U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-O-I-, INC.

DATE: MAR. 12, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a restaurant group, seeks to extend the Beneficiary's temporary employment as its vice president of operations 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 California Service Center denied the petition, concluding that the record did not establish, as claimed, that the Petitioner will employ the Beneficiary in the United States in an executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director owed deference to a prior approval, and relied on an improperly restrictive interpretation of the definition of "executive capacity." In the alternative, the Petitioner also asserts that the Beneficiary qualifies as a manager.

Upon *de novo* review, we agree with the Director's finding that the Beneficiary is not an executive, but will sustain the appeal based on a finding that the Petitioner will employ the Beneficiary in a managerial capacity.

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 his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

II. DEFERENCE

Before we address the merits of the case, we note that the Petitioner cites "a 2004 Service Memo stating that, absent something extraordinary, the Service should grant 'deference' to prior approvals." That memo is the Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQOPRD 72/11.3, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity* (Apr. 23, 2004). The Yates Memorandum has been rescinded by USCIS Policy Memorandum PM-602-0151, *Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status* (Oct. 23, 2017), https://www.uscis.gov/laws/policy-memoranda. The new policy memorandum, which is binding on all USCIS components, including the AAO, states: "An adjudicator's fact-finding authority . . . should not be constrained by any prior petition approval, but instead, should be based on the merits of each case." *Id.* at 3.

III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

A. Executive Capacity

An executive capacity is an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

The Director found the Beneficiary's highest-ranking subordinate employees are supervisors rather than managers, and therefore "the beneficiary is not primarily directing the management of the U.S. entity." On appeal, the Petitioner does not press the claim that the Beneficiary's subordinates are managers. Instead, the Petitioner asserts that this finding is irrelevant, and cites two federal district court decisions and the Foreign Affairs Manual (FAM). Upon review, we find that the cited cases are not binding on the Administrative Appeals Office. Further, the FAM provides guidance to employees of the Department of State in carrying out their official duties, such as the adjudication of visa applications abroad, but is not relevant to this proceeding.

Ultimately, the issue is that an executive must direct the management of the organization or a department, subdivision, function, or component thereof. The statutory definitions differentiate between managing an organization (the role of a manager) and *directing* the management of an organization (the role of an executive). It is the petitioner's burden to establish how an executive can "direct the management" in the absence of managers to direct, without personally managing the organization. The Petitioner has not explained how the Beneficiary will direct the management without directing managers or managing the company himself.

Furthermore, another key element of an executive capacity is that an executive establishes the goals and policies of the organization, component, or function. *See* section 101(a)(44)(B)(ii). The Beneficiary's job description, however, requires him to ensure "that the broad goals and policies *established by the President* are effectively implemented and executed" (emphasis added). Therefore, the position does not meet one of the cornerstone requirements of an executive capacity.

B. Managerial Capacity

On appeal, the Petitioner asks us, in the alternative, to consider the Beneficiary's position as managerial. Because this request involves no material change to the facts of the record, we will examine it here as part of our *de novo* review of the record.

A managerial capacity is an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization, and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A personnel manager supervises and controls the work of other supervisory, professional, or managerial employees. A personnel manager must also have the authority to execute or recommend personnel actions such as hiring, firing, and promotions. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

The Petitioner submitted details and documentation of specific examples of the Beneficiary's activities and the record shows that the Beneficiary has general authority over the company's restaurants; supervises and controls the work of subordinates who are, themselves, supervisors; has authority over hiring, firing, and other personnel actions; and exercises discretion over the day-to-day operation of the restaurants. The record does not indicate that the Beneficiary has significant operational or administrative duties that would substantially reduce the time available to spend on managerial functions.

IV. CONCLUSION

The Petitioner has established that it will employ the Beneficiary in a managerial capacity.

ORDER: The appeal is sustained.

Cite as *Matter of F-O-I-, Inc.*, ID# 933176 (AAO Mar. 12, 2018)