U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30238881

Date: MAR. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an international management consulting firm, seeks to temporarily employ the Beneficiary as an Associate (Management Consultant) under the L-1A nonimmigrant classification for intracompany transferees. Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 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 work temporarily in the United States 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 was employed abroad in a managerial capacity. The matter is now before us on appeal pursuant to 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. EMPLOYMENT ABROAD

The sole issue to be addressed is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity. The record indicates that the Petitioner's affiliate in The Netherlands employed the Beneficiary from May 2019 until December 2021, and that he held the position of Fellow (Management Consultant) for more than one year during that period.[1]

The Petitioner has consistently claimed that its foreign affiliate employed the Beneficiary in a managerial capacity and that his position involved both supervision and control of subordinate professional employees and management of an essential function. The Petitioner does not claim that the Beneficiary was employed abroad in an executive or specialized knowledge 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, 8 U.S.C. § 1101(a)(44)(A).

To show that a beneficiary was employed abroad in a managerial capacity, a petitioner must show that the beneficiary performed all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the petitioner establishes that the foreign position meets all four elements set forth in the statutory definition, it must then prove that the beneficiary was *primarily* engaged in managerial duties, as opposed to operational activities alongside the company's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties were primarily managerial, we consider the petitioner's description of the job duties, the company'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.

In a letter submitted at the time of filing, the Petitioner provided the following information regarding the Beneficiary's prior position:

> Fellows (Management Consultants) work in conjunction with [company] and client personnel in conducting relevant research and performing technical analyses of information affecting the clients' operations and industries, interpreting and summarizing data, and making recommendations to the consulting team. They provide technical support and research in performing basic industry and company analyses of performance trends using both electronic and print data sources. They receive

[1] The Petitioner indicates that the Beneficiary left its foreign affiliate to pursue a master of business administration degree in the United States. The record reflects that he attended a U.S. university as a J-1 nonimmigrant exchange visitor beginning in January 2022.

> [company] specific training and experience in the basic areas of problem solving, interviewing, communications, client and [internal] team interaction and [are] expected to obtain a basic working knowledge of functional skills such as finance, operations, organizational effectiveness and strategy, and the consulting process in general.

This overview of the "Fellow (Management Consultant)" role does not describe a position that performs the high-level responsibilities found in the definition of managerial capacity at section 101(a)(44)(A) of the Act. Rather, the Petitioner describes it as a professional position that involves contributing research, analysis, and support to a consulting team's overall efforts, while allowing the position holder opportunities to receive training and develop a range of "basic" skills needed to fully understand and perform the duties of a management consultant.

Despite including the above description of the Fellow (Management Consultant) position, the Petitioner stated that the Beneficiary, while employed in this position, "served in a senior capacity," "received minimal guidance," and maintained "independent autonomy and discretion over project planning, project management, resource deployment management, and management of other professional employees." The Petitioner did not attempt to reconcile the apparent discrepancy between these statements and its own description of the position as one that is focused on research, analysis, technical support, team contributions, and acquisition of functional skills.

The Petitioner also provided a bulleted list of the "managerial job duties" the Beneficiary performed as a Fellow. We observe that this list of duties was identical to that provided for the Beneficiary's proposed U.S. position as an "Associate (Management Consultant)." However, there is evidence in the record indicating that the positions of "Fellow" and "Associate" are distinct roles within the organization, with the latter being more senior.[2] According to the submitted payroll evidence provided, the Beneficiary was promoted to the position of Associate in July 2021, but did not hold the position for a full year prior to leaving the foreign entity at the end of 2021. The inconsistencies between the Petitioner's general overview of the Fellow role and the duties the Beneficiary is claimed to have performed in that role have not been clarified and therefore raise questions as to whether the Petitioner conflated the two different positions the Beneficiary held during his tenure with its foreign affiliate.

Nevertheless, even if the record established that the Fellow and Associate management consultant roles are substantially similar in terms of duties and level of authority, it would not support a determination that the Beneficiary was employed abroad in a managerial capacity.

