U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5866633

Date: JAN. 9, 2020

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a director of technical and support services – value consulting 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 denied the petition, concluding that the record did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States, or that the Beneficiary was employed abroad in a managerial or executive capacity.

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.*

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The Director determined that the Petitioner did not establish that the Beneficiary will be employed in a managerial capacity in the United States. On appeal, the Petitioner asserts that the Beneficiary will be employed as a function manager.[1] Thus, the issue to be addressed on appeal is whether the Petitioner established that the Beneficiary will be employed as a function manager in the United States.

[1] The Petitioner does not claim that he will be employed in an executive capacity.

The term "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.

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. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is 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).

A. Procedural History

In support of the petition, the Petitioner submitted a letter stating that the Beneficiary will serve as "Director of Technical and Support Services – Value Consulting – Digital Service Operations (DSO)[2] – United States." It stated that the value consulting division's three "key product lines (pillars)" are digital service management (DSM), DSO, and workload automation (Automation). The Beneficiary heads the DSO unit abroad, and in its support letter, the Petitioner stated that in the United States, he will perform "the same duties and responsibilities as in the parent company." The Petitioner further stated that value consulting is an essential function because it is a key component, along with the sales division, of the Petitioner's business model. The Petitioner stated that it "nominates two members of the existing core leadership team to head these essential functions;" that its CEO leads the sales division in the United States; and that the Beneficiary will lead the value consulting division.

In support of the petition, the Petitioner submitted a letter stating that the Beneficiary will spend at least 80% of his time creating, refining and overseeing strategy and operations for the DSO; that he will spend 5% of his time providing guidance and direction to global value consulting on critical DSO matters; that he will spend approximately 10% of his time evaluating leads, training the USA sales team, reviewing and approving technical content for the Petitioner's portfolio, and aligning the value consulting team with the sales organization division; that he will spend approximately 3% of his time

[2] The foreign parent's organizational chart refers to this pillar as "Digital Service Optimization." Presumably, they are both referring to the same product line. We will refer to both as DSO.

conducting quarterly business reviews and participating in strategy and vision and internal leadership training with global leadership teams; and that he will spend approximately 2% of his time approving employee salaries and other compensation and related with human resources and administration departments.

Here, the Beneficiary's duties will remain the same as his duties abroad, and the organization's global personnel are intertwined with its U.S. operations. Thus, we must review the global and U.S. organizational charts to understand the Beneficiary's proposed role in the United States. The foreign organizational chart submitted with the initial petition shows that the parent company is led by a CEO who oversees a chief technology officer (CTO), a chief operating officer (COO), and a director of finance and administration. The CTO oversees the following divisions: value consulting, development, R&D, software compliance, strategy, contracts, commercials, and infrastructure, big data, and support. The value consulting division is split into three units – DSM, DSO, and Automation – each with its own director and subordinate staff. The Beneficiary heads DSO abroad.

The initial organizational chart for the Petitioner submitted with the petition indicates that the same CEO that leads the parent company also leads the Petitioner in the United States. The CEO oversees the Beneficiary, the enterprise account manager, and the director of strategy.[3] He also oversees three finance and administration contractors, including two law firms and a CPA firm. The chart indicates that the Beneficiary will be in charge of a "Value Consulting Assurance and Automation Global" team and a "Value Consulting Assurance and Automation US" team. The global team is similar to the DSO team the Beneficiary oversees abroad, and the U.S. team consists of a value consulting manager, two named value consultants, and three yet-to-be-hired value consultants. The role of the foreign CTO in the United States is unclear, as he is listed on the foreign organizational chart but not on the U.S. chart. Because the global DSO team operates abroad as part of the global value consulting division, it appears that they will still be ultimately overseen by the global CTO and CEO.

In response to the Director's request for evidence (RFE) requesting clarification of the Beneficiary's day-to-day duties, the Petitioner submitted an additional letter from the Petitioner. It refers to its original letter submitted with the petition related to the Beneficiary's proposed duties and states that the Beneficiary will manage the value consulting division in the United States. The Petitioner also provided a revised organizational chart for its U.S. operations. It added the global director of finance and administration and the global marketing divisions to be overseen by the CEO, in addition to the Beneficiary, the enterprise account manager, and the director of strategy. It also identified one of the previously unhired value consultants to be managed by the Beneficiary in the United States, and it added the organization's global finance, human resources, contracts, commercials, administration, marketing, and legal services teams to the chart.[4]

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[3] The director of strategy is the same individual that serves as COO abroad. The enterprise account manager will oversee one yet-to-be hired sales representative in the United States, and the director of strategy oversees no personnel. Their roles with the Petitioner are unclear.

[4] As discussed further herein, differences between the provided organizational charts leave questions as to the Petitioner's actual organizational structure as of the date the petition was filed. The Petitioner must resolve inconsistencies and 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).

In her denial decision, the Director noted that the payroll records show that the value consulting manager received a lower salary than one of the value consultants. She stated that the description of the subordinates' duties do not include a percentage of time that the subordinates are dedicated to the tasks. She determined that the record does not show that the Beneficiary would primarily supervise and control the work of other supervisory, professional, or managerial employees.

On appeal, the Petitioner asserts that the Beneficiary will manage an essential function and that the regulations do not require it to provide the percentage of time that the Beneficiary's subordinates will be focused on particular job duties.

