U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-B- INC.

DATE: JUN. 12, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an importer and exporter of medical supplies, seeks to temporarily employ the Beneficiary as its general manager 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 revoked a petition approved on behalf of the Beneficiary concluding that the Petitioner did not establish that he was employed in a managerial or executive capacity.

On appeal, the Petitioner contends that the Beneficiary acted in a managerial capacity supervising subordinate managers and professionals. The Petitioner also emphasizes that its operations were supported by foreign entity employees. Further, the Petitioner points to its previously approved petitions and asserts that the Director revoked the current petition in error.

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.* 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).

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of

intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).[1]

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner has established that the Beneficiary was employed in a managerial capacity as of the date of the Director's NOIR. The Petitioner does not claim that the Beneficiary was employed in an executive capacity. Therefore, we will restrict our analysis to whether the Beneficiary was 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 performed by the beneficiary and indicate whether such duties are in a managerial capacity. *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

Based on the 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). Second, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the

[1] An L-1A nonimmigrant intracompany transferee petition filed on behalf of the Beneficiary was approved on March 31, 2017, for the period June 30, 2017, to June 29, 2019. The Director later revoked this approved petition on November 8, 2017, following the issuance of a notice of intent to revoke (NOIR) in September 2017. The Director concluded that the Beneficiary was no longer eligible for the nonimmigrant classification. *See* 8 C.F.R§ 214.2(l)(9)(iii)(2).

Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner stated that it was established in 2015 to "further expand, develop and market [the foreign parent company's] biotechnology products in North America." The Petitioner indicated that the Beneficiary, as general manager, spent 20% of his time determining "the qualifications of managerial personnel and recruit[ing] them," assigning them specific duties, and overseeing their performance. The Petitioner emphasized that the Beneficiary had final authority as to the hiring and firing of his managerial subordinates and pointed to his recruitment and appointment of a sales representative, an import/export manager, and an administrative manager. Further, it explained that the Beneficiary devoted 2% of his time to "strategiz[ing] the vision and long-term plan" and establishing the "business goals" and "policies and procedures" of the Petitioner, including determining the "best cooperation model for different projects and departments." It also indicated that his duties involved "setting guidelines to select the appropriate distributors," as well as approving their sales territories and making physical visits to their worksites to evaluate their performance.

In addition, the Petitioner stated that the Beneficiary was responsible 10% of the time for conducting in-person meetings with his department managers, including reviewing their activity reports, determining progress on projects, revising strategies and plans, and providing guidelines and instructions to his subordinate managers. It further indicated that the Beneficiary spent 6% of his time ensuring the achievement of business goals, detailing financial plans, allocating operating budgets, determining the funding for new and continuing operations, and monitoring the progress of ongoing projects. It also explained that the Beneficiary devoted 2% of his time to "exploring and seeking new business opportunities and establishing business relationship[s]" and another 10% reporting to the board of directors on a quarterly basis.[2] The Petitioner did not provide any further detail regarding the Beneficiary's asserted managerial duties in response to the Director's NOIR.

The Petitioner has not submitted a sufficiently detailed duty description that describes the Beneficiary's day-to-day managerial-level duties or that credibly establishes he devoted his time primarily to qualifying tasks. Specifics are clearly an important indication of whether a beneficiary's duties are primarily 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 Beneficiary's duty description includes several generic duties that could apply to any manager acting in any business or industry and they do not provide insight into the actual nature of his role. The Petitioner provided insufficient examples and little supporting documentation to demonstrate the Beneficiary's performance of qualifying duties, such as specific duties he assigned to his subordinate managers, vision or long-

[2] We note that the Petitioner's percentage breakdown of the Beneficiary's duties amounts to only 50%; however, it states elsewhere on the record that he devotes half of his time in the United States continuing to act as the general manager of the foreign entity.

term goals he set, or policies, procedures, or business goals he established.[3] Further, the Petitioner does not articulate or substantiate projects the Beneficiary oversaw, distributor guidelines he put in place, sales territories he approved, distributor worksites he visited, or financial plans he set. This lack of detail and documentation is particularly noteworthy since the Beneficiary asserts that he has worked as general manager of the Petitioner since June 2015, over two years prior to the date of the Director's NOIR.

