U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7952651

Date: MAY 19, 2020

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 chief of operations under the L-1A nonimmigrant visa classification for managers or 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 demonstrate the Beneficiary's employment abroad in a required managerial, executive, or specialized knowledge capacity. The Director also found that the Petitioner did not establish that the Beneficiary would work in the United States in the requisite managerial or executive capacity.

The Petitioner bears the burden of establishing 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.

I. L-1A MANAGERS AND EXECUTIVES

An L-1A petitioner must demonstrate that it, a parent, subsidiary, or affiliate employed a beneficiary full-time in a managerial, executive, or specialized-knowledge capacity for at least one continuous year within the three years preceding the foreign national's admission into the United States. 8 C.F.R. §§ 214.2(l)(3)(i), (iii), (iv). An L-1A petitioner must also establish that it would employ a beneficiary in a managerial or executive capacity in the United States and that the beneficiary's education, training, and experience qualify him or her for the offered position. 8 C.F.R. §§ 214.2(l)(3)(ii), (iv).

II. THE NATURE OF THE EMPLOYMENT ABROAD

The Petitioner states that, after working several years as a systems analyst, the Beneficiary founded its parent company in Brazil in 1997. He worked there until 2016, when he obtained L-1A status to help launch the Petitioner's operations in the United States. The parent's initial business activities involved renting computer equipment and printers to small- and medium-sized companies. The parent states that it decided to shift its business focus to robotics and established the Petitioner to help develop robots and software to operate them. The record indicates that, for the past few years,

the Petitioner has been developing robots and robotics-based, educational programs for children. The company also acquired a coffee shop, where it tested one of its robots.[1]

The Petitioner asserts that the Beneficiary worked for its parent in Brazil in managerial and executive capacities. We will therefore consider the Beneficiary's foreign employment on both qualifying bases.[2]

A. Managerial Capacity

The term "managerial capacity" means an assignment where an employee primarily: 1) managed the organization, or a department, subdivision, function, or component of it; 2) supervised and controlled the work of other supervisory, professional, or managerial employees, or managed an essential function within the organization, department, or subdivision; 3) had the authority to hire and fire supervised employees, or to recommend those and other personnel actions, or, if not a direct supervisor of another, functioned at a senior level within the organizational hierarchy or regarding a managed function; and 4) exercised discretion over the day-to-day operations of the activity or function for which the employee had authority. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). Unless supervised employees are "professional," a first-line supervisor does not act in a managerial capacity. *Id.*

To demonstrate foreign employment as a manager, a petitioner must show that a beneficiary performed the high-level responsibilities detailed in the statutory definition of the term "managerial capacity." A beneficiary's foreign position must have met all four elements of the term's definition. If the duties of a foreign position satisfy the term's definition, a petitioner must also prove that a beneficiary *primarily* engaged in managerial duties, as opposed to ordinary operational activities. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining the managerial nature of a foreign position, we consider: its job duties; the business and organizational structure of the foreign entity; the existence of other employees who could have relieved a beneficiary from performing operational duties; the duties of any subordinate employees; and any other factors that affected a beneficiary's duties and business role.

The definition of the term "managerial capacity" allows a beneficiary to qualify as either a manager of an "essential function," or as a manager of personnel. The Petitioner does not assert the Beneficiary's management of an essential function abroad, nor does it propose his management of an essential function in the United States. *See* section 101(a)(44)(A)(ii) of the Act. Thus, in evaluating the managerial nature of the Beneficiary's foreign and proposed U.S. employment, we will consider his qualifications only as a personnel manager.

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[1] The record indicates the coffee shop's operation as a separate entity from the Petitioner. Online government records also indicate that the Petitioner may have sold the shop while this appeal was pending. *See* Fla. Dep't of State, Div. of Corps., "Search Records," https://dos.myflorida.com/sunbiz/search/ (last visited Apr. 15, 2020). The records show that the limited liability company that operates the shop has a new manager, a new federal employer identification number, and does business under a new name. *Id.*

[2] The Petitioner does not claim that its parent employed the Beneficiary in a position involving specialized knowledge. We therefore will not consider the specialized knowledge nature of his foreign employment.

