U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-T- INC.

DATE: JUNE 7, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a chemical trading company specializing in flavor and fragrance ingredients, seeks to continue the Beneficiary's temporary employment as its general manager under the L-1A nonimmigrant classification for intracompany transferees. *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 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 submits additional evidence and asserts that the Director did not consider the reasonable needs of the petitioning organization as a whole, mischaracterized the nature of the company, and placed undue emphasis on the Petitioner's U.S. staffing levels, leading to an erroneous conclusion regarding the Beneficiary's employment capacity.

Upon *de novo* review, we will dismiss the appeal.

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.*

II. DEFINITIONS

"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.

The term "executive capacity" is defined as an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

Based on the definitions of managerial and executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive 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 at 1533.

III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The sole issue to be addressed is whether the Petitioner established that it will employ the Beneficiary in a managerial or executive capacity under the extended petition.

When examining the managerial or executive capacity of a given beneficiary, we will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a 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. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

The Petitioner states that it operates as a "global procurement division" for its overseas affiliate, which imports and sells flavor and fragrance chemical ingredients to Chinese customers. At the time of filing, it submitted the following description of the Beneficiary's duties as general manager:

> 20% Engagement Management:
> Oversee daily operations, project planning, and special events, working closely with each program coordinator. Manage client engagements during pre-sales and post-sales closing. Monitor and track gross profitability of all

accounts in his portfolio. Communicate with the sales personnel, legal counsel, delivery teams and finance. Review all project proposals, contracts, statement of works and any other agreements related to clients. . . .

30% Hiring/Training:
Personnel management (recruitment, hiring, training, evaluation and termination of staff). Create hiring plans to fill needs. . . . [M]entor manager as well as teams' individual performance by ensuring successful execution of organization management techniques and career planning techniques. Simultaneously review and analyze process performance reports against targets . . . . Conduct regular performance assessments.

30% New Business Development:
Build relationships with new clients in order to develop more business and enhance the sales pipeline. Develop and execute marketing strategy plans with the assistance of the Manager.

20% Administration:
Together with the manager, will develop and manage the annual budget . . . . Review cost structure of the team on a regular basis and take decision on team structure to meet account profit targets. Financial reviews of direct costs, travel and logistics planning. Effectively communicating business statistics and progress to board members.

The Director found this description insufficient to establish that the Beneficiary would be performing primarily managerial or executive duties and requested additional information regarding the nature of the Beneficiary's day-to-day tasks. We agree with this assessment of the position description, as it contained several deficiencies.

First, most of the Beneficiary's "engagement management" responsibilities appeared to be inconsistent with the nature of the Petitioner's organization. Based on the evidence provided, the Petitioner does not engage in projects, special events, or client engagements, does not provide any service that would require a "statement of work," and does not employ the "program coordinators" or "delivery teams" referenced in the job description. Further, the Petitioner later stated that it does not have sales personnel or engage in sales and marketing activities, which raises questions regarding the Beneficiary's stated pre-sales and post-sales activities and communications with sales personnel. As a result, the duties attributed to the Beneficiary under this area of responsibility did not appear to reflect his actual day-to-day duties as general manager of a procurement company.

The Beneficiary's responsibility for "new business development," reflects his direct involvement in non-managerial sales and marketing activities, and is also inconsistent with the Petitioner's later claim that the U.S. company is not engaged in sales or marketing. In addition, the Petitioner indicated that the Beneficiary spends part of his "administration" time communicating with board

members, but the Beneficiary is the sole owner of the company and the record does not indicate that the Petitioner has a board of directors.

In response to the Director's request for evidence (RFE), the Petitioner submitted a statement from the Beneficiary, who maintained that he divides his time between the same four broad areas of responsibility. However, the Beneficiary did not further clarify what specific tasks make up his responsibility for "engagement management," or explain the incongruous duties that appeared in the initial description. Rather, he generally stated that he manages the Petitioner's New Jersey office, Arizona office, United Kingdom office, and "finance/accounting unit," noting that all offices are "participating in procurement initiatives, finalizing procurement activities, and completing transportation orders through . . . outside vendors/service contractors."

