U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29702021

Date: JAN. 23, 2024

Appeal of Texas Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a company owning and operating a convenience store, seeks to temporarily employ the Beneficiary as the president and chief executive officer of its new office[1] 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 Director of the Texas Service Center denied the petition on multiple grounds, concluding the record did not establish that the Beneficiary was employed abroad for one continuous year in the three preceding the date the petition was filed and that he was employed with the foreign employer in a managerial or executive capacity. The matter is now before us on appeal. The matter is now before us on appeal. 8 C.F.R. § 103.3.

Upon *de novo* review, we will dismiss the appeal as the Petitioner did not establish 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. Since this issue is dispositive, we decline to reach and hereby reserve its arguments with respect to the Director's other ground for denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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*.

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. EMPLOYMENT WITH THE FOREIGN EMPLOYER IN A MANGERIAL OR EXECUTIVE CAPACITY

The sole issue we will analyze is whether the Petitioner established that the Beneficiary was employed in a managerial or executive capacity with the foreign employer.

"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.

To be eligible for L-1A nonimmigrant visa classification as a manager or executive, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial or executive position. If the Petitioner establishes that the foreign position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial or executive duties abroad, 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). In determining whether a given beneficiary's foreign duties were primarily managerial or executive, we consider the description of the Beneficiary's foreign job duties, the foreign employer's organizational structure, the duties of a beneficiary's subordinate employees abroad, the presence of other employees to relieve the 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 with the foreign employer.

The Petitioner stated that the Beneficiary was "crucial in the expansion of the [foreign employer] and its branches in the Belgian market." The Petitioner indicated that the Beneficiary acted in a

"managerial authority" with the foreign employer since August 2020. It submitted a foreign organizational chart reflecting that he oversaw three convenience stores/markets and asserted that he was responsible for their "operational procedures and standards."

In denying the petition, the Director emphasized that the Petitioner did not submit probative supporting documentation to substantiate the Beneficiary's performance of managerial duties, his foreign subordinates, and how they relieved him from performing non-qualifying tasks. The Director further pointed to the lack of supporting documentation to demonstrate the Beneficiary's personnel authority over his subordinates, including his ability to hire or fire them, or recommendation such actions.[2]

On appeal, the Petitioner states that the Beneficiary "worked as a manager and executive as he directed the management and functions of the organization," emphasizing that the foreign employer "was able to open two new locations because of the beneficiary's experience, knowledge, and skills." The Petitioner also contends that the Beneficiary "took various decisions regarding the [foreign employer] and the management of his own with minimum supervision from the board of directors" and "managed all three [convenience store] locations in Belgium, [and] had the authority to hire and fire staff." The Petitioner did not submit any additional evidence in support of the appeal.

The Petitioner's assertions on appeal do not directly address the lack of evidence discussed by the Director in the denial decision, namely, the lack of probative supporting documentation to substantiate the Beneficiary's performance of managerial duties, the foreign employer's employment of subordinates reporting to him, how his subordinates relieved him from performing non-qualifying tasks, and his personnel authority over his subordinates, including his ability to hire or fire them, or recommendation such actions. In fact, the Petitioner's statements on appeal merely reiterate the statutory definition of a manager, and confusingly appear to assert that the Beneficiary also was employed as an executive, an assertion not previously offered on the record, and for which it provides no explanation.[3] Further, the Petitioner does not specifically articulate any deficiencies in the Director's decision. We note that the regulations provide that we must summarily dismiss any appeal when a petitioner does not specifically identify an erroneous conclusion of law or statement of fact on the part of the Director. 8 C.F.R. § 103.3(a)(1)(v). Therefore, we adopt and affirm the Director's decision. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has

[2] 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*). The provided foreign organizational chart listed one subordinate at each convenience store location that the Beneficiary supervised, as such, it was reasonable for the Director to conclude that the Petitioner was asserting that the Beneficiary qualified as a personnel manager abroad. The Petitioner made no statements on the record indicating that the Beneficiary qualified as a function manager abroad.

[3] A petitioner claiming that a beneficiary will perform as a "hybrid" manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity.

been "universally accepted by every other circuit that has squarely confronted the issue"); Chen v. INS, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

As discussed by the Director, the Petitioner submitted little supporting documentation to corroborate the Beneficiary's performance of managerial or executive duties abroad, his delegation of non-qualifying tasks to subordinates, or his performance of tasks consistent with personnel authority over his claimed subordinates. The Petitioner states on appeal that the Beneficiary opened two new "locations" abroad and made "various decisions regarding the [foreign employer] and the management of his own with minimum supervision from the board of directors." However, it does not explain in detail how he acted as a manager in opening two new locations and what managerial decisions he made, nor did it document his performance of managerial or executive-level tasks. The lack of detail and documentation as to Beneficiary's claimed foreign managerial or executive-level role is noteworthy, since the Petitioner contends that he has been acting in this capacity since August 2020.[4] Specifics are clearly an important indication of whether a beneficiary's duties would be primarily managerial or executive 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). In addition, the Petitioner further provides little supporting documentation to demonstrate the employment of the Beneficiary's claimed subordinates and their duties. *See Matter of Chawathe*, 25 I&N Dec. at 376.

In sum, as determined by the Director, the Petitioner has provided little supporting evidence to demonstrate that the Beneficiary acted in a managerial or executive capacity abroad and has not sufficiently addressed on appeal the material deficiencies discussed by the Director in the denial decision. For this reason, the appeal must be dismissed.

ORDER: The appeal is dismissed.

[4] The petition was filed in March 2023.