U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-E-I- LTDA

DATE: JUNE 20, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner is the foreign parent company of [redacted] a real estate development company. It seeks to continue the Beneficiary's temporary employment as [redacted] 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 approved the petition but later revoked the approval, concluding that the record did not establish, as required, that the company employed the Beneficiary in the United States in a managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred because the Petitioner previously addressed the Director's concerns.

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.

"Executive capacity" means 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 statutory 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 1533.

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

The Director denied the petition based on a finding that the Petitioner did not establish that the U.S. company employed the Beneficiary in a managerial or executive capacity.

When examining the managerial or executive capacity of a given beneficiary, we will look to 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 or executive 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 and its staffing levels. We will begin with staffing, because that issue was the focus of the Director's decision.

A. Staffing

On the petition form, asked the "Current Number of Employees in the United States," the Petitioner answered "31." In an accompanying letter, the Petitioner stated: [redacted] employs approximately 45 persons, primarily contractors of various types." The Petitioner submitted a "Workers List" with 37 names, including an architect, realtors, and several individuals involved in various steps of construction such as excavation, masonry, and lumber sales.

The Petitioner submitted copies of contracts with a building company, a realtor, and a provider of "management and accounting services." Bank statements included reproductions of checks payable to these and other contractors.

The Director approved the petition, but then issued a notice of intent to revoke because the Petitioner did not appear to have any employees, and lacks "the complexity to elevate the beneficiary to the level of a manager or executive."

In response, the Petitioner stated that it "hires contractors and sub-contractors to perform the many construction tasks involved in building a home." The Petitioner asserted that "[t]he amount of capital, the number and quality of [contractors] and the number of significant real estate transactions required, make this business extremely complex."

In the decision revoking the approval of the petition, the Director acknowledged the company's reliance on contractors but found that the Petitioner did not show that the company has sufficient organizational complexity to warrant a managerial or executive position, or that the Beneficiary exercises a managerial or executive level of control over the contractors.

On appeal, the Petitioner asserts that the contractors perform all the operational functions and many administrative tasks. The record supports this conclusion, but a closer look at the Beneficiary's claimed duties supports the Director's decision to revoke the approval of the petition. Ultimately, the issue is not that the Petitioner lacks sufficient staff to relieve the Beneficiary from performing non-qualifying tasks. Rather, the issue is that the record identifies few qualifying tasks for the Beneficiary to perform on more than an occasional or incidental basis.

As we will further discuss below, the record does not show continuous business activity. Instead, the record portrays the Beneficiary as an investor or speculator who has purchased a few undeveloped lots, arranged for third parties to build houses, and then sold the developed properties. Performing this activity through a limited liability company rather than under his own name is not sufficient to make the Beneficiary a manager or executive.

B. Duties

The definitions of managerial and executive capacity each have two parts. First, the Petitioner must 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 1533.

The Petitioner initially stated that the Beneficiary's work in the United States "has involved setting up of a physical office, marketing, hiring and firing of personnel, establishment of professional

contacts (attorneys, accountants, engineers, contractors), creating U.S. company policies, oversight of initial homebuilding projects and strategic planning for the future." The Petitioner also claimed that the Beneficiary would work full-time.

In response to the notice of intent to revoke, the Petitioner maintained that it had accurately described the Beneficiary's duties. None of those duties, however, demonstrably placed significant continuing demands on the Beneficiary's time during the validity period established by the extension petition (June 2015-June 2017). The Beneficiary had already established a network of contractors to perform construction and some administrative tasks.

With respect to "setting up a physical office," the Beneficiary works from an office in his home and the Petitioner sometimes used the address of its management consultant for its mailing address. (Invoices show that, on average, the consultant works for the Petitioner for less than 11 hours per month.) The Petitioner has not shown that the Beneficiary spends a significant amount of time setting policies, or explained how a company with no other employees would require the Beneficiary to set policies.

Concerning "strategic planning" and "oversight of initial homebuilding projects," the Petitioner oversaw the construction of two houses between June 2015 and June 2017, and sold one of them during that time. (The sale of the second house was pending as of October 2017.) The Petitioner has not established that this volume of business activity warrants a full-time manager as claimed. Even if the Beneficiary actively monitors the work of dozens of contractors as claimed, the Petitioner has not established that the construction of two houses kept those contractors fully occupied for two years.

The Director concluded that, while contractors handle many tasks, the Beneficiary himself must perform "all marketing, contract negotiation, customer service, secretarial, and data entry duties." On appeal, the management consultant who works part-time for the Petitioner stated that [redacted] has little secretarial work to do. [The Beneficiary] prepares necessary correspondence and uses email frequently, I believe." It may be true that the Beneficiary "has little secretarial work to do," but the Petitioner has not shown that he performs much of other types of work either. The Beneficiary purchases land, engages contractors to develop it, and periodically checks on the work of the contractors. The Petitioner has not shown that the volume of activity that took place between June 2015 and June 2017 amounted to continuous business activity that warranted managerial or executive oversight.

The appeal includes a new list of the Beneficiary's responsibilities:

- Identify and purchase land on which to build (10% of time spent on this duty)
- Sales (10% of time spent on this duty)
- Plan the construction of residential projects (20% of time spent on this duty)
- Oversee the construction (20% of time spent on this duty)
- Financial management and reporting (20% of time spent on this duty)

- Responsible for legal compliance (20% of time spent on this duty)

The Petitioner does not explain why this description is so different from the one submitted at the time of filing, or show that the new job description is more accurate than the earlier version. As noted above, the record identifies only two construction projects that were underway during the two-year validity period established by the petition. The Petitioner does not explain how the sale of a single house could reasonably have taken up 10% of the Beneficiary's working hours between June 2015 and June 2017. The Petitioner also does not explain how the Beneficiary's duties related to finance occupy 20% of his time, when invoices show that a consultant spends only a fraction of that time actually compiling and preparing the financial documents.

For the above reasons, we find that the Petitioner has not demonstrated that the Beneficiary worked primarily as a manager or executive under the extended petition from June 2015 to June 2017.

IV. CONCLUSION

The Petitioner did not establish that the Beneficiary worked primarily as a manager or executive during the term of the extended petition; therefore, the approval of the petition was properly revoked.

ORDER: The appeal is dismissed.

Cite as *Matter of P-E-I- Ltda*, ID# 1264664 (AAO June 20, 2018)