U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-, INC.

DATE: MAR. 28, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which sells software applications and related hardware developed by its foreign parent company, seeks to temporarily employ the Beneficiary as its chief business development officer 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 the Petitioner would employ the Beneficiary in the United States in a managerial or executive capacity. The Petitioner filed a motion to reopen and reconsider that decision. The Director granted the motion and affirmed the denial of the petition.

The matter is now before us on appeal. On appeal, the Petitioner asserts that the Director erred by rendering a decision inconsistent with binding precedent.

Upon review, we will withdraw the Director's decision and remand the matter for a new decision.

As noted above, the Director issued two decisions in this case, one regarding the initial petition and another regarding the Petitioner's combined motion to reopen and reconsider. Most of the Director's second denial decision repeats the first decision, with minimal discussion of the specific points the Petitioner raised on motion.

In both decisions, the Director indicated that the Petitioner provided inconsistent information about the Beneficiary's intended U.S. duties. The statutory definition of "managerial capacity" allows for both "personnel managers" (who supervise managerial, supervisory, or professional employees) and "function managers" (who manage an essential function within the organization). *See* sections 101(a)(44)(A)(i) and (ii) of the Act.

The Petitioner indicated that the Beneficiary would work as a function manager. But the Director also noted "previous assertions the Beneficiary will manage the development department of the organization, control the work of other supervisory and professional employees, hold authority to

recommend personnel actions, and exercise discretion over the day-to-day operations of the development team." Neither of these alternatives is disqualifying for the benefit sought. On balance, the function manager designation appears to be more apt, because the Petitioner asserted that the Beneficiary would not supervise employees at the petitioning U.S. company. Rather, employees at the foreign parent company would perform various services to support the Beneficiary.

The Petitioner's motion largely relied on *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016). In that decision, we found that the beneficiary "will continue to rely on the support of the eight staff members in Japan and two employees in the United States to accomplish non-managerial duties." *Id.* at 7. We further stated: "Given the overall purpose of the organization and the organization's stage of development, the Petitioner has established a reasonable need for a senior-level employee to manage the essential function of developing its brands and presence in the United States, notwithstanding that the Petitioner employs directly only two other employees in the United States." *Id.* The Petitioner argues that the fact pattern in its own case is similar to the pattern in *Z-A-*, and the Director has not addressed this argument, focusing instead on the lack of employees at the petitioning U.S. company. As a result, the Petitioner's key assertions and evidence do not appear to have received due consideration.

Beyond the issue in the Director's two decisions, another issue demands further attention. The Petitioner must show that the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization, and in a qualifying capacity, within the three years preceding the filing of the petition. 8 C.F.R. § 103.2(l)(3)(iii) and (iv). It is not yet evident that the Petitioner has met this requirement.

In its discussion of the Beneficiary's employment abroad, the foreign parent company stated:

> [The Beneficiary] has been employed by [the foreign company] in a managerial capacity for more than one year for the past three years. . . .
>
> . . . [The Beneficiary] recently got promoted from Chief Product Development Officer to Business Development Manager. From January 2018 to present, [the Beneficiary] was employed in a full-time managerial capacity by [the foreign company] as Business Development Manager.

The Director did not dispute the managerial nature of the Beneficiary's position abroad as business development manager. The Beneficiary, however, held that position for less than five months before the filing of the petition in May 2018. The Petitioner did not provide sufficient evidence or information to show that the Beneficiary's previous position, chief product development officer, was primarily managerial. Therefore, the Petitioner has not shown that the Beneficiary had at least one year of continuous experience in a primarily managerial capacity during the three years preceding the filing of the petition.

The issue of the Beneficiary's employment abroad requires resolution. Because the Director did not raise this issue in the request for evidence or the two denial decisions, the Petitioner has not had an opportunity to address this critical deficiency in the record.

We remand the matter to the Director for a new decision, taking the above issues into account.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of S-, Inc.*, ID# 2916983 (AAO Mar. 28, 2018)