U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6044017

Date: MAR. 11, 2020

Appeal of California Service Center Decision

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

The Petitioner, a logistics provider, seeks to temporarily employ the Beneficiary as its president in the United States 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 California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity in the United States.

On appeal, the Petitioner asserts that the submitted duty descriptions for the Beneficiary's subordinates and the other supporting documentation establishes that he would oversee subordinate supervisors; and therefore, qualify as a personnel manager. The Petitioner also states that the Director erred in concluding that its employer's quarterly wage tax reports did not match its asserted number of employees.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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 their 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. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity. The Petitioner does not claim that the Beneficiary would be

employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in 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.

As a preliminary matter, the Petitioner asserts only that the Beneficiary qualifies based on his management of subordinate supervisors. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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." *Id.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*). Therefore, as the Petitioner only contends that the Beneficiary would qualify as a personnel manager, we will not analyze whether he would qualify as a function manager.

When examining the managerial capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a 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. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

Based on the definition of managerial capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *See* section 101(a)(44)(A) of the Act. Second, 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).

The Petitioner stated in a support letter that it "provides international express logistics services between China and the U.S." The Petitioner indicated that it transfers U.S. goods to customers in China, sorts and ships these goods from trading companies in the United States and China, and

packages and delivers personal items and gifts to local customers in Oregon. The Petitioner provided the following duties for the Beneficiary in response to the Director's request for evidence (RFE):

Business Planning, Strategy, Goals, and Policy (50% of the time)
The Beneficiary will lead the business direction of the company establishing its goals and policies and revising its business plan according to industry developments and trends, including:

- Develop and implement a strategic vision,
- Facilitate cooperation with third party shipping companies,
- Establish the company's financial goals based on planned milestones, market research, and industry outlook,
- Establish and monitor operation, concentrating resources on activities that provide an opportunity to gain an important competitive advantage,
- Oversee the investment of funds and manage associated risks,
- Coordinate the activities of the company and third party shipping companies, and
- Craft an integrated corporate strategy and oversee the implementation of workflows.

The Beneficiary will establish a sufficient staffing structure that elevates him to the managerial level, including:

- Establish a staffing structure as planned in the organizational chart,
- Make final decisions on personnel to ensure that the subordinate staffing structure has the sufficient capacity,
- Conduct leadership and development trainings for managers,
- Use challenging job assignments to speed high-potential managers' development and eliminate blockages to open up spots,
- Look for ways to organize and decentralize the business in order to make faster decisions,
- Get personally involved in solving important problems,
- Organize the organization around people, turning to the individual with the right skills and style for key strategic issues or business problems or big opportunities, and
- Uphold organizational logic and strategic fit.

The Beneficiary will report progress and outcomes of the overall business operation to the Board of Directors on a monthly basis,

Business Operation and Management (40% of the time)
The Beneficiary will lead his managers in making major business decisions that help the company establish a profitable business operation, including:

- Produce sound plans, spot problems and opportunities early, and respond aggressively to them,
- Adhere strictly to his operating plans and commitments,
- Figure out exactly what is required to achieve the company's planned milestones,

- Assign tasks to managers during routine weekly meetings, question them regarding operational issues and cost estimates, and approve or reject their suggestions and recommendations,
- If business drops off sharply, quickly scale back costs and/or cut discretionary expenditures,
- Lead the company's financial planning by allocating resources to support competitive strategies,
- Avoid excessive support for marginal proposals, low payout projects, and operating necessities,
- Concentrate more resources on initiatives that provide the opportunity to gain an important competitive edge,
- Avoid projects where everything must work 110% to get a decent return,
- Postpone or rethink high-risk investments and shortchange, and
- Follow up on major investments and capital expenditures to be sure projected benefits are realized.

Maintain Knowledge of Industry Developments and Business Opportunities (10% of the time)

- Spot problems and identify potential competitive advantages,
- Spend time maintaining knowledge of industry developments and business opportunities,
- Involvement in strategy formulation, and
- Get competitive information first-hand by talking to knowledgeable customers and distributors.

