U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32157984

Date: JULY 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a fruit importer and exporter, seeks to employ the Beneficiary as a purchasing manager. The company requests her classification under the L-1A nonimmigrant visa category as an intracompany transferee who would temporarily work in a "managerial" or "executive capacity." *See* 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. The Director concluded that the Petitioner did not demonstrate the Beneficiary's foreign or proposed U.S. work in either capacity. On appeal, the Petitioner contends that the Director overlooked evidence and reached contradictory conclusions.[1]

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the company has not established the qualifying nature of the proposed U.S. work. We will therefore dismiss the appeal.

I. LAW

An intracompany transferee is a noncitizen who – for one continuous year in the three years before their U.S. admission – worked abroad and seeks to enter the country to temporarily work for a branch, parent, affiliate, or subsidiary of their foreign employer in a capacity that is managerial, executive, or involves "specialized knowledge." Section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(A).

An L-1A petitioner must demonstrate that:

[1] The Petitioner also contends that the Director erred in separately finding the Beneficiary ineligible to change her U.S. nonimmigrant visa status. *See* section 248(a) of the Act, 8 U.S.C. § 1258(a). To the extent that the company did not request a change of her status, we agree that the Director erred. But the decision on that collateral matter does not affect this appeal's merits regarding the requested L-1A classification. Nor would we have jurisdiction to rule on a noncitizen's change of status. *See* 8 C.F.R. § 248.1(b) (barring appeal from the denial of a change-of-status application).

- It and the beneficiary's foreign employer are "qualifying organizations" under 8 C.F.R. § 214.2(l)(1)(ii)(G);
- The beneficiary would be employed in an executive or managerial capacity;
- The beneficiary has at least one continuous year of full-time work abroad with a qualifying organization within the three years before the petition's filing;
- The beneficiary worked the prior year abroad in a job that was managerial, executive, or involved "specialized knowledge;" and
- The beneficiary's education, training, and employment qualifies them to perform the proposed U.S. services.

8 C.F.R. § 214.2(l)(3)(i)-(iv).

II. ANALYSIS

The record shows that the Beneficiary, an El Salvadoran native and citizen, has a bachelor's degree in commerce and administration, three years of university studies in public accounting, and more than 25 years' experience in the fruit business. She has worked for the Petitioner's affiliate in El Salvador as a procurement manager since August 2021.

Both the Petitioner and its affiliate import and export fruit. The Petitioner claims that the Beneficiary will lead the company's expansion efforts in the United States.

A. The Proposed U.S. Work

The Petitioner must demonstrate that it would employ the Beneficiary in the United States in a managerial or executive capacity. The term "managerial capacity" means work where a beneficiary "primarily:"

- Manages the organization or a department, subdivision, function, or component of it;
- Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization or its department or subdivision;
- Has the authority to hire and fire or to recommend those and other personnel actions, or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or regarding the function managed; and
- Exercises discretion over daily operations of the activity or function for which the employee has authority.

Section 101(a)(44)(A)(i)-(iv) of the Act.

As the term's definition indicates, "managerial capacity" recognizes both "personnel managers" and "function managers." Personnel managers must primarily supervise and control the work of other supervisory, professional, or managerial employees. *Matter of G- Inc.*, Adopted Decision 2017-05, *3 (AAO Nov. 8, 2017). In contrast, function managers primarily manage an essential function within the organization. *Id.* If incidental to managing the function, function managers may also oversee personnel. *Id.*

The term "executive capacity" means work where a beneficiary "primarily:"

- Directs the management of an organization or a major component or function of it;
- 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, a board of directors, or stockholders of the organization.

Section 101(a)(44)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(C).

The definition of "executive capacity" describes an elevated position. An executive must be able to "direct[] the management" and "establish the goals and policies" of an organization or a major component or function of it. Section 101(a)(44)(B)(i), (ii) of the Act. The phrase "directs the management" requires an executive to exercise control over a subordinate level of managerial employees. *VHV Jewelers, LLC v. Wolf*, 17 F.4th 109, 114 (11th Cir. 2021). To demonstrate these abilities, a petitioner must explain the management of the organization, component, or function and establish a beneficiary's primary focus on its goals and policies, rather than its daily operations. *See Boyang, Ltd. v. INS*, 67 F.3d 305 (9th Cir. 1995) (quoting *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988)) ("An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity.")

When considering the nature of an offered position, USCIS examines a petitioner's job duty descriptions. The descriptions must clearly describe a beneficiary's proposed duties and indicate that the noncitizen would perform all the elements comprising the definition of "managerial" or "executive capacity." *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring "a detailed description of the services to be performed"). USCIS also considers: a petitioner's organizational structure; the presence of other employees to relieve a beneficiary from performing non-qualifying duties; the duties of a beneficiary's subordinate employees; the business's nature; and other factors potentially affecting a beneficiary's duties and role.

