U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16151902

Date: MAR. 30, 2021

Appeal of California Service Center Decision

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

The Petitioner seeks to operate as an indoor playground and recreation center. It intends to temporarily employ the Beneficiary as "President" of its new office[1] 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 Petitioner did not establish, as required, that: (1) the Beneficiary's employment abroad was in a managerial or executive capacity; (2) the Beneficiary is qualified to perform the intended services in the United States; and (3) the Petitioner would employ the Beneficiary in a managerial or executive capacity within one year of the petition's approval. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner did not establish that the Beneficiary's employment abroad was in a managerial or executive capacity. Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding the remaining issues pertaining to the Beneficiary's qualifications and the proposed U.S. employment. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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 submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The issue to be addressed in this decision is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity.[2]

"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 definition of managerial capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. Sections 101(a)(44)(A) and (B) of the Act. The Petitioner must also prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the foreign employer's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

The Petitioner's claims will be addressed in the discussion below, which will include consideration of the Beneficiary's job duties along with evidence of the nature of the foreign employer's business, its staffing levels, and its organizational structure.

A. Job Duties

First, we will discuss the duties performed by the Beneficiary in her position with the foreign entity. We note that the actual duties themselves reveal the true nature of the employment. *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).

In a supporting cover letter, the Petitioner stated that the Beneficiary created the [redacted] brand, which the foreign entity uses in the course of its operation as an "indoor playground." The Petitioner

[2] At all times during this proceeding the Petitioner has referred to the Beneficiary's foreign position as managerial and has indicated that the Beneficiary was employed in a managerial capacity. As such, we will limit our discussion to the basis of the Petitioner's claim and we will not discuss whether the Beneficiary's foreign employment fits the definition of executive capacity.

stated that the Beneficiary "reports directly to all shareholders" and manages a "senior management team" comprised of a vice president and "Chief Operating Officer." The Petitioner also highlighted the Beneficiary's "wide discretions in all matters" and her authority over the company's business policies, objectives, and its budget, expenses, and overall finances.

The Petitioner's supporting statement and response to a request for evidence (RFE) included an identical job description, which stated that the Beneficiary allocated her time as follows: 10% to establishing "strategic direction"; 10% to creating and maintaining a "corporate culture" and reinforcing "company values"; 30% to "overall management and final decision making"; 15% to personnel administration; 15% to financial management; 10% to "leading business and marketing"; and 10% to "legal compliance assurance." Although the Petitioner emphasized the Beneficiary's discretionary authority over the foreign entity's personnel, finances, and general business practices in further discussing each of these broadly stated elements, the directives and activities it listed were deficient in that they were vague and lacked sufficient detail about the Beneficiary's actual tasks.

For instance, in describing the Beneficiary's "overall management" and decision-making role, the Petitioner broadly referenced the Beneficiary's discretionary authority over "business operations" and "final decisions" and again highlighted the Beneficiary's direct supervision of the two employees comprising "the senior management team." The Petitioner also listed the following as part of the Beneficiary's "overall management" and decision-making role:

- Setting short-term goals regarding company revenue;
- Setting long-term goals to: increase the client base, expand into new markets, develop human resources, and promote innovation in place space activities;
- Receiving progress reports during weekly management meetings over which she presided;
- Presiding over monthly meetings with the "senior management team" to monitor implementation of goals and policies; and
- Presiding over annual meetings with "shareholders and the senior management team" to review company finances, operations, and the following year's budget.

However, the Petitioner did not describe the tasks involved in the goal-setting process within the context of a children's indoor play center, nor did it explain how the Beneficiary developed human resources or identify the steps she took to promote innovation. Further, the Petitioner's reference to an annual meeting where the Beneficiary reports to and seeks input from "shareholders," despite claiming that the Beneficiary owns 99.5% of the foreign entity leaving only .5% of the ownership to remaining "shareholders." If USCIS finds reason to believe that an assertion stated in the petition is not true, USCIS may reject that assertion. *See, e.g.*, Section 204(b) of the Act, 8 U.S.C. § 1154(b); *Anetekhai v. INS*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In the context of the foreign entity's described ownership scheme, the Petitioner's reference to "shareholders," and the suggestion that there is an annual meeting where the Beneficiary has to answer to the foreign entity's "shareholders," is misleading and not supported by the evidence on record. It is unclear how a .5% minority ownership of the foreign entity could have impacted the Beneficiary's position and duties performed for the foreign entity.

The following were listed as components of the Beneficiary's role in personnel administration: establishing staffing requirements; directing the implementation of HR policies with respect to performance evaluations, occupational health and safety, and employee conduct, benefits, and compensation; directing the execution of HR plans and activities; and reviewing employee performance reports. Again, despite highlighting the Beneficiary's role as the ultimate authority with respect to these components, the Petitioner did not convey an understanding the actual steps taken by the Beneficiary to explain precisely how she directed or ensured the implementation of her directives.

