U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8935855

Date: JULY 29, 2020

Appeal of California Service Center Decision

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

The Petitioner, which operates a patent transaction database, seeks to temporarily employ the Beneficiary in the United States as its vice president of customer solutions 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 record did not establish, as required, that: (1) the petitioning entity is doing business; (2) the foreign entity is doing business; (3) the Beneficiary has been employed abroad in a capacity that is managerial, executive, or involves specialized knowledge; and (4) the Petitioner will employ the Beneficiary in the United States 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 dismiss the appeal.

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. DOING BUSINESS

A qualifying organization must be doing business as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the

alien's stay in the United States as an intracompany transferee. 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*). "Doing business" means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization.

The Director concluded that the Petitioner had not established that the petitioning U.S. entity and its foreign subsidiary are doing business. The Director acknowledged that invoices and other materials in the record show that the Petitioner and its wholly-owned foreign subsidiary engaged in income-generating business activity in 2018 and 2019. The Director determined, however, that the Petitioner had not established that this activity was regular, continuous, and systematic.

The evidence indicates that, rather than the provision of easily identifiable, short-term services to a large number of clients, the Petitioner's business operates on a model of a small number of long-term agreements, for which clients make one-time, five-figure payments. The foreign subsidiary has no outside clients; its business activity, through services invoiced monthly, is within the organization. Such internal activity qualifies as doing business under *Matter of Leacheng Int'l, Inc.*, 26 I&N Dec. 532 (AAO 2015).

The Petitioner's various submissions establish, by a preponderance of the evidence, that both entities are doing business. We therefore withdraw the Director's contrary determination.

At the same time, we note this passage in the foreign entity's 2017 annual report (and quoted in the Petitioner's appellate brief): "Within the next year, the company will likely move its business activities to the United States." This information raises questions about the foreign entity's *bona fide* intention to continue doing business in Sweden. If the foreign entity were to cease operations abroad, then the Petitioner would cease to be a qualifying organization. If the Petitioner employed any L-1 nonimmigrants at such a time, those individuals would fall out of status because a qualifying organization must be doing business in at least two countries "for the duration of the alien's stay in the United States as an intracompany transferee."

III. EMPLOYMENT IN A MANAGERIAL CAPACITY

The Petitioner claims that the Beneficiary has been, and will be, employed in a managerial capacity. The Director concluded that the Petitioner had not shown that the Beneficiary's employment abroad or his proposed employment in the United States qualify as managerial.

"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 show that a beneficiary previously worked abroad in a managerial capacity, the petitioner must show that the beneficiary performed 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 foreign position met all four of these elements, we cannot conclude that it was a qualifying managerial position.

If a petitioner establishes that the foreign position met all elements set forth in the statutory definition, the petitioner must then prove that the beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the entity's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether the beneficiary's duties were 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.

Since 2017, the foreign entity has employed the Beneficiary as its chief executive officer (CEO). Initially, the Petitioner described this position in terms relating to both a managerial and an executive capacity. On appeal, the Petitioner asserts that the position is managerial, and we will therefore only address this claim. Correspondence in the file shows that the Beneficiary has consistently referred to himself as the Petitioner's vice president of customer solutions rather than as CEO of the foreign entity. The record does not show any functional separation between the two positions.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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." 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 Petitioner initially claimed that the Beneficiary, in his position abroad, is both a function manager and a personnel manager. The Director determined that the Petitioner had not shown that the Beneficiary meets the requirements of either type of manager. On appeal, the Petitioner maintains that the Beneficiary is a personnel manager, and does not directly dispute the determination that the Beneficiary is not a function manager. Therefore, we consider the function manager claim to be abandoned.[1]

To determine whether the Beneficiary managed professional employees, we must evaluate whether the subordinate positions required 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

[1] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

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." Employing an individual who holds a baccalaureate degree does not establish that the position is professional; the position must *require* such a degree.[2]

The Petitioner asserts that the Beneficiary's only direct subordinate, the manager of broker relations and data, is a professional. As the Director noted in a request for evidence, the employee in question did not hold that position until June 10, 2019, one day before the petition's filing date. The Beneficiary must have served in a managerial capacity abroad for at least one year prior to the filing date, but the Petitioner's claims involve an organizational structure that did not exist for most of that year.

Because the foreign entity did not employ a manager of broker relations and data until one day before the filing date, the Beneficiary's authority over that position cannot establish the required year of managerial experience. Instead, the Petitioner must show that the Beneficiary's position was already managerial even in the absence of a manager of broker relations and data.

Before June 2019, the Beneficiary's only subordinate employee was an intellectual property/business analyst. The Petitioner has not provided sufficient information about the duties of that position, or the minimum educational requirements to qualify for it. The Petitioner does not establish that the subordinate employee performed the same duties before June 2019. (The Petitioner acknowledges that the employee received a "promotion," rather than simply a change of title.) Before June 2019, the employee was apparently working part time (as indicated by pay receipts and email communications in the record) while working on her master's degree and holding other jobs.[3]

Email messages from the then-IP/business analyst address compiling contact information for possible business leads; updates to the company's website; and preliminary discussions about a pricing chart. The Petitioner has not shown these tasks to be professional-level duties. (The employee held a bachelor's degree at the time, but this does not establish that the position required such a degree.)

The Petitioner asserts that, in addition to the Beneficiary's authority over his subordinate employee at the foreign entity, "the Beneficiary will be supervising the sales activities carried out by the CEO, COO, and Director of Analytics" at the petitioning U.S. entity. This does not establish that the Beneficiary will supervise and control their work; the CEO outranks the Beneficiary.[4]

We further note the Petitioner's claim that the Beneficiary devotes 40% of his time to responsibilities relating to sales and marketing. The record does not support this estimate; it portrays a low-volume

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[2] *See Matter of Shin*, 11 I&N Dec. 686, 688 (D.D. 1966).

[3] The subordinate employee's résumé and LinkedIn profile, both in the record, refer to additional, ongoing employment as a passenger traffic coordinator and conductor with a railroad company, and as a connector and consultant with a venture capital company. This concurrent employment presumably made additional demands on her time in 2018-2019.

[4] The delegation of sales duties to the company's highest-ranking employees raises further questions about the entity's organizational structure. At the time of filing, the U.S. entity had six employees, and already considered the Beneficiary to be its vice president. Four of these seven people hold executive, managerial, or directorial titles. It is not readily apparent that the organization warrants such a top-heavy structure.

business, with a small number of clients who each pay large fees to the U.S. company. The Petitioner issued five invoices between November 2017 and September 2018; an internal discussion of "2019 Growth Opportunities" included income projections based on 20 clients. Furthermore, there is no dedicated sales or marketing staff; those functions are instead diffused throughout the organization. As noted above, even the organization's CEO is said to perform, not oversee, sales duties.

For the above reasons, the Petitioner has not established that the Beneficiary supervised and controlled the work of professional employees for at least one year prior to the filing date.

The Director also concluded that the Petitioner has not shown that the Beneficiary will work in a managerial capacity in the United States. Detailed discussion of this issue cannot change the outcome of this appeal, because we have already determined that the Petitioner has not shown that the Beneficiary worked in a qualifying managerial capacity abroad. Therefore, we reserve the remaining issue.[5]

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[5] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).