U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37768467

Date: MAY. 07, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a medical clinic, seeks to temporarily employ the Beneficiary as the chief operating officer (COO) of its new office[1] 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).

SCOPS denied the petition, concluding the record did not establish that the Beneficiary was employed abroad with his foreign employer in a managerial or executive capacity. The matter is now before us on appeal. 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.

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 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).

[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.

II. EMPLOYMENT WITH THE FOREIGN EMPLOYER IN A MANGERIAL CAPACITY

The Petitioner does not claim that the Beneficiary was employed in an executive capacity abroad. Therefore, we restrict our analysis to whether the Beneficiary was employed in a 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.

When examining the asserted foreign managerial capacity of a given beneficiary, we will review the petitioner's description of the job duties abroad. The petitioner's description of the foreign job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

A. Duties

To be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) of the Act. If the record does not establish that the foreign position meets all four of these elements, we cannot conclude that it was a qualifying managerial position.

If the Petitioner establishes that the foreign position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside other foreign employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's foreign duties were primarily managerial, we consider the Petitioner's description of the job duties abroad, the foreign company's organizational structure, the duties of a beneficiary's subordinate employees abroad, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in the business abroad.

The Petitioner indicated that the Beneficiary's foreign employer owned and operated gas stations, a radio station, and an Asian food restaurant chain in El Salvador. The Petitioner stated the Beneficiary acted as the COO of the foreign employer, mainly leading the restaurant chain portion of its business. The Petitioner submitted the following duty description for the Beneficiary's asserted foreign employment:

- Develop and implement strategic initiatives to increase productivity and profitability across all restaurants in the chain– 10%

- Established and directed the organization's policies and goals, leveraging his extensive experience and profound knowledge of the [foreign employer] and its objectives.

- Analyze market trends and customer preferences to identify opportunities for growth and expansion– 5%
  - Conducted weekly meetings with the management team to review KPIs, evaluate sales performance, customer services, and develop new strategies as necessary.

- Oversee day-to-day operations of the restaurant division to ensure efficiency and consistency in service delivery– 25%
  - Frequently spoke to subordinate managers regarding trends, customer preferences, sales results, and other matters that could affect the operations and profitability of the company.
  - Adjust or change operational initiatives based on management input and performance results.

- Implement standardized processes and systems to streamline operations and enhance productivity– 20%
  - Establish the company's policies and performance goals, including sales targets, expenses, staffing and inventory levels.

- Monitor key performance indicators and financial metrics to track restaurant performance and identify areas for improvement– 5%

- Build and mentor a high-performing team of restaurant managers and staff members that embodies the chain's values and culture– 5%
  - Held personnel authority and actively participated in and authorized the hiring and firing of employees.

- Provide training and support to the restaurant teams to ensure compliance with operational standards and procedures– 10%

- Foster a collaborative and positive work environment that encourages innovation and continuous improvement– 5%

The Petitioner submitted a generic duty description for the Beneficiary's role abroad that could apply to any manager in any position or type of business. The foreign duty description vaguely discussed a variety of managerial duties without providing meaningful detail as to his actual day-to-day tasks within the foreign business. The Petitioner provided insufficient specifics and no supporting documentation to substantiate his performance of qualifying managerial duties abroad such as strategic initiatives he implemented, goals and policies he set, opportunities for growth and expansion he identified, or KPIs he monitored. Likewise, the Petitioner did not detail and document the executive team members he collaborated with, service delivery he oversaw, operational initiatives he changed, financial matters he improved, personnel decisions he made, or training he provided. The lack of

detail and supporting evidence to substantiate the Beneficiary's qualifying managerial duties is particularly noteworthy since the Petitioner stated that he held weekly meetings with his subordinate managers to "review KPIs, evaluate sales performance, customer services, and develop new strategies." Specifics are clearly an important indication of whether a beneficiary's foreign duties involve managerial duties, 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).

