U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF O-I-, INC.

DATE: JUNE 14, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner describes itself as an electronic trader and shipper of cell phone accessories. It seeks to continue the Beneficiary's employment as its "Chief Executive Officer" 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 the Beneficiary would be employed in a managerial or executive capacity under an extended petition.

On appeal, the Petitioner contends that the Director misconstrued the Beneficiary's duties and asserts that he would primarily act as a function manager under an extended petition.

Upon de novo review, we find that the Petitioner has not overcome the basis for denial. Therefore, 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 managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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.*

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and

evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue we will address is whether the Petitioner established that the Beneficiary would act in a managerial capacity under an extended petition. The Petitioner does not claim that the Beneficiary will be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary will be 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 to be 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 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 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.

The Petitioner stated that it was engaged in business activities similar to that of its foreign parent; specifically, "engaging in the e-trading of…mobile phones and computer accessories and parts through several online platforms." In support of the petition and in response to the Director's request for evidence (RFE), the Petitioner submitted largely similar duty descriptions specific to the Beneficiary's first year and the extended petition. The Petitioner indicated that the Beneficiary devoted his time to some of the following duties during the first year, among others:

- set up two departments, an administration and logistic and warehouse department and hired three staff members,
- made increases to staff salaries,
- exercised the authority to hire, terminate, promote, or demote staff,
- supervised staff of the two departments and controlled and coordinated them,
- signed all pay checks,
- set up the logistics system and monitored its operation by staff,
- coordinated with carriers such as DHL,
- personally signed up the shipping delivery software system provided by [redacted],
- coordinated with the parent company on marketing analysis and financial control,
- decided which cell phones were suitable to the US market and provided this information or directly ordered from the parent company in China,
- coordinated with the parent company to fulfill orders from the U.S.,
- monitored the operation of the parent company to make sure that U.S. customer's orders were timely made,
- conveyed U.S. customer concerns, opinions, and complaints to the parent company, and
- controlled the budget and decided on sales goals.

In addition, the Petitioner provided a description of duties that the Beneficiary would perform under the extended petition, including the following tasks and responsibilities:

- continue to manage each department and make sure that the orders for the cell phone accessories from our foreign parent can be handled timely and correctly,
- manage the flows and logistics to run smoothly by the staff,
- monitor the staff to operate the domestic issues of the operation of the company such as delivery, postage, customer's complaints, returns, staff performance or absence, and product pricing.
- make decisions on the increase of salary for our staff,
- set up a sales and marketing department,
- hire a supervisor or assistant manager in each department,
- continue to perform functional duties, including marketing and investment analysis, implement financial controls and goals, and set up a better sales and logistics system for the foreign parent,
- develop and set up more suitable and competitive sales and marketing strategies in the U.S. market,
- make the decision as to when to communicate with the foreign parent about logistics and sales strategies,
- represent the company, meet clients, and sign contracts, and
- control the budget and develop a financial plan for the coming three to five years.

The duty descriptions submitted by the Petitioner do not sufficiently establish that the Beneficiary would devote his time primarily to qualifying managerial tasks. The descriptions include several generic duties that could apply to any manager acting in any industry and they provide little insight

into his actual day-to-day managerial tasks. For instance, the Petitioner did not detail or document the major company operations issues the Beneficiary decided on, marketing or investment analysis he conducted, financial controls or goals he set, or sales logistics systems he established. In addition, the Petitioner did not describe or document sales marketing strategies the Beneficiary set up, clients he met with, or contracts he signed, beyond one lease and a subsequent extension. This lack of detail and documentation leaves question as to the Petitioner's assertion that the Beneficiary devotes 75% of his time to managerial tasks.

To the extent that the Beneficiary submits detail and documentation regarding the Beneficiary's daily duties, this evidence reflects his involvement in non-qualifying operational tasks. For instance, the Beneficiary's duty descriptions state that he is responsible for making sure that all orders for phone accessories are handled timely and correctly and that he makes daily decisions on all operational aspects of the business including delivery, postage, customer complaints, returns, and product pricing. Similarly, the Beneficiary's duties indicate that he was tasked with coordinating orders between the Petitioner and its foreign parent in China, ensuring that these orders were timely, and conveying customer concerns, opinions, and complaints to the parent company.

Furthermore, the Petitioner submitted substantial documentation reflecting the Beneficiary's involvement in nearly all the non-qualifying operational aspects of the business. For example, the Petitioner provided credit card statements in the Beneficiary's name dated as late as May 2018 showing his payment of shipping costs and Amazon fees, as well as him making purchases at several retail stores. The Petitioner also provided bank records from March 2017 through the date of the petition indicating regular charges for the shipment of goods and each of these transactions bears the Beneficiary's name. Likewise, it submitted several shipping invoices dated near the date of the petition that include the Beneficiary's name. It also provided a letter from the Beneficiary to the U.S. Post Office in October 2018, after the date the petition was filed, stating that "some packages came to our warehouse without sufficient postage" and "we do not accept this type of return." It also provided bank records from July and August 2018 indicating checks written by the Beneficiary for rent and the payment of shipping invoices.

