U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-L-, INC.

DATE: JAN. 26, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology training and consulting company, seeks to continue the Beneficiary's temporary employment as its operations manager under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 that the Beneficiary would be employed in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner asserts that it engages contractors and indicates that it has hired subordinate managers and professionals to relieve the Beneficiary from primarily performing non-qualifying operational tasks. The Petitioner contends that the Beneficiary acts a personnel manager supervising professional subordinates and as a function manager overseeing an essential function of the organization.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification for a new office, 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

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period July 7, 2016, to January 31, 2017. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

"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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) takes into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The sole issue to address is whether the Petitioner has established that the Beneficiary will act in a managerial capacity under the extended petition. The Petitioner does not claim that the Beneficiary will be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary will be employed in a managerial capacity.

The Director concluded that the Petitioner did not demonstrate that the Beneficiary was managing an essential function within the organization as asserted. The Director pointed to the Petitioner's lack of staffing as of the date of the petition and concluded that the Beneficiary would likely primarily perform non-qualifying operational tasks under an extended petition.

On appeal, the Petitioner states that it contracts with professional trainers to perform its training services thereby relieving the Beneficiary from non-qualifying operational tasks. The Petitioner asserts that it has hired three professionals subordinate to the Beneficiary who also relieve him from non-qualifying duties. The Petitioner contends that the Beneficiary qualifies as a manager of professional subordinates and as a function manager overseeing an essential function of the organization.

When examining the managerial capacity of the Beneficiary, we will review 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 capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, USCIS examines the claimed managerial capacity of a beneficiary, including 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 business and its staffing levels.

A. Duties

Based on the definitions 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.

The Petitioner stated that it was established in the United States for the purpose of expanding the foreign employer's offering of information technology courses provided by "experienced consultants." The Petitioner indicated that the Beneficiary previously acted as the foreign employer's training services manager overseeing the instruction of training staff and the development of information technology programs and coursework. The Petitioner explained that the Beneficiary manages an essential function of the Petitioner, "driving and managing the overall business operations," "providing key input for directly enabling training business development," and "managing...relationships with key stakeholders (i.e. examination institutes and accreditation bodies)."

The Petitioner indicated that the Beneficiary would devote 25% of his time to "overseeing new business development opportunities," coordinating and overseeing customer relationships, directing "the expansion of opportunities," and "defining and designing strategic service offerings." The Petitioner stated that the Beneficiary would be responsible another 5% of the time for "overseeing administrative procedures and staffing needs," including registering the business with government entities, overseeing compliance with regulations, and "managing the recruitment and hiring of necessary staff." The Petitioner also explained that the Beneficiary would devote 20% of his time to "overseeing/reviewing market trends," "providing guidance on new training programs," establishing and managing relationships with course providers, "directing accreditation requirements," and "managing resources to order to fulfill the requirements defined by the accreditation bodies and certification institutes." In addition, the Petitioner indicated that the Beneficiary would spend 10% of his time on the following:

> Directing training courses to ensure that all resources are available for training course delivery, including but not limited to: classroom or virtual environment, trainer with relevant skills and requirements, training materials, presentations, exercise booklets, attendance list, student satisfaction surveys, course completion certificates, and any complementary materials required, depending on the course topic.

Furthermore, the Petitioner stated that the Beneficiary would devote 5% of his time to "managing candidates certifications," including "directing customer follow up after course delivery," "managing and advising on relevant coursework pre-requisites," and "overseeing the relationship between the candidate and the relevant examination institute," and another 5% of his time on "directing the introduction of new staff and contractor trainers," ensuring staff "obtains detailed knowledge" about information technology frameworks, and "training and guid[ing] staff through the certification process. The Petitioner also indicated that the Beneficiary would spend 5% of his time on each of the following: communicating performance goals to trainers and managing their performance; "managing the CRM and creating reports"; developing new course content, including updating training materials and syllabi; evaluating courseware providers; "providing strategic guidelines"; and "coordinating with examination institutes for defining the qualification and certification scheme."

