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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-C-C- LTD.

DATE: MAR. 17, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which operates a spa at a [redacted] seeks to extend the Beneficiary's temporary employment as its president and general manager 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 required, that the Beneficiary will be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary qualifies as an executive and as a manager, with oversight over professional nail technicians and massage therapists. The Petitioner also notes that the Beneficiary has held L-1A nonimmigrant status for several years, with a prior renewal of status.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the Beneficiary's application for admission into the United States. 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, executive, or specialized knowledge capacity. Section 101(a)(15)(L) of the Act.

The regulations require the Petitioner to submit evidence that it will employ the Beneficiary in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed. 8 C.F.R. § 214.2(l)(3)(ii).

II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director found that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity under the extended petition.

Section 101(a)(44)(A) of the Act 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.

Further, "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.*

Section 101(a)(44)(B) of the Act defines the term "executive capacity" as "an assignment within an organization in which the employee primarily":

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

A. Duties

When examining the managerial or executive capacity of the Beneficiary, we will look first to 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 or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

Based on the definitions of managerial and executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive 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); *Champion World*, 940 F.2d 1533.

The petition included a job description for the Beneficiary, submitted without attribution (note: errors in the original text have not been changed):

> Employee related activities
>
> 1. Hiring and firing all employees.
> 2. Complying with all health and safety regulations for the premise and the employees.
> 3. Employee training.
> 4. Supervise all employees in the daily operation.
>
> Procurement
>
> 1. Procure all necessary supplies for the business.
> 2. Procure all retail supplies for the business.
> 3. Maintain specialty equipments to utmost efficiency including Facial Massage and Pedicure equipments for the Spa.
>
> Marketing
>
> 1. Create events to promote the business with the base.
> 2. Attend community functions and meet with leaders to promote the business.
>
> His other duties include negotiating with base official in regards to contract renewals and other ways to improve the service. His main duty is to make the operation runs smoothly on a daily basis.

The Director issued a request for evidence (RFE), stating that the Petitioner had not provided enough information about the Beneficiary's duties. In response, the Beneficiary, in his capacity as the Petitioner's president, listed six tasks and the approximate time devoted to each:

Perform administrative duties including: reading and writing reports, dictating memorandums and orally communicating with customers, manager, employees, corporate office. Make judgments and implement changes to maximize profits while maintaining quality and customer satisfaction. Supervise development of and revision to business plan, annual budget and annual and monthly forecasts.	35%
Interview, hire, develop, supervise and counsel manager, supervisor and other staff in the efficient operation of their respective area(s), per [the Petitioner's] policies and procedures. Meet with, develop and delegate improvement plans for operation and review performance of manager and supervisor. Support a proactive Human Resource function and ensure compliance with all territorial and federal labor laws and regulations.	25%
Participate in community affairs and maintain positive image for [the petitioning company]. Meet with potential and current clients and promote hotel.	15%
Physically tour and visually inspect property on a daily basis. Monitor cost control, property condition, and quality of service. Greet and maintain rapport with employees and customers.	15%
Travel to attend corporate meetings.	5%
Conduct regular staff and employee meetings.	5%

The unexplained reference to a hotel in the third item, above, calls into question the extent to which the Beneficiary referred to his own duties, rather than a template prepared for hotel managers, when preparing the above list. The list does not contain any specific references to the operation of a spa, rather than a hotel.

The Director denied the petition, stating that the Beneficiary's duties appear to include operational tasks that do not indicate a managerial or executive capacity. On appeal, the Petitioner asserts that the Beneficiary's position meets all the requirements of both managerial and executive capacity.

The Petitioner also submits a new job description for the Beneficiary, which matches the one submitted in response to the RFE except that the Petitioner changed most of the percentages and combined the fifth and sixth items into a single item. Like the earlier version, the new job description lacks detail, and contains information that conflicts with the evidence of record. It refers to a hotel, whereas the Petitioner is not a hotel, and there is no evidence that the Petitioner is part of a hotel. Furthermore, it repeatedly refers to the Beneficiary's authority over a manager, but the Petitioner does not claim to employ any manager other than the Beneficiary. Therefore, we have

reason to doubt the accuracy, reliability, and origin of the job descriptions submitted in response to the RFE and on appeal.

