U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-S-, INC.

DATE: JULY 11, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer software development company, seeks to temporarily employ the Beneficiary as "Executive Director of Software Development" 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 Beneficiary would be employed in a managerial or executive capacity.

On appeal, the Petitioner asserts, contrary to the Director's decision, that the Beneficiary's duty description is sufficiently detailed and that it provided comprehensive duty descriptions for his asserted subordinates. The Petitioner contends that the Petitioner qualifies as a personnel manager based on his supervision of subordinate managers and professionals.

Upon *de novo* review, we will dismiss 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 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. *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 is engaged in "building and developing high-end, customized solutions for a broad range of clients across a wide variety of industry verticals." In response to the Director's request for evidence (RFE), the Petitioner submitted a lengthy description of the Beneficiary's duties and responsibilities, including some of the following:

- Supervise and direct the Product and User Experience departments, including establishing policies, technical roadmaps, performance goals and criteria, and policies for employee performance;
- Manage the work of the subordinate Directors of Product and User Experience,
- Give strategic direction in the development and implementation of technical standards that comply with corporate vision, objectives, and intended direction of the company,
- Supervise the assignment of duties to the Business Analyst and Product

Manager, ensuring adherence within budgetary goals,
- Gather information regarding timelines, delivery schedules, sprint planning activities, adherence to allocated budgets and proper team distribution,
- Review milestone completions by the Directors of Product and User Experience,
- Give instruction to the Directors of Product and User Experience,
- Strategize the continued implementation of the company's goals within established financial and budgetary limitations,
- Obtain guidance on the implementation of overall business plans and goals,
- Conduct daily staff meetings with the Directors of Product and User Experience to monitor the implementation of technical objectives, providing performance criteria, and guidance on the implementation of goals,
- Supervise the technical development and maintenance of all software application ecosystems across their full lifecycle,
- Implement discretionary decision-making power over all development, documentation, and test design actions to ensure solutions are meeting requirements,
- Daily meetings with subordinate personnel to capture, analyze and develop application requirements, and ensure application test strategies and tactical plans are in line with deliverable schedules,
- Synchronize employees work schedules with current operating procedures and based on the technical strategy,
- Daily monitoring of the market to identify new technologies and processes,
- Evaluate employee performance, establish performance criteria, and maintain unfettered authority to recommend personnel action,
- Set comprehensive performance goals for subordinate managers and monitor compliance and performance, and
- Oversee the development, delivery, and quality of software applications and coordinate processes and procedures with its Brazilian subsidiary.

Despite the lengthy duty description provided by the Petitioner, it submitted supporting documentation indicating the Beneficiary's substantial involvement with apparent non-qualifying operational tasks alongside his colleagues. The Petitioner provided several client invoices listing various hours it billed for information technology services and many of these invoices included line items for the Beneficiary's provision of services to clients near to the date of the petition. For instance, the invoices listed hours billed for the Beneficiary's services, such as "initial engagement," "safeguard genesis," "profile/fuel extension," "Solomon- Upstream (Phase 3)," "Tailwind Internal Processes," "Admin Based Project Management," among others. In some cases, these listed services appear to be the same or similar to those billed by his colleagues not working in managerial roles within the company's organizational chart. This documentation suggests that the Beneficiary is directly involved, and working alongside, his colleagues in providing services to the company's clients.

In contrast, the Petitioner submitted few specifics and little supporting documentation to substantiate the Beneficiary's primary performance of qualifying managerial duties. For instance, the Petitioner did not detail or document policies, technical roadmaps, performance goals or criteria the Beneficiary

set, strategic direction in the development and implementation of technical standards he managed, strategies he implemented to comply with financial and budgetary limitations, business plans and goals he coordinated with upper management, and technical development and maintenance of all software application ecosystems he supervised. Likewise, it did not articulate or document discretionary decisions the Beneficiary made as to development and test design actions, strategies he conveyed to his subordinates, staffing and resources he allocated, work schedules he synchronized, staffing issues he resolved on projects, personnel actions he took, performance goals he set for employees, or issues he coordinated with the foreign employer.

Despite its length, the Petitioner's duty description included few specific examples regarding his managerial actions and this lack of detail is questionable considering he is asserted to have acted in his role since September 2015. 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).

We acknowledge that the Petitioner submitted some documentary evidence reflecting the Beneficiary providing direction to his claimed subordinates; namely, a handful of communications he sent to them and colleagues through an internal messaging system. Although these few messages do indicate that in some instances the Beneficiary provided direction to his colleagues, we do not find this evidence sufficient to demonstrate that he devotes a majority of his time to qualifying managerial tasks. In fact, it is reasonable to conclude that these messages could just as likely reflect the Beneficiary's performance of the project management services reflected in client invoices. The messages do not demonstrate the Beneficiary performing the qualifying duties listed in his duty description, such as setting policies or goals, deciding on strategic direction, coordinating business plans, allocating staffing, or taking personnel actions. Indeed, we find the submitted messages more reflective of an employee working alongside his colleagues in providing services to clients, rather than demonstrating his performance of duties consistent with a senior level manager.

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) and (B) 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.

The Petitioner stated that the Beneficiary oversees a director of product who in turn oversees a product manager. It also indicated that the Beneficiary supervises a director of user experience who manages

a business analyst. In short, the Petitioner contends that the Beneficiary qualifies as a personnel manager based on his supervision of subordinate managers and professionals.