The Petitioner has submitted a duty description and documentary evidence indicating that the Beneficiary performs substantial non-qualifying operational duties. For instance, the Beneficiary's duty description includes several non-qualifying duties directly related to the provision of services to clients, including directing accreditation of clients, managing resources to fulfill client requirements, arranging for a physical or virtual classroom environment, obtaining or creating training materials, presentations, and exercise booklets, managing attendance lists and class surveys, arranging for course completion certificates, advising clients on coursework pre-requisites, overseeing relationships between clients and examination institutes, training trainers and ensuring they receive "detailed knowledge," creating "CRM reports," and updating training materials and syllabi.

The Petitioner also submits considerable documentary evidence reflecting the Beneficiary's performance of these operational duties as of the date of the petition. For example, the Petitioner provides several proposals submitted to clients for the provision of coursework which are signed by the Beneficiary dating from June 2016 to February 2017. The Petitioner submits a services agreement the Beneficiary executed with a coursework provider in February 2017 reflecting that he is the "designated supplier representative." The agreement also indicates that the Petitioner is tasked with several duties set forth in the Beneficiary's duty description including conducting a sixteen hour training course, identifying resources necessary to complete trainings, arranging for student materials, trainers, and sample exams and exercises, and distributing and developing student surveys and certificates of completion. The Petitioner also provides a number of client invoices, but does not substantiate that there is an individual responsible for the non-qualifying tasks inherent in these documents as of the date of the petition, such as issuing and creating the invoices and ensuring their payment. The Petitioner does not articulate or document that these non-qualifying tasks would be delegated to other employees under the extended petition.

In sum, the submitted duty description and documentation suggests that the Beneficiary is, and will be, responsible for a substantial amount of the operational aspects of the business, and it has provided few examples and little evidence to substantiate that he will delegate these tasks to subordinates. The evidence does not indicate as of the date of the petition, or as of the date of this appeal, that the Beneficiary has been primarily relieved from performing non-qualifying operational tasks and that he spends a majority of his time managing a function or delegating operational tasks to subordinates. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial capacity. *See, e.g.*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Moreover, the Petitioner does not document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. The Petitioner lists the Beneficiary's duties as including both managerial tasks and administrative or operational tasks, and confusingly intermingled them in the Beneficiary's duty description. This lack of clarity is important because, as we have discussed, the record includes substantial evidence reflecting the Beneficiary's performance of non-qualifying operational tasks that do not fall directly under managerial duties as defined in the statute. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In fact, to the extent the Petitioner references qualifying managerial tasks in his duty description, these are vague and do not convey his actual day-to-day tasks or establish that he would devote his time primarily to them. The Beneficiary's duty description includes several general duties that could apply to any manager acting in any business or industry and they do not provide insight into the actual nature of his qualifying tasks. The Petitioner provides few examples and little supporting documentation to demonstrate the Beneficiary's performance of managerial level duties. For instance, the Petitioner does not describe or document new business development or opportunities he directed, strategic service offerings he designed, or new training programs he formulated. Likewise, the Petitioner does not detail or provide evidence demonstrating him delegating the organization of training courses, setting goals, defining performance metrics, developing guidelines, implementing pricing procedures, or directing promotional activities. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial 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).

Even though the Beneficiary holds a senior position within the organization, the fact that he will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. The Beneficiary may exercise

discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial in nature.

B. Function Manager and Staffing

In its initial filing, the Petitioner did not indicate that the Beneficiary had any subordinates and the petition itself indicated that it had only one employee.[2] In response to the Director's request for evidence, the Petitioner submitted an updated organizational chart indicating that the Beneficiary supervised a digital marketing manager, a technology and development manager, and a business development manager. Further, it showed that the Petitioner oversaw four "senior trainers and consultants." The Petitioner indicated that the digital marketing manager was hired on February 1, 2017, after this petition's filing, and that the technology and development manager and business development manager were hired in May 2017. The Petitioner provided an Ohio quarterly summary of wages from the first quarter of 2017 reflecting that it paid wages to the Beneficiary and the digital marketing manager.

On appeal, the Petitioner contends that the Petitioner acts as a function manager. 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).

