U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8705856

Date: JULY 13, 2020

Appeal of California Service Center Decision

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

The Petitioner, a manufacturer of laser equipment, seeks to temporarily employ the Beneficiary as a custom product manager 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 was employed in a managerial or specialized knowledge capacity abroad. In addition, the Director determined the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial or executive capacity in the United States.

On appeal, the Petitioner asserts that the Beneficiary managed an essential function abroad and contends his former foreign position involved specialized knowledge uncommon in the industry. Further, the Petitioner states it submitted sufficient evidence to establish that the Beneficiary would be employed as a function manager in the United States.

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 first issue we will address is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity in the United States. 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).

The Petitioner stated it is "a leading manufacturer of laser equipment" and specializes in the "ability to customize systems" for customers. The Petitioner explained that as a custom product manager the Beneficiary's "skillset and knowledge" would "enhance [its] ability to modify solutions [and] innovate to satisfy customers' special needs." The Petitioner provided the following U.S. duty description for the Beneficiary:

1. Work with sales team to clarify laser processing needs and challenges, identify the customization module, including special laser sources model selection, the motion control design and etc.; 15%
2. Communicate technical specification with R&D team at the parent company, oversees the designing process; 15%
3. Receive technical specification design proposal and processing work piece, arrange personnel, time, and location to do demonstration;

4. Work with R&D team to make changes when needed by the customers;
5. Form a local team to provide system initiation, commissioning and training.

In the request for evidence (RFE), the Director stated that the provided U.S. duty description "lacked sufficient detail." The Director noted the Petitioner "provided no supporting documentation to demonstrate the beneficiary's managerial authority" or to establish that he would be primarily relieved from performing daily non-qualifying duties. The Director further indicated that the duty description should describe the Beneficiary's typical managerial duties and include the percentages of time he spent on each task. However, as noted by the Director in the denial decision, the Petitioner only resubmitted the same duty description included above in response to the RFE; and on appeal, again resubmits this same description.

The U.S. duty description provided for the Beneficiary does include specific daily tasks nor does it assign percentages of time he devoted to each claimed duty. In fact, the duty description questionably accounts for only 30% of the Beneficiary's time. This lack of detail is noteworthy since the Beneficiary's duty description indicates he would be engaged in the performance of several non-qualifying operational tasks such as identifying the customization module, special laser source model selection, and motion control design, communicating technical specifications with the research and development team, and making changes to customer solutions as required.

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 Petitioner lists the Beneficiary's duties as including both managerial tasks and administrative or operational tasks but does not quantify the time he spends on these different duties. 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 contrast, despite a direct request from the Director, the Petitioner provided few details and no supporting documentation to substantiate the Beneficiary's primary performance of qualifying managerial duties. For instance, the Petitioner did not provide specifics or supporting documentation to corroborate the Beneficiary overseeing design processes, arranging personnel, forming teams, or providing training as claimed. Further, despite contending that the Beneficiary is relieved from non-qualifying operational tasks, there is no supporting evidence to substantiate this assertion. This lack of detail and documentation is noteworthy as the Petitioner contends that the Beneficiary has been acting in his claimed managerial role in the United States for more than three years since September 2015.[1] 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 portion of the business does not necessarily establish eligibility for classification

[1] The petition was filed on April 3, 2019.

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.

The Petitioner solely asserts that the Beneficiary would be employed as a function 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. Whereas 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. Since the Petitioner only asserts that the Beneficiary would qualify as a function manager, we will not analyze whether he would qualify as a personnel manager.

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 indicated in support letters that the Beneficiary's "position doesn't [involve] supervise [*sic*] and control," but noted that "he will have a virtual team with help of management from R&D in China, local customer support team and manufacturing team in China." It also stated there were "5 engineers designated to support customization projects managed by product managers all around the world." The Petitioner asserts on appeal that the Beneficiary "oversees modification and innovation to satisfy customers' special needs" and contends he is not tasked with the daily duties of the function but oversees "others' work and exercise[s] discretion to achieve the goal."

First, the Petitioner has not sufficiently defined the Beneficiary's claimed essential function. The Petitioner only generically indicates that the Beneficiary performs customization projects for customers; however, it does not explain these projects in detail nor how this is a specifically defined function over which he has discretionary authority. In fact, the Petitioner indicates that the Beneficiary's position does not involve "control," leaving question as to whether he exercises discretion over an essential function.

Further, the Petitioner did not submit sufficient detail and supporting documentation to substantiate that the Beneficiary is primarily tasked with managing his function rather than performing it. As discussed, the Beneficiary's duty description indicates his substantial involvement in non-qualifying operational aspects of the projects he works on, including identifying the customization module, special laser source model selection, and motion control design, communicating technical specifications with the research and development team, and making changes to customer solutions as required. However, there is little evidence of the Beneficiary overseeing others performing these tasks or of him delegating these non-qualifying operational duties. In addition, as discussed, the record includes little supporting evidence to substantiate the Beneficiary performing managerial level tasks, such as overseeing design processes, arranging personnel, forming teams, or providing training as claimed.

The Petitioner contends that the Beneficiary is relieved from performing non-qualifying tasks by members of his teams, including research and development staff, the local customer support and manufacturing team, and "5 engineers…designated to support customization projects." However, the Petitioner does not identify these employees, explain specifically how they primarily relieve the Beneficiary from non-qualifying tasks, substantiate their existence, explain their duties, list their salaries, or demonstrate their educational levels, despite these direct evidentiary requests made by the Director. Therefore, in sum, the evidence is insufficient to establish that the Beneficiary would be employed as a function manager in the United States.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary would be employed in a managerial capacity in the United States.