In sum, the Beneficiary's duties and the supporting evidence indicate that he had significant involvement in the non-qualifying operational aspects of the business alongside his subordinates as of the date the petition was filed. In contrast, there is little supporting documentation substantiating that the Beneficiary delegates these tasks to his asserted subordinates or that he was devoting 75% of his time to qualifying managerial tasks as of the date the petition was filed.

Even though the Beneficiary holds a senior position within the organization, the fact that he will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a 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. *Id.* 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 position descriptions alone are insufficient to establish that his actual duties would be 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, the Petitioner submitted an organizational chart reflecting that the Beneficiary, listed as the general manager,[1] oversaw an administration department consisting of one employee and a logistics and warehouse department including two employees. The chart also showed that the Petitioner planned to establish a sales and marketing department with "1 to 2 persons in 6 to 12 months." Later in response to the Director's RFE the Petitioner provided an organizational chart indicating that the Beneficiary supervised a proposed assistant manager to be hired in six to 12 months who would supervise an administrator, a manager assistant, and a warehouse operator. The chart again projected that the Petitioner would hire additional employees in its administration, logistics and warehouse, and sales and marketing departments in six to 12 months.

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." *Id.* 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*).

First, the Petitioner has not established that the Beneficiary would act as a personnel manager under an extended petition. The Petitioner submitted California quarterly wage reports from the second quarter of 2018 reflecting that the Beneficiary only had three subordinates; while the state wage reports from the third quarter, closest to the date of the petition, indicate that he had only two subordinates at this time. In each case, these employees were not identified as subordinate managers or professionals in the submitted organizational charts, but as shipping and warehouse personnel. On appeal, the Petitioner appears to acknowledge that the Beneficiary does not qualify as a personnel manager stating that "all the staff under [the Beneficiary's] management and supervision are not professional" and that "it is not mandatory that a beneficiary must manage professional or managerial employees." Likewise, the Petitioner states on appeal that "the workers at the warehouse department and customer service department indeed do not need a bachelor's degree or professional [degree]."[2] As such, the Petitioner

[1] We note that in the Form I-129 the Petitioner indicated that the Beneficiary would act as the chief executive officer of the Petitioner.

[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."

does not assert or support that the Beneficiary would oversee supervisory or professional subordinates as of the date the petition was filed; therefore it has not established that he would qualify as a personnel manager.

On appeal, the Petitioner asserts that the Beneficiary qualifies as a function manager based on his supervision of an essential function. 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 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).

The Petitioner has not demonstrated that the Beneficiary would act as a function manager under an extended petition. In asserting that the Beneficiary would act as a function manager, the Petitioner merely makes vague reference to his management of an essential function. The Petitioner does not specifically articulate why the Beneficiary would qualify as a function manager; for instance, it does not detail the nature of the function, why it is essential, or how he would be primarily relieved from performing the function. In fact, as we have discussed, the Petitioner submitted substantial documentation reflecting the Beneficiary's performance of non-qualifying operational tasks such as arranging and paying for shipping, among various other day-to-day operational matters of the business.

In contrast, the record includes little corroborating evidence substantiating the Beneficiary's performance of qualifying tasks related to managing a function, such as duties listed for him under the extended petition, including marketing and investment analysis, setting of financial goals and controls, establishing sales or logistics systems, or putting marketing plans in place. In fact, as we have discussed, state quarterly wage reports coinciding with the date the petition was filed indicate that the Beneficiary oversaw only two employees working less than 40 hours per week, leaving question as to whether it had sufficient staff to primarily relieve him from non-qualifying operational tasks as of the date the petition was filed. Therefore, the Petitioner has not adequately established that the Beneficiary will be primarily relieved of non-qualifying tasks as necessary to qualify him as a function manager.

The regulations also require that a Petitioner seeking the extension of a new office petition submit evidence of its financial status after one year. 8 C.F.R. § 214.2(l)(14)(ii)(E). However, the Petitioner provided insufficient details and documentation regarding its financial status after one year. In response to the RFE requesting evidence specific to the Petitioner's financial status after one year, it stated that it had "been conducting very active business activities and ha[d] a very stable and sufficient income to cover the expenses." It also asserted that it had earned gross income of approximately $618,720 through September 2018. However, the Petitioner provided little supporting documentation to substantiate these revenues. For instance, although the record reflects evidence of shipment costs

and the Petitioner discusses the coordination of shipments for the foreign company, there is little evidence to indicate that it is earning the revenues it asserts. Likewise, it submits little indication as to its current financial status and whether it has developed sufficiently to support the Beneficiary in a managerial capacity after one year.

For the foregoing reasons, the Petitioner has not established that the Beneficiary would act in a managerial capacity under an extended petition.

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 O-I-, Inc.*, ID# 3841523 (AAO June 14, 2019)