The Petitioner described the Beneficiary's role with the foreign entity as follows:

> [T]he beneficiary managed critical workstreams for client engagements to ensure that the team's deliverables align with the client's objectives. The beneficiary's responsibilities included project planning, project management, and resource deployment management. In addition, he had supervisory authority over teams of

[2] An organizational chart for the foreign entity indicated that the Beneficiary, in his role as a Fellow (Management Consultant), reported to an Associate (Management Consultant). The submitted pay statements show that the Beneficiary was promoted from Fellow to Associate in July 2021 and received a significant salary increase at the time.

> [company] professionals supporting each study, including Junior Management Consultants, Research Analysts, and other members of the consulting team. . ..
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> . . . [T]he beneficiary's position with our affiliate . . . entailed the management of an essential function within our business operations. Specifically, the beneficiary managed specialized and critical workstreams by leading and guiding various projects teams and supervising analysts to implement change programs through the identification of issues, conducting of analysis, and making of recommendations to a mix of client/team leadership. Additionally, the beneficiary managed these workstreams by leading his teams to validate data, create potential solutions based on that data, build portfolio models, and highlight subsequent implications of such models . . .. The beneficiary supervised and directed activities of the critical workstreams, which involved managing projects and supervising the deployment of the firm's resources throughout the client engagement . . ..

The Petitioner stated that, based on his performance of these duties, the Beneficiary:

> (a) managed an essential function of our business – specifically critical workstreams for important client engagements. . . ; (b) functioned at a senior level with respect to the function managed; (c) supervised and controlled the work of professional employees; and (d) exercised discretion over the day-to-day operations of [the] essential function under his management.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections (101)(a)(44)(A)(i) and (ii) of the Act. The Petitioner asserted that the Beneficiary's job responsibilities entailed both management of an essential function and supervision and control of subordinate professional employees. It has not, however, established that the Beneficiary was employed primarily as either a personnel manager or a function manager.

Personnel managers are required to primarily supervise and control the work of supervisory, professional, or managerial employees. A beneficiary must have authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Sections 101(a)(44)(A)(ii)-(iii) of the Act.

The Petitioner asserts that the Beneficiary, within the scope of his assigned client workstreams, supervised analytics analysts, junior management consultants, research analysts and "graphic/information/analytical services specialists." The Petitioner also submitted organizational charts relating to three of his assignments with the foreign entity. Each chart showed that the Beneficiary reported to an Associate (Management Consultant) and supervised varying numbers of junior management consultants, visualization experts, and content editors, depending on the individual assignment. However, the charts did not show the organizational structure above the Associate level, or otherwise place these teams into the context of the larger organization.

The Petitioner also did not indicate that teams assigned to client projects or workstreams are fixed structures within the organization. Rather the Petitioner explained that the company's "organization structure is fluid by its very nature – lower-level management consultants can report to several

managerial-level management consultants concurrently on different client engagements, while managerial-level management consultants can have a number of different management consultants reporting to them on different engagements at the same time as well." This fluid, informal structure suggests that a "managerial level management consultant" has authority over "lower-level management consultants" only within the context of a given project or project component; the Petitioner did not claim that a management consultant at the Fellow level has exclusive authority over any permanently designated subordinates.

Further, under section 101(a)(44)(A)(iii) of the Act, a managerial employee's direct supervision of professional, supervisory, or other managerial employees must entail "the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization." Here, the Petitioner stated: "No single employee at [the petitioning company] has direct hiring or firing authority for management consulting roles." Instead, individuals in managerial positions provide strategic input on decisions that directly influence these outcomes, and they further contribute directly to these performance reviews. The Petitioner stated that the Beneficiary's duties as a Fellow (Management Consultant) included participating in performance reviews, but it did provide evidence in support of this assertion and did not indicate that his authority extended to recommending hiring, firing and other personnel actions. A personnel evaluation that does involve recommendations for specific personnel actions does not satisfy the statutory requirement at section 101(a)(44)(A)(iii) of the Act.

