U.S. Citizenship and Immigration Services

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

In Re: 7030295

Date: JAN. 8, 2020

Appeal of California Service Center Decision

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

The Petitioner seeks to continue employing the Beneficiary as its president under the L-1A nonimmigrant visa classification for 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 extension petition. The Director concluded that, contrary to the Act and Department of Homeland Security regulations, the Petitioner did not demonstrate the Beneficiary's employment abroad in a managerial or executive capacity, or in a position involving specialized knowledge. The Director also found that the record did not establish the managerial or executive nature of the Beneficiary's proposed employment in the United States.

The Petitioner bears the burden of establishing 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. NONIMMIGRANT MANAGERS AND EXECUTIVES

An L-1A petitioner must establish that it or a parent, branch, subsidiary, or affiliate employed a beneficiary abroad in a managerial or executive capacity, or in a position involving specialized knowledge, for at least one continuous year in the three years before his or her admission into the United States. 8 C.F.R. §§ 214.2(l)(3)(i), (iii), (iv). A petitioner must also demonstrate that it would employ a beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii). Supporting evidence need not accompany an L-1A extension petition, but a director may request it. 8 C.F.R. § 214.2(l)(14(i).

## II. EMPLOYMENT ABROAD

The Petitioner here does not clearly assert whether the Beneficiary worked abroad in a managerial or executive capacity, or in a position involving specialized knowledge. We will therefore consider all three possibilities.

The term "managerial capacity" means an assignment where an employee primarily: 1) managed an organization, or its department, subdivision, function, or component; 2) supervised and controlled the work of other supervisory, professional, or managerial employees, or managed an essential

function within the organization, its department, or subdivision; 3) had authority over personnel actions if a direct supervisor, or functioned at a senior level within the organizational hierarchy or with respect to a function managed; and 4) exercised discretion over the day-to-day operations of the activity or function managed. Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B). Unless supervising professional employees, "[a] first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties." *Id.*

The term "executive capacity" means an assignment where an employee primarily: 1) directed the management of an organization or a major component or function of it; 2) established the goals and policies of the organization or its component or function; 3) exercised wide latitude in discretionary decision-making; and 4) received only general supervision or direction from higher-level executives of the organization, its board of directors, or its stockholders. Section 101(a)(44)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(C).

A position involving "specialized knowledge" requires special knowledge of a petitioner's product, service, research, equipment, techniques, management, or other interests, and its application in international markets. 8 C.F.R. § 214.2(l)(1)(ii)(D). Specialized knowledge may also include an advanced level of knowledge or expertise in a petitioner's processes and procedures. *Id.*

A. Managerial or Executive Capacity

As indicated above, the definition of "managerial capacity" includes management of either personnel or a function. The Petitioner does not contend that the Beneficiary managed a function abroad. We will therefore consider only whether he served as a personnel manager.

A petitioner asserting foreign employment in a managerial or executive capacity must show that a beneficiary assumed the high-level responsibilities described in the statutory and regulatory definitions of the terms "managerial capacity" or "executive capacity." *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). A petitioner must also prove that a beneficiary primarily performed managerial or executive duties, as opposed to operational tasks. *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

When determining the managerial or executive nature of a position, U.S. Citizenship and Immigration Services (USCIS) examines the position's job duties. USCIS also considers: a foreign entity's organizational structure and the nature of its business; whether other employees relieved a beneficiary from performing operational duties; the job duties of subordinate employees; and other factors affecting the nature of a beneficiary's position.

Here, the record documents the Beneficiary as the sole proprietor of the Petitioner's parent business in India from at least 2009 until his admission into the United States in 2014. Evidence indicates that the parent imports and trades computer numerical control (CNC) machinery.

In response to the Director's written request for evidence (RFE), the Petitioner submitted a letter from a director of the parent stating that the Beneficiary worked abroad as executive director. The director's letter states that the Beneficiary "oversaw the management, administration, and execution of the strategic plans" of the Indian business. The Beneficiary reportedly advised directors on policy

development, developed contingency plans, managed the business's resources and finances, conceived and implemented expansion plans, and built partnerships in new markets. The letter also states that he developed and implemented strategies to increase market share, set goals and objectives, recruited and motivated employees, provided guidance to subordinate managers, and developed policies, plans, and guidelines. The letter states that the Beneficiary spent: 45% of his time on "[m]anagement decisions including financial decisions;" 25% of his time on "[s]upervision of day-to-day operations;" 20% on "[c]ontract negotiations & business development;" and 10% on "[c]ompany representation."

