U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10831589

Date: MAR. 26, 2021

Appeal of California Service Center Decision

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

The Petitioner seeks to continue employing the Beneficiary as its general manager under the L-1A nonimmigrant visa classification for intracompany managers and executives. See 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. The Director concluded that the Petitioner did not establish the Beneficiary's employment abroad in the claimed managerial or executive capacity. The Director also found the record insufficient to demonstrate the Beneficiary's proposed U.S. employment in the required managerial or executive capacity.

The Petitioner bears the burden of establishing eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. L-1A MANAGERS AND EXECUTIVES

An L-1A petitioner must demonstrate that, in the three years before a beneficiary's admission to the United States, the petitioner or a parent, branch, affiliate, or subsidiary employed the beneficiary abroad full-time for at least one continuous year in a capacity that was managerial, executive, or involved specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(i), (ii), (iv). An L-1A petitioner must also establish a beneficiary's qualifications for an offered position, and their proposed U.S. employment in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii), (iv).

A petition to extend L-1A status does not require supporting documentation, but a director may request it. 8 C.F.R. § 214.2(l)(14)(i). U.S. Citizenship and Immigration Services (USCIS) need not approve petitions that do not demonstrate eligibility merely because of prior, potentially erroneous approvals. Matter of Church Scientology Int'l, 19 I&N Dec. 593, 597 (Comm'r 1988) (citations omitted).

II. PROPOSED U.S. EMPLOYMENT

A. Managerial Capacity

The term "managerial capacity" means employment that would "primarily" involve 1) managing an organization or a department, subdivision, function or component of it; 2) supervising and controlling the work of other supervisory, professional, or managerial employees, or managing an essential function of an organization, department, or subdivision; 3) having authority to hire and fire or to recommend those personnel actions and others, or, if a beneficiary would not directly supervise others, functioning at a senior level within the organizational hierarchy or regarding the function managed; and 4) exercising discretion over the daily operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B).

The definition of the term "managerial capacity" recognizes managers of both personnel and essential functions. The Petitioner asserts that the Beneficiary would manage both personnel and functions. We will therefore consider the Beneficiary's qualifications as both a personnel and function manager.

The job duties of a personnel or function manager must meet all four elements of the definition of the term "managerial capacity." A petitioner must also demonstrate that a foreign national "primarily" performed managerial duties, as opposed to operational tasks. Family Inc. v. USCIS, 469 F.3d 1313, 1316 (9th Cir. 2006).[1]

In determining the managerial nature of a proposed position, USCIS considers descriptions of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii) (requiring an L-1A petitioner to submit "a detailed description of the services to be performed"). The Agency also considers: the business's organizational structure and nature; the existence of other workers who would relieve a beneficiary from performing operational tasks; the job duties of subordinate workers; and other factors affecting a beneficiary's proposed business role.

1. Personnel Manager

A personnel manager must primarily supervise and control the work of other supervisory, professional, or managerial employees. Section 101(a)(44)(A)(ii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). "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)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(4).

The record describes the Petitioner and the Beneficiary's former employer in India as brokerages in the trading of cashews and other nuts. The companies serve as intermediaries in transactions, providing market information and choices of buyers and sellers. The companies also purportedly negotiate transactions and execute contracts.

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[1] Family involved an immigrant visa petition for a multinational manager. See section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). The job duties of both nonimmigrant L-1A managers and immigrant multinational managers, however, must meet the definition of the term "managerial capacity." See section 101(a)(44)(A) of the Act (defining the term "managerial capacity"); also compare 8 C.F.R. § 214.2(l)(ii)(B) with 8 C.F.R. § 204.5(j)(2) (providing the same definition of the term for nonimmigrant and immigrant purposes).