The Beneficiary indicated that he manages "the three units through establishing goals and polices for each sub-unit to follow," and stated that each office manager reports to him on a daily basis and seeks his approval regarding all procurement activity initiated. However, this statement did not provide sufficient detail regarding what the Beneficiary does on a day-to-day basis with respect to the company's procurement activities. In addition, the Beneficiary is the sole employee at the New Jersey office, which it initially described as the company's "East Coast branch," and has not shown how he would manage, rather than perform, procurement activities conducted from that location.

The Beneficiary's statement in response to the RFE also did not further elaborate upon his "hiring/training" duties. While we do not doubt that he has the authority to hire and train staff, the record shows that he has hired no more than one or two employees since he was granted L-1A status in 2015, and the record does not establish that he would be hiring or training staff under the extended petition or how he would spend 30% of his time on this area of responsibility.

The Beneficiary went on to state that his responsibility for "new business development," requiring an additional 30% of his time, includes "building relationships with new business partners in the international market for [the Petitioner] to source and purchase higher quality and new kinds of raw chemistry materials/elements for our Chinese parent company." However, it is not clear how this responsibility differs from that of his two subordinates who also source and purchase materials for export to the parent company, or how it qualifies as a managerial or executive duty. The Beneficiary provided examples of new supplier relationships secured in 2017, but also stated that he "personally participated in the critical stage of sourcing new business partner and product samples." While the Petitioner has provided evidence that the Beneficiary had two subordinates to assist him with procurement, the record does not establish that they would sufficiently relieve him from non-managerial duties associated with the company's business development and procurement activities.

Overall, the position description submitted in response to the RFE did not sufficiently detail the specific tasks the Beneficiary would perform as part of his regular daily routine. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial or executive in nature.

B. Staffing and Organizational Structure

If staffing levels are used as a factor in determining whether an individual will be acting in a managerial or executive 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.

The Petitioner has provided inconsistent information regarding its staffing and organizational structure. At the time of filing in August 2017, the Petitioner stated that it employs three people and has offices in California, Arizona, and New Jersey. It provided evidence related to all three locations, including photographs of its California location. On the Form I-129 signed by the Beneficiary, the Petitioner used a California mailing address and stated that the Beneficiary "will divide his time and effort between the 3 [company] locations."

The organizational chart that accompanied the petition identified the Beneficiary as general manager with a subordinate manager a logistic manager (open position), and a marketing and sales manager reporting to him. The chart also showed three vacancies for "assistant" positions under the manager, two vacant "distribution rep" positions under the logistics manager, and three open "account manager" positions under the marketing and sales manager, for a total of 12 positions. The Petitioner provided evidence of wages paid to in 2015 and an offer letter issued to for the position of sales manager with a start date of March 2016. Based on the evidence submitted, the Beneficiary resides in New Jersey, in Arizona, and in California.

In the RFE, the Director requested additional detailed evidence regarding the Petitioner's organizational structure and subordinate staff. In response, the Petitioner stated that the inclusion of the California address on the Form I-129 was "an administrative error made by the petitioner's prior attorney/representative." The Petitioner indicated that its California office closed three months after opening in 2016 due to the loss of business with two major suppliers.

However, the Petitioner's initial filing was presented as self-prepared with no acknowledged attorney or representative. Further, the Petitioner expressly stated on the Form I-129 that it had a West Coast branch, indicated that the Beneficiary would spend some of his time and effort there, provided a lease agreement with photographs of the location, and submitted an organizational chart identifying a sales manager based in California. It did not simply indicate an erroneous mailing

address on the Form I-129. The Petitioner has not adequately explained why it claimed to have an office in California if such office had closed a year before the date of filing.

In addition, the Petitioner claimed in response to the RFE that it had opened a United Kingdom branch office in July 2017. The Petitioner did not explain why it did not mention or provide evidence related to the U.K. office when it filed this petition in August 2017. It is reasonable to expect the Petitioner to be able to accurately identify the location of its offices and employees at any given time. As a result of these changes, the organizational chart submitted in response to the RFE bore little resemblance to that provided at the time of filing.

