U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30240887

Date: MAR. 7, 2024

Appeal of Texas Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a clothing retailer, seeks to temporarily employ the Beneficiary as its national sales 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 Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary has been employed abroad, and would be employed in the United States, in a managerial or executive capacity. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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).

II. ANALYSIS

The Director determined that the Petitioner did not establish that: (1) it will employ the Beneficiary in the United States in a managerial or executive capacity; and (2) the Beneficiary has been employed

abroad in a qualifying capacity. The Petitioner specifies that the Beneficiary's past and intended future positions are managerial rather than executive. Therefore, we restrict our analysis to the requirements of 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.

To show that a beneficiary is eligible for L-1A nonimmigrant visa classification as a manager, a petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then 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). In determining whether the beneficiary's duties will be primarily managerial, we consider the description of the job duties, the company's organizational structure, the duties of the 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 the beneficiary's actual duties and role in the business.

Below, we will consider whether the Petitioner has established that it would employ the Beneficiary in a primarily managerial capacity in the United States.

After earning a law degree in 2014, the Beneficiary began working for the Petitioner's foreign affiliate in India in 2015, serving as the retail head of its readymade division since 2019. The Beneficiary owns 25% of the foreign entity and a 16% membership interest in the petitioning U.S. entity.

The Petitioner provided this description of the Beneficiary's intended duties in the United States:

> 70% of [the Beneficiary's] time will be devoted towards operational management, including but not limited to overseeing the staff and handling managerial matters like hiring, firing, appraisals and one-one meetings with direct reports and executing performance review. . . . [H]e will ensure that the proper training is provided to all employees, and he will monitor and develop sale strategies to help all employees perform their roles efficiently.
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> [The Beneficiary's] responsibilities extend to identifying new and emerging markets for the brand's retail locations, proposing new retail locations, and developing business plans in addition to coordinating stores buildout for new locations.

> 30% of [the Beneficiary's] time will be devoted to managing and improving retail operations throughout all the company's retail locations. This entails the planning and forecasting of all locations' inventory, overseeing and managing employees' payroll and drive top and bottom-line growth for all the stores' locations.

A fundamental element of a managerial capacity is supervision and control of the work of other supervisory, professional, or managerial employees, unless the beneficiary manages an essential function within the organization. *See* section 101(a)(44)(A)(ii) of the Act and 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*). The Petitioner does not claim that the Beneficiary would serve as a function manager, a term that applies generally when a beneficiary's managerial capacity derives not from supervising or controlling a subordinate staff, but instead from primarily managing an "essential function" within the organization. Rather, the Petitioner claims that the Beneficiary will supervise lower-level managers.

In denying the petition, the Director concluded that the Petitioner had not submitted enough evidence and information to show that the Beneficiary "supervised and controlled the work of other managerial, supervisory, or professional employees" and did not "demonstrate that there were support staff who were employed and engaged in relieving the beneficiary of the non-qualifying operational and administrative tasks" needed to operate the business. We agree with these conclusions.

The Petitioner initially submitted an organizational chart, said to list "all employees [under] the beneficiary's immediate supervision in [redacted] NJ." The chart names four individuals said to be under the Beneficiary's authority, but it does not indicate that those individuals are all "in [redacted] Rather, the chart states their titles as "Store Managers" in [redacted] and "Shift Manager – [redacted] The Petitioner submitted copies of résumés for the individuals identified as the store managers in [redacted] but these documents did not contain thorough descriptions of their duties, nor did the résumés include the full name of the petitioning entity.

The organizational chart also indicates that each of those managers, in turn, oversees a sales team. The chart does not specify the sizes of those sales teams or name the individual employees who comprise those teams. The minimal information about the claimed sales teams cannot suffice to meet the Petitioner's burden of proof.

In a request for evidence (RFE), the Director asked for further documentation regarding the subordinates who would report to the Beneficiary, and evidence to show the Beneficiary's authority over those individuals. In response, the Petitioner stated: "The beneficiary will be supervising and controlling the work of other professional employees within his department." The Petitioner's response included an "updated 2023 organizational chart," showing the same names as the earlier version but indicating that the store manager in [redacted] is also the "cluster manager" with authority over the four locations specified previously. That individual's résumé shows the title "regional manager" of a company with a name similar, but not identical, to that of the Petitioner.

The Director concluded that the Petitioner had "not furnished sufficient evidentiary documentation to establish that the beneficiary supervises and controls the work of other managerial, supervisory, or professional employees." On appeal, the Petitioner submits additional information about the claimed

subordinate positions. The Petitioner does not explain why it did not furnish this information when first requested in the RFE. Also, the new information lacks verifiable, objective corroboration.

We agree with the Director that the Petitioner has not sufficiently documented that the Beneficiary would have authority over managerial, supervisory, or professional employees. Several assertions in the Petitioner's appellate brief do not include citations to documents in the record. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998).

The Petitioner did not submit evidence to show that it owns stores at the locations named on the organizational chart, or that it has authority over employees at those locations. On the petition form, the Petitioner claimed only six employees in the United States, a number too small to account for the sales managers and sales teams claimed on the organizational chart.

The Petitioner did not report paying any salaries on its 2021 IRS Form 1065, U.S. Return of Partnership Income. That return indicates that the Petitioner's total expenses, apart from "Cost of Goods Sold" which is listed separately, amounted to $49,005. Itemized lists of both types of expenses do not include salaries or identifiable labor costs.

The initial filing included copies of IRS Form W-2 Wage and Tax Statements for four individuals, showing wages paid to them in 2022. Two of those individuals are also named on the organizational chart as being subordinate to the Beneficiary. But the company that filed the petition is not named as the employer on any of the Forms W-2. Instead, each of the four Forms W-2 names a different employer, with a different Employer Identification Number. The Petitioner has not explained or documented any arrangement by which the Beneficiary would have managerial authority over the employees of four other companies. In the absence of corroborated links with the petitioning entity, tax and payroll records from other companies cannot meet the Petitioner's burden of proof.

The Petitioner states that "[t]he salary for [the claimed store managers in [redacted] is $25,000 annually." This figure is consistent with the Forms W-2 in the record for those two individuals, but this consistency is not enough to establish that they are store managers under the authority of a manager at the petitioning entity. The low salaries raise questions about the actual nature of their positions and the extent of their duties. Also, $25,000 per year is below minimum wage for full-time employment in New Jersey and Illinois.[1]

The presence of a subordinate level of management, overseeing sales teams in three states, is central to the Petitioner's claim that it would employ the Beneficiary's managerial capacity. But the information provided by the Petitioner is inconsistent as to whether the Petitioner has any employees at all, and what little documentation the Petitioner has provided about the Beneficiary's claimed subordinates indicates that those individuals work for employers other than the Petitioner.

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not met its burden of proof to establish that it would employ the Beneficiary in a primarily managerial capacity in the United States. This conclusion, by itself, is sufficient to determine the outcome of the appeal.

[1] *See* https://www.dol.gov/agencies/whd/state/minimum-wage/history.

Therefore, we will dismiss the appeal for the reasons described above. We reserve the separate issue of whether the Beneficiary has been employed abroad in a qualifying managerial capacity.[2]

ORDER: The appeal is dismissed.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).