U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-C-[redacted]

DATE: JULY 26, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a [redacted] business, seeks to temporarily employ the Beneficiary as its security manager and extend his stay 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 the Beneficiary was employed abroad in a managerial or executive capacity prior to his transfer to the United States, or that he would be employed in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner contends that the Beneficiary was employed abroad, and would be employed in the United States, in a managerial capacity and asserts that the Director failed to apply the preponderance of the evidence standard to the facts presented.

Upon *de novo* review, we will dismiss the appeal as the Petitioner did not establish that the Beneficiary was employed abroad in a managerial capacity. However, we find that the Petitioner has established that the Beneficiary would be employed in the United States in a managerial capacity and withdraw the Director's adverse determination with respect to that issue.[1]

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

[1] Specifically, the record reflects that the Beneficiary, as security manager, will have managerial responsibility for developing security policies, plans, and programs across all [redacted] and for specific [redacted] terminals; will directly and indirectly manage supervisory security personnel; will have the authority to recruit and make hiring decisions regarding [redacted] security employees; and will exercise authority over [redacted] security activities. Further, the Petitioner demonstrated that it is more likely than not that the Beneficiary will primarily perform higher-level activities consistent with the definition of managerial capacity. *See* section 101(a)(44)(A) of the Act.

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.*

II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The issue to be addressed is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity prior to his transfer to the United States in L-1A status. The Petitioner must establish that the Beneficiary worked for its foreign subsidiary in a managerial capacity for at least one year in the three years preceding the filing of the initial L-1 petition in November 2015. *See* 8 C.F.R. § 214.2(l)(3)(iii)-(iv). The Petitioner does not claim that the Beneficiary was employed abroad in an executive 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 assessing the managerial nature of an offered position, we examine a petitioner's description of the job's duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring an L-1 petitioner to submit "a detailed description of the services to be performed"). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of the 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 the Beneficiary's actual duties and role in a business.

A. Job Duties

Based on the statutory definition of managerial capacity, the Petitioner must first show that the Beneficiary performed certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). The Petitioner must also prove that the Beneficiary was *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.

As a preliminary matter, we note that there is some ambiguity in the record regarding the Beneficiary's employment history with the Petitioner's operations abroad. Initially, the Petitioner and foreign entity submitted letters stating that the Beneficiary was employed abroad in a managerial capacity as "Chief Officer Safety, New Build Operations," from March 2014 until June 2015, and that he previously held positions "with managerial responsibilities" from 2008 to 2014, during which time he served as a deputy security officer and chief security officer on [redacted] the Petitioner's [redacted] abroad. However, the Petitioner did not provide job descriptions for the earlier positions, nor did it claim that

he was eligible based on those positions. It presented the chief officer safety position as a new position that the Beneficiary assumed in 2014, and as the position that qualified him for L-1A classification in a managerial capacity.

On appeal, the Petitioner states that "[d]ue to an internal reorganization at the Petitioner as well as a clerical error, [the Beneficiary's] job title was incorrectly listed as Chief Officer Safety, it was in fact Chief Security Officer." The Petitioner asserts that the previously submitted job description was accurate, but it does not explain the "internal reorganization," nor does it explain why it previously indicated that the Beneficiary assumed a new position with new duties in 2014. Nevertheless, we note that the Petitioner previously submitted the Beneficiary's payroll summary for 2014 and 2015 which shows that his job title was "chief security officer" throughout this period.

Turning now to the Beneficiary's job duties, the Petitioner initially submitted a letter from its foreign subsidiary, noting that, from 2014 until 2015, the Beneficiary performed the following duties:

> Managed the [redacted] security operations in collaboration with the local [redacted] authorities in multiple regions of the world. [The Beneficiary] was involved in the development of security operations on [redacted] including, but not limited to analyzing security levels and threats; identification of security risks in each [redacted] ensured communication and collaboration with the local security and government agencies to ensure the [redacted]s safety.

