staff roster also listed 23 employees working on "packing," but again, these employees and this function did not appear on the foreign organizational chart. These material discrepancies leave question as to the identity and nature of the Beneficiary's actual subordinates in his former capacity abroad. The Petitioner must resolve this discrepancies 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).

The Petitioner asserts that the Beneficiary supervised subordinate managers and supervisors abroad; however, it has submitted little supporting documentation to substantiate this assertion. In support of the petition and in response to the RFE the Petitioner provided little evidence to demonstrate that the Beneficiary oversaw a vice general manager and seven department heads. For instance, the record included no evidence reflecting the Beneficiary directing these subordinate managers or delegating tasks and duties to them. Further, the Petitioner did not submit duty descriptions for these subordinate supervisors.

Now on appeal, the Petitioner provides claimed performance evaluations the Beneficiary completed for the asserted "deputy general manager," "business manager," and "financial manager." First, we note that one submitted evaluation refers to a deputy general manager, while the provided organizational chart identified only a vice general manager. In addition, the Petitioner only submitted evaluations for three of the Beneficiary's asserted eight subordinate managers abroad. The Petitioner questionably stated in response to the RFE that "records since the initial hiring of these employees are not currently available" and that the foreign employer did not maintain these personnel records "for such a long period of time as their business practices differ from the standards of the United States." However, the Petitioner does sufficiently explain these asserted foreign employer personnel record retention practices or how they differ. The Beneficiary's foreign employment also only ended in late 2016, seemingly not a "long period of time" since the date the petition was filed. Further, even if we accept the lack of personnel documentation specific to the Beneficiary's subordinates, this does not explain the lack of evidence of him acting in his claimed managerial role and delegating duties to his subordinate supervisors on a daily basis.

Regardless, we did not find the provided performance evaluations credible in establishing that the Beneficiary supervised subordinate managers abroad. First, all three of the evaluations included identical language, despite the apparent differences in these asserted positions. In addition, the evaluations were questionably generic, indicating that each of these employees were being judged based on vague bases, such as "put[ting] the work first, work[ing] hard," "correct[ing] understanding of work instructions and guidelines," and "no dissatisfaction or complaints." In each case, the

performance evaluations included no credible detail on the actual accomplishments of these claimed subordinate managers, areas for improvement, or other individualized feedback. In sum, the performance evaluations did not credibly demonstrate that the Beneficiary was responsible for overseeing subordinate supervisors abroad.

Furthermore, on appeal, the Petitioner submits duty descriptions for only three of the Beneficiary's claimed eight supervisory subordinates; again, these related to the deputy general manager, financial manager, and business manager. The submitted duty descriptions, much like the provided performance evaluations, were generic and lacked credible detail to sufficiently substantiate these positions. For example, the financial manager's duty description could apply to any finance employee working for any company in any industry, indicating that this employee was tasked with the "development of financial management systems," improving "the company's financial management procedures and policies" [and] "quarterly financial plans," monitoring "major economic activities," and managing "relationships with banks and other institutions." Much like the Beneficiary's duty description, it included no credible specifics, such as the financial systems the financial manager oversaw, procedures or policies they put in place, major economic activities they managed, or banking relationships they fostered.

The duties provided for the deputy general manager were also similarly vague, including no details, such as articulating the "development strategy plans" this employee formulated, organizational decisions they made, promotional activities they managed, systems they implemented, or corporate culture they fostered. Likewise, the duty description submitted for the asserted business manager did not credibly detail the markets and customers this claimed manager analyzed, resources and problems they dealt with, business plans they organized, or "on-site business workflows" they developed. Therefore, in sum, the Petitioner did not sufficiently establish that the Beneficiary supervised subordinate managers and supervisors in his former position abroad; as such, it did not establish that he qualified as a personnel manager on this basis.

In the alternative, the Petitioner did not establish that the Beneficiary qualified as a personnel manager based on his supervision of professional subordinates. 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 subordinate employee. 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.

