U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7930505

Date: JULY 28, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology consulting service, seeks to temporarily employ the Beneficiary in the United States as a director of technology 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 Texas Service Center denied the petition, concluding that the record did not establish, as required, that: (1) it will employ the Beneficiary in the United States in a managerial or executive capacity; and (2) the Beneficiary has been employed abroad in a managerial or executive capacity.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter to the Director for further consideration and entry of a new decision.

I. LAW

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. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that the Beneficiary has been, and will be, employed in a managerial capacity. The Petitioner does not claim that the Beneficiary has been, or will be, employed 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.

To be eligible for L-1A nonimmigrant visa classification as a manager, a 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.

A beneficiary's proposed position must meet all four elements of the term's definition. If a petitioner establishes that the offered position meets all elements set forth in the statutory definition, the petitioner must then 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 the beneficiary's duties will be primarily managerial, we consider the description of the job duties, 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 the business.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we must 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.

A. Withdrawal of Director's Decision

The Petitioner initially submitted a two-page description of the Beneficiary's past duties as a software manager abroad, and a three-page description of his intended duties as a director of technology in the United States. The Petitioner further expanded on these descriptions in response to a request for evidence. In the denial notice, the Director stated: "The majority of the beneficiary's job description includes duties that could apply to any manager acting in any business or industry. The majority of the duties appear to perform the tasks of the operation." The Director does not explain or elaborate upon these findings.

An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review.

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). The Director's summary conclusion does not sufficiently explain how the detailed job descriptions are deficient.

The Petitioner asserts that the Beneficiary has been, and will be, a personnel manager. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. By statute, 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." Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*4*). If a petitioner claims that a beneficiary directly supervises other employees, those subordinate employees must be supervisory, professional, or managerial, and the beneficiary must have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Sections 101(a)(44)(A)(ii)-(iii) of the Act; 8 C.F.R. §§ 214.2(l)(1)(ii)(B)(*2*)-(*3*).

The Director stated that the Petitioner did not submit "sufficient evidence as to the beneficiary's authority to hire/fire along with the stated authorities of performance ratings, promotion, and recommended pay increases; such as email correspondence, employee evaluations, or assessments, and/or hiring documentation." The Director also found that "the petitioner has not provided sufficient evidence verifying the employment of the direct subordinates."

The Petitioner, however, had submitted the following evidence:

- Copies of payroll documents for subordinates in the United States and India;
- Email correspondence in which the Beneficiary stated "we should initiate the new hire process" to fill a vacancy; and
- Several appraisals of subordinate employees, performed by the Beneficiary.

The Director did not address these materials or discuss any specific shortcomings. Instead, the Director implied that the Petitioner had not submitted these documents at all.

For these reasons, we find that the Director did not adequately analyze the evidence submitted in support of the Petitioner's claims that he was employed abroad and would be employed in the United States, as a personnel manager. Accordingly, we withdraw the Director's decision.

B. Basis for Remand

Although we withdraw the Director's decision, the evidence of record is not sufficient to establish that the Beneficiary has been or will be employed in a managerial capacity. Accordingly, the matter will be remanded to the Director for further review and entry of a new decision.

As noted above, the Petitioner asserts that the Beneficiary has been, and will be, employed as a personnel manager. The Petitioner asserts that the Beneficiary is a personnel manager because he supervises professional employees; the Petitioner does not claim or establish that the Beneficiary did, or will, supervise managerial or supervisory employees.

The Petitioner indicates that, abroad, the Beneficiary directly supervised 18 Senior Associates and 3 leads. In the United States, he would supervise the following subordinates:

- 4 managers (1 in United States, 3 in India)
- 10 senior associates (1 in United States, 9 in India)
- 1 associate (in India)
- 2 leads (both in United States)
- 1 specialist – technology (in United States)

Some of the proposed subordinates were also the Beneficiary's subordinates abroad.

To determine whether the Beneficiary did, and will, manage 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 United States 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 submits copies of diplomas and certificates for several of the subordinates, but not for all of them. A number of the submitted certificates do not appear to represent bachelor's degrees or higher; one senior associate in India received a "Diploma in Information Technology" after taking a "three months part time course." A senior associate in the United States holds an associate degree in radiologic technology. The record does not support a finding that those subordinate positions are professional.

Furthermore, the Petitioner must show that the Beneficiary will exercise discretion over the day-to-day operations of the activity or function for which the Beneficiary had, or will have, authority. Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*4*).

Organizational charts from the Beneficiary's employment abroad as an assistant manager in 2013 and a manager in 2014 are nearly identical, and show the following hierarchy:

- Senior Director [2013] / Chief Executive Officer [2014]
- Director
- Assistant Software Manager/Software Manager (the Beneficiary)
- 21 subordinates

The prospective organizational chart for the Beneficiary's proposed position shows the following layers of authority:

- Managing Director
- Senior Director
- Director of Technology (the Beneficiary)
- 18 subordinates

The charts do not show how these organizational subdivisions fit within the overall structure of the company in the United States and India. For instance, it does not show whether other managers and assistant managers report to the named director, or whether other directors report to the senior director (in India) or managing director (in the United States).

Without knowing the full range of responsibilities of the Beneficiary's past and future superiors, the extent of the Beneficiary's discretion is in question. For instance, if the Beneficiary were the director's only direct subordinate, then it would appear that the director's primary (or only) responsibility was to oversee the organizational unit comprising the Beneficiary and his subordinates. In that case, the director, not the Beneficiary, would essentially manage that unit.

These questions are significant considering the size of the petitioning entity. The Petitioner claims 1200 employees in the United States; the submitted U.S. organizational chart shows only 21 of them. The Beneficiary's supervision of a small fraction of this staff is not self-evidently managerial.

The Petitioner has not established the extent of the Beneficiary's discretion over the day-to-day operations of the activities or functions over which the Beneficiary had, or will have, authority.

As the Director did not sufficiently address the Petitioner's claims and supporting evidence or provide notice of the evidentiary deficiencies addressed herein, the matter will be remanded for further review and entry of a new decision. At a minimum, the Director should request expanded organization charts and any other evidence deemed necessary to clarify the Beneficiary's placement within the organizational hierarchy, and evidence to establish that the Beneficiary did, and will, primarily supervise professional employees. The Director may also notify the Petitioner of additional, potential grounds of denial if supported by the record.

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