U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 09477156

Date: MAR. 9, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a technology solutions and services provider, seeks to continue the Beneficiary's temporary employment as a vice president and business partner 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 Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary's prior year of employment abroad was in a managerial position, and that he will be employed in a managerial position in the United States.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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 that the Beneficiary's employment abroad was in a managerial or executive capacity. Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments pertaining to 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. 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. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The primary issue to be addressed is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity. The Petitioner does not claim that he was employed in an executive capacity in this role. Therefore, we will restrict our analysis to whether the Beneficiary was employed in a managerial capacity.

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 position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the position abroad meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the foreign entity'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 description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees who relieved 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 abroad meets all elements of the statutory definition of "managerial capacity" at section 101(a)(44)(A) of the Act.

The record shows that the Beneficiary was employed as Vice President – Delivery Head for Technology with [redacted] continuously for more than one year prior to his entry into the United States as a nonimmigrant. The Petitioner initially submitted evidence regarding the Beneficiary's duties for [redacted] including a brief job description and an organizational chart showing his direct reports and supervisory chain.

In responding to the Director's request for evidence (RFE), the Petitioner submitted a letter from an executive of [redacted] which added percentages of work hours spent on each duty to the previous job description, and provided additional background information regarding those duties. This letter, like the initially submitted letter from the Petitioner, explained that the Beneficiary "managed all delivery teams within the Global Delivery Center for Technology Practice," and was responsible for evolving strategy and "proposal preparation, delivery of products and services, and support of [redacted] global client base," and also states that he "played a key role in the development of products . . . ." It further provides some context to these responsibilities. However, the description provided, which the Petitioner references on appeal, does not establish that the Beneficiary's duties met all four of the elements of the statutory definition of "manager."

The Petitioner first points out on appeal that the letter from [redacted] reiterates that the Beneficiary managed all of the delivery teams, and asserts that this is sufficient to show his management of the Global Delivery Center component of the organization. It also takes issue with the Director's description of the Beneficiary's daily duties as "unclear," noting that the letter comprises five pages compared to the single paragraph which was initially submitted. However, we agree with the Director that the added text in this letter does little to shed light on the day-to-day tasks which the Beneficiary performed in this position. For example, in elaborating on the tasks involved with providing in-context collaboration with his teams, which the letter indicates occupied 10% of his work hours, the letter states that the Beneficiary ensured that the delivery team "in a collective fashion was competing for the successful delivery of the product," and "ensure[d] that such collective effort was worn in to the sub culture of the delivery team…" But these are goals rather than duties, and the description does not explain the duties he performed to ensure that these goals were accomplished. Another 10% of his work hours were devoted to focusing on managing value and change, which the letter states involved "[D]irecting the team's focus on better decision making at all levels in an organization." The description does not indicate how the Beneficiary directed his team's focus, or what the decision-making processes were that he intended to improve.

A third example is the description of the tasks involved in ensuring lifecycle traceability, accounting for 8% of his work hours, for which the letter states that the Beneficiary "ensures that the efforts of different people working within a team are properly aligned . . . ." We note that this goal appears to be very similar to ensuring that the team works collectively, discussed above, as well as the 5% of his duties described as "guiding efficiencies and control through collaboration, communication, and transparency about project information." In addition, another 3% of his responsibilities are said to involve "cross collaboration among various units and teams." The descriptions for these goals do not

provide insight into the actual duties performed by the Beneficiary in aligning the efforts of his team members or collaborating with others.

Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's activities in the course of his daily routine.

In addition, some of the broad responsibilities and goals appearing in this job description appear to be shared with others in the Beneficiary's team or elsewhere in the organization. For instance, the job description indicates that 10% of the Beneficiary's duties involved risk assessment, including risks to a project arising from technical and regulatory issues. However, the job descriptions for three of the positions shown as reporting to the Beneficiary also indicate that these individuals "forecast project risks." The job description for the Beneficiary's former position does not explain how his responsibilities in this regard differed from those of his subordinates, and thus accounted for 10% of his work hours.

Considering the vague and repetitive nature of the description of the Beneficiary's duties with [redacted] it has not been established that he primarily managed a department, subdivision, function, or component of this organization.

Turning to whether the Beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees in compliance with section 101(a)(44)(A) of the Act, the record includes a partial organizational chart for [redacted] showing five positions under his direction: (1) General Manager CM/PR; (2) Vice President GRC; (3) Associate Vice President – Trace Ready; (4) PMO-Lead; and (5) Lead Architect. The chart shows that the first three of these positions have subordinate employees or "resources." In response to the Director's RFE, the Petitioner submitted identical job descriptions for each of these three positions. However, descriptions were not provided for the other two positions indicated on the [redacted] organizational chart as directly reporting to the Beneficiary, although we note that a description was included for the lead architect position as it appears on the Petitioner's organizational chart. The organizational chart does not show that the employees in these two positions have managerial or supervisory duties. While a beneficiary is not required to supervise personnel, if a petitioner claims that a beneficiary's duties involve supervising employees, then a petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* section 101(a)(44)(A)(ii) of the Act.

To determine whether a beneficiary manages professional employees, we evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

Therefore, we focus on the level of education required by the position, rather than the degree held by the subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity. Although the Petitioner indicated in its RFE response that the individual in the lead architect position holds an MBA degree, it has not established that a bachelor's degree or higher is actually necessary to perform the duties of that position or any of the others which the [redacted] chart showed as the Beneficiary's direct reports.

In addition, the organizational chart shows that the other three positions which reported to the Beneficiary at [redacted] General Manager CM/PR, Vice President GRP, and Associate Vice President TraceReady, each had dozens of "resources" or team members. A separate letter from the same [redacted] official who described the Beneficiary's duties includes brief job descriptions for each of these positions, which are identical except for their area of product or service responsibility. Each position is described as being responsible for profit and loss in the specific area, closely working with the sales department on client leads, ensuring adherence to process and local regulations, ensuring project deliverables meet client expectations, and forecasting project risks and mitigating them. None of these descriptions indicate any managerial or supervisory tasks performed by the individuals in these positions. Further, we note that while the letter from [redacted] states that the Beneficiary "had multiple levels of managers and submanagers reporting both directly and indirectly to him," this is not reflected in the organizational chart submitted.

Accordingly, the evidence does not establish that in the position of Vice President – Delivery Head for Technology for [redacted] the Beneficiary managed a department, subdivision, function, or component of this organization, or that he supervised and controlled the work of other supervisory, professional, or managerial employees, as required by section 101(a)(44)(A)(i)-(ii) of the Act. As such, we conclude that the Beneficiary was not employed in a primarily managerial capacity for [redacted]

III. UNITED STATES EMPLOYMENT IN A MANAGERIAL CAPACITY

The Director also found that the Beneficiary's position with the Petitioner in the U.S., Vice President & Business Partner, Serialization Services, is not managerial, for many of the same reasons that his position with [redacted] did not qualify as such. Because our findings regarding the Beneficiary's employment abroad warrant denial of the petition and dismissal of the appeal, we need not reach this additional issue, and therefore reserve it[1]. Our reservation of this issue is not a stipulation that the Petitioner has overcome it and should not be construed as such. Rather, there is no constructive purpose to addressing the issue here because it cannot change the outcome of the appeal.

ORDER: The appeal is dismissed.

[1] *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).