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*). In this matter, the Petitioner does not indicate that the Beneficiary qualifies as a function manager[1]; therefore, we will only analyze whether he qualifies as a personnel manager.

The Petitioner has not submitted sufficient evidence to demonstrate that the Beneficiary oversees subordinate managers and supervisors as necessary to qualify him as a personnel manager. As discussed, the Petitioner submitted client invoices reflecting hours billed to clients for services and this supporting documentation indicated that the Beneficiary was likely acting alongside his claimed managerial subordinates, namely the directors of product and user experience, in providing services for clients. For instance, a client invoice from June 2018[2] reflected that the Petitioner billed $26.81 an hour for the Beneficiary's provision of services, while it charged the same hourly rate for the claimed director of user experience and director of product. Further, another client invoice from July 2018 shows that the Petitioner billed the same hourly rate for the Beneficiary as it did for the claimed subordinates of his managerial juniors, including the product manager. These client invoices also indicate the Beneficiary working with various members of the Petitioner's organizational chart, and they provide little indication that he exercises supervisory authority over his asserted managerial subordinates or the other claimed members of his department.

In addition, the Petitioner provided payroll documentation from 2017 reflecting that the Beneficiary earned marginally less than the director of product and indicating that the director of user experience earned significantly more than him. This discrepancy raises question as to the Beneficiary's claimed managerial authority over these employees, particularly since it claimed that he has been acting in his current managerial capacity since 2015. Meanwhile, payroll documentation from 2018 indicated that the Beneficiary only earned marginally more than his claimed supervisory subordinates. This same payroll documentation also showed that as of June 2018 the claimed business analyst and product manager, who are asserted to work for the Beneficiary's claimed supervisory subordinates, worked

[1] The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead would be 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.

[2] The petition was filed on August 17, 2018.

only minimal hours. In sum, the provided client invoices and payroll documentation does not sufficiently substantiate that the Beneficiary primarily exercises managerial authority over supervisory subordinates.

In contrast, the Petitioner submits little supporting documentation to corroborate that the Beneficiary has managerial authority over his claimed subordinates. For instance, as noted, the Petitioner submitted a handful of communications involving the Beneficiary which were transmitted through its internal information technology messaging system. Although we acknowledge that these messages in some cases reflect the Beneficiary providing direction to the director of product and user experience, it does not sufficiently demonstrate that he exercises regular supervisory authority over them. Likewise, this evidence does establish that the Beneficiary's claimed subordinate managers oversee subordinates of their own. In fact, the submitted messages could just as likely reflect the Beneficiary's provision of the project management services reflected in submitted client invoices, rather than him exercising regular supervisory authority over these asserted subordinates. Beyond this handful of messages, the Petitioner provides little supporting documentation to substantiate that the Beneficiary has managerial authority over his claimed supervisory subordinates, such as personnel documents, performance evaluations, or other such probative evidence. Therefore, on whole, the submitted evidence does not sufficiently establish that the Beneficiary qualifies as a personnel manager based on his oversight of subordinates supervisors.

In the alternative, the Petitioner also asserts that the Beneficiary qualifies as a personnel manager based on his supervision of professional subordinates. In evaluating whether a beneficiary would manage 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." However, we must focus on the level of education required by the position, rather than the degrees held by a beneficiary's subordinate employees. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that a beneficiary would be employed in a professional capacity.

The Petitioner has not submitted sufficient evidence to establish that the Petitioner supervises professional subordinates. First, as we have discussed, the Petitioner did not submit sufficient supporting documentation to demonstrate that the Beneficiary has supervisory authority over the claimed directors of product and user experience. Indeed, as we have noted, the preponderance of the evidence indicates that the Beneficiary more likely acts alongside these colleagues, and other members of the Petitioner's organizational chart, to provide services to clients. In addition, the Petitioner did not sufficiently articulate why the Beneficiary's claimed supervisory subordinates are professionals. For instance, the Petitioner only submitted evidence to establish that one of his claimed subordinates, the director of product, holds a bachelor's degree. However, the Petitioner does not submit this same evidence for the director user experience or for the subordinate product manager and business analyst. This lack of evidence leaves question as to whether these subordinate positions require a bachelor's degree level education to perform their duties. As such, we conclude that the Petitioner has not

provided sufficient evidence to demonstrate that the Beneficiary qualifies as a personnel manager based on his supervision of professional subordinates.

In conclusion, although the Beneficiary provided a lengthy duty description for the Beneficiary, it in fact included few specifics regarding the claimed qualifying managerial duties he performs and the Petitioner submitted little supporting documentation to substantiate his performance of these duties. On the other hand, the Petitioner provided a substantial amount of client invoices indicating the Beneficiary working alongside his colleagues in providing services for its clients, indicating his performance of non-qualifying operational duties. Furthermore, the same invoices and payroll documentation did not corroborate that the Beneficiary exercised managerial authority over his asserted subordinate supervisors and the Petitioner otherwise did not provide sufficient evidence to demonstrate him acting in this capacity. Lastly, the Petitioner did not sufficiently document that the Beneficiary oversees professional subordinates nor did it properly explain and substantiate that these claimed subordinate positions are professional as defined by the regulations. As such, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary would act in a managerial capacity under the extended petition.

III. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that the Beneficiary would be employed in a managerial capacity. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of I-S-, Inc.* ID# 3790166 (AAO July 11, 2019)