The letter included a list of 17 duties and the percentage of time the Beneficiary allocated to each one. After reviewing the initial evidence, the Director issued a request for evidence (RFE) and instructed the Petitioner to provide more detailed information in support of its claim that the Beneficiary's duties were primarily managerial. The Director advised the Petitioner that the position description lacked specificity and noted that the Petitioner "omitted evidence that would demonstrate the managerial decisions and/or actions made by the beneficiary." In response, the Petitioner submitted a new letter that included the same duties listed in a different order:

1. Managed the security team, designated to create a safe and secure environment for the Guests, [redacted] and Visitors who [redacted]. (8%)
2. Conducted trainings to all [redacted] security and non-security and certifies them according to international standards and requirements for a new [redacted] (8%)
3. Worked closely with various vendors to ensure all deadlines were met for the testing and implementation all systems and tools. (3%)
4. Established open communication with the [redacted] and vendors on matters of security for the [redacted] and its perimeter. (8%)
5. Worked closely with heads of department on development of an effective locking plan system . . . (8%)
6. Ensured project objectives and approved scope of work and scope changes were delivered on schedule and on budget. (4%)
7. Managed the development and implementation of global security policies, standards, guidelines, and company procedures to ensure an effective security system was in place for the entire [redacted] (5%)

8. Oversaw and coordinated security efforts, including equipment orders, security team scheduling, communications, and physical installations of CCTV systems, intruder alarms and the locking systems (7%)
9. Ensuring the compliance with the Code and collaborating on all issues that would affect the operation and its stay in the (4%)
10. Planned the and equipment required for a smooth entrance and exit from the (8%)
11. Developed the preliminary ship assessment tools to identify operational needs and opportunities for future enhancements of the program and make modifications as needed. (4%)
12. Assisted in the development of the s security plan, which provided a documented procedures for the security team to follow, ensuring a safe and secure operation at the highest standard. Responsible for the planning of the surveillance system including, location of cameras, retention requirements, work stations permissions and physical installation. (6%)
13. Ensured the locking plan had integrity and kept the areas safeguarded against unauthorized access. (6%)
14. Created an early identification of vulnerable and key areas of the and developed a restricted area plan. (4%)
15. Collaborated with the executive committee to prioritize security initiatives and training based on appropriate risk assessment and the companies training programs . . . (8%)
16. Prepared the for internal and external classification audits, to ensure that all protocols were in accordance with the flag state and company procedures. (6%)
17. Compiled weekly report addressed to shore side management summarizing the projects progress and timeline updates. (6%)

In the denial decision, the Director noted that a number of the listed duties did not appear to be consistent with those typically performed by a managerial employee. Further, the Director emphasized that the Petitioner "omitted documentary evidence that would corroborate your assertions of the beneficiary's managerial decisions and/or actions," even though the RFE had specifically mentioned the lack of such supporting evidence.

On appeal, the Petitioner emphasizes that the specific duties that the Director called into question represented less than 30% of the Beneficiary's time. The Petitioner argues that, based on the lack of further discussion of job duties in the denial decision, "the Director has conceded that the preponderance of beneficiary's duties abroad, as a percentage of time, are managerial." Further, the Petitioner contends that "the Director failed to contemplate the scope of the work to be p[er]formed within the duties in question," and emphasizes that the Beneficiary was a high ranking officer whose department was responsible for the safety and security of the entire and guests.

We disagree with the Petitioner's contention that the Director, in effect, conceded that the Beneficiary's primary duties were managerial in nature. In addition to questioning whether specific listed duties were managerial, the Director also highlighted the lack of corroborating documentation submitted to establish that the Beneficiary actually carried out managerial functions, an evidentiary issue that had been specifically raised in the RFE and was not addressed in the Petitioner's response.

Further, we note that it is difficult to "contemplate the scope of the work to be performed within the duties in question" if the duties themselves are not sufficiently detailed. The Petitioner emphasizes that the Beneficiary was a high-ranking officer [redacted] its [redacted] and emphasizes his overall authority over security operations, but it is still the Petitioner's burden to provide a specific description of the actual day-to-day duties he performed. We will not accept a broad description and speculate as to what the Beneficiary actually did. Here, many of the responsibilities attributed to the Beneficiary are vaguely written and do not provide sufficient insight into whether the associated duties were managerial.