The original job description has several deficiencies as well. Marketing, procuring supplies and maintaining equipment are not managerial or executive tasks. If the Beneficiary will "[s]upervise all employees," then he will be a first-line supervisor. And the phrase "[c]omplying with all health and safety regulations" does not identify any specific tasks, so we cannot tell if this phrase refers to operational functions such as handling chemicals and conducting inspections.

The record documents that the Petitioner is doing business, but it does not contain significant evidence of the Beneficiary's claimed work in a managerial capacity for the petitioning entity, such as the reports and plans that the Petitioner claims occupy much of the Beneficiary's time. Overall, the three job descriptions do not appear to be mutually consistent, and none of the descriptions shows that the Beneficiary's work would be primarily managerial or executive in nature.

At the time of filing and again in response to the RFE, the Petitioner consistently referred to the Beneficiary as a manager. On appeal, the Petitioner claims for the first time that the Beneficiary "qualifies under the executive capacity [*sic*]." The Petitioner offers no detailed information in support of this new claim. Instead, the Petitioner asserts that the Beneficiary meets each of the elements of the definition of "executive capacity." For example, the Petitioner states that the Beneficiary "is able to exercise all discretionary decision making concerning the component. Further, he has run the component of the organization with almost minimal general supervision or direction from higher level executives." It does not suffice for the Petitioner to reiterate the regulations. The Petitioner must provide specific information in support of its claims. *See 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).

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and they must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. One does not qualify as an executive under the statute simply because one "directs" the enterprise as the sole managerial employee. The Petitioner has not adequately supported its new claim, on appeal, that the Beneficiary qualifies as an executive. While the Beneficiary may have the appropriate level of authority over the company as its senior employee, the submitted job descriptions do not show that the Beneficiary is primarily focused on the policies and goals of the company rather than on its day-to-day administrative and operational activities.

The Petitioner has not shown that the Beneficiary's intended duties are primarily managerial or executive in nature.

B. Staffing

Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including 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.

The Petitioner asserts that the Beneficiary qualifies as a personnel manager. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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." Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*4*). If a petitioner claims that a beneficiary directly supervises other employees, those subordinate employees must be supervisory, professional, or managerial, and the beneficiary must have the 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; 8 C.F.R. §§ 214.2(l)(1)(ii)(B)(*2*)-(*3*).

The Petitioner initially identified seven employees:

- The Beneficiary (variously identified as president, general manager, and manager);
- [redacted] (cashier, wax, manicure/pedicure, supervisor of others listed below);
- Two additional manicurist/pedicurists; and
- Three "massagers."

We note that the Beneficiary initially stated that the petitioning company holds "a contract to operate a Spa and barber shop." The Petitioner submitted several photographs, identified as showing the Petitioner's place of business. One photograph shows several barber's chairs; the logo "Experts in the Military Cut;" and what appears to be an employee holding a hair trimmer. The Petitioner's organizational chart, however, does not show any barbers or hairstylists.

In the RFE, the Director stated: "it does not appear that the beneficiary will be supervising professional, supervisory or managerial employees." The Director requested job descriptions and educational backgrounds for the Beneficiary's subordinate employees.

The Petitioner responded with an updated organizational chart. It is similar to the previous version, except one of the masseuses had left the company; the Petitioner had hired a new employee who performed waxes, manicures, and pedicures; and the cashier/waxer/supervisor no longer performed manicure/pedicures.

The Petitioner provided a four-part job description for the supervisor:

1. Daily job assignment to each manicurist and pedicurist, supervise them, and evaluate their job performance.
2. Technical training or supervision of each employee.
3. Daily job performance report to General Manager.
4. In [the absence] of the General Manager, the Supervisor will perform General Manager's duties and report to the General Manager later thereon.

The above job description does not include the duties of a cashier or manicurist/pedicurist, although the Petitioner has twice stated that the supervisor holds those positions as well.