The Petitioner has submitted a duty description that does not credibly convey the Beneficiary's actual day-to-day managerial tasks within the context of its business. Several of the Beneficiary's stated duties discuss general attributes of, or approaches used by, managerial employees. However, these generic duties could apply to any manager acting in any industry or company and they are not reflective of his actual day-to-day tasks within the company. For instance, the duty description vaguely indicated that the Beneficiary would concentrate "resources on activities that provide an opportunity to gain an important competitive advantage," "act decisively," "use challenging job assignments to speed high-potential managers' development and eliminate blockages to open up spots," and "look for ways to organize and decentralize the business in order to make faster decisions." Likewise, the Petitioner ambiguously indicated that the Beneficiary would "get personally involved in solving important problems and intervene in someone else's territory," "organize the organization around people…turning to the right individual with the right skills and style," "uphold organizational logic and strategic fit without unnecessarily hemming the person in," and "produce sound plans, spotting problems and opportunities early, and responding to them aggressively."

In addition, the Petitioner generically explained that the Beneficiary would "adhere strictly to operating plans and commitments," question managers and approve or reject their suggestions, allocate "resources to support competitive strategies," "avoid excessive support for marginal proposals, low payout projects, and operating necessities," and "avoid projects where everything must work 110% to get a decent return." Again, in sum, the Beneficiary's duties describe the general attributes of senior managers, considerations they might make, or actions they would take, rather than

his specific daily tasks within the context of the company's operations. For example, there is little detail as to resources the Beneficiary managed to gain a competitive advantage, what issues he acted decisively on, or how he reassigned managers or reorganized the organizational structure. Similarly, the Petitioner did not submit credible specifics as to how the Beneficiary intervenes on a daily basis to solve problems, upholds "organizational logic and strategic fit," or organizes "the organization around people." These vague statements substantially affect the credibly of the Beneficiary's asserted duty description and it does not sufficiently demonstrate his actual day-to-day managerial tasks. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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).

We acknowledge that the Petitioner did submit several documents meant to corroborate the Beneficiary's performance of managerial tasks. However, this submitted evidence also lacked credibility and did not sufficiently corroborate that the Beneficiary acted as a personnel manager as of the date the petition was filed. For instance, the Petitioner submitted notes from asserted meetings conducted between the Beneficiary and his subordinates. For example, claimed meeting notes from February 2018 indicated that the Beneficiary recognized "the recent performance of all employees of the company and encourage[d] everyone to make persistent efforts" and it also referred to an "employee duty schedule for the holiday during the Chinese New Year." However, these notes include few credible details, such as the actual activities of the Beneficiary's subordinates or changes that were made to the company's schedule.

Other claimed meeting minutes also included vague and non-credible statements, such as one from December 2017 stating that the Beneficiary "roughly divid[ed] the scope of work and responsibilities of each department" and "re-plann[ed] the warehouse." These meeting notes also indicated that one of the Beneficiary's subordinate managers had collected "feedback from customers and evaluat[ed] customer satisfaction." However, there are questionably few credible details in the asserted notes from these meetings, such as actual department changes that were made by the Beneficiary, how the warehouse was being re-planned and why, or which customers were contacted and what their feedback was. Meanwhile, notes from another meeting in October 2017 ambiguously stated that the "volume of goods has reached the standard of FEDEX's big customer," "a new employee is hired, who has strong ability and high enthusiasm," and "the website needs to be further improved for the online transshipment function." However again, this internal document did not discuss the actual volume of goods processed by FedEx, name the new employee hired, or discuss what issues the website was having or actual improvements that would be made.

The Petitioner also submitted asserted emails from his claimed subordinate supervisors that were also similarly vague and questionable. For example, an email dated in January 2018 from the Beneficiary's claimed subordinate shipping department manager stated that he had "found that there are some problems in our work and some of them are involved in work inefficiency," but the email did not proceed to indicate what these problems or inefficiencies were. Likewise, the Petitioner provided another email from the claimed warehouse manager to the Beneficiary indicating that this employee would "plan to redesign the existing facilities to make rational use of warehouse space and improve work efficiency." However, the email ambiguously does not discuss these improvements or why they are necessary. Another email from the warehouse manager from November 2017 similarly stated that

he "drafted some rules and procedures for the specific operation of the department" and noted that he would "arrange centralized training and implement it." But again, there was no discussion of these rules or procedures, why they were necessary, or what the "centralized training" would consist of.