The Petitioner states that, as its general manager, the Beneficiary would assume responsibility for all U.S. operations, including managing and implementing plans to broaden the Petitioner's activities. The Petitioner states that the Beneficiary would spend the following percentages of his time on the following duties:

- 15%. Adding new customers and increasing business with existing customers. Interacting regularly to discuss market trends and product development. Matching customer needs with offers from supplies in Asia and Africa.
- 15%. Adding to product range. Interacting closely with U.S. tree-nut suppliers. Managing information collection from Asia to encourage suppliers to offer products.
- 10% International Trading. Leveraging U.S. presence to trade with partners in various countries.
- 10%. Negotiating and finalizing contracts. Interacting closely with suppliers and customers to enable them to make sales and purchase decisions. Advising on strategies based on production and demand prospects.
- 10%. Making recommendations to clients. Supervising collection of information and interacting with trade organizations and market participants. Analyzing production and trade statistics. Preparing recommendations for clients and discussing procurement and sales strategies.
- 10%. Logistics. Managing logistics team to interact with suppliers to ensure optimum inventories and reduce chances for unavailability or late deliveries.
- 10%. Collections. Supervising accounts team to ensure prompt payments from customers to suppliers and regular commissions from suppliers.
- 10%. Participating in conferences and trade shows. Participating in trade organization committees and conferences as a visitor, presenter, or moderator. Networking with decision makers.
- 10%. Product Development. Working with suppliers to meet customer needs regarding product development and quality, and food safety. Developing long-term, sustainable relationships between suppliers and customers.

In response to the Director's written request for additional evidence (RFE), the Petitioner also stated that the Beneficiary would: contract with outside vendors to provide necessary business services, such as tax return preparation and accounting; manage and guide staff, including hiring and firing; and work closely with the Beneficiary's former employer in Indian to ensure consistent business operations and investment decisions.

As the Director found, the descriptions of the Beneficiary's proposed duties do not demonstrate that he would primarily serve as a personnel manager. The descriptions indicate job duties - such as managing logistics and accounting teams, and supervising collection of information - that appear to involve supervising and controlling the work of others. But the descriptions indicate that the Beneficiary would devote less than 30% of his time to these duties. The descriptions indicate that the Beneficiary would spend most of his time on duties – such as interacting with new clients, existing clients, and suppliers, and participating in conferences and trade shows - that the record does not establish as involving supervision and control of others' work. Thus, contrary to the definition of the term "managerial capacity," the proposed job duties do not indicate that the Beneficiary would "primarily" supervise and control of the work of others as a personnel manager. See Matter of Church

Scientology Int'l, 19 I&N Dec. at 604 (stating in L-1 proceedings for a manager or executive that "the employee's duties must be primarily at the managerial or executive level").

As the Director also found, the record does not demonstrate the Petitioner's ability to support a managerial position at the time of the petition's filing in November 2019. See 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility for a requested benefit "at the time of filing"). The Petitioner's organizational chart places the Beneficiary at the company's top, above six other employees. The chart indicates the Beneficiary's direct supervision of five of the six employees. The chart, however, identifies two of the supervised workers - a chief accountant and an executive assistant - as employees of the Beneficiary's former employer in India. An L-1A manager may supervise employees of a foreign affiliate. See Matter of Z-A-, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016) (approving a petition for a beneficiary who would rely on the support of eight foreign employees as a manager in the United States). But, unlike in Z-A-, this Petitioner has not demonstrated the amounts of time the foreign workers would devote to the U.S. operations or explained who would assume their foreign duties.

Also, the Petitioner's organizational chart identifies two of the remaining three proposed subordinates of the Beneficiary as independent vendors. The record does not indicate whether either of the vendors would work on a full-time basis or whether either would provide support beyond accounting and tax preparation services. In addition, although the chart indicates that a vendor would file tax returns, the Petitioner described a proposed U.S. duty of the chief accountant as "[p]reparing and filing tax returns." A petitioner must resolve inconsistencies of record with independent, objective evidence pointing to whether the truth lies. Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988). Thus, the chart and a copy of the Petitioner's payroll tax return for the third quarter of 2019 identify an executive assistant as the only full-time employee who would support the Beneficiary in the United States. The record therefore does not establish the Petitioner's ability to relieve the Beneficiary from the need to primarily engage in operational tasks in the United States.[2]

For the foregoing reasons, the Petitioner has not demonstrated that the Beneficiary would primarily work in the United States as a personnel manager.

2. Function Manager

To establish a beneficiary's proposed employment in a managerial capacity as a "function manager," a 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 would primarily manage, as opposed to perform, the function; (4) the beneficiary would act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary would exercise discretion over the function's day-to-day operations. Matter of G- Inc., Adopted Decision 2017-05 (AAO Nov. 8, 2017). A function manager may directly oversee personnel if the supervision is incidental to management of the function. Id.