Further, the Petitioner also provided duties for the Beneficiary that are not credible in light of its stated operations. For instance, the Petitioner stated that the Beneficiary devoted 10% of his time reporting to the company's board of directors; however, its minutes reflect that he was the only member of the board and its designated president, secretary, and treasurer. As such, it appears that the Petitioner asserts the Beneficiary spent 10% of his time reporting to himself. Likewise, the Beneficiary's duties mention "several major independent distributors" who market the Petitioner's goods and his visits to their worksites to "direct, oversee, review and evaluate" them. The Petitioner also includes these distributors in its organizational chart. However, these distributors are not specifically identified and there is little evidence indicating that the Beneficiary regularly visited their worksites to perform inspections, or that he "approves their sales territories."

To the extent that the Petitioner submits evidence reflecting the Beneficiary's activities, it is indicative of his performance of non-qualifying operational level tasks. For instance, the Petitioner provided invoices, packing lists, order forms, and shipping confirmations dated as recent as August 2017 including the Beneficiary as a contact. The Petitioner also submitted documentation reflecting the sale of goods through [redacted] which include an email contact matching the Beneficiary's email address listed in invoice and shipping documentation. To illustrate, the Petitioner provided an [redacted] shipment document dated in November 2017, approximately eight months after it filed the petition, listing the Beneficiary as the shipper. In contrast, the Petitioner submitted no documentation reflecting the Beneficiary's delegation of these operational tasks to subordinates or indicating that his asserted subordinates performed these non-qualifying duties. Furthermore, the Petitioner stated that a key duty of the Beneficiary is conducting site visits with distributors to review and evaluate their performance directly, rather than delegating this apparent operational task to subordinates. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial capacity. *See, e.g.*,

[3] The Petitioner asserts on appeal that the Beneficiary qualified as a personnel manager based on his supervision of subordinate managers, supervisors, and professionals. *See* section 101(a)(44)(A)(i) and (ii) of the Act. However, many of his duties indicate that he acted in an executive capacity, focusing on the broad goals and policies of the organization rather than the supervision of subordinate managers and professionals. *See* Section 101(a)(44)(B) of the Act. This logical inconsistency leaves further question as to the Beneficiary's asserted duties. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary is primarily employed in either a managerial or executive capacity.

sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The Petitioner also did not document what proportion of the Beneficiary's duties were managerial functions and what proportion was non-qualifying. As noted, the Petitioner submits evidence indicating the Beneficiary's involvement in administrative or operational tasks, but does not quantify the time he devoted to these duties. This lack of documentation is important because several of the Beneficiary's documented tasks do not fall directly under managerial duties as defined in the statute. For this reason, we cannot determine whether the Beneficiary was primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary holds a senior position within the organization, the fact that he manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in an 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. Sections 101(A)(44)(A) of the Act. 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; however, the job description alone is insufficient to establish that his actual duties were primarily managerial in nature.

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 support of the petition in March 2017, the Petitioner submitted an organizational chart indicating that the Beneficiary supervised a marketing manager, an import/export team manager, and an administration manager. Further, the marketing manager was shown to supervise a sales representative overseeing "independent distributors" on the "east" and "west" coasts, as well as distributors in southern California, Canada, and South America. The chart also reflected that the import/export manager supervised three import/export specialists. The Petitioner indicated that the import/export specialists were employees of the foreign employer located and paid abroad. Lastly, the chart showed that the administration manager supervised an outsourced attorney and certified public accountant (CPA).

In a response letter to the NOIR in September 2017, the Petitioner set forth similar subordinates to the Beneficiary; however a list of its employees indicated that it had new marketing and import/export managers and an additional sales representative on staff. In addition, the provided list of employees showed that all of its import/export specialists located abroad had been "terminated."

The Petitioner contends that the Beneficiary qualified as a personnel manager based on his supervision of subordinate supervisors and managers. 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." Section 101(a)(44)(A)(iv) of the Act. If a beneficiary directly 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*).

The submitted evidence is not sufficient to demonstrate that the Petitioner supervised managerial or professional subordinates as of the date of the NOIR. First, the Petitioner submitted vague duties for the Beneficiary's claimed subordinates which do not credibly demonstrate that they acted as subordinate managers. For instance, the Petitioner stated that the marketing manager is tasked with determining the demand of products and services, developing pricing strategies, overseeing product development, establishing distribution and sales networks, and determining annual unit and gross-profit plans by implementing marketing strategies. However, these generic duties do not detail the pricing strategies he put in place, the product development he oversaw, or the distribution and sales networks or marketing strategies he was responsible for.

