U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32656305

Date: JUL. 25, 2024

Appeal of California Service Center Decision

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

The Petitioner, a company owning and operating a free-range chicken farm, seeks to extend the temporary employment of the Beneficiary as its chief executive officer under the L-1A nonimmigrant classification for intracompany transferees.[1] *See* 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 the record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity or that he would be employed in the United States in this same capacity. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal as the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. Since this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding the Director's other basis for denying the petition. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for a one-year period ending on June 5, 2023. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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.*

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

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 in the United States under an extended petition. The Petitioner does not claim on appeal 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).

A. Duties

To be eligible for the L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, 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 determining whether a given beneficiary's duties will be primarily managerial, we consider the Petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the 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.

The Petitioner indicated when the petition was filed in October 2023 that it had "quickly established a viable farm from ground zero" since the Beneficiary's admission into the United States in January 2023. The Petitioner submitted the following general duty description for the Beneficiary:

- Manage the U.S. Company (50%)
- Supervise, control the work of operations manager and manage essential functions of the US company (25%)
- Hire and fire all employees (10%)
- Exercise discretion oversee the day-to-day operation and function of the farm (15%)

In addition, the Petitioner listed the following tasks for the Beneficiary:

- Livestock Health Management. Currently the farm has over 40 breeder goats, 5,000 guinea fowl chicken, 1,000 free range chickens, and 1,000 quails. The task of managing livestock health requires [the Beneficiary] to develop a way to monitor health to ensure the farm facility and surrounding environment is optimal for brooding, rearing, growing, and laying conditions, while ensuring that the livestock are provided with natural feeds that offer adequate nutrition, water and clean environment.

- Environmental Management. To ensure successful livestock farm operation, [the Beneficiary] will develop proper recordkeeping that includes regular cleaning and disinfection schedule of the farm facility and surrounding areas. [The Beneficiary] will also develop a waste management plan to ensure that the farm operation meets the regulatory and environmental compliance. [The Beneficiary] will work with local farm expert and consultant to achieve this objective.

- Production Management. [The Beneficiary] will need to find ways for disease prevention and control measures that can reduce mortality and increase livestock production. Because of the objective of having an organic farm, [the Beneficiary] must develop plans to achieve the production objectives without using antibiotic or other enhancement medicine to treat the livestock.

- Finance Management. [The Beneficiary] will review the farm's financial reports and work with Operations Manager to find ways to improve efficiency of the farm operation while cutting cost. [The Beneficiary] as the top manager, has the discretion and authority to approve all spendings. [The Beneficiary] will manage all financial aspects of the business, including budgets, planning loans and taxes of the company by

analyzing financial statements, sales reports, etc. and guide the company's finances to achieve financial health for the farm.

- Business Marketing. [The Beneficiary] will work with Operations Manager to initiate the business marketing and social media for the farm…

- Human Resources and Corporate Related Policies. [The Beneficiary] will work with HR consultant to develop HR management and corporate related practices…

The Petitioner submitted a duty description for the Beneficiary and other supporting evidence leaving substantial uncertainty as to whether he would devote a majority of his time to qualifying managerial duties under an extended petition. The Beneficiary's duty description includes several apparent non-qualifying operational tasks indicating his direct involvement in the operation of the Petitioner's farm, including: "developing a way to monitor health to ensure the farm facility and surrounding environment is optimal for brooding, rearing, growing, and laying conditions;" "finding ways for disease prevention and control measures that can reduce mortality and increase livestock production;" and "overseeing *all* [emphasis added] financial aspects of the business." Similarly, the Petitioner stated that during the daily operation of the farm, the Beneficiary would be directly involved in decisions related to "animal welfare, waste management, food safety, and environmental protection," as well as "immediate resolutions or counter-measure[s] to ensure compliance [with regulations]" and "repairs or renovations of the premises…required to improve the welfare of the livestock." These duties suggest the Petitioner's direct involvement in nearly all the operational aspects of the business, and at minimum, they reflect him working alongside operational employees within the business in performing ordinary non-qualifying operational tasks.

The Beneficiary's focus on non-qualifying operational tasks is further reflected in submitted supporting documentation, including receipts showing him purchasing bushels of oats, a washer and dryer, a kennel, materials to repair a stoop, an excavator and documentation showing him selling chickens, quails, and goats. Likewise, provided evidence also reflects the Beneficiary being responsible for paying water and electric bills and includes photographs showing him transporting livestock. The Petitioner asserted that the Beneficiary would delegate a majority of these non-qualifying operational tasks to his subordinate operation manager, subordinate farm workers, and later on appeal, independent contractors. However, the Petitioner provided little supporting evidence to reflect his delegation of non-qualifying tasks to these subordinates and contractors, in contrast to the substantial documentation reflecting his performance of seemingly all the day-to-day operational tasks of the farm. Again, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside its other employees. *See Family Inc. v. USCIS*, 469 F.3d at 1313.

