U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7163905

Date: MAR. 9, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a distributor of court recording audio-visual systems and equipment, seeks to continue the Beneficiary's temporary employment as its operations 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 Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish that: (1) the Beneficiary would be employed in a managerial or executive capacity under an extended petition; and (2) the Beneficiary had at least one year of qualifying employment abroad in a managerial or executive capacity in the three years preceding his transfer to the United States in L-1A status.

On appeal, the Petitioner asserts that it submitted sufficient evidence to establish that the Beneficiary was employed abroad, and will continue to be employed in the United States, in a managerial capacity.

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.

I. LAW

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.*

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. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The primary issue to be addressed is whether the Petitioner established that the Beneficiary will be employed in the United States in a managerial capacity. The Petitioner states on appeal that the Beneficiary "has worked for [the company] in the managerial capacity since he was hired" and does not claim that he is employed in an executive capacity.

To be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary will perform 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 offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, 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). In determining whether a given beneficiary's duties would be 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.

Therefore, the first question before us is whether the Petitioner established that the Beneficiary's position of operations manager meets all elements of the statutory definition of "managerial capacity" at section 101(a)(44)(A) of the Act.

The Petitioner's description of the Beneficiary's position indicates that he will be responsible for managing the company as a whole, have the authority to hire any future employees and to take other personnel actions, and have discretion over the company's day-to-day operations, consistent with section 101(a)(44)(A)(i), (iii), and (iv) of the Act. However, we agree with the Director's determination that the record does not establish that the Beneficiary's operations manager role

involves either supervision of subordinate supervisory, professional or managerial employees or management of an essential function, as required by section 101(a)(44)(A)(ii).

First, the Petitioner has not articulated a claim that the Beneficiary would manage an essential function of the organization. *See Matter of G-, Inc.*, Adopted Decision 2017-05, *3 (AAO Nov. 8, 2017). Further, the Petitioner did not establish that the Beneficiary would be supervising any employees as of the date of filing. According to its 2017 and 2018 federal tax returns, the Petitioner paid no salaries and wages to employees and made no payments to contractors in the two years preceding the filing of this extension petition in March 2019. The Petitioner provided an organizational chart which identified the Beneficiary as its sole U.S. employee and included proposed positions for a head of IT, a human resources manager, a pre/post-sales manager and a technical support manager. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978) (stating that a petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position.)

While the Petitioner does not have any employees other than the Beneficiary, it initially claimed that the Beneficiary will "manage labor for the installation of audio visual court recording equipment." The Petitioner's organizational chart identifies four individuals who are claimed to be employees or contractors of its South African affiliate. The chart identifies them as a pre-/post-sales manager, technical support manager, "chief JAVS consultant and skilled technician," and "system installation sub-contractor." Although the record contains some evidence of email communications between the Beneficiary and these individuals, the record does not establish that he supervises and controls their work and does not sufficiently document their employment or the terms of any contractual relationship between them and either the Petitioner or its affiliate. Finally, the Petitioner has neither claimed nor provided evidence to establish that these individuals are supervisory, managerial, or professional employees.

For the reasons discussed, the Petitioner has not established that the Beneficiary would supervise and control the work of other supervisory, professional, or managerial employees, or manage an essential function within the organization, or a department or subdivision of the organization, as required by section 101(a)(44)(A)(ii) of the Act. Accordingly, the Petitioner did not establish that the offered position is in a "managerial capacity" as defined in the statute governing this classification.

As the Petitioner did not establish that the position will be in a managerial capacity, we will not conduct a full analysis of the remaining evidence related to the Beneficiary's U.S. position. However, we agree with the Director's determination that the submitted job description does not support a finding that his duties would be primarily managerial in nature. The Petitioner indicates that the Beneficiary will spend 15% of his time on "market research," 20% on "product and system development," and 25% providing "customer assistance in training, product support, supply management." None of these duties, as described, can be classified as managerial in nature. Further, there are other non-managerial tasks included in the Beneficiary's job description, such as billing, invoicing, and customer relations.

On appeal, the Petitioner emphasizes that "under no circumstances would a non-managerial employee negotiate international contracts for installation of court reporting equipment on behalf of foreign government agencies." However, the Petitioner does not address the Director's finding that many of the duties included in the Beneficiary's job description, requiring more than half of his time, are non-managerial in nature. By statute, eligibility for L-1A classification in a managerial capacity requires that the duties of a position be "primarily" managerial. Section 101(A)(44)(A) of the Act.

While 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, the Petitioner must still establish that the position meets all elements of the statutory definition of managerial capacity and that it requires the Beneficiary to perform primarily managerial duties. Here, the Petitioner did not meet that burden. Accordingly, the appeal will be dismissed.

III. RESERVED ISSUES

As noted, the Director also determined that the Petitioner did not establish that: (1) the Beneficiary had at least one continuous year of full time employment with a qualifying organization abroad in the three years preceding the filing of his initial L-1A petition in April 2016; and (2) the Beneficiary was employed abroad in a managerial or executive capacity. However, because the Beneficiary's lack of qualifying managerial employment in the United States is dispositive in this case, we need not reach these issues and therefore reserve them. *See 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).

ORDER: The appeal is dismissed.