B. Analysis

The Director's decision focused primarily on whether the Beneficiary will serve as a personnel manager in the United States. On appeal, the Petitioner asserts that the regulations do not require it to provide the percentage of time that the Beneficiary's subordinates will be focused on particular job duties. We agree. However, on appeal, the Petitioner also clarifies that the Beneficiary will serve as a function manager in the United States. The Petitioner has not established by a preponderance of the evidence that the Beneficiary will primarily manage an essential function. *See Matter of G- Inc.*, Adopted Decision 2017-05.

The Petitioner states that value consulting and sales are its organization's two essential functions. Despite claiming that the Beneficiary will lead value consulting in the United States, the Petitioner did not provide job descriptions or organizational charts depicting the Beneficiary as head of the organization's value consulting division. Instead, it appears that the Beneficiary will lead DSO, which is only one-third of the organization's value consulting division and is not, in and of itself, an essential function. As noted above, the Petitioner's most recently submitted organizational chart is different than a previously submitted chart. It adds much of the parent company's existing global operations to assist the U.S. organization. When the U.S. organizational charts are viewed in conjunction with the parent's global organizational chart, it appears that the global CTO, rather than the Beneficiary, will actually occupy the senior position with respect to the organization's value consulting function. The Beneficiary oversees DSO globally and it appears that he will continue to oversee DSO in the United States. However, the Petitioner did not clarify how the Beneficiary's proposed U.S. responsibilities are consistent with his global organizational placement as subordinate to the CTO or how the Beneficiary's claimed management of the value consulting function is separate and apart from the CTO, who is depicted as occupying the senior-most position with respect to that function at the global level. The Petitioner has not provided enough information to permit a meaningful comparison between the proposed responsibilities of the Beneficiary in the United States and those of the global CTO. The existence of a global CTO who outranks the Beneficiary and who oversees the value consulting division appears to preclude a finding that the Beneficiary will primarily manage value consulting in the organization.

Further, it appears that the global directors of the other two value consulting units – DSM and Automation – will continue to operate globally, and therefore, it appears that the Beneficiary's role in the United States will continue to be limited to DSO. The existence of two global directors who manage the other two parts of the value consulting division appears to preclude a finding that the Beneficiary will primarily manage the organization's value consulting division.

Additionally, in the United States, the Beneficiary will be overseen by the CEO, who is also the CEO of the parent abroad. The CEO's duties are not specifically detailed in the record, but the Petitioner indicated in its initial support letter that the CEO "currently has an L-1A, and directs and manages the US sales team." However, according to the Petitioner's U.S. organizational charts, the Petitioner has no sales staff on its payroll, and it expects to hire one sales representative to be overseen by the enterprise account manager.[5] The enterprise account manager's duties are also not detailed in the record. Thus, it is not clear whether the CEO has any sales staff to manage in the United States, and it is also not clear whether the CEO's duties overlap with the Beneficiary's proposed duties in the United States. The Petitioner has not provided enough information to permit a meaningful comparison between the responsibilities of the Beneficiary and those of his immediate superior, the CEO, in the United States. We also note that the Petitioner stated that the Beneficiary will spend approximately 10% of his time evaluating leads, training the USA sales team, reviewing and approving technical content for the Petitioner's portfolio. However, as indicated above, the Petitioner has no sales staff on its payroll, so it is unclear how he will train a sales staff that does not exist. Based on the above deficiencies, and after reviewing the totality of the factors in the record, the Petitioner has not established that the Beneficiary will primarily manage an essential function.

On appeal, the Petitioner has also not resolved the Director's concerns about the subordinates' salaries. The Petitioner submitted payroll documents showing that it had three U.S. employees at the time of filing the petition in December 2018. The payroll records submitted in response to the RFE show that the value consulting manager made less per hour than the newly hired value consultant. On appeal, the Petitioner asserts that the salaries are "irrelevant" to whether the subordinates qualify as professionals, and that the job duties and degrees needed to accomplish the duties determine the professional status of the subordinates. However, the incongruous salaries of his subordinate personnel further confuse the record regarding the Beneficiary's purported management of an essential function in the organization.

Lastly, we note that the Petitioner's actual operations in the United States are unclear. Although the record contains payroll and employment tax records showing that it paid wages and salaries to between one and four employees in 2018, it appears from the Petitioner's bank statements in the record that the funds used to pay those wages came from the parent's infusion of equity into the business, and not from any revenue earned by the Petitioner. The Petitioner stated in its support letter submitted with the petition that DSO's revenue is approximately 65% of the total revenue of value consulting. However, it is not clear that any of the stated DSO revenue results from its U.S. operations.[6] In any future filings, the Petitioner must establish that it is doing business as an employer in the United States.[7]

In sum, the Petitioner has not established that the Beneficiary will be primarily responsible for managing an essential function within the organization. Accordingly, the Petitioner has not met its

[5] The subsequent employment of projected personnel is not relevant to this petition because they were not employed by the Petitioner at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

[6] The parent's support letter submitted with the petition states that the U.S. operation has a "healthy sales pipeline" but has an "inability to close the deals."

[7] "Doing business" is defined as the regular, systematic, and continuous provision of goods or services. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H).

burden to establish that it would employ the Beneficiary in a primarily managerial capacity in the United States.

III. EMPLOYMENT ABROAD IN AN EXECUTIVE CAPACITY

The Director also determined that the Petitioner did not establish that the Beneficiary is employed abroad in an executive capacity.[8] However, because the Beneficiary's lack of qualifying managerial employment in the United States is dispositive in this case, we need not reach the issue of the Beneficiary's employment abroad in an executive capacity and therefore reserve it.

ORDER: The appeal is dismissed.

[8] The Petitioner does not claim that the Beneficiary is employed abroad in a managerial capacity.