As the Director found, the descriptions of the Beneficiary's foreign job duties are vague and closely resemble the responsibilities stated in the statutory and regulatory definitions of the terms managerial and executive capacity. The descriptions indicate that the Beneficiary managed the Petitioner's parent and established its goals and policies. But the Petitioner does not specify how the Beneficiary directed the business or provide examples of goals and policies he set. An L-1A petitioner must include "a detailed description" of a beneficiary's job duties. 8 C.F.R. § 214.2(l)(3)(ii). Job-duty descriptions do not demonstrate employment in a managerial or executive capacity simply by mimicking the language of the statutory and regulatory definitions of those terms. *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). On appeal, another manager/director of the parent denies that the business modeled its job-duty descriptions on the contents of the statutory and regulatory definitions. Regardless, however, the record lacks descriptions of the Beneficiary's foreign duties detailed enough to establish his employment in a managerial or executive capacity.

The Petitioner submitted an organizational chart of the company's parent indicating the Beneficiary's supervision of other supervisory employees. But the chart is undated, and the record does not otherwise demonstrate the chart's reflection of the parent's organizational structure when the Beneficiary worked abroad. Also, the organizational chart indicates the parent's employment of at least 24 people. But copies of financial documentation from 2017-19 does not support that number of employees. We take notice that the current minimum wage in India is 176 rupees for an eight-hour, work day.[1] Assuming a five-day, work week for 50 weeks a year, an Indian employee would earn 44,000 rupees a year. The parent's profit and loss statements as of the first quarters of 2018 and 2019, however, report salary and wage expenses of 369,810 rupees and 500,150 rupees, respectively. If the parent employed 24 people in both fiscal years, each worker would have averaged about 15,408.75 rupees in 2017-18, and 20,839.53 in 2018-19, less than half of the minimum annual wage rate. Also, with 24 employees earning 44,000 rupees a year, the minimum annual wage expenses of the parent would total 1.056 million rupees. The parent's Indian income tax return for 2018-19, however, reflects gross total income of 612,150 rupees, significantly less than the minimum annual wages of 24 employees. The record therefore does not support the number of employees or business structure listed on the parent's organizational chart. A petitioner must resolve discrepancies of record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

[1] *See* Roli Srivastava, "India passes 'historic' minimum wage law amid activist worries," Thomson Reuters Foundation (Aug. 2, 2019), http://news.trust.org/item/ 20190802170845-5q2uq/ (last visited Dec. 9, 2019).

Also, although requested by the Director, the Petitioner did not provide the job duties of the Beneficiary's subordinates in India or the educational requirements of their positions. *See* 8 C.F.R. § 103.2(b)(14) (authorizing a petition's denial where a petitioner does not submit requested evidence precluding a material line of inquiry). The record therefore does not demonstrate the Beneficiary's supervision of managerial, professional, or supervisory employees as required under the definition of managerial capacity. We also cannot determine whether other employees in India likely relieved the Beneficiary from performing operational duties, thereby allowing him to focus on managerial or executive tasks. For the foregoing reasons, the Petitioner has not demonstrated the managerial or executive nature of the Beneficiary's employment in India.

B. Specialized Knowledge

The record also does not demonstrate the Beneficiary's employment abroad in a position involving specialized knowledge. As previously indicated, the Petitioner provided only a general description of the Beneficiary's job duties abroad. The company has not identified aspects of his foreign job requiring special knowledge of the parent's products, services, research, equipment, techniques, management, or other interests. *See Fedin Bros.*, 724 F. Supp. at 1108 (finding specifics important indicators of a position's nature). The record indicates that the Beneficiary likely has special knowledge of the parent's business. But the Petitioner has not demonstrated that the Beneficiary's position abroad required such knowledge or expertise.

For the foregoing reasons, the record does not demonstrate the Beneficiary's employment abroad in a managerial or executive capacity, or in a position involving specialized knowledge. We will next consider the nature of the Beneficiary's proposed employment in the United States.

## III. EMPLOYMENT IN THE UNITED STATES

The Petitioner does not clearly indicate whether it would employ the Beneficiary in a managerial or executive capacity. We will therefore consider both possibilities.