[2] In determining the Beneficiary's qualifications as a personnel manager in the United States, we considered the number of employees that he would supervise. But we also examined the job duties, hours, and employment terms and conditions of the proposed supervised workers. Thus, consistent with section 101(a)(44)(C) of the Act, we did not base our decision solely on the number of subordinates the Beneficiary would supervise.

In response to the Director's RFE, the Petitioner asserted the Beneficiary's management of "all functions of the US office." The record, however, does not support the Petitioner's assertion. In its RFE response, the Petitioner stated that the chief accountant would "[o]versee[] the Accounts Department." Thus, the record does not establish the Beneficiary's purported management of all the Petitioner's functions. The discrepancy casts doubt on the reliability of the Petitioner's claims. See Matter of Ho, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record).

Also, as previously discussed and found by the Director, the record does not establish the Petitioner's ability to support the Beneficiary as a manager at the time of the petition's filing. The Petitioner has not demonstrated sufficient resources to relieve the Beneficiary from primarily performing operational tasks in the United States. The record therefore does not establish the Petitioner's proposed employment of the Beneficiary as a function manager.

B. Executive Capacity

The term "executive capacity" means employment where a beneficiary would "primarily:" 1) direct the management of an organization or a major component or function of it; 2) establish goals and policies of the organization, component, or function; 3) exercise wide latitude in discretionary decision-making; and 4) receive only general supervision or direction from higher-level executives, a board of directors, or shareholders of an organization. Section 101(a)(44)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(C).

The job duties of an executive must meet all four elements of the definition of the term "executive capacity." A petitioner must also demonstrate that a noncitizen would primarily perform executive duties, as opposed to operational tasks. Family Inc. v. USCIS, 469 F.3d at 1316.

As in determining a job's managerial nature, USCIS considers descriptions of the job duties when assessing a position's executive nature. The Agency also considers: the business's organizational structure and nature; the existence of other employees who would relieve a beneficiary from performing operational tasks; the job duties of subordinate employees; and other factors affecting a beneficiary's business role.

As the Director found, the descriptions of the Beneficiary's proposed job duties do not demonstrate employment in an executive capacity. The descriptions do not indicate that he would "primarily" establish goals and policies of the Petitioner or its components. See section 101(a)(44)(B)(ii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(C)(2). Also, for the reasons discussed in the context of the Beneficiary's proposed employment in a managerial capacity, the Petitioner has not demonstrated its ability to relieve the Beneficiary from primarily performing operational tasks. Thus, the record does not establish the Petitioner's proposed employment of the Beneficiary as an executive.

On appeal, the Petitioner argues that, under USCIS' findings, the company "is a business association without an executive or senior manager." The Petitioner asserts that "[t]his does not make logical sense." The company therefore contends that USCIS "must have used a standard [of proof] other than preponderance of the evidence." See, e.g., Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010) (stating that, except where otherwise specified by law, a petitioner must prove eligibility for a requested benefit by a preponderance of evidence).

In its argument, the Petitioner appears to assign the terms "manager" and "executive" their plain, ordinary meanings. To qualify for L-1A status, however, proposed U.S. employment must meet the statutory definition of the term "managerial capacity" or "executive capacity." See sections 101(a)(44)(A), (B) of the Act. As previously discussed, a preponderance of the evidence does not demonstrate that the Beneficiary's proposed employment meets all the elements of the definition of "managerial capacity" or "executive capacity." Thus, contrary to the Petitioner's argument, our findings use the proper standard of proof and "make logical sense."

For the foregoing reasons, the Petitioner has not demonstrated its proposed U.S. employment of the Beneficiary in a managerial or executive capacity. We will therefore affirm the petition's denial.

III. EMPLOYMENT ABROAD

A. Managerial Capacity

1. Personnel Manager

The Petitioner indicates that the Beneficiary worked as general manager for his former Indian employer for about seven years before beginning L-1A employment with the Petitioner in 2017. The Petitioner stated that, as general manager in India, the Beneficiary was "involved in management of all key functions of the business including trading, finance, and administration." He purportedly developed and implemented strategies for building long-term relationships between suppliers and customers and oversaw data collection and preparations of market analyses for clients. The Petitioner also stated that the Beneficiary negotiated contracts and supervised execution.

