U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8656673

Date: JULY 10, 2020

Appeal of California Service Center Decision

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

The Petitioner, a seller of auto parts, seeks to temporarily employ the Beneficiary as its president in the United States 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 California Service Center denied the petition, concluding the record did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity in the United States. On appeal, the Petitioner reiterates the Beneficiary's asserted duties and contends he would act in a managerial capacity.

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

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 their 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).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity. The Petitioner does not claim that the Beneficiary would be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed 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.

When examining the managerial capacity of a given 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, 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, its staffing levels, and its organizational structure.

A. Duties

Based on the definition of managerial capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *See* section 101(a)(44)(A) of the Act. 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).

In support of the petition and in response to the Director's request for evidence (RFE), the Petitioner did not provide a comprehensive description of its business; however, based on the Beneficiary's duty descriptions and other supporting evidence it appeared to be engaged in the sale of auto parts. In support of the petition, the Petitioner provided the following description of the Beneficiary's duties:

> My duties within [the Petitioner], have been primarily [to] direct the course of the corporation, with my years of experience in automotive area, I have been organizing the sales structure, the marketing area together with the person who now is directly responsible for that area, which is on hands [*sic*] of [the marketing manager]. I have traveled to Mexico, Panama and Venezuela with the intention of placing sellers in those countries; this managing has enabled me to locate four sales representatives in Venezuela, one in Columbia; placing clients in Panama, and by via telephone [*sic*]. In addition, I went in last June to the [redacted] in Panama to show our line of our products; and on November 1st, I'll go to [redacted] and [redacted], two shows in Las Vegas which are dedicated to exhibit goods from international vendors, especially from Asia, like China and South Korea; and of course, vendors of US territory; so the

> attendants can have a huge variety of vendors, so in my case, I can have, the opportunity of get a well assortment inventory [*sic*] in order to meet my clients demands.
>
> We have also completed and put it on operation our website..., also we have developed a digital catalog, and, printed advertising in magazines...which circulate for the automotive branch.

Later, in response to the Director's RFE requesting additional detail as to the Beneficiary's daily tasks, the Petitioner provided the following:

> Assignment of budgetary resources, formulation of policies, coordination of commercial operations, monitoring and motivation of employees, management of operating costs, guarantee of good customer service, improvement of administration processes, seek and maintain relationships with suppliers, the hiring and training of employees, the identification of business opportunities and monitoring of financial activities.
>
> Distribution of daily work time:
> - Supervise daily business operations. – 50%
> - Development and implementation of growth strategies; Improvement of income, Evaluate performance and productivity; Investigate and identify growth opportunities. – 15%
> - Training for managers and low level personnel. – 5%
> - Creation and management of budgets; Analysis of accounting and financial data; Capture of potential clients; Direct relation with customers and suppliers. – 15%
> - Generation of reports and presentations – 15%

The Petitioner has submitted duties and supporting documentation indicating the Beneficiary's substantial involvement in non-qualifying operational duties. For instance, in support of the petition, the Petitioner provided a duty description explaining several non-qualifying operational tasks such as the Beneficiary visiting locate sales representatives and clients abroad, attending trade shows to display its products, arranging inventory, and establishing the company's website. However, there is no indication in this description or supporting evidence that the Beneficiary is primarily delegating these tasks to his subordinates. In fact, the Petitioner questionably provided a materially different duty description in response to the Director's RFE that did not discuss these same non-qualifying operational duties. The Petitioner must resolve 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).

Further, the later RFE duty description indicated that the Beneficiary would "guarantee good customer service," "seek and maintain relationships with suppliers," "capture...potential clients," and generate "reports and presentations." Again, these duties suggest the Beneficiary's performance of non-qualifying operational level tasks. The Petitioner also submitted supporting documentation bearing the Beneficiary's name indicating his involvement in non-qualifying operational duties, including an order for a security system, checks for the payment of shipping services and rent, and identifications for his attendance at tradeshows. Similarly, the Petitioner also emphasizes these apparent non-qualifying operational duties on appeal pointing to the Beneficiary's maintenance of bank accounts,

coordination with vendors, attendance at trade shows, and his purchase of auto parts inventory. In contrast, the record includes little evidence substantiating the Beneficiary's performance of managerial level tasks or his delegation of non-qualifying duties to his claimed subordinates.

Whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. The Beneficiary's duties reflect, and provided supporting documentation indicates, his performance of non-qualifying administrative or operational tasks, but the Petitioner does not quantify the time he spends on these duties. For this reason, we cannot determine whether the Beneficiary would primarily perform 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 contrast, the Petitioner only provided generic managerial level duties that could apply to any manager acting in any business and they add little insight into the actual nature of his asserted role. For instance, the Petitioner vaguely stated that the Beneficiary would be responsible for the "coordination of commercial operations," "development and implementation of growth strategies," "improvement of income," and "creation and management of budgets." However, the Petitioner submitted little detail and no supporting documentation to substantiate the budgets the Beneficiary managed, policies he formulated, financial activities he monitored, or growth strategies he implemented. Likewise, it did not specify or document the company policies the Beneficiary ensured compliance with, the goals he set, product or pricing strategies he put in place, or plans he formulated to improve the company's operation. This lack of detail and documentation related to the Beneficiary's asserted managerial duties is noteworthy particularly since it claims he has been acting in his managerial role in the United States for approximately three years prior to the date the petition was filed. Specifics are clearly an important indication of whether a beneficiary's duties are primarily 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)(A) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial in nature. *Id.* 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. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we take 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.

On appeal, the Petitioner emphasizes that the Beneficiary oversees a professional subordinate and its organizational chart reflects he supervises a claimed subordinate manager. 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 Petitioner submitted an organizational chart indicating that the Beneficiary oversaw a vacant operations manager position shown to supervise an international logistics supervisor (also vacant) and a warehouse supervisor. The warehouse supervisor was also shown to oversee two vacant warehouse operator positions. The chart further reflected that the Beneficiary supervised an administration manager overseeing vacant human resources and accounting positions. In addition, the chart indicated that the Beneficiary supervised a marketing manager overseeing four Venezuelan market account representatives, a "new Latin America & Caribbean accounts representative," and a vacant web-based marketing representative position.

The Petitioner has not submitted sufficient evidence to establish that the Beneficiary would qualify as a personnel manager based on his supervision of subordinate supervisors. First, the organizational chart indicates that the asserted warehouse manager and administration manager had no subordinates as of the date the petition was filed, since the positions below them were shown as vacant. In fact, the only employee in the organizational chart below the Beneficiary shown to supervise others is the marketing manager as it indicated she oversaw five sales representatives based abroad. However, the Petitioner provided a state employer's quarterly wage report from the fourth quarter of 2018 corresponding with the time the petition was filed reflecting that it only had three employees at this time, the Beneficiary and the asserted warehouse and administration managers. As such, the supporting documentation indicates that the Petitioner did not employ its only claimed subordinate supervisor as of the date the petition was filed, the marketing manager.

Further, even if the employment of the marketing manager was established, there is no supporting documentation to corroborate the Beneficiary's personnel authority over this claimed manager or any of his asserted subordinates based abroad. The Petitioner did not provide supporting documentation to substantiate the engagement of sales representatives abroad to establish them as part of the its U.S. organizational structure. Therefore, the Petitioner did not properly demonstrate that the Beneficiary qualifies as a personnel manager based on his supervision of subordinate supervisors.

The Petitioner also appears to assert that the Beneficiary oversees a subordinate professional, noting on appeal that the claimed marketing manager has a bachelor's degree in business administration. To determine whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be

limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity.

The Petitioner has not sufficiently demonstrated that the Beneficiary would qualify as a personnel manager based on his oversight of professional subordinates. First, the only asserted professional, the marketing manager, does not appear on the Petitioner's state employer's quarterly wage report corresponding with the date the petition was filed. Beyond this, the Petitioner does not clearly explain why the positions subordinate to the Beneficiary require bachelor's degrees, nor did it document that the claimed warehouse and administration manager positions required this level of knowledge. As such, the Petitioner did not sufficiently establish that the Beneficiary would supervise subordinate professionals. Therefore, the Petitioner did not demonstrate that the Beneficiary would act as a personnel manager under an extended petition.

In the alternative, the Petitioner has not established that the Beneficiary would be employed as a function manager in the United States. 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).

In this matter, the Petitioner has not described or provided evidence that the Beneficiary manages an essential function. Further, as we discussed, the Petitioner provided duties for the Beneficiary and supporting documentation suggesting his primary involvement in the non-qualifying operational aspects of the business, such as handling its daily bills, maintaining its bank account, coordinating with vendors, and purchasing inventory. By comparison, there is no supporting documentation to corroborate that the Beneficiary primarily manages an essential function or that he primarily delegates non-qualifying tasks to his claimed subordinates. Therefore, the Petitioner did not adequately demonstrate that the Beneficiary would primarily manage a function rather than perform it. The Petitioner has not sufficiently established that the Beneficiary would qualify as a function manager.

For the foregoing reasons, the Petitioner has not established that the Beneficiary would act in a managerial capacity under an approved petition.

ORDER: The appeal is dismissed.