The Petitioner only provided one specific example of a managerial-level decision the Beneficiary made during his employment abroad, stating that he added a menu item called "the SUPERWOK" to the foreign employer's Asian restaurant chain in October 2022 "as a response to the competition from a rival pizza chain that was taking our customers by offering a medium pizza lunch and soda at low prices." First, the Petitioner did not sufficiently articulate the nature of this food item added to the menu or the specific financial results that came from this decision. This task also suggests the Beneficiary's direct involvement in the day-to-day operational matters of the business. The Petitioner states on appeal that "the functions carried out by [the Beneficiary] in his position abroad are also consistent with what leading business experts consider normal functions of management in an organization," including "planning, organizing, leading, staffing, and controlling." However, the Petitioner did not discuss in detail how the Beneficiary performed these functions and did not substantiate his performance of these claimed managerial duties with supporting documentation. The fact that the Petitioner provided only one example of a specific managerial decision he made leaves uncertainty as to whether he devoted a majority of his time to qualifying managerial tasks while employed abroad, particularly since it asserted that he was employed in this role from June 2022 to October 2023. The Petitioner must resolve ambiguities in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

Whether the Beneficiary is a managerial turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not credibly document what proportion of the Beneficiary's foreign duties were managerial functions and what proportion would be non-qualifying. The Petitioner suggested the Beneficiary's involvement with certain administrative or operational tasks but did not sufficiently quantify the time he spent on these duties as opposed to qualifying managerial duties. For this reason, we cannot determine whether the Beneficiary primarily performed the duties of a manager while employed abroad. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary holds a position with a managerial title within the foreign organization, the fact that he managed or directed a portion of the foreign 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" managerial in nature. *Id.* The Beneficiary may have exercised discretion over some of the foreign employer's day-to-day operations and possessed some requisite level of authority with respect to discretionary decision-making; however, the foreign position description is not alone sufficient to establish that his actual duties abroad were primarily managerial in nature.

B. Staffing

The Petitioner submitted a foreign organizational chart reflecting that the Beneficiary supervised a chief financial officer (CFO) and a general manager. The foreign organizational chart also showed that the CFO oversaw audit, accounting, and "internal control" employees, while the general manager supervised human resources and maintenance employees and an operation manager. The operation manager was further shown to oversee two restaurant managers, two cashiers, two cooks, a "production hub manager," "operators," and "distribution."

The Petitioner provided a foreign organizational chart reflecting that the Beneficiary supervised subordinate managers and professionals abroad and claims on appeal that he qualified as a personnel manager. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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." *Id.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).[2]

The Petitioner did not sufficiently establish that the Beneficiary was employed as a personnel manager abroad. The Petitioner provided no supporting evidence to demonstrate that the Beneficiary primarily delegated tasks to his claimed subordinate managers and their asserted subordinates. Likewise, the Petitioner provided no documentation to substantiate that the Beneficiary exercised personnel authority over his claimed subordinate managers and professionals. It is questionable that the Petitioner submitted no supporting evidence to corroborate the Beneficiary's performance of managerial-level tasks or evidence reflecting his personnel authority when it claimed he was employed in this role abroad for sixteen months, particularly since it asserted he met with his subordinate managers on a weekly basis. On appeal, the Petitioner states that the Beneficiary primarily managed the foreign employers' restaurant division and subordinate supervisors and professionals and did not perform day-to-day operational tasks. However, the Petitioner provided little evidence to support this assertion; for instance, it did not provide duty descriptions for the Beneficiary's subordinates as necessary to demonstrate that he supervised subordinate supervisors and professionals. As such, without sufficient supporting evidence, we cannot conclude that the Beneficiary was employed as a personnel manager abroad.

On appeal, the Petitioner states that the Beneficiary "supervised and controlled the work of other managerial employees," pointing to a general manager and maintenance, operations, and two restaurant managers. However, the Petitioner submitted a "List of Employees at [the foreign employer]" and this did not reflect several of the employees included in its asserted organizational chart abroad including the audit, accounting, internal control, production hub manager, or distribution employees, nor any operators or human resources employees. Further, this foreign employee list showed "pre-cooks" not shown on the foreign organizational chart. Again, the Petitioner must resolve

[2] Although the Petitioner generally mentioned the caselaw related to function managers, it did not clearly assert on appeal that the Beneficiary qualified as a function manager. As such, we decline to analyze whether the Beneficiary would be eligible as a function manager.

discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. at 582, 591-92. In sum, these material discrepancies leave uncertainty as to the foreign employer's asserted organizational structure and whether the Beneficiary oversaw subordinate supervisors and professionals abroad.

For the foregoing reasons, the evidence reflects that the Director was correct in denying the petition as the Petitioner did not sufficiently establish that the Beneficiary was employed abroad in a managerial capacity.

ORDER: The appeal is dismissed.