As previously indicated, the term "managerial capacity" means an assignment where an employee would primarily: 1) manage an organization, or its department, subdivision, function, or component; 2) supervise and control the work of other supervisory, professional, or managerial employees, or manage an essential function within the organization, its department, or subdivision; 3) have authority over personnel actions if a direct supervisor, or function at a senior level within the organizational hierarchy or with respect to a managed function; and 4) exercise discretion over the day-to-day operations of the activity or function managed. Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B). Because the Petitioner does not contend that the Beneficiary would manage a function, we will consider only whether he would serve as a personnel manager.

The term "executive capacity" means an assignment where an employee would primarily: 1) direct the management of an organization or a major component or function of it; 2) establish the goals and policies of the organization or its component or function; 3) exercise wide latitude in discretionary decision-making; and 4) receive only general supervision or direction from higher-level executives of the organization, its board of directors, or its stockholders. Section 101(a)(44)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(C).

When determining the managerial or executive nature of a position, USCIS examines the position's job duties. USCIS also considers: a petitioner's organizational structure and the nature of its business; whether other employees would relieve a beneficiary from performing operational duties; the job duties of subordinate employees; and other factors affecting the nature of a beneficiary's position.

Here, the Petitioner states that it intends to employ the Beneficiary as its president. The record indicates that the company makes and sells spice crushers and machines used in the manufacturing and packaging industries.

The letter from the parent's director states that the Beneficiary would "plan, develop, organize, implement, direct and evaluate the [Petitioner's] fiscal function and performance." Working with officials of the parent, he would develop the Petitioner's "plans and programs as a strategic partner" by evaluating its business and introducing new products and strategies to achieve goals. The Beneficiary would provide the parent's directors with analyses of markets, budgets, and financial reports and would develop, implement, and enforce policies and procedures. He would build a team of "committed members," guide and lead subordinate managers, and define goals. The Beneficiary would also provide technical advice to subordinates and strategic financial input and leadership on business decisions. In addition, he would project and report cash flows, evaluate the Petitioner's financial structure, set goals and plans, and develop contingency plans. The letter states that the Beneficiary would spend: 50% of his time on "[m]anagement decisions including financial decisions;" 25% of his time on "[s]upervision of day-to-day operations;" 15% on "[c]ontract negotiations & business development;" and 10% on "[c]ompany representation."

Like the descriptions of the Beneficiary's foreign job duties, the Petitioner's representations of his proposed U.S. duties are vague and closely resemble the responsibilities stated in the statutory and regulatory definitions of the terms managerial and executive capacity. The descriptions indicate that the Beneficiary would manage the Petitioner and establish the organization's goals and policies. But the descriptions lack specifics on how the Beneficiary would direct the business, or examples of goals and policies he would set. As previously indicated, job-duty descriptions do not demonstrate employment in a managerial or executive capacity simply by mimicking the language of the statutory and regulatory definitions of those terms. *Fedin Bros.*, 724 F. Supp. at 1108. The record lacks descriptions of the Beneficiary's proposed duties detailed enough to establish his proposed employment in a managerial or executive capacity.

The Petitioner's organizational chart indicates that, as president, the Beneficiary would directly supervise an "executive." The director's letter, however, does not list the job of executive among the Petitioner's "active and proposed positions." Also, the director's letter identifies the same employee as both the Petitioner's operations manager and its strategic manager of marketing and sales. As previously indicated, a petitioner must resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591. The record does not explain how the same employee would simultaneously hold two managerial positions. The unresolved inconsistencies between the director's letter and the Petitioner's organizational chart cast doubt on the company's claimed staffing and organizational structure. The record therefore does not demonstrate whether the Beneficiary would supervise managerial, professional, or supervisory employees as a manager, or whether other employees would likely relieve him from performing

operational duties. For the foregoing reasons, the record does not establish the Beneficiary's proposed duties in a managerial or executive capacity.

## IV. CONCLUSION

The record on appeal does not establish the Beneficiary's employment abroad in a managerial or executive capacity, or in a position involving specialized knowledge. The Petitioner also did not demonstrate that it would employ the Beneficiary in a managerial or executive capacity. We will therefore affirm the petition's denial.

**ORDER:** The appeal is dismissed.