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 credibly document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. The Beneficiary's duties reflected on the record are largely administrative or operational, but the Petitioner does not sufficiently quantify the time he would spend on these duties as opposed to qualifying managerial tasks. For this reason,

we cannot determine whether the Beneficiary would primarily perform the duties of a manager under an approved petition. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

For instance, the Petitioner asserts that the Beneficiary would perform certain managerial-level tasks consistent with delegating policies and goals to his subordinates, such as developing proper recordkeeping, a regular cleaning and disinfection schedule, plans to achieve production objectives, business marketing and social media, as well as guiding the company's finances from a managerial level. However, the Petitioner provided little supporting evidence to substantiate his primary performance of these policy related tasks or his delegation of non-qualifying operational duties to his claimed subordinates and contractors. Although we do not expect the Petitioner to articulate and document every managerial task to be performed by the Beneficiary, it is reasonable to expect that it would provide sufficient detail and documentation to corroborate his primary performance of qualifying duties as of the date the petition was filed.

On appeal, the Petitioner asserts that there was an unnecessary delay in his entry into the country from Vietnam frustrating his ability to sufficiently launch the business as of the date the petition was filed in late October 2023.[2] Here, the initial new office petition filed on behalf of the Beneficiary was approved from June 6, 2022, through June 5, 2023. Although we acknowledge how the Beneficiary's delay entering the United States was likely difficult, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the intended U.S. operation one year within the date of approval of the petition to support a managerial position. There is no provision in the regulations allowing for an extension of this one-year period. If the business does not have the necessary staffing after one year to sufficiently relieve the Beneficiary from performing operational and administrative tasks, the Petitioner is ineligible for an extension. Further, it is also noteworthy that the Petitioner asserted its farm was sufficiently operational and staffed when the petition was filed in October 2023 and when it responded to the Director's request for evidence (RFE) in January 2024. However, when the appeal was filed in February 2024, the Petitioner provided no additional supporting evidence to substantiate the Beneficiary's primary performance of managerial duties or his delegation of non-qualifying tasks to his asserted subordinates and contractors. The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also* Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.").

Even though the Beneficiary holds a position with a managerial title within the organization, the fact that he will manage or direct the 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 some of the Petitioner's day-to-day operations and possess some requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that her actual duties would be primarily managerial in nature.

[2] The record reflects that the Beneficiary entered the United States on his initial L-1A nonimmigrant visa in January 2023.

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.

In response to the Director's request for evidence (RFE), the Petitioner submitted an organizational chart reflecting that he oversaw an operation manager, "human resources (outsource services)," and "business and marketing (outsource services)." In addition, the chart reflected that the operation manager supervised a farm manager overseeing two farm workers. At that time, the Petitioner emphasized that the Beneficiary would be primarily relieved from day-to-day operational level tasks by his subordinate operation manager and this claimed manager's subordinate operational employees.

On appeal, the Petitioner emphasizes that the Beneficiary would qualify as a function manager, overseeing, but not performing, the essential functions of the business such as livestock health, environmental, production, and finance management, among others.[3] The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. 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. The term "essential function" is not defined by statute or regulation. If a petitioner claims that a beneficiary will manage an essential function, a petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, or more specifically, identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, a petitioner's description of a beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform duties related to the function. See *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

However, as we have already discussed at length, the record includes substantial documentary evidence reflecting the Beneficiary's direct performance of nearly all the non-qualifying operational tasks of the Petitioner's farm. The Petitioner has not sufficiently demonstrated that the Beneficiary would be primarily responsible for managing a function, rather than performing it, as it is not clear who would perform the tasks of his claimed functions other than him. The Petitioner previously asserted on the record that his subordinate operation manager and other subordinates would relieve him from these tasks, but has not submitted supporting evidence to substantiate this, nor documentation to corroborate their employment beyond one internal payroll document from September 2023. For instance, the Petitioner did not provide tax documentation from the Internal Revenue Service (IRS), state quarterly wage forms, paystubs, or other similar documentation to substantiate the payment of its claimed employees. Likewise, on appeal, the Petitioner points to the

[3] We acknowledge that previously on the record the Petitioner also contended that the Beneficiary qualified as a personnel manager overseeing subordinate managers and professionals. However, the Petitioner appears to have abandoned this assertion on appeal.

Beneficiary's collaboration with an independent expert in developing livestock health management programs for the farm, asserting this reflects his primary performance of managerial tasks. But again, the Petitioner provided little supporting evidence to demonstrate its regular engagement of an independent expert or contractors, or other employees, to relieve the Beneficiary from performing the non-qualifying tasks of operating the farm, which he is exclusively reflected as performing on the record. Therefore, the Petitioner has not sufficiently established that the Beneficiary would be employed as a function manager.

Lastly, the new office extension regulation also requires that the Petitioner submit evidence of its financial status and that it has been doing business for the previous year. *See* 8 C.F.R. § 214.2(l)(14)(ii). Part 5, item 15 of the Form I-129, Petition for a Nonimmigrant Worker lists its gross annual and net annual income as "start-up," indicating that it was not earning regular income when the petition was filed. In addition, the Petitioner submitted information or evidence reflecting its income, salaries, or financial status, such as tax documentation, audited financial statements, or any other similar supporting documentation to substantiate that it is sufficiently operating to support the Beneficiary in a qualifying managerial capacity as of the date the petition was filed. The Petitioner must resolve inconsistencies and ambiguities 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).

For the foregoing reasons, the evidence reflects that the Director was correct in denying the petition as the Petitioner did not sufficiently establish that the Beneficiary would be employed in a managerial capacity in the United States.

ORDER: The appeal is dismissed.