The Petitioner's descriptions of the offered U.S. job reflect inconsistencies casting doubt on the descriptions' accuracy. In the initial filing, the Petitioner stated that the Beneficiary, in part, would "set the goals for [the] product management, marketing, and sales departments." The Petitioner's organizational chart lists a sales manager who appears to supervise a contracting company. But the chart does not indicate that the Petitioner has product management or marketing departments.

Also, in a revised job description in response to the Director's request for additional evidence, the company's controller stated that the Beneficiary, in part, would "analyze research conducted by subordinate managers." The record, however, does not demonstrate her proposed supervision of any subordinate managers. The Petitioner's organizational chart shows that the Beneficiary would directly supervise a purchasing agent. But the chart does not show that the purchasing agent would supervise anyone. Nor does the record otherwise establish the agent as a manager. The inconsistent job descriptions cast doubt on the accuracy of the offered job's purported duties. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies).

Other evidence also casts doubt on the Petitioner's proposed employment of the Beneficiary in a managerial or executive capacity. As previously indicated, the phrase "directs the management" in the definition of "executive capacity" at section 101(a)(44)(B)(i) of the Act requires an executive to exercise control over a subordinate level of managerial employees. *VHV Jewelers, LLC v. Wolf*, 17 F.4th at 114. As discussed above, the Petitioner has not established the Beneficiary's proposed sole subordinate as a manager. Also, the Petitioner's organizational chart does not indicate the Beneficiary's control over the company's sales manager. The company therefore has not demonstrated that the Beneficiary would meet the "executive capacity" definition by directing the company's management.

The Petitioner also has not demonstrated that it would employ the Beneficiary in a managerial capacity. A personnel manager must primarily supervise and control the work of other supervisory, professional, or managerial employees. Section 101(a)(44)(A)(ii) of the Act; *Matter of G- Inc.*, *supra*, at *3. The Petitioner has not demonstrated that the Beneficiary's sole subordinate would constitute a supervisory, professional, or managerial employee. The company's organizational chart does not indicate the subordinate's proposed supervision of anyone, and the record lacks evidence that she would otherwise serve as a manager. And, as the Director notes, the Petitioner has not documented the subordinate's duties, educational level, or employment by the company. Thus, the record also does not establish the subordinate as a professional employee. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "profession" to mean "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation").

Further, the Petitioner has neither asserted its proposed employment of the Beneficiary as a "function manager" nor demonstrated that she would manage a clearly defined or "essential" function. *See* section 101(a)(44)(A)(ii); *see also Matter of G- Inc.*, *supra*, at *4. Thus, the Petitioner has not demonstrated its proposed employment of the Beneficiary in a managerial or executive capacity.

On appeal, the Petitioner contends that the Director reached a "confusing conclusion" regarding the purported managerial nature of the offered job and that her reasoning was "inherently contradictory." The Petitioner asserts that the Director "acknowledged that the proposed duties set forth in the [company's initial] support letter are managerial in nature but also found that the record did not establish that these duties are clearly managerial in nature."

Contrary to the Petitioner's contention, we do not find the Director's decision to be contradictory. The Director stated:

> The support letter indicated that the beneficiary['s] position is in a managerial capacity; however, the record lacked supporting evidence that the beneficiary will primarily perform in a[] managerial capacity in the U.S. position. The record did not sufficiently demonstrate that the beneficiary will primarily engage in managerial-level tasks on a daily basis.

The Petitioner appears to mistakenly assume its support letter's sufficiency to demonstrate the offered job's managerial nature. As previously discussed, proposed job duties in the letter conflict with other evidence of record. The letter states that the Beneficiary would "set the goals for [the] product management, marketing, and sales departments." But the Petitioner's organizational chart does not

indicate that the company has product management or marketing departments. Thus, the letter does not constitute reliable evidence of the job's purported managerial nature. The Director therefore did not err in finding insufficient evidence to support the letter's statements.

The Petitioner also asserts that it demonstrated the Beneficiary's proposed U.S. work in an executive capacity because she would purportedly primarily perform executive duties. As previously indicated, however, the term "executive capacity" requires meeting all of the elements at section 101(a)(44)(B)(i)-(iv) of the Act. Section 101(a)(44)(B)(i) of the Act requires an executive to primarily "direct[] the management of the organization," meaning to exercise control over a subordinate level of managerial employees. *VHV Jewelers, LLC v. Wolf*, 17 F.4th at 114. Because the Petitioner did not establish the Beneficiary's proposed sole subordinate as a manager or her control over the company's sales manager, the Petitioner did not meet the "executive capacity" definition by showing that the Beneficiary would direct the company's management.

For the foregoing reasons, the Petitioner has not demonstrated its proposed U.S. employment of the Beneficiary in a managerial or executive capacity. We will therefore affirm the petition's denial.

B. The Beneficiary's Work Abroad

Our conclusion regarding the nature of the proposed U.S. work resolves this appeal. Thus, we need not reach, and hereby reserve, the Petitioner's appellate arguments regarding the nature of the Beneficiary's work abroad. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not demonstrated the qualifying nature of the proposed U.S. work. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.