The Petitioner has not submitted sufficient evidence to establish that the Beneficiary qualified as a personnel manager abroad based on the supervision of subordinate professionals. First, as we have noted, the Petitioner presented a foreign organizational chart and a staffing list that conflicted, thereby leaving uncertainty to his actual subordinates abroad. Further, as discussed, the Petitioner provides little supporting documentation to demonstrate that the Beneficiary exercised regular personnel authority over his claimed subordinates, beyond generic performance evaluations and duty

descriptions lacking credibility. Further, as indicated, the Petitioner provided performance evaluations and duty descriptions related to only three of the Beneficiary's eight claimed subordinates. Although the Petitioner submitted translated documentation indicating that some of the Beneficiary's claimed subordinates may have earned bachelor's degrees in China, their generic duty descriptions do not adequately demonstrate that these positions required bachelor's degrees to perform their tasks. In total, the Petitioner did not submit sufficient supporting evidence to establish that the Beneficiary supervised professional subordinates abroad.

In conclusion, the Petitioner provided a generic foreign duty description for the Beneficiary and submitted little detail and supporting documentation to substantiate his primary involvement in qualifying managerial level tasks abroad. Further, the Petitioner submitted a conflicting foreign organizational chart and staffing list, leaving uncertainty as to the Beneficiary's actual subordinates abroad. The record also included no credible evidence of the Beneficiary delegating duties to his claimed subordinates or documentation reflecting his personnel authority over them. In addition, the Petitioner submitted vague duty descriptions for the Beneficiary's claimed professional subordinates that did not sufficiently demonstrate that these positions required bachelor's degrees. In sum, the provided evidence does not sufficiently establish that the Beneficiary acted in a managerial capacity abroad.

III. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

As we have discussed, the Director also denied the petition concluding that the Petitioner did not establish that the Beneficiary would be employed in a managerial capacity in the United States.[1] Because of the dispositive effect of the above finding of ineligibility; namely, our affirmation of the Director's conclusion that the Petitioner did not establish that the Beneficiary acted in a managerial capacity in his former position abroad, we will only briefly address the remaining issue addressed by the Director.

Upon review, the provided evidence does not sufficiently demonstrate that the Beneficiary would act in a managerial capacity in the United States under an extended petition. The Petitioner indicated that it acted as a distributor of the foreign employer's haircare products in the United States. Again, the U.S. duty description submitted for the Beneficiary was vague and the record lacked supporting documentation to substantiate that he would be primarily engaged in qualifying tasks in the United States. Once again, specifics are clearly an important indication of whether a beneficiary's duties are primarily 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. at 1103, 1108.

For instance, the Petitioner did not sufficiently detail and document the daily operations the Beneficiary managed, strategies and solutions he devised, plans he set for the marketing manager and "sales reps," key issues he handled vis-à-vis the foreign parent, or "strategic solutions," "company direction," or "policy development" he directed. Similarly, the Petitioner did not articulate or document the "creative promotional plans" the Beneficiary worked on with the marketing manager,

[1] Similar to the Beneficiary's asserted foreign employment, the Petitioner claimed that the Beneficiary would be employed in a managerial capacity and not as an executive consistent with the regulations. Therefore, we will only briefly analyze whether the Beneficiary would qualify as a manager in the United States.

business strategies he adjusted, budgets he set, training he provided to subordinates, or relationships he built with other business entities, banks or clients. In fact, the Petitioner provided little documentation reflecting the Beneficiary managing his claimed subordinate managers and delegating tasks to them on a daily basis. This lack of detail and documentation is notable considering the Petitioner claims that the Beneficiary has been acting in a managerial capacity in the United States for approximately two years since February 2017.[2]

However, to the extent that the Petitioner provided detail and documentation specific to the Beneficiary's activities in the United States, this evidence appeared reflective of his performance of non-qualifying operational duties. For instance, in support of the petition, the Petitioner detailed the Beneficiary's direct involvement in networking events and his arrangement of booths at industry conventions. Submitted documentation also reflected that the Beneficiary was directly involved in all the operational aspects of arranging for and setting up these booths at networking events. In contrast, the record includes no evidence of the Beneficiary delegating non-qualifying operational level duties to his claimed subordinate managers or the other claimed operational employees of the business.

Again, whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner lists duties and provided evidence reflecting the Beneficiary's involvement in non-qualifying tasks, but does not sufficiently document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of a manager in the United States. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d at 22, 24.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary would be employed in a managerial capacity in the United States.

IV. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that Beneficiary was employed in a managerial or executive capacity abroad or that he would be employed in a managerial or executive capacity in the United States under an extended petition.

ORDER: The appeal is dismissed.

[2] The petition was filed on February 25, 2019.