U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-USA

DATE: JAN. 25, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software company, seeks to temporarily employ the Beneficiary as its chief technical officer 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 of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner (1) has a qualifying relationship with the Beneficiary's foreign employer, and (2) will employ the Beneficiary in the United States in a managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by not giving sufficient consideration to the structure of the multinational organization as a whole, and to the Petitioner's reliance on contractors.

Upon *de novo* review, we will dismiss the appeal. We withdraw the Director's finding that the Petitioner has not established a qualifying relationship with the Beneficiary's foreign employer, but we affirm the finding that the Petitioner has not established that it will employ the Beneficiary in a managerial or executive capacity.

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).

The Petitioner does not claim that it seeks to employ the Beneficiary in an executive capacity. Therefore, we restrict our analysis to whether the Petitioner has shown that it will employ the Beneficiary 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.

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. The Petitioner asserts that the Beneficiary will be a function manager, whose managerial role arises from management of an essential function rather than subordinate personnel.

Based on the statutory definition of managerial capacity, the Petitioner must first show that the Beneficiary will perform 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 will be *primarily* engaged in managerial duties, 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); *Champion World*, 940 F.2d 1533.

When examining the managerial or executive capacity of a given beneficiary, we will look to the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business and its staffing levels.

A. Duties

The Petitioner stated:

> [The Beneficiary] will be responsible for managing the delivery of multiple client projects implemented by the [petitioning organization's] distributed team for one of our largest customers. In addition, he will supervise the work of several . . . teams for key customers and will be attending meetings with current and prospective customers on a regular basis. He will also lead pre-sales activities and oversee and manage the

sales and marketing activities. He will be responsible for building teams for the projects including hiring US based and remote employees.

The Petitioner listed various projects that the Beneficiary would handle in the United States, along with his "specific responsibilities on [each] project." The responsibilities for one such project were as follows:

- Presale and sales activities including presenting the company's expertise, understanding the customers' problems, creating a vision of the solution, building a proof of concept, executing the contract;
- Building a set of project teams and management of a prototype creation;
- Working on product suite roadmaps;
- Management of resources allocation;
- Daily communication with the customer;
- Management of the customer's expectations and delivery processes[; and]
- Understanding and us[e] of Key Technologies . . . .

The Beneficiary's "specific responsibilities" for another project included, among other elements:

- Coordination of the marketing activities to build awareness of the product
- Conducting sales demonstrations and running the quizzes at key events . . .
- Close communication with sales, marketing, development, design and QA teams

More broadly, the Petitioner provided the following breakdown of the Beneficiary's responsibilities and the approximate time to be devoted to each:

Manage multiple projects	20%
Supervise projects teams working for company's key customers	15%
Supervise [the Petitioner's] marketing activities in the U.S.	15%
Manage pre-sales and supervise[] sales activities	30%
Staffing of the project teams	10%
Conduct interviews with candidates and participate in the overall hiring process	10%

Within the above categories, the Petitioner provided additional details filling more than three pages. Under "Manage multiple projects," for instance, the Petitioner specified the following duties:

- Oversee the delivery of group projects for some of the biggest clients of the company
- Participate in scrum meetings to hear updates regarding client projects from project managers; monitor project delivery process
- Make resource allocation decisions based on reports from project managers; adjust allocations as needed

- Oversee project managers' communications with clients; ensure[] business requirements clarification and implementation details are timely and effectively delivered to clients by his subordinates
- Manage progress[] on key projects by using [various software applications] to track the work of the technical team

Regarding management of pre-sale and sales activity, the Petitioner listed the following duties:

- Oversee the Sales Department's sale cycle; review activity and results reports submitted by Sales Managers
- Manage follow-up activities with potential leads; review plans to address clients' business needs and provide feedback to Sales Managers
- Oversee compliance of sales process to the company's practices
- Oversee and approve business proposals prepared by subordinates and present them to key customers

In the denial notice, the Director found that the Beneficiary would predominantly perform non-qualifying tasks such as marketing and sales.

On appeal, the Petitioner asserts that the Director "ignored key words like 'manage' and 'supervise,'" which showed that the Beneficiary would oversee, but not perform, the company's operational activities. We will address the issue of the organization's staffing below, noting here that the Petitioner claimed only one employee at the time of filing, which leaves open the question of who performs basic administrative and clerical tasks for the company.

B. Staffing

A given beneficiary is not automatically a function manager simply because he or she delegates all business functions to contractors or other third parties. A petitioner, who bears the burden of proof, must also show that the outsourced activity requires managerial oversight, and that the beneficiary provides it. In this context, the issue of staffing and the quality and quantity of supporting evidence are critical matters.

The Petitioner has no employees apart from its president, but the Petitioner asserted that the Beneficiary, the chief technical officer, would directly manage four employees at Russian affiliate companies; seven Russia-based contractors; and five U.S.-based contractors. Among these direct reports are nine project managers who, the Petitioner claims, supervise 148 developers and quality assurance engineers. Some of these project managers, according to the Petitioner, are contractors who then engage the services of subcontractors, further attenuating the chain of management from the Beneficiary to the front-line developers and quality assurance engineers.

The Director acknowledged that the Beneficiary supervised work by contractors and employees of the foreign affiliate, but found that these individuals are not the Petitioner's employees or "part of its organizational structure."

On appeal, the Petitioner cites *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016), which requires us to "evaluate relevant evidence in the record concerning the reasonable needs of the organization as a whole." *Id.* at 6. The Petitioner contends that "[t]he facts present in *Matter of Z-A, Inc.* are similar [to those in] the instant case," because that petitioner, like this one, "relied on subordinates at the related company abroad to support the beneficiary's managerial role."

In *Z-A-*, we acknowledged "the Petitioner's substantial evidence relating to the support provided by the overseas staff," including "staff members within the parent company's headquarters office in Japan [who] also exclusively support the Beneficiary's work" In the present case, such "substantial evidence" is lacking. Significantly, the Petitioner has only documented its contracts with five U.S. contractors, only a small fraction of the total workforce that the Beneficiary is said to oversee.

An organizational chart referring to over 100 unnamed support staff is not sufficient to establish a foreign workforce said to support the Beneficiary's work. Payroll records from the Petitioner's foreign affiliate name only 30 employees, with no indication as to which ones are under the Beneficiary's authority.

Also, the Petitioner has not shown that these claimed foreign workers exclusively support the Beneficiary's work, as was the case in *Z-A-*. In the present case, the foreign employer stated that, during his intended assignment in the United States, the Beneficiary "will continue to lead our company in Russia . . . and will supervise the Russian employees." The Russian company evidently provides the same services as the U.S. company, and the Petitioner has not shown that the Russian company provides these services on behalf of the Petitioner rather than its own behalf. The Beneficiary's continued role abroad, supervising foreign-based employees at a foreign-based company, is not intrinsically a managerial capacity in the United States, even if the Beneficiary is in the United States while supervising those foreign employees.

Based on the deficiencies discussed above, the Petitioner has not met its burden of proof to establish that it intends to employ the Beneficiary in a managerial capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of W-USA*, ID# 2051067 (AAO Jan. 25, 2019)