The revised organizational chart (dated October 2017), indicated that the Beneficiary oversees (Manager/EU), (Manager/USA), and a contracted CPA who is the sole member of the "finance/accounting department." The new chart did not include a sales/marketing department and the previously identified manager of that department. Instead the Petitioner stated that it "does **not** have [a] sales and marketing department" or any need for one. The proposed logistics department was also absent from the new chart. Rather, the Petitioner indicated that the two managers are responsible for "sourcing, purchasing, marketing, and logistics." The chart shows that each manager oversees or works with two to three vendors/third-party companies responsible for warehousing, labeling, packing/repacking, shipping, and custom clearance activities.

The Petitioner provided evidence that it has paid wages to since 2014 and established that she is the only employee of the Arizona office.[1] The Petitioner also submitted an employment agreement for of in the United Kingdom. Under the stated terms, the Petitioner agreed to pay him $20,000 per quarter to source and purchase raw materials in Europe, obtain market intelligence about products in the flavor and fragrance industry, and to perform "other duties" as assigned. The Petitioner provided evidence that it paid invoices issued by company in 2016 and 2017 for the purchase of chemical ingredients, as well as evidence of one wire transfer made directly to in October 2017.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 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. 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] Section 101(a)(44)(A)(iv) of the Act. If a beneficiary directly supervises other

[1] The Petitioner explained that receives half of her salary from a related U.S. company called which the Petitioner states is engaged in repackaging purchased products prior to export. The submitted evidence indicates that she is the sole employee of

[2] In evaluating 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*

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*).

Both of the Beneficiary's subordinates have managerial job titles, but they appear to be primarily responsible for sourcing and purchasing chemical ingredients and arranging for warehousing, packing, and shipment of these ingredients through third-party companies, rather than performing managerial or supervisory duties. The Beneficiary's statement in response to the RFE indicated that he approves procurement activities initiated by his subordinates, which further supports a finding that the subordinate employees are not acting as managers. Further, there is some confusion regarding duties, as the evidence indicates that she is the sole employee of a second, related company that engages in repackaging products. The Petitioner also provided business licenses for its Arizona location showing that it engages in retail sales. job description does not include duties related to retail or repackaging activities.

The Petitioner also indicates that both subordinate employees have obtained at least a bachelor's degree and qualify as professional employees. Specifically, has a Ph.D. in physics and has a bachelor's degree in political science. We focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an individual is employed in a professional capacity. The Petitioner did not sufficiently explain how the purchase of chemical ingredients and arrangement of shipping of these agreements with third parties requires an employee with a bachelor's degree. In fact, the initial evidence indicated that the foreign entity's procurement specialist, who performs similar duties in China, and the foreign entity's, vice general manager, who is claimed to oversee the procurement activities in China, both have a "middle school" education.

Finally, even if the Petitioner established that the Beneficiary supervises managerial or professional subordinates, for the reasons discussed, it has not consistently described his job duties and has not clearly established how much of his time would be spent on supervisory duties. For these reasons, the Petitioner has not established that the Beneficiary would be employed primarily as a personnel manager.

The Petitioner's primary claim on appeal is that the Director overlooked the fact that the U.S. company performs the essential function of global procurement for its overseas affiliate. The Petitioner asserts that the Director erred by not acknowledging this role within the broader qualifying organization or the duties performed by the foreign entity's employees.

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. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in

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shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G-Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

Here, although we agree that procurement is an essential function of the petitioning company and the broader organization, the Petitioner has not demonstrated that the Beneficiary primarily manages this function or that the subordinate staff sufficiently relieve him from significant involvement in its day-to-day activities. The Petitioner indicates that it has two employees and two offices in the United States, with the Beneficiary in its New Jersey office and a manager in its Arizona office. The Petitioner has provided evidence that the Arizona-based manager is engaged in procurement activities, but it appears that she is also responsible for a repackaging business with no other employees, and possibly a retail business. The record does not support the Petitioner's claim that this single employee relieves the Beneficiary from performing the procurement function in the United States. Likewise, the Beneficiary has described his involvement in securing new suppliers outside the United States, and the record does not show that the U.K.-based employee singlehandedly performs all international procurement activities.