The Petitioner also provided accompanying policies that were comparably generic and which did not credibly corroborate the Beneficiary's daily management of subordinate supervisors and his delegation of duties to them. To illustrate, a claimed warehouse policy from November 2017 proposed by the aforementioned warehouse manager vaguely declared that "so it is recommended to check the remaining materials, estimate the amount of consumption for the next month then purchase the materials needed on the first working day of each month, rather [than] redundant materials." However, again, it is not clear what materials are being referred to, and this statement appears to refer to inventory, not the Petitioner's asserted business, the shipment of goods.

In addition, the Petitioner submitted a few documents related to the asserted marketing/customer service manager's proposed redesign of the '[redacted]' shipping website. However, in support of the petition, the Petitioner provided a franchise agreement with a '[redacted]' where this franchisor agreed in section 8 to provide "unified advertising and promotional support" and "IT information service." Given this, it appears questionable that the Petitioner's claimed marketing manager, working for the franchisee, would be tasked with redesigning the franchisor's website, particularly since the franchisor was stated to provide this type of marketing support. In sum, although the Petitioner submitted substantial documentation meant to substantiate its activities and the Beneficiary's managerial duties, this evidence raised more questions rather than credibly corroborating his primary performance of qualifying duties on a daily basis. The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the Petitioner submitted evidence indicating the Beneficiary's likely involvement in daily non-qualifying operational tasks. For instance, the Petitioner submitted invoices for the purchase of packaging materials including the Beneficiary's name from late 2018 and throughout 2019.[1] However, in contrast, the Petitioner does not mention these types of non-qualifying operational tasks in his duty description. The Beneficiary's name appearing on these documents appears to contradict its assertion that he delegates these type of tasks to his asserted supervisory subordinates and its other claimed operational employees. Whether the Beneficiary is a manager turns on whether the Petitioner has sustained its burden of proving that his duties are "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner submits evidence indicating the Beneficiary's involvement in non-qualifying operational duties, but it does not sufficiently document what proportion of his duties would be managerial and what proportion would be non-qualifying. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary holds a senior position within the organization, the fact that he will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily"

[1] The appeal was filed on November 26, 2019.

managerial in nature. *Id.* 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; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

As discussed, the Petitioner exclusively contends that the Beneficiary has, and would under an approved petition, act as a personnel manager based on his supervision of subordinate supervisors. In support of the petition and in response to the RFE, the Petitioner submitted an organizational chart reflecting that the Beneficiary would oversee a shipping department manager, a marketing/customer service manager, a warehouse manager, and an "external accountant." Further, the shipping department manager was shown to supervise a verifying and shipping clerk and a checking clerk. Meanwhile, the chart also indicated that the marketing/customer service manager oversaw a "local marketing/customer service specialist" and two other employees working for the foreign employer in China; specifically, a key customer specialist and a Chinese marketing/customer specialist. Lastly, the chart reflected that the warehouse manager oversaw a package operator and an internal package recipient/shipper.

First, the Petitioner submitted no evidence to substantiate that it regularly engages two employees working for the foreign employer or an "external accountant," or that the Beneficiary exercises authority over these individuals to sufficiently establish that they could be considered part of its organizational chart.

In addition, in denying the petition, the Director pointed to employer's quarterly wage tax reports closest to the date the petition was filed which reflected that the Petitioner had only five employees. This documentation was in conflict with its organizational chart reflecting at least eight individuals working directly for the company. The most recent IRS Form 941, Employer's Quarterly Tax Return from the second quarter of 2018 provided on the record, prior to appeal, reflected that the Petitioner had only five employees. On appeal, the Petitioner submits a state quarterly wage tax report from the fourth quarter of 2018 indicating that it had seven employees in October 2018, eight in November 2018, and six in December 2018. It is noteworthy that the supporting tax documentation, beyond that from November 2018, indicates that the Petitioner was not sustaining its claimed organizational chart. For instance, as indicated above, a state quarterly wage tax report reflected that the Petitioner only had six employees less than a month after the date the petition was filed.

Further, prior to this adjudication, we issued a notice of intent to deny (NOID) based on records we observed from the Oregon Secretary of State indicating that the Petitioner had been "administratively dissolved" in December 2019 and requested evidence to address this apparent discrepancy. In response, the Petitioner submitted a state quarterly wage tax report from the fourth quarter of 2019 indicating that it had six employees in October 2019 and only five in November and December 2019.