The Petitioner has not demonstrated that the Beneficiary would act as a function manager under the extended petition. The submitted evidence indicates that as of the date of the petition the Beneficiary was primarily devoted to non-qualifying operational tasks. First, we note that the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Further, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) requires that a new office have the necessary staffing to sufficiently relieve the Beneficiary from performing operational and administrative tasks in order to be eligible for an extension.

The Petitioner indicated, and the evidence reflects, that it had no employees beyond the Beneficiary as of the date of the petition in January 2017. As we discussed at length in the previous section, the

[2] We note that the petition was filed on January 27, 2017.

Beneficiary's duty description and the submitted documentation indicate that the Beneficiary was substantially devoted to the performance of non-qualifying operational duties as of the date of the petition, mostly specific to arranging for and supplying all resources necessary for client trainings. The Petitioner provides no evidence that these tasks were, or are now, being delegated to his claimed subordinates. Regardless, as of the date of the petition, there were no subordinates to whom these non-qualifying tasks could have been delegated, indicating that they were being performed by the Beneficiary.

Indeed, even if the Petitioner demonstrated that his direct subordinates were employed as of the date of the petition, their asserted duties do not indicate that they would be tasked with the service provision related tasks assigned to the Beneficiary such as managing resources to fulfill client requirements and obtaining or creating training materials, presentations, and exercise booklets, among others. Further, although we acknowledge that the Petitioner submits evidence on appeal that it engages independent contractors to conduct training, the evidence does not indicate that these trainers relieve the Beneficiary from his stated non-qualifying tasks. In fact, the Beneficiary's duties and the provided evidence reflect that the Beneficiary is responsible for training these independent consultants to provide training courses to clients. To qualify as a function manager a Beneficiary need not have subordinates. However, the Petitioner must establish that the Beneficiary is primarily devoted to qualifying managerial duties, but the Beneficiary's duties and the supporting evidence do not support that he was being primarily relieved of these tasks as of the date of the petition.

The Petitioner also asserts that the Beneficiary qualifies as a personnel manager as of the date of the petition based on his supervision of professional subordinates. 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. 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." Section 101(a)(44)(A)(iv) of the Act. 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 Petitioner has not established that the Beneficiary acted as a personnel manager as of the date of the petition. First, as we have discussed, the evidence indicates that at the time of the petition's filing, the Petitioner only had one employee, the Beneficiary. Again, we acknowledge that the Petitioner provides contractual documentation indicating that it engages independent contractor trainers to provide trainings to clients. However, there is little evidence to demonstrate that these independent contractors were being regularly engaged as of the date of the petition such that they could be considered employees of the Petitioner or subordinates of the Beneficiary. Further, the Petitioner appears to have hired three employees with bachelor's degrees after the date of the petition, but this not relevant to demonstrating the Beneficiary's eligibility as of the date of the petition. Again, the Petitioner must establish that all eligibility requirements for the immigration

benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

In addition, the Petitioner has not established that it was sufficiently operational as of the date of the petition to support the Beneficiary in a qualifying managerial capacity. The Petitioner has provided proposals, contracts, and invoices indicating that it is providing training services to clients through third party vendors. However, we are provided with little indication as to its financial status after its new office period. In fact, the Petitioner stated that it only earned $60,000 in 2016, a limited amount of revenue, considering it now asserts that the organization supports not only the Beneficiary, but three subordinate professionals. In sum, we are provided little evidence to provide a picture of the Petitioner's operations after its new office period and whether it is sufficiently operational to support the Beneficiary in a qualifying managerial capacity.

As discussed, the Petitioner submits a duty description and supporting evidence indicating that the Beneficiary would be involved in nearly all of the operational matters of the business and it has submitted little evidence to indicate that he will delegate operational tasks to subordinates. In addition, the Petitioner has not demonstrated that the Beneficiary has managerial or professional subordinates as of the date of the petition, or that his claimed subordinates would relieve him from performing non-qualifying operational duties. As such, the evidence does not demonstrate that the Beneficiary would act in a qualifying managerial capacity. For these reasons, the appeal will be dismissed.

III. CONCLUSION

The appeal must be dismissed as the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity under the extended petition.

ORDER: The appeal is dismissed.

Cite as *Matter of G-L-, Inc.*, ID# 924407 (AAO Jan. 26, 2018)