U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15840658

Date: MAR. 3, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of IT consulting and software services, seeks to employ the Beneficiary temporarily as an "Associate Engagement Manager" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. The matter is before us on appeal.

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 because the Petitioner did not establish the Beneficiary's position abroad was in a managerial capacity.[1] Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's proposed employment in the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is 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).

I. LEGAL FRAMEWORK

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been

[1] The Petitioner claims that the Beneficiary was employed in a managerial capacity and does not claim that the foreign employment was in an executive capacity.

employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;
(ii) 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;
(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. 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.

II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The issue to be addressed is whether the Petitioner provided sufficient evidence establishing that the Beneficiary's position abroad was in a managerial capacity.

To be eligible for immigrant visa classification as a multinational manager, 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 Beneficiary's proposed position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the position in question meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary *primarily* performed managerial duties, as opposed to ordinary operational activities alongside other employees within the U.S. entity. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties are primarily managerial, we consider that beneficiary's job duties, the employer's organizational structure, the duties of a 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 a beneficiary's actual duties and role in a business.

The Petitioner states that its organization provides IT services to "more than 1,279 major companies." It named two of those companies – [redacted] and [redacted] – as the focus of the Beneficiary's

employment abroad. The Petitioner claimed that the Beneficiary worked at a "high level" and "exercised autonomy" in making decisions with respect to the projects he managed, stating that the Beneficiary set project goals, determined staffing requirements, and provided "managerial direction and technical guidance" to a 54-person "globally distributed team" of supervisory and professional employees who supported the Beneficiary's projects.

The Petitioner also provided an organizational chart depicting the Beneficiary as "Senior Project Manager [redacted]' directly overseeing a "Technical Architect" and six project managers and indirectly overseeing the project managers' respective subordinates. Despite indicating that the Beneficiary's position was supervisory with respect to a number of IT personnel, the chart pertained exclusively to an unidentified cross section of the foreign organization and included no information clarifying the placement of this cross section within the broader scope of the organization. As such, we are unable to assess the Beneficiary's organizational placement or that of the two clients he managed within the overall scope of the organization.

Furthermore, the organizational chart shows that there were six managerial tiers above the Beneficiary's position, starting with a "CEO" at the top-most tier, followed by a "COO," a "President-Deputy COO," an "SVP-SOH RCL," a "VP-Delivery Head [redacted]," and a "Senior Delivery Manager [redacted]" who is depicted as the Beneficiary's direct superior. The Petitioner did not claim, nor does the organizational chart demonstrate, that the Beneficiary primarily managed a department, subdivision, function, or component of the organization pursuant to sections 101(a)(44)(A)(i) of the Act or that he managed an essential function within the organization, or a department or subdivision of the organization pursuant to sections 101(a)(44)(A)(ii) of the Act.

In response to a request for evidence (RFE), the Petitioner stated that the Beneficiary "directed and supervised the work of subordinate managers and professionals." The Petitioner conveyed this information in greater detail in a job duty breakdown which highlights the Beneficiary's discretionary authority over matters concerning his assigned projects, including project logistics, finances, client communications, and the personnel who carry out the underlying tasks associated with those projects. However, the Petitioner neither indicated nor did it provide evidence showing that [redacted] and [redacted] either individually or collectively, represented a department, subdivision, function, or component within the foreign organization. Further, even though the foreign organizational chart indicates that the Beneficiary's position involved overseeing a team of project managers and IT personnel, the same organizational chart shows that the Beneficiary was subordinate to six tiers of management, thereby indicating that he was not sufficiently elevated in the staffing hierarchy that pertained to [redacted] and [redacted]

Although the Beneficiary may have exercised discretion over the day-to-day operations of projects with respect to two of the foreign entity's clients, the Petitioner must still establish that the position meets all elements of the statutory definition of managerial capacity in the course of performing primarily managerial duties. For the reasons discussed above, the Petitioner has not established that [redacted] and [redacted] represented a department, subdivision, function, or component of the organization and that the Beneficiary managed a department, subdivision, function, or component of the organization, as required by section 101(a)(44)(A)(i) of the Act.

The Petitioner also did not establish that the Beneficiary managed an essential function pursuant to section 101(a)(44)(A)(ii) of the Act. 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).

In this matter, the Petitioner claims that the Beneficiary's position abroad focused on two specific clients. However, it has not established that the foreign entity's clients represent a clearly defined activity or that the clients are "essential" to the organization, as required by the first two prongs of the function manager analysis. Although the Petitioner claimed that its organization services over 1400 clients, it did not indicate that there was a hierarchy among those clients, nor did it demonstrate that [redacted] and [redacted] were particularly critical to the organization so that they would have been deemed "essential" within the organization, or a department or subdivision of the organization. Further, because the Petitioner provided an organizational chart that offered only a limited cross section of the foreign organization, we are precluded from gaining a meaningful understanding of how that cross section fits within the broader scope of the foreign organization's hierarchy. This lack of clarity further hinders our ability to properly assess the Beneficiary's position and determine whether it incorporated the characteristics of someone who was employed in a managerial capacity.

For the reasons discussed above, the Petitioner did not establish that the Beneficiary's position abroad was in a "managerial capacity" as defined in the statute governing this classification.

ORDER: The appeal is dismissed.