U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-USA, INC.

DATE: JAN. 23, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which custom-builds computers and related equipment, seeks to temporarily employ the Beneficiary as its manager of product development and international operations under the L-1A nonimmigrant classification for intracompany transferees. *See* 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 claimed, that the Petitioner will employ the Beneficiary in the United States in a managerial capacity.

The matter is now before us on appeal. On appeal, the Petitioner asserts that the Beneficiary's intended position meets all the regulatory criteria of a managerial capacity, and that the Director did not give sufficient consideration to the Petitioner's evidence and information.

Upon *de novo* review, we will sustain 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 found that the Petitioner did not establish that it will employ the Beneficiary in a managerial capacity. The Petitioner does not claim that it seeks to employ the Beneficiary in an executive capacity.

A managerial capacity is an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization, and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. A personnel manager supervises and controls the work of other supervisory, professional, or managerial employees, and must also have the authority to execute or recommend personnel actions such as hiring, firing, and promotions. A function manager need not directly supervise other employees, but must manage an essential function within the organization, or a department or subdivision thereof, and function at a senior level within the organizational hierarchy or with respect to the function managed. Section 101(a)(44)(A) of the Act.

The Petitioner asserts that the Beneficiary would qualify as a personnel manager by virtue of supervising professionals, and also as a function manager by managing the essential function of new product development.

The Petitioner initially specified that it seeks to employ the Beneficiary as a function manager, managing the essential function of new product development. The Petitioner also asserted that the Beneficiary's role would be "to manage and supervise the personnel both in the United States and in Uzbekistan in areas of product development as well as the continued development of the company's operations." He would not be "directly engaged in the provision of these services or the operations of the company." The Petitioner also stated that the Beneficiary "will be required to assume the Product Development Management duties currently being performed by the President and Vice President."

A four-page table of the Beneficiary's intended duties, too long to reproduce here in full, listed ten basic responsibilities, and the approximate time the Beneficiary would devote to each. Within each of those ten responsibilities, the Petitioner listed two or three lines detailing "[h]ow the duty will be [m]anaged." For the two responsibilities that, together, would take up half of the Beneficiary's time, the Petitioner provided these additional details:

> Consult with management in planning logistics of manufacture and production (30%):
> - Strategic Planning Meetings with the President, Vice President and other managers to receive reports and provide critical direction in [the] area [of] the development of the Company's product;
> - Receive feedback from sales teams and customer services personnel in matters of customer needs and requirements.
> - Confer with engineers to understand time constraints of the International and US customer base.
> - Direct and provide guidance to overseas engineers in areas of product requirements and specifications based on US customer demand.

Oversee the generation of product specifications and requirements (20%):

- Utilize knowledge of market needs and proprietary knowledge of the Company's product and functions to direct those officers/experts responsible for the creation and development of new products.
- Direct the Product Development Department in the US as well as . . . overseas in the matter of development timetables, pricing structure, and time-integrated plans for product introduction.

The Director concluded that the Beneficiary "will be primarily assisting with the day to day non-supervisory duties of the business." The Director did not explain what underlies this conclusion. The Director had previously advised the Petitioner that the job description lacked necessary detail, but the Petitioner had responded by providing a much longer description.

We disagree with the Director's finding that the Beneficiary will primarily perform non-qualifying tasks. The Beneficiary's intended authority would extend to employees abroad as well as in the United States, and those subordinate employees (including a product development manager and a lead programmer) appear to be sufficient to handle the direct work of new product development.

The Director stated that the Petitioner had not provided enough evidence to establish that the Beneficiary will manage an essential function. The Director did not elaborate. The Petitioner had initially stated: "As a custom computer manufacturer, [the Petitioner] is constantly required to develop new products and to upgrade existing ones to keep current with the industry and with technological advances in the field. Consequently, product development plays a key role in the business of the petitioner." Subsequent submissions have built upon this foundation. We conclude that the Petitioner has adequately shown that the design of new products and the improvement of existing ones is a distinct and essential function within the Petitioner's business organization, and that the Beneficiary's role with respect to that function rises to the level of a managerial capacity.

Because the Petitioner has established, by a preponderance of the evidence, that the Beneficiary will manage an essential function of the organization, we need not discuss in depth the Petitioner's parallel claim that the Beneficiary will supervise professionals. We note, however, that the Petitioner identified seven of the Beneficiary's intended subordinates as professionals. The Director, in the denial notice, addressed the Petitioner's claims regarding only one of those subordinates (the international sales consultant).

III. CONCLUSION

The Petitioner has established that it seeks to employ the Beneficiary as a function manager.

ORDER: The appeal is sustained.

Cite as *Matter of F-USA, Inc.*, ID# 899658 (AAO Jan. 23, 2018)