Further, the Beneficiary is the sole employee of the Petitioner's "East Coast office," which appears to rent office space at the location of a warehouse or shipping company called in New Jersey. The Petitioner stated that all of its offices are "participating in procurement initiatives, finalizing procurement activities, and completing transportation orders through . . . outside vendors/service contractors." Further, the Beneficiary's job description indicates that he personally participates in sourcing new business partners. The Petitioner has not provided any additional description of what its New Jersey office does if it is not engaged in procurement activities and arrangement of shipments from its location.

In sum, the Petitioner's claim that one U.S. employee, one U.K. employee, a contracted accountant, and several outsourced service providers are able to relieve the Beneficiary from performing non-managerial duties associated with the global procurement function performed by the U.S. company is not adequately supported by the record.

While performing non-qualifying tasks will not automatically disqualify a beneficiary as long as those tasks are not the majority of a beneficiary's duties, a petitioner still has the burden of establishing that a beneficiary will "primarily" perform managerial or executive duties. *See* section 101(a)(44) of the Act. Whether a beneficiary is "function" manager turns in part on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See Matter of Z-A-*, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016). Here, because of the overly broad description of the Beneficiary's duties, the Petitioner did not adequately document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-managerial. Absent a clear and credible breakdown of the time spent by the Beneficiary performing specific tasks, we cannot determine what proportion of the duties would be managerial,

nor whether the Beneficiary is primarily performing the duties of a function manager. *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The Petitioner cites to *Matter of Z-A-* and asserts that the Director erred by focusing on the size of the Beneficiary's subordinate staff and the small size of the U.S. company. The Petitioner also claims that, pursuant to *Matter of Z-A-*, the Director was required to consider evidence of personnel employed by another related entity within the qualifying organization who perform day-to-day non-managerial tasks for the petitioning entity.

Here, unlike the Petitioner in *Matter of Z-A-*, the Petitioner did not present evidence that its foreign affiliate's personnel perform any day-to-day tasks for the petitioning entity. Rather, the Petitioner has characterized the U.S. company as one which performs the procurement and purchasing function for the foreign entity. Therefore, while the Petitioner submitted an organizational chart for the foreign entity, the Director's decision did not erroneously exclude the foreign entity's employees from its analysis of the Beneficiary's U.S. position. The foreign employees were not mentioned in the Beneficiary's own job description and the Petitioner did not place any emphasis on the roles of the foreign employees prior to the appeal.

The Beneficiary may continue to supervise the foreign staff in his role as general manager of the Chinese company, but the Petitioner must still establish that the duties he performs on a day-to-day basis within the scope of the U.S. company's day-to-day operations are primarily managerial. His continuing general oversight of the foreign affiliate's activities does not support the Petitioner's claim that the Beneficiary qualifies as a function manager. Further, it remains unclear how much time he spends overseeing the foreign entity's activities since such duties were not included in his job description.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and they must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee.

Although the Petitioner has at times described the Beneficiary's duties as "executive or managerial," the submitted job descriptions do not indicate he would be primarily focused on the company's broad policies and goals. Further, the supporting evidence, which was initially marked by unexplained inconsistencies regarding the location of the Petitioner's offices and employees, as well as job duties for the Beneficiary that are not credible in light of the nature of the business, is not sufficient to show how the two claimed employees would sufficiently relieve the Beneficiary from

involvement in the global procurement function undertaken by the company. Therefore, the record does not establish that the Beneficiary would be employed in an executive capacity.

IV. CONCLUSION

The Petitioner has not established that it would employ the Beneficiary in a managerial or executive capacity under the extended petition.

ORDER: The appeal is dismissed.

Cite as *Matter of G-T- Inc.*, ID# 1288507 (AAO June 7, 2018)