U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31090915

Date: MAY 2, 2024

Appeal of Texas Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner is a "telecommunications/electrical installation" company that filed this petition as a new office[1] and seeks to employ the Beneficiary temporarily as its "general project manager" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish that the Beneficiary was employed abroad in a managerial or executive capacity or that the Petitioner would be able to support the Beneficiary in a managerial or executive capacity within one year. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal because the Petitioner has not established that the Beneficiary was employed abroad in a managerial or executive capacity. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's 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).

[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. Despite responding in the affirmative in the petition when asked whether the Beneficiary is coming to the United States to open a new office, in response to a request for evidence the Petitioner stated that it does not qualify for the new office designation because it "has been in business since October 14, 2021," and thus it claimed to have been doing business for longer than one year as of the date this petition was filed in July 2023. Because this appeal will be dismissed on other grounds, the issue of the Petitioner's designation as a new office need not be further address at this time.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(1). The beneficiary must also be seeking 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. 8 C.F.R. § 214.2(l)(3)(ii).

In addition, regarding a new office petition, 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 OR EXECUTIVE CAPACITY

The issue to be addressed is whether the Petitioner provided sufficient evidence establishing that the Beneficiary's position abroad was in a managerial or executive capacity.

As a preliminary matter, we note that the Petitioner has not clearly and consistently identified the Beneficiary's employment abroad as having been primarily managerial or primarily executive; rather, the Petitioner used and continues to use both terms when discussing the Beneficiary's position as the foreign entity's project manager. However, a petitioner claiming that the beneficiary's position will consist of a mixture of managerial and executive duties will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each set of criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the position in question – in this instance, the position abroad – was not primarily in either a managerial or executive capacity.

Because the Petitioner did not solely rely on one definition or the other as the basis of its claim regarding the Beneficiary's foreign employment, our analysis will include discussions of both statutory definitions.

A. Managerial Capacity

First, we will discuss whether the Beneficiary's foreign position of project manager meets the statutory criteria of managerial 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 definition of managerial capacity, the Petitioner must first show that the position in question involved 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).

Beyond the required description of the job duties, we examine the company's organizational structure, the duties of the Beneficiary's subordinate employees, the presence of other employees to relieve the Beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding the Beneficiary's actual duties and role in a business.

Accordingly, we will address the Petitioner's claims 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. Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner's claim is "probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. Each piece of evidence, even if not mentioned directly, has been examined for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

The record in this matter shows that the Beneficiary was employed as the foreign entity's project manager for at least one year during the three years that preceded this petition's date of filing. Contrary to the Petitioner's assertions on appeal, the Director did not question the Beneficiary's period of employment abroad. Instead, the Director focused on the nature of such employment, questioning whether the Beneficiary's position involved primarily managerial job duties. *See* section 101(a)(44)(A) of the Act (requiring that the employee "primarily" perform the enumerated managerial duties). Given the lack of evidence the Petitioner provided, both initially and later in response to the request for evidence (RFE), we find that the Director was reasonable in raising questions about the nature of the Beneficiary's employment as the foreign entity's project manager.

In the job description provided in the petition form, the Petitioner stated that the Beneficiary's "primary role" was to ensure successful and timely project completion, which involved "managing various projects related to development, implementation and maintenance of communication systems, energy facilities, and infrastructure projects." Although the Petitioner's supporting statement further discussed the foreign entity's formation and the Beneficiary's role as vice president of its board of directors, the Petitioner did not adequately discuss the Beneficiary's role as project manager, stating only that the Beneficiary was responsible for "managing technicians, installers, and other subordinates in the different projects."

The Petitioner also provided the foreign entity's organizational chart depicting the Beneficiary as the shareholder, vice president of the board of directors, and project manager. The chart shows that in his

capacity as project manager, the position that is claimed to be managerial or executive, the Beneficiary was subordinate to the company's general manager and had a "regional/field management" as his only direct subordinate, who is shown as directly overseeing the crew manager followed by a technical coordinator.

In the RFE, the Director determined that the record lacked sufficient evidence, pointing to the absence of a list of the Beneficiary's specific daily job duties and percentage of time allocated to each duty, as well as the absence of evidence showing that the Beneficiary took personnel actions, such as hiring and firing employees. The Director also questioned how the Beneficiary was relieved from performing primarily non-managerial duties and whether he supervised and controlled the work of other managerial, supervisory, or professional employees.

The Petitioner's response included government-issued documents showing the Beneficiary's work history as well as business documents containing the Beneficiary's signature in his capacity as project manager and "legal representative" of the foreign entity. The Petitioner did not elaborate on the Beneficiary's job duties or explain how his position satisfies the four-prong statutory definition of managerial capacity. Rather, the Petitioner made vague claims about the Beneficiary "managing the projects" and "signing agreements with the local government," stating that decision-making was "inherent to [the Beneficiary's] executive position," all the while claiming that the Beneficiary "holds a managerial position that allows him to make decisions for the best interest of his company, has the power to hire and fire employees, and does not depend on other supervisors (higher supervision) to make decisions for the company." The Petitioner further claimed that the Beneficiary "has [] overseen plenty of subordinate engineers in seven years and other qualified professionals that are crucial to optimal performance and project development." The Petitioner did not discuss whether the Beneficiary's claimed subordinates were supervisory, professional, or managerial employees as required under section 101(a)(44)(A)(ii) of the Act.

