U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF N-R-G-O-N-A-, INC.

DATE: JULY 23, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which manages information systems and technology functions for its corporate group in North America, seeks to extend the Beneficiary's temporary employment as its "Lead Business Solutions – Costing" 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 Petitioner did not establish, as required, that it would employ the Beneficiary in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner disputes the denial decision, arguing that the Director erroneously evaluated a position description submitted for a subordinate employee as the Beneficiary's own description, and misinterpreted the Petitioner's statements with respect to the composition of the team he manages. The Petitioner submits additional evidence and asserts that the Beneficiary will continue to be employed in a managerial capacity.

Upon *de novo* review, and for the reasons discussed below, we will withdraw the Director's decision and remand the matter for entry of a new decision.

## 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 his or her 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. BASIS FOR REMAND

Upon review, we find that the Director's decision contains two material factual errors. First, in evaluating the Beneficiary's job duties, the Director quoted a list of duties that was submitted for the position of "Business Solutions Specialist – F&C Costing," a job title held by two of the Beneficiary's subordinates. The Director appears to have attributed the subordinates' duties to the Beneficiary and did not analyze the expanded job description the Petitioner provided in response to a request for evidence (RFE). Therefore, to the extent that the denial decision included an analysis of the proposed job duties, it did not focus on the Beneficiary's role as described in the record.

The Director further found that the record contained inconsistencies with respect to the identity of the Beneficiary's subordinates. Specifically, the Director observed that, while the Petitioner stated in its supporting statements that the Beneficiary will supervise a director of finance, a director and product supply controller, and a costing manager, the submitted organizational charts identify the Beneficiary's subordinates as "specialist business solutions," "expert business solutions," and "external consultants." Based on these perceived inconsistencies, the Director concluded that the Petitioner did not sufficiently describe its organizational hierarchy or the number or type of employees the Beneficiary would supervise, and did further address the Beneficiary's supervisory responsibilities.

However, we note that the Petitioner has consistently stated that the Beneficiary will manage the development and implementation of business solutions through a subordinate staff that includes "two Business Solution Exports and two Business Solutions Specialists." Therefore, we do not find that the Petitioner submitted conflicting statements regarding the positions held by the Beneficiary's direct reports. The Petitioner also consistently stated that the Beneficiary would provide guidance to the director of finance, director and product supply controller, and costing manager, and it further clarifies on appeal that the Beneficiary works closely with these employees to align IT strategies throughout the Petitioner's group.

As a result of these errors, we find that the Director's decision did not adequately explain the deficiencies in the evidence. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Accordingly, the Director's decision will be withdrawn.

However, although the decision will be withdrawn, the record does not contain sufficient evidence to establish that the Beneficiary would be employed in a managerial capacity under the extended petition.

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 also claims on appeal that the Beneficiary qualifies 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. Here, the Petitioner indicates that the Beneficiary will allocate 50% of his time to "manage and delegate the day-to-day activities of subordinate costing specialists" and perform additional supervisory duties as part of his responsibility for overseeing "[redacted] projects." Based on this description of the role, the Beneficiary's duties are primarily supervisory and the position should be analyzed as a personnel manager rather than as a function manager. *See* section 101(a)(44)(A)(ii) of the Act; *see also Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017) (stating that "a position that a petitioner claims to be primarily supervisory in nature should be evaluated as a personnel manager.")

The Petitioner claims that the Beneficiary manages "supervisors and degreed professionals" but has not adequately supported this claim. As noted, the Beneficiary's subordinates hold the positions of "specialist business solutions" and "expert business solutions." The Petitioner has submitted two versions of the "specialist business solutions" position, and has not provided a description for the "expert business solutions" position. The submitted job description for the "specialist" position does not identify any supervisory duties.

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."

The Petitioner claims that the Beneficiary's subordinates are "degreed professionals" but did not provide evidence of their educational qualifications. Moreover, based on the definition of "profession," we must focus on the level of education required by the position, rather than the degree held by a subordinate employee. One of the two submitted position descriptions for the business solutions specialist indicates that the basic minimum requirements for the position include a "high school diploma or GED equivalent"; a bachelor's degree is preferred but not required. Another version of the position description submitted on appeal does not list any minimum educational requirements. We cannot conclude that the Beneficiary's subordinates are professionals or supervisors based on the evidence currently in the record.

Finally, we note that the Petitioner has not submitted a sufficiently detailed position description for the Beneficiary. The definition of managerial capacity has two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). 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, e.g.*, *Family Inc. v. USCIS*, 469 F.3d 1313,

1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533. The record as presently constituted lacks the necessary information about the Beneficiary's daily tasks.

For example, the Petitioner indicated that as part of his responsibility for directing deployment of costing and finance projects, and maintaining previously implemented projects, the Beneficiary is expected to "develop strategic responses" to the company's operating concerns in the region, "lead the application" of solutions to these operating concerns," and "manage incident resolutions." The Petitioner did not describe the actual tasks associated with these responsibilities. On appeal, the Petitioner submits its official internal description for the position, but it includes similarly broad duties some of which are not clearly managerial, such as "collaborates with peers to provide solutions for new business requirements," and "works with the Finance function to understand business requirements and assist the technical team in designing functionalities/solutions." Additional information regarding the Beneficiary's specific day-to-day tasks would be needed to determine the nature and extent of his hands-on involvement in designing and developing the business solutions assigned to his team.

## III. CONCLUSION

Although the Petitioner did not submit sufficient evidence to establish that the Beneficiary would be employed in a managerial capacity, we find that the Director's decision did not adequately analyze the facts of the matter. As the Director did not satisfy this condition, we will remand the matter for entry of a new decision. The Director should request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period of time.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of N-R-G-O-N-A-, Inc.*, ID# 5058084 (AAO July 23, 2019)