III. FOREIGN EMPLOYMENT IN A MANAGERIAL OR SPECIALIZED KNOWLEDGE CAPACITY

As we have discussed, the Director also denied the petition concluding that the Petitioner did not establish that the Beneficiary was employed in a managerial or specialized knowledge capacity abroad. Because of the dispositive effect of the above finding of ineligibility, we will only briefly address whether the Beneficiary acted in a managerial or specialized knowledge capacity abroad. The Petitioner does not claim that the Beneficiary was employed in an executive capacity abroad. Therefore, we restrict our analysis to whether the Beneficiary was employed in a managerial or specialized knowledge capacity.

In denying the petition on these grounds, the Director determined the submitted evidence did not substantiate that the Beneficiary, an asserted function manager abroad, was primarily relieved from performing the non-qualifying operational tasks of his function. In addition, the Director concluded that the Petitioner did not compare the Beneficiary's knowledge against that of his colleagues as necessary to set his knowledge apart as specialized.

On appeal, the Petitioner points to prior nonimmigrant visa approvals it received on behalf of the Beneficiary, notes that no material changes were made on the record with respect to his foreign employment, and contends that based on this, his eligibility should have not been reevaluated by the Director. The Petitioner also states that the Director erred in concluding that the Beneficiary's function abroad was not essential and asserts he was relieved from non-qualifying duties by the members of

the cross-functional teams he oversaw. Lastly, the Petitioner indicates that the Beneficiary's knowledge was special in comparison to others the industry; and therefore, that it was improper for the Director to point to the lack of comparisons of the Beneficiary against his colleagues within the company.

First, we do not concur it was improper for the Director evaluate whether the Beneficiary's former foreign employment was in a managerial or specialized knowledge capacity. The Director's decision does not indicate whether she reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same evidence contained in the current record, these approvals would constitute an error on the part of the Director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be unreasonable for the Director, or us, to treat acknowledged errors as binding precedent. *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center Director had approved the nonimmigrant petitions on behalf of the Beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

For similar reasons as those expressed in the previous section, the Petitioner did not demonstrate that the Beneficiary acted as a function manager abroad. As noted by the Director, the Petitioner did not sufficiently demonstrate that the Beneficiary primarily managed his claimed function, rather than performing it. Again, the Beneficiary's generic duty description indicated his involvement in non-qualifying operational tasks abroad such as developing detailed descriptions of solutions, arranging manufacturing and commissioning of products, "close collaboration" with customers, and acting as a "pivot point" on the project. However, the Petitioner did not detail what portion of the Beneficiary's duties abroad involved non-qualifying operational tasks as compared to claimed managerial duties. Further, despite asserting that the Beneficiary oversaw and directed teams abroad, there is no supporting documentation to substantiate this nor evidence of him delegating non-qualifying tasks to others. Therefore, much like the Beneficiary's proposed U.S. employment, the Petitioner did not properly corroborate that he was primarily engaged in managerial tasks abroad and managing his asserted function as opposed to performing it.

In the alternative, the Petitioner did not demonstrate that the Beneficiary's foreign position involved specialized knowledge. In concluding that the Beneficiary's foreign position did not involve specialized knowledge, the Director emphasized that the Petitioner did not compare him to his colleagues as necessary to establish that his knowledge was greatly developed than that of his colleagues. On appeal, the Petitioner contends this analysis was in error, since it was asserting that his knowledge abroad was special, or "distinct or uncommon in comparison to that generally found in the particular industry."[2]

[2] Determining whether a beneficiary has "special knowledge" requires review of a given beneficiary's knowledge of how the petitioning organization manufactures, produces, or develops its products, services, research, equipment, techniques, management, or other interests. Because "special knowledge" concerns knowledge of the petitioning organization's products or services and its application in international markets, a petitioner may meet its burden through evidence that

However, the Petitioner's assertion on appeal ignores that the Petitioner did not compare the Beneficiary's knowledge against those similarly placed in the industry to establish it as "distinct or uncommon" by comparison. Without further explanation or evidence on the part of the Petitioner, it is reasonable to conclude that there are other companies in the international marketplace that manufacture and customize lasers, and in turn, other professionals performing duties similar to the Beneficiary. However, the Petitioner provides no specifics or documentation to substantiate that the Beneficiary's knowledge in the industry is distinct or uncommon.

In fact, at a minimum, the Petitioner has not even provided a detailed explanation of the nature of the Beneficiary's knowledge, but only vaguely indicated that it was based in proprietary information. We cannot make a factual determination regarding a given beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of its products and services or processes and procedures, the nature of the specific industry or field involved, and the nature of the beneficiary's knowledge. The petitioner should also describe how an employee is able to gain specialized knowledge within the organization and explain how and when the individual beneficiary gained such knowledge. As the Petitioner has not provided this level of detail or other sufficient supporting evidence specific to the Beneficiary's asserted specialized knowledge, we agree with the Director's conclusion that the Petitioner did not establish that the Beneficiary's former position abroad involved specialized knowledge.

For the foregoing reasons, the Petitioner has not established that the Beneficiary was employed in a managerial or specialized knowledge capacity abroad.

ORDER: The appeal is dismissed.

---

the beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry. Knowledge that is commonly held throughout a petitioner's industry or that can be easily imparted from one person to another is not considered special knowledge.