The Petitioner also provided one-paragraph job descriptions for "Manicurist," "Pedicurist," and "Massager." These appear to be generic templates, not specifically prepared for positions at the petitioning company. The Petitioner does not employ separate manicurists and pedicurists, and the "Pedicurist" listing states: "Some manicurists include foot and leg massages, along with paraffin treatments or hot oil treatments." This is a general statement about the varying degrees of service offered by pedicurists (or manicurists).

Copies of the employees' job applications indicate that the supervisor/cashier/manicurist-pedicurist has a college degree in "Fine Art." (On her application, she stated that she sought a position as a "nail technician.") The other subordinates did not claim education beyond high school. One left the "Education History" part of her job application blank.

In the denial notice, the Director found that the Petitioner had not shown that the Beneficiary oversees the work of professionals, supervisors, or managers. Although the Beneficiary's job description mentions unidentified managers, the Petitioner has not put forward a specific, coherent claim that the Beneficiary supervises managerial employees at the petitioning company.

The Petitioner initially asserted that the Beneficiary has authority over a supervisor. The Director found that the claimed supervisor also has significant non-supervisory duties as a cashier and a manicurist/pedicurist, and therefore the Beneficiary is essentially "a first-line supervisor of non-professional employees." On appeal, the Petitioner does not dispute this finding. We agree with the Director that, although one of the Beneficiary's subordinates is nominally a supervisor with authority to act in the Beneficiary's place, she is predominantly a front-line service employee. The supervisor has several non-supervisory duties, including serving as the Petitioner's only cashier.

To determine whether the 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 United States 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."

The Director found that the Petitioner had not shown that any of the subordinate positions requires at least a bachelor's degree. Thus, the Director concluded that the Beneficiary does not supervise professionals.

On appeal, the Petitioner states:

> We would contend that the Nail technicians and the Massage Therapist are professional under the definition. The nail technicians are required to attend and complete 350 hours of manicurist license courses and receive a license [from the] . . . The Massage Therapist[s] are also required to complete 240 to 1000 hours of training in order to be certified Massage Therapists.

The Petitioner does not claim or establish that the positions at the petitioning spa require academic (as opposed to vocational) training. The statute and regulations distinguish between expertise gained through academic study and expertise gained through vocational training. *See, e.g.*, section 203(b)(3)(A) of the Act, 8 U.S.C. § 1153(b)(3)(A).

Furthermore, the Petitioner refers to "massage therapists" on appeal, but previously had identified these workers only as "massagers." The Petitioner has not shown that the terms are interchangeable. The appeal includes documentation showing that several employees have training in "massage techniques," but only one has completed a course in "Massage Therapy and Spa Treatments."

The Petitioner has not overcome the Director's finding that the Beneficiary's subordinates are not supervisors, managers, or professionals. Therefore, we agree with the Director that the Petitioner has not established that the Beneficiary is a personnel manager.

The statutory definition of "managerial capacity" also allows for "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that a beneficiary will manage an essential function, a petitioner must clearly describe the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary's daily duties dedicated to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, a petitioner's description of a beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform the duties related to the function.

The Director concluded that the Petitioner had not shown that the Beneficiary qualifies as a function manager. The Director found that "the beneficiary is primarily involved in the performance of routine operational activities of the entity rather than in the management of a function of that business."

On appeal, the Petitioner contends that the Beneficiary's position has all the necessary elements of a managerial position, but does not elaborate. The Petitioner simply rephrases the definition of "managerial capacity." As explained above, this does not suffice. We agree with the Director's determination that the evidence is insufficient to establish that the Beneficiary will be employed as a function manager.

III. PRIOR APPROVALS

The Petitioner asserts that USCIS previously granted the requested status, thereby recognizing that the Beneficiary works in a managerial or executive capacity. Each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). That said, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material error on the part of the Director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g. Ltd.Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound by a decision of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).

IV. CONCLUSION

The Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity under the extended petition.

ORDER: The appeal is dismissed.

Cite as *Matter of G-C-C- Ltd.*, ID# 270660 (AAO Mar. 17, 2017)