The Petitioner's RFE response also states that the Beneficiary had "[o]verall charge of the business including trading." He purportedly managed the staff, oversaw their work, and hired and fired personnel. The Petitioner stated that the Beneficiary assisted his spouse - a manager and partner of the Indian firm - in investment decisions, maintained relations with suppliers and customers, and attended conferences and business promotion events.

As the Director found, the descriptions of the Beneficiary's foreign duties do not demonstrate his primary supervision and control over the work of others as a personnel manager. Some of his duties - such as managing staff and overseeing data collection and preparations of market analyses - appear to have involved personnel management. But the record does not establish that other duties - such as negotiating contracts, assisting in investment decisions, and attending conferences - involved supervision and control of others' work, as opposed to performing the work himself. The Petitioner has not indicated the amounts of time the Beneficiary spent on individual duties. The descriptions of the job duties therefore do not establish that the Beneficiary "primarily" served as a personnel manager in India.

Also, although unaddressed by the Director, the organizational chart of the Beneficiary's foreign employer conflicts with other evidence of record. The chart from the time of the Beneficiary's tenure lists him on the top row, along with two other partners. The chart shows that the Beneficiary directly supervised three of the six employees below the partner-level. The Beneficiary's three subordinates

included: the chief accountant; a coordination assistant; and an executive assistant. The chart identifies the Beneficiary as the only partner who directly supervised employees in India.

Describing the job duties of another Indian partner, however, the Petitioner stated that she was "[i]n charge of office administration, including supervising the work of the staff handling logistics." The job-duty descriptions also state that the third partner - the Beneficiary's spouse - oversaw the accounts department. By indicating that the two other partners supervised employees, the job-duty descriptions contradict the organizational chart. The discrepancies cast doubts on the credibility of both the descriptions and the chart. See Matter of Ho, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record). The evidence therefore does not reliably demonstrate that the Beneficiary primarily supervised and controlled others' work abroad. Thus, in any future filings in this matter, the Petitioner must explain the inconsistencies of record with independent, objective evidence.

For the foregoing reasons, the record does not establish the Beneficiary's foreign employment as a personnel manager.

2. Function Manager

As previously indicated, the Petitioner asserted that the Beneficiary's employment abroad involved "management of all key functions of the business including trading, finance, and administration." The record, however, does not support the Beneficiary's management of "all key functions." As previously discussed, job-duty descriptions of the Beneficiary's spouse indicate that she – rather than the Beneficiary - was in "[o]verall charge of finance, such as banking, investment, etc." Also, the third partner in India - rather than the Beneficiary - purportedly was "[i]n charge of office administration." The inconsistent job-duty descriptions of the Indian partners cast doubts on the credibility of the Beneficiary's claimed management of essential functions abroad. See Matter of Ho, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record). We therefore agree with the Director that the Petitioner did not demonstrate the Beneficiary's role as a function manager abroad.

For the foregoing reasons, the record does not establish the Beneficiary's foreign employment in the claimed managerial capacity.

B. Executive Capacity

The Director found that the Petitioner "did not indicate that the position abroad was executive. Even if this was your intent, the submitted evidence was insufficient to show that the position abroad was executive."

Contrary to the Director's finding, however, the record indicates that the Petitioner claimed the Beneficiary's foreign employment in an executive capacity. The company's letter with the petition referred only to his "Past Managerial Position in the Indian Company." But the Petitioner's RFE response asserted evidence of both his "Managerial Position Abroad" and his "Executive Position Abroad." On appeal, the Petitioner further asserts that the Beneficiary "is an executive of [the Petitioner] and, previously, was an executive of [his former employer in India]." (emphasis in original). Thus, a preponderance of evidence indicates that the Petitioner claimed the Beneficiary's foreign employment in an executive capacity.

An adverse petition decision must "explain in writing the specific reasons for denial." 8 C.F.R. § 103.3(a)(1)(i). The Director's decision found insufficient evidence of the executive nature of the Beneficiary's foreign employment. But, contrary to 8 C.F.R. § 103.3(a)(1)(i), the decision did not specifically explain the insufficiencies of the evidence. The Petitioner claimed the Beneficiary's employment abroad as an executive, but the Director's decision did not specifically explain why the Petitioner's evidence was insufficient. We will therefore withdraw this portion of the Director's decision.