In fact, the duties of the marketing manager appear to discuss his oversight of a much larger sales organization than reflected in the Petitioner's submitted organizational charts, noting his implementation of "national sales programs" and "field sales action plans," the completion of "national sales operational requirements," and the maintenance of national sale staff. However, the organizational chart indicated that the marketing manager only supervised two sales representatives, including one who was not added to the company until just prior to the Petitioner's response to the NOIR. Further, there is little documentation supporting that the Petitioner had national and local sales initiatives in place for the asserted marketing manager to oversee, or that they managed distributors all across the United States, Canada, and South America. In fact, the Petitioner's 2017 finances reflect that it spent only a little less than $4,000 on marketing expenses during that year. Therefore, in sum, the claimed duties of the marketing manager are not credible in light of the Petitioner's operations reflected in the supporting documentation.

In addition, the Petitioner's organizational chart reflected that the Beneficiary oversaw an import/export manager, who as of the filing of the petition, was shown to supervise three foreign employer import/export specialists. However, the Petitioner indicated in response to the NOIR in September 2017 that all of its foreign based import/export specialists had been terminated, two in March 2017 and the other in August 2017. As such, it is not clear how the import/export manager acted as a manager as of the date of the NOIR without any subordinates. The termination of these employees also raises question as to who performs their tasks, such as planning and coordinating the shipment of goods. In fact, as we have discussed, the Petitioner provided evidence reflecting the Beneficiary's involvement in these matters, and there is little indication that as of the date of the NOIR that he was being relieved of these duties by managerial or operational subordinates.

Likewise, the duties of the import/export manager are also vague, noting that he was responsible for negotiating contracts for sales, and purchases, managing and maintaining effective and lawful insurance provisions, maintaining an effective and expert driven import and export team, and closely monitoring import and export performance. However, this duty description includes no credible examples to substantiate these activities, such as contracts he negotiated or daily tasks he performed; indeed it references his management of an "import and export" team that did not exist as of the date of the NOIR.

Furthermore, the Petitioner indicated that the Beneficiary also supervised an administration manager who oversaw an outsourced attorney and a CPA. However, the Petitioner submitted little supporting documentation to substantiate that it regularly engaged an attorney and CPA such that they could be considered part of the company's organizational structure and subordinates to the administration manager. In addition, the duties provided for the asserted administration manager are also generic, noting that he or she was responsible for coordinating and directing "the support services," "overall work performance," providing "document and communication management," and "training and development for administrative staff." First, the administration manager's duties do not mention his or her supervision of a subordinate attorney and CPA. The duties also provided no specifics or actual day-to-day duties that make up the referenced "support services," "work performance," or "document and communication management." In fact, the duties of the administration manager stated that he or she was tasked with training and developing administrative staff; however, the Petitioner was not shown to have any administrative staff. The Petitioner must resolve inconsistencies 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).

In sum, the Petitioner has not submitted sufficient documentary evidence, including adequately detailed duty descriptions for the Beneficiary's claimed managerial subordinates, to establish that he oversaw subordinate managers or supervisors. The Petitioner's organizational chart did not appear to include sufficient operational employees to perform the duties of its import and export business; for instance, employees devoted to processing and shipping orders and navigating customs. In fact, the Petitioner submits substantial evidence indicating that the Beneficiary was performing these tasks and it submits evidence indicating that the three foreign employees previously devoted to these tasks are no longer employed.

In addition, the Petitioner did not demonstrate that the Beneficiary oversaw subordinate professionals. The Petitioner does not explain why the Beneficiary's subordinates should be considered professionals or submit evidence to demonstrate that his subordinates hold bachelor's degrees. Further, the submitted duties of the Beneficiary's subordinates are not indicative of professional level positions requiring a specific bachelor's degree.[4] Therefore, the Petitioner has not

[4] 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

demonstrated that the Beneficiary acted as a personnel manager based on his supervision of subordinate professionals.

Lastly, on appeal, the Petitioner emphasizes that the Beneficiary was previously approved as an intracompany transferee on three different occasions, including the current revoked petition at issue. However, if the previous nonimmigrant petitions were approved based on the same evidence contained in the current record, these approvals would constitute errors on the part of the Director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *Church Scientology Int'l*, 19 I&N at 597. For the reasons discussed above, we conclude that the Director properly revoked the previously approved petition, as the Petitioner did not establish that the Beneficiary acted in a managerial capacity. For this reason, the appeal will be dismissed.

III. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that the Beneficiary was employed in a managerial capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of R-B- Inc.*, ID# 1241168 (AAO Jun. 12, 2018)

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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."