On appeal, the Petitioner repeats its assertion that the Beneficiary supervised professional employees in his former position as a Fellow (Management Consultant) and emphasizes that the previously submitted evidence was sufficient to demonstrate the position's eligibility under section 101(a)(44)(A)(ii) of the Act. However, the Petitioner but does not address how the position satisfies the requirement at section 101(a)(44)(A)(iii) of the Act. Therefore, for the reasons discussed above, the Petitioner has not established that the Beneficiary primarily performed duties consistent with those of a personnel manager.

We have also considered the Petitioner's claim that the Beneficiary was employed abroad as a function manager. On appeal, the Petitioner asserts "[h]is job responsibilities entailed . . . functional managerial responsibilities in the form of project planning, project management and resource deployment management," as well as people management.

The term "function manager" applies generally when a beneficiary's managerial capacity derives not from supervising and controlling a subordinate staff, but instead from primarily 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 has not described or provided evidence that the Beneficiary managed an essential function of the foreign affiliate.

The job description for the Beneficiary's position included these elements, among others:

- Managed key, discrete parts of consulting projects . . .;
- Developed and implemented analytical approach and project plans for work streams;
- Led and identified innovative data sources and data collection approaches . . .;
- Managed collection of required client and industry data and performance of required analyses and syntheses of findings and the development of client-ready recommendations;
- Organized and led client interviews on behalf of the engagement team; and
- Directed the development of data charts illustrating client performance trends and supporting the proposed recommendations.

The Petitioner asserts that "workstreams and client engagements are a crucial part of [its] business operations, and the Beneficiary's management over them therefore constitutes management of an essential function of the business." The Petitioner, however, has not shown that the Beneficiary was responsible for the overall management of these workstreams throughout the company. Rather, the Beneficiary's stated responsibilities involved granular details of individual projects or project workstreams or components by one team, rather than oversight over client engagements, which are performed in parallel by many other teams.

Although successful fulfillment of client consulting engagements is undoubtedly at the core of the services provided by a management consulting firm, it is insufficient to state that each individual client engagement or project, or each discrete workstream or study delivered within such a project, of which there are likely many, is an essential function of the organization. Based on the submitted evidence, many employees within the organization's consulting career path, despite having different titles and levels of authority, are "management consultants" and have some mentoring or leadership responsibilities and a certain degree of independence over their own research activities or "workstreams" within a given project or engagement. The persons holding these positions cannot all be considered managers acting at a senior level with respect to the same projects, engagements, or "functions."

Here, the Beneficiary, as a fellow-level management consultant, reported to an associate-level management consultant whose duties have not been described. Other evidence in the record reflects that associates report to engagement managers, who are also management consultants. The Petitioner explained in a supporting letter that "[e]ach engagement team at [the company] is directed, led and managed by a managerial-level consultant who is responsible for directing the engagement team, and who is ultimately responsible for ensuring that [the company] understands the client's perspective and that the proposed solutions are relevant and applicable to the company environment." While it appears that an engagement manager may exercise this level of authority, the record does not show that a fellow, which is two tiers lower in the company's organizational structure, is a "managerial-level consultant" or that the position functions at a senior level with respect to client engagements. The Petitioner has not provided evidence demonstrating that the Beneficiary's position was at a senior level either within the organization or with respect to the function he is claimed to have managed.

The information and evidence provided by the Petitioner indicates that the Beneficiary had some authority over small teams working on individual projects (or workstreams within individual projects). But it does not demonstrate that he functioned at a senior level with respect to an essential function within the organization. Accordingly, the record does not establish that the Petitioner's foreign affiliate employed the Beneficiary as a function manager.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not met its burden to establish that the Beneficiary was employed abroad in a managerial capacity.

ORDER: The appeal is dismissed.