Nevertheless, the Petitioner has not demonstrated the Beneficiary's foreign employment in an executive capacity. The descriptions of the Beneficiary's job duties indicate that he managed staff. But the descriptions do not state that he performed executive duties such as establishing goals and policies. See section 101(a)(44)(B)(ii) of the Act. The job-duty descriptions also include some duties that the record does not establish as executive in nature, such as overseeing data collection and preparation of market analyses and attending conferences and business promotion events. The Petitioner has not specified how much time the Beneficiary devoted to each foreign duty. Thus, contrary to the definition of the term "executive capacity," the record does not demonstrate that the Beneficiary "primarily" engaged in executive duties abroad.

In any future filings in this matter, the Petitioner must submit additional evidence demonstrating the claimed, executive nature of the Beneficiary's foreign employment.

IV. QUALIFYING ORGANIZATION

Although unaddressed by the Director, the record also does not establish the Petitioner as a "qualifying organization." A "qualifying organization" must continue to be "doing business . . . as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee." 8 C.F.R. § 214.2(l)(1)(ii)(G)(2); see also 8 C.F.R. § 214.2(i)(9)(iii)(A)(1) (authorizing revocation of the approval of an L-1 petition if "[o]ne or more entities are no longer qualifying organizations"). The term "doing business" means "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

Here, the record does not establish that the Petitioner does business in another country directly or through a parent, branch, affiliate, or subsidiary. The Petitioner claims that it and the Beneficiary's former employer in India are affiliates because both companies are "owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity." See 8 C.F.R. § 214.2(l)(1)(ii)(L)(2) (defining the term "affiliate").[3]

The record, however, does not support the claimed affiliation between the Petitioner and the Beneficiary's foreign employer. A copy of the Indian company's partnership deed shows that, since late 2015, three people have owned the company together. The deed states that the Beneficiary and

[3] Ownership means the direct or indirect legal right of possession of the assets of an entity with full power and authority to control. Matter of Church Scientology Int'l, 19 I&N Dec. at 595. Control refers to the direct or indirect legal right and authority to direct an entity's establishment, management, and operations. Id.

his spouse each own 45% of the firm, while the third partner holds the remaining 10%. The Petitioner asserts that the same three people own it in the same proportions.

Contrary to the partnership deed, however, notes to the Indian company's financial statements indicate that, from at least March 31, 2016, through March 31, 2018, the Beneficiary owned most of the foreign firm. The financial notes state that the Beneficiary owned 67.78% of the foreign company; his spouse, 22.22%; and the third person, the remaining 10%. The discrepancies in the ownership percentages between the partnership deed and the financial notes cast doubt that the same individuals own the foreign and U.S. entities in approximately the same proportions. The discrepancies also cast doubt on the accuracy and authenticity of the Petitioner's evidence. See Matter of Ho, 19 I&N at 591 (stating that "[d]oubt cast on any aspect of a petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition").

Also, as evidence of the Petitioner's ownership, the petitioning U.S. limited liability company submitted copies of membership certificates dated November 1, 2016. While the Petitioner asserts that three people own it, it submitted only two membership certificates: one in the Beneficiary's name; and the other in his spouse's name. The certificate numbers and the amounts of ownership units listed on them are illegible. A copy of the Petitioner's federal income tax return for 2018, however, indicates that the Beneficiary and his spouse each own 50% of the U.S. company. Online government records also do not indicate a third principal's involvement in the U.S. entity. See Cal. Dep't of State, "Business Search," https://businesssearch.sos.ca.gov/ (last visited Feb. 24, 2021). Thus, contrary to the Petitioner's claim, the record does not demonstrate that the same group of individuals, holding approximately the same proportion of each entity, own the Petitioner and the Beneficiary's foreign employer. The record therefore does not establish the Petitioner as a qualifying organization.

Thus, in any future filings in this matter, the Petitioner must explain the inconsistencies of record and provide independent, objective evidence of the claimed qualifying relationship between the Petitioner and the Beneficiary's foreign employer.

V. CONCLUSION

The record does not establish the Beneficiary's proposed employment in the United States in the required managerial or executive capacity. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.