For example, without more detailed information, the Petitioner has not established that the Beneficiary's responsibilities for preparing [redacted] for internal and external audits, preparing regular reports, developing [redacted] assessment tools, coordinating [redacted] order and installation activities, planning [redacted] and associated equipment, planning surveillance systems, and communicating with vendors and [redacted] on security issues qualify as the types of higher level duties contemplated by the statutory definition of managerial capacity. Further, the Petitioner has not sufficiently described the specific day-to-day tasks associated with ensuring compliance with [redacted] code, ensuring the integrity of the [redacted]'s locking plan, "assisting" with development of the [redacted]s security plan, and preparing a restricted area plan. While these are important security functions, many of these responsibilities would likely require performance of some administrative and operational tasks. As discussed below, the record does not contain position descriptions for the positions that reported to the Beneficiary and we therefore cannot determine to what extent subordinate staff relieved him from involvement in non-managerial security functions on a day-to-day basis.

Overall, the description highlights the Beneficiary's authority over [redacted] security matters without sufficiently detailing what he was expected to do on a day-to-day basis within the context of the [redacted]'s regular operations. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros.* 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The fact that the Beneficiary led a department [redacted] the Petitioner's [redacted] does not necessarily establish his eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44) of the Act.

B. Staffing and Organizational Structure

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."[2] *Id.* If a beneficiary directly

[2] 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."

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*).

Here, the Petitioner has consistently stated that the Beneficiary qualifies for the benefit sought based on his supervision of subordinate personnel; it has not articulated a claim that he acted primarily as a function manager. However, the Petitioner has neither consistently described nor sufficiently documented the Beneficiary's subordinate staff. In its initial letter in support of the petition, the Petitioner stated that the Beneficiary managed "over 30 supervisory staff, security professionals, and technical staff," and stated that his team included three first officers, three second officers, quartermasters, and "ad hoc non security [redacted] and security staff (22)." The Petitioner summarized the duties of these positions in its letter and submitted internal position descriptions for the first officer, second officer, and quartermaster positions.

However, the Petitioner submitted a [redacted] Organization" chart showing that these are the staff who report to the position of "Chief Officer Safety," a position that the Petitioner now claims the Beneficiary never held. The same organizational chart includes a "security officer" position and shows that individuals in this role typically supervise two deputy security officers, a guest security supervisor, a security supervisor, and security guards. The record now reflects that the security officer position is the one the Beneficiary actually held during the relevant three-year period abroad.

However, the record does not contain a detailed organizational chart showing the actual staffing of the specific [redacted] on which the Beneficiary served, although it appears that the generic "[redacted] Organization" chart is meant to depict the standard structure aboard one of the Petitioner's [redacted]. More importantly, the Petitioner has not submitted position descriptions and requirements for the subordinates that were actually subordinate to the Beneficiary, specifically, the positions of deputy security officer, security supervisor, and security guards.

We cannot not evaluate the supervisory or professional nature of these positions based solely on the provided position titles. Further, without position descriptions, we cannot determine which non-managerial security functions were actually delegated to subordinate staff [redacted] the [redacted] to which the Beneficiary was assigned. Therefore, the Petitioner has not met its burden to establish that the Beneficiary qualified as a personnel manager based on his supervisory duties, nor has it supported its claim that the subordinate security staff relieved him from performing administrative and operational duties, such that he was able to engage primarily in managerial tasks. The record is simply deficient in this regard.

The Petitioner asserts that the Beneficiary was the highest ranking security officer [redacted] the [redacted] to which he was assigned and emphasized the importance of ensuring the safety and security of the [redacted] and passengers; however, the issue is not the extent of the Beneficiary's authority, but whether all relevant factors, taken together show that the Beneficiary primarily performed managerial duties. For the reasons cited above, the Petitioner has not established that the Beneficiary was employed abroad in a managerial capacity.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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 R-C-*[redacted], ID# 4527218 (AAO July 26, 2019)