The Petitioner was equally vague in describing the Beneficiary's activities with respect to establishing "strategic direction," creating a "corporate culture," and reinforcing "company values." The Petitioner stated that the Beneficiary established a "strategic direction" by creating and overseeing the implementation of a company "vision." However, this statement is devoid of meaningful content as it includes no information about the underlying actions the Beneficiary took to set and pursue a vision. Moreover, given the foreign entity's claimed gross earnings and level of operation as an indoor playground and activity center, it appears that the "vision" of becoming "a premier children's indoor playground and recreation activities provider" was, to some degree, realized, thereby leading us to question what the Beneficiary did beyond defining the "vision" and what actual tasks she performed in establishing a "strategic direction." Likewise, the job description does not specify the steps the Beneficiary took to develop a "corporate culture" and reinforce "company values." Instead, it broadly states that the Beneficiary established "guiding principles on integrity and ethics in business conduct" and reviewed operational policies and procedures to ensure they align with the "corporate culture and values." However, the Petitioner imparted no information as to how developing a "corporate culture" and reinforcing "company values" represents activities performed by the Beneficiary in the regular course of managing a children's indoor playground and recreation center.

In sum, the Petitioner indicated that most of the Beneficiary's time, or 65%, was allocated to four elements that were described with vague and ambiguous terms that conveyed no meaningful content about the actual tasks the Beneficiary performed within the context of an organization that operates as a children's indoor playground and recreation center. In fact, most of the items listed as part of the Beneficiary's job description are generic and can apply to anyone who manages a business, regardless of the nature and size of the business or the industry in which that business operates.

On appeal, the Petitioner claims that the Beneficiary's position is managerial because it involves "significant managerial authority" over a vice president and "Chief Operating Officer" and personnel matters in general, pointing to the Beneficiary's performance evaluations of her subordinates. However, the fact that the Beneficiary will manage a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. While the Beneficiary may exercise discretion over the foreign entity's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, her actual duties may not be primarily managerial in nature. To make this determination, we rely on specific information about a beneficiary's actual daily tasks as an important indication of whether their duties are primarily managerial or executive in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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).

Although the Petitioner contends that the previously provided job description "clearly illustrates" the managerial nature of the Beneficiary's foreign position, we disagree. For the reasons discussed in the analysis above, we find that the Petitioner offered a deficient job description that did not adequately specify the Beneficiary's tasks within the specific context of the foreign entity's operation. As such, we cannot conclude that the Beneficiary's time was primarily allocated to tasks of a managerial nature.

B. Staffing

Next, we will address the foreign entity's staffing at the time of filing. When staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, the reasonable needs of the organization must be considered in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

In support of the claim that the Beneficiary's position abroad was managerial, the Petitioner provided the foreign entity's organizational chart showing the Beneficiary at the top of the organization, overseeing a vice president and "Chief Operating Officer." The vice president is shown as overseeing the "General Office Department," comprised of a manager and two clerks, and the finance department, comprised of a director and an accountant. The "Chief Operating Officer" is also depicted as overseeing two departments, representing operations and "education & training," respectively, where the operations department is comprised of a manager, two sales people, and one supervisor overseeing a janitor and three "attendant" positions, while the education and training department is comprised of a manager, a head instructor, and three subordinate instructors. Although the organizational chart depicts a five-tier staffing hierarchy with the Beneficiary assuming a position at "the top of the chain of command," the Petitioner has not provided sufficient evidence demonstrating a practical need for a position that would primarily carry out managerial job duties within the context of a children's indoor playground and recreation center.

We further note that the job descriptions of the Beneficiary's subordinates lack sufficient substantive information and do not adequately delineate the subordinates' respective job duties that explain what practical functions they fulfilled or how they relieved the Beneficiary from having to perform non-managerial duties within the context of the foreign entity's business. For instance, the vice president's job description indicates that this position was responsible for improving operations through measures that included "supply changes or the disposal or records" as well as administering and controlling "budgets for contracts, equipment and supplies." The Petitioner did not explain what supplies or contracts were common to the foreign entity's business, nor did it explain what records required disposal and how this would improve operations.

The job description of the subordinate "Chief Operating Officer" also contains vague statements that lack meaningful content about the actual job duties assigned to this position. For instance, the job description states that this position was responsible for establishing "successful support, channel and partner programs" to promote the business and for leading "the development and on-going evaluation of operational standards, policies, and procedures." However, it is unclear how these broadly stated duties translate to activities that are relevant in the daily course of a business that operates as a children's indoor playground. The job description also indicates that the "Chief Operating Officer" was responsible for leading "innovation of education/recreation programs and activities" to achieve

an improved customer experience. However, this job duty closely resembles leading "innovation and change in service offerings that improve customer experience," which was assigned to the Beneficiary to further her role in leading business and marketing. It is unclear why the Beneficiary and her subordinate were assigned overlapping job duties.

When examining the managerial capacity of a beneficiary, U.S. Citizenship and Immigration Services reviews the totality of the evidence, including job descriptions of a beneficiary and their subordinates, the nature of the business, the employment and remuneration of employees, and any other evidence contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of a beneficiary and their subordinates correspond to their respective placements in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support a managerial position.

In light of the deficiencies described above, we cannot conclude that either the foreign organization's staffing or the Beneficiary's job duties within that organization adequately demonstrate that the Beneficiary was employed abroad in a managerial capacity.

ORDER: The appeal is dismissed.