In sum, the submitted tax documentation reflects that the Petitioner did not, and would not, employ a level of supervisors subordinate to the Beneficiary as claimed. The tax documentation indicates that the Petitioner had six employees less than a month after the petition was filed, as opposed to the eight listed in its organizational chart. Meanwhile, the most recent state quarterly wage report indicates that in December 2019 the Petitioner had only five employees, leaving substantial uncertainty as to whether it would employ three subordinate supervisors under the Beneficiary. In addition, the Petitioner does not indicate or clarify whether the Beneficiary is considered an employee pursuant to these forms, leaving additional uncertainty as to its claims.

In response to the NOID, the Petitioner also provided a profit and loss statement reflecting that it paid $28,000 in "officer compensation" and $97,814.25 in employee wages during all of 2019. First, the Petitioner claims that the Petitioner would earn $54,000 in compensation under an approved petition, but the evidence appears to indicate that he only earned $28,000 in "officer compensation" the year just after the time the petition was filed. Further, the Petitioner elsewhere submitted an employee list asserting that the warehouse manager would earn $4000 per month (or $48,000 per year), the shipping department manager $3500 per month ($42,000 annually), and the marketing/customer service manager $2500 per month ($30,000 per year). This alone accounts for $120,000 in wages per year, yet the Petitioner's own profit and loss statement reflects that it only paid approximately $98,000 in wages in all of 2019. As such, the submitted evidence indicates that the Petitioner likely did not pay three supervisors and five other operational employees during 2019 as it claimed it would.

Similarly, the state wage form from the fourth quarter of 2019 reflects that the Petitioner paid only $30,342.84 in wages during that quarter, while the claimed wages of the Beneficiary's asserted supervisors were an asserted $30,000 per quarter alone. This evidence also indicates that the Petitioner only employs the Beneficiary's claimed subordinate supervisors and not five other operational level employees underneath these claimed managers. These discrepancies in the provided tax forms leave substantial question as to whether the Petitioner would have sustained a level of subordinate supervisors reporting to the Beneficiary as necessary to qualify him as a personnel manager under an approved petition. In addition, the most recent evidence near the date of this adjudication, namely the state wage tax forms from the fourth quarter of 2019 and the Petitioner's profit and loss statement, indicate that it is not currently employing a level of supervisors subordinate to the Beneficiary or operational level employees to support them it these asserted roles. We note that 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).

The substantial conflicting tax and financial documentation, in light of the other generic and vague evidence of the Beneficiary's claimed managerial authority over his claimed subordinate supervisors, leaves substantial uncertainty as to whether the Petitioner's organizational structure was, and is, as claimed. For instance, in denying the petition, the Director pointed to two performance reviews submitted specific to the Beneficiary's claimed managerial subordinates and indicated that they reflected reviews for employees not in the Petitioner's organizational chart. On appeal, the Petitioner stated only that these reviewed subordinates were former employees. However notably, the Petitioner does not provide other supporting evidence to substantiate that the Beneficiary's claimed supervisors acted in their asserted roles, such as performance reviews or other personnel documentation relevant to operational employees in its organizational chart as of the date the petition was filed or thereafter. Again, the Petitioner must resolve this discrepancies in the record with independent, objective

evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582, 591-92. Therefore, the Petitioner has not established that the Beneficiary would qualify as a personnel manager under an approved petition.

In the alternative, the Petitioner also did not establish that the Beneficiary would supervise professional subordinates to qualify him as a personnel manager. First, at no point on the record or on appeal does the Petitioner contend that the Beneficiary's subordinates are professionals nor does it explain why they should be considered professionals.[2] Without this clarity or explanation, it is not clear how these positions dealing with the day-to-day matters of shipping and warehousing would require bachelor's degrees. For this reason, the Petitioner did not establish that the Beneficiary would supervise professional subordinates.

For the foregoing reasons, the Petitioner has not established that the Beneficiary would act in a managerial capacity under an approved petition.

ORDER: The appeal is dismissed.

[2] To determine whether a beneficiary manages professional employees, we must 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 must focus on the level of education required by the position, rather than the degree held by 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.