The Petitioner also provided a new organizational chart containing a different, more robust staffing structure than depicted in the organizational chart that was previously submitted. Namely, with respect to the Beneficiary's position, the more recent chart does not include a crew manager and lists the position of technical coordinator in three separate blocks, albeit listing the same individual's name in each block. The newer chart also lists an 18-person technical staff subordinate to the technical coordinator and indicates that the administrative manager, who is shown as directly subordinate to the director of human resources, is also somehow subordinate to the Beneficiary, even though the original organizational chart showed the administrative manager as the general manager's direct subordinate.

Without adequate documentation resolving these inconsistencies, we are unable to gauge which staffing structure was in place during the Beneficiary's employment abroad and thus we cannot determine whether the foreign entity had the infrastructure to support the Beneficiary in a managerial position. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (establishing that inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies).

Although the Director pointed out that the Petitioner provided organizational charts containing different iterations of the foreign entity's staffing structure, the Petitioner has neither acknowledged the anomaly nor addressed the matter on appeal. As such, the Petitioner has not provided sufficient

evidence establishing whom the foreign entity employed and how it supported the Beneficiary during his one year of employment abroad in the three years that preceded this petition's filing.

Likewise, despite the Director's finding that the record lacked a detailed job description listing the Beneficiary's specific daily job duties, the Petitioner has not supplemented the record with this information. Instead, the Petitioner points to previously submitted evidence of the Beneficiary's authority to sign binding contracts on behalf of the foreign entity and approve requests made by employees. However, demonstrating that the Beneficiary had discretionary over certain business and personnel matters does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) 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 have exercised a certain level of discretion over the foreign entity's day-to-day operations and possessed the requisite level of authority with respect to discretionary decision-making, the Petitioner has not established that the Beneficiary's duties were 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).

In the present matter, while the Petitioner claims that the Beneficiary's responsibilities included "managing crews," it is unclear precisely what tasks were entailed in this broadly stated responsibility. The Petitioner also states that the denial is "troubling because there was evidence presented that shows that the beneficiary is and has indeed been with the company as an executive and manager since day number one. . . ." As noted, however, the Petitioner has not provided a detailed listing of the job duties the Beneficiary performed in the daily course of the foreign operation even though the Director highlighted the significance of this information, first in the RFE and again in the denial.

In addition, the Petitioner argues that the Director "did not review all the evidence and overlooked evidence so crucial as the 'registration of the company/articles of incorporation' where the name of the beneficiary is clearly included as incorporator, owner, and project manager." First, the record does not indicate that the listed evidence has been overlooked. Moreover, this argument incorrectly assumes that the Beneficiary's authority and position title caused the Director to deny the petition. In fact, the Director did not highlight either the Beneficiary's discretionary authority or his position title as reasons for the denial. Rather, the Director discussed other adverse findings, including the Petitioner's submission of two inconsistent organizational charts and the lack of a detailed job duty breakdown. The Director also pointed to the lack of evidence showing that the Beneficiary regularly delegated assignments and was relieved of having to primarily perform operational tasks.

An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See, e.g.*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). Here, the Petitioner did not adequately demonstrate that the foreign entity had the staffing infrastructure to relieve the Beneficiary from having to primarily perform non-managerial functions, nor did the Petitioner adequately specify the Beneficiary's job duties or establish that he primarily managed the

organization or subdivision and supervised and controlled the work of other supervisory, professional, or managerial employees pursuant to sections 101(a)(44)(A)(i) and (ii) of the Act. As such, the Petitioner did not establish that the Beneficiary employed in a managerial capacity.

B. Executive Capacity

Next, we will discuss whether the Beneficiary was employed abroad in an executive capacity.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the organization, major component, or function as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

In the present matter, the Petitioner refers to the Beneficiary as "an executive and manager since day number one" and further states that he has "well over the minimum requirement of time as an executive." However, the Petitioner has not adequately supported these claims with a detailed job duty breakdown or sufficient evidence of the foreign entity's staffing as it has not resolved the previously noted inconsistencies between the two organizational charts that were submitted, first in support of the petition and later in response to the RFE. Despite providing documents showing that the Beneficiary was a major shareholder of the foreign entity, was vice president of the foreign entity's board of directors, and had authority to enter into binding contracts on its behalf, the Petitioner has not established that the Beneficiary primarily performed duties that were consistent with directing the management of the foreign entity or its major component or function. *See* section 101(a)(44)(B)(i).

For the reasons discussed above, the Petitioner has not established the Beneficiary was employed abroad in a managerial or executive capacity and therefore the petition cannot be approved.

ORDER: The appeal is dismissed.