U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-A-R-O-

DATE: MAR. 26, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which promotes trade and investment between the United States and Shenzhen, China, seeks to temporarily employ the Beneficiary as its assistant chief representative 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 California Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity; and (2) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred by disregarding evidence of eligibility, and by not sufficiently explaining the finding that the Beneficiary's proposed duties are non-qualifying. The Petitioner indicated that it would file a supplemental brief within 30 days of filing the appeal. That period has elapsed, and the record does not contain any further submission from the Petitioner. Therefore, we consider the record to be complete as it now stands.

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 his or her 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. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE 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.

Based on the statutory 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 Director denied the petition based, in part, on a finding that the Petitioner did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. On appeal, the Petitioner asserts that the Beneficiary's employment abroad was as a function manager, whose managerial capacity derives from managing an essential function rather than from supervising and controlling the work of supervisory, professional, or managerial employees. Therefore, we need not consider the requirements for an executive, a personnel manager, or a capacity involving specialized knowledge.

When examining the claimed managerial capacity of a given beneficiary, we will look to the description of the job duties. The description of the job duties must clearly describe the duties 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). 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 foreign entity's business and its staffing levels.

The Petitioner indicated that its affiliate, the [redacted] employed the Beneficiary as chief of its Quality and Brands Control Section beginning in January 2017, continuing through the time the Petitioner filed the petition in June 2018.

listed the Beneficiary's duties abroad, and the approximate time devoted to each:

Manage the work of 3 staff members of Quality and Brands Control Section;	45%
Make recommendation on hiring, promoting and discharging subordinate staff Members;	5%
Manage the collection, organization and analysis of data concerning the quality of industries and brands;	10%
Manage the preparation of industries and businesses quality and brands reports;	10%
Make recommendations on formulating policies and measures for improving industries and businesses quality and brands;	10%
. . . [F]ormulate strategies and plans for improving industry and business quality and brands;	10%
Manage the selection of enterprises applying for product quality and brand reputation recognition by the Ministry of Industry and Information Technology;	5%
Manage special funds for brand development.	5%

later provided additional details relating to the above categories.

One of the three staff members mentioned above would "[p]romote industrial technological transformation and consulting related issues"; another would assist the Beneficiary "in promoting quality and brand"; and the third would assist the Beneficiary "in handling internal administrative affairs, and daily work." The Petitioner did not claim that these three subordinates held professional positions.

The Director found that five of the Beneficiary's eight responsibilities (the first three and the last two, as ordered above) "contain non-qualifying duties, in part, or whole." The Director found that some of these responsibilities concerned duties that the Beneficiary had to perform herself (such as researching existing municipal and provincial plans and policies), while others amounted to first-line supervision of non-professional employees.

On appeal, the Petitioner states: "The position description and other documents in the record have established that the beneficiary is a functional manager, responsible [for] coordinating and managing the quality and brands control of the industries and businesses of

The term "function manager" applies generally when a beneficiary's managerial capacity derives not from supervising or controlling a subordinate staff, but instead from primarily managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that:

> (1) the function is a clearly defined activity; (2) the function is "essential," i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the

> function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations.

Matter of G- Inc., Adopted Decision 2017-05 (AAO Nov. 8, 2017). In this matter, the Petitioner has not established that the Beneficiary manages an essential function. The Beneficiary appears to have had discretion over her unit's day-to-day operations, but the Petitioner has not satisfied the other four elements listed immediately above:

(1) The Petitioner has not defined "Quality and Brands Control" beyond the description of the Beneficiary's duties. "[T]he selection of enterprises applying for product quality and brand reputation recognition by the Ministry of Industry and Information Technology" occupied only a small fraction of the Beneficiary's time, and the above wording appears to indicate that the Ministry of Industry and Information Technology, not the Quality and Brands Control Section, was responsible for actually granting the recognition sought.
(2) The Petitioner has not shown that "coordinating and managing the quality and brands control of the industries and businesses of [redacted] amounts to an essential function within [redacted]
(3) The Beneficiary's described duties predominantly involve supervising data collectors, participating in conferences, and preparing reports. Because the Petitioner has not fully defined "Quality and Brands Control," the Petitioner has not established the extent to which the Beneficiary manages, rather than performs, the activity.
(4) The Petitioner has not provided enough information about [redacted] organizational structure to show either (a) the significance of the Beneficiary's role there, or (b) who else has authority over the function managed. The Beneficiary's job description indicates that she "formulate[d] [redacted] strategies and plans," but also submitted these plans "to the senior management of [redacted] for review" and then "to the leadership of [redacted] Municipal Government," indicating multi-layered review that does not appear to be consistent with a senior level of authority or discretion.

Based on the deficiencies discussed above, the Petitioner has not established that [redacted] employed the Beneficiary in a managerial capacity abroad.

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

The Director also found that the Petitioner had not established that it would employ the Beneficiary in a managerial or executive capacity in the United States. However, because the above finding regarding the Beneficiary's employment abroad is dispositive in this case, we need not reach the issue of her prospective U.S. employment, and therefore reserve it.

IV. CONCLUSION

The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of N-A-R-O-*, ID# 2480479 (AAO Mar. 26, 2019)