In response to the Director's written request for additional evidence (RFE), the chief executive officer (CEO) of the Petitioner's parent stated that the Beneficiary served the Brazilian company as its business director. The CEO stated that the Beneficiary: created and implemented company goals and policies; defined new products and market strategies; analyzed cash flows; implemented customer service strategies; maintained standardized performance evaluations with the accounting, finance, and legal departments; entered into contracts with vendors and suppliers for products needed to maintain quality leasing equipment; and created, defined, and directed the implementation of strategies for product leasing, sales, and services. The CEO also stated that the Beneficiary created complex work plans for the company's management and supervisory positions.

The CEO's description of the Beneficiary's job duties abroad does not establish his performance of all the responsibilities listed in the statutory definition of the term "managerial capacity." By stating the Beneficiary's maintenance of performance evaluations, the description suggests that he evaluated the work of other employees. Contrary to section 101(a)(44)(A)(ii) of the Act, however, the description does not establish that he "supervise[d] and control[led] the work" of others. Also, the RFE asked the Petitioner to address "[w]hether the beneficiary had the authority to hire and fire, or recommended hiring and firing as well as other personnel actions." *See* section 101(a)(44)(A)(iii) of the Act. But the Petitioner did not answer this question. *See* 8 C.F.R. § 103.2(b)(14) (requiring USCIS to deny a petition if a petitioner does not submit requested evidence which precludes a material line of inquiry). In addition, the CEO's description states the Beneficiary's maintenance of performance evaluations "with the Accounting, Finance, and Legal Departments." The parent's organizational charts, however, do not indicate that it has a legal department. The inconsistency casts doubt on the accuracy of the job duties. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies).

The Petitioner submitted copies of descriptions of the Beneficiary's foreign job duties that it provided with prior L-1A petitions for him. Unlike the description submitted in response to the RFE, the prior descriptions specify the Beneficiary's "authority to hire and fire subordinates." The Petitioner, however, has not explained why it omitted the Beneficiary's authorization to hire and fire from the description the Petitioner submitted with this petition. The company has also not provided independent, objective evidence of the Beneficiary's foreign authority to hire and fire. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record). The prior descriptions also do not demonstrate the Beneficiary's supervision and control over the work of others or explain the current description's reference to a legal department. Thus, neither the prior descriptions of the Beneficiary's job duties nor the current one support his employment abroad in a managerial capacity.

The Petitioner's RFE response also included a revised organizational chart of its parent, listing additional purported job duties of the Beneficiary abroad. The revised chart states that he: negotiated contracts; drew up work plans; developed sales strategies; and attended meetings, events, and fairs to define sales strategies, products, and business. But the chart also states his involvement in "expanding the franchises" of the Petitioner and the coffee shop it acquired. The record indicates that the Petitioner and the coffee shop did not begin operations until after the Beneficiary's L-1A admission to the United States in 2016. Thus, contrary to section 101(a)(15)(L) of the Act, the revised chart does not describe the Beneficiary's duties abroad "within three years preceding the

time of his application for admission into the United States." The chart's description of the Beneficiary's foreign job duties therefore does not establish his employment in a managerial capacity during the relevant period.

Even if the descriptions of the Beneficiary's foreign job duties demonstrated his performance of all the requisite responsibilities listed in the statute, the record would not establish that he *primarily* engaged in managerial duties. The record does not demonstrate the managerial nature of some of the Beneficiary's foreign duties, such as analyzing cash flows and entering into contracts with vendors and suppliers. Although requested in the RFE, the Petitioner did not indicate how much time the Beneficiary spent on each duty. The record therefore does not establish that the Beneficiary *primarily* worked in a managerial capacity.

For the foregoing reasons, the record does not establish the Beneficiary's employment abroad in a managerial capacity. We will next consider the executive nature of the Beneficiary's foreign employment.

B. Executive Capacity

The term "executive capacity" means an assignment where an employee primarily: 1) directed the management of the organization or a major component or function of it; 2) established the goals and policies of the organization, component, or function; 3) exercised wide latitude in discretionary decision-making; and 4) received 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.

To demonstrate foreign employment as an executive, a petitioner must show that a beneficiary performed the responsibilities detailed in the statutory definition of the term "executive capacity." A beneficiary's foreign position must have met all four elements of the term's definition. If the duties of a foreign position satisfy the term's definition, a petitioner must also prove that a beneficiary *primarily* engaged in executive duties, as opposed to ordinary operational activities. *See Family Inc. v. USCIS*, 469 F.3d at 1316. In determining the executive nature of a foreign position, we consider: its job duties; the business and organizational structure of the foreign entity; the existence of other employees who could have relieved a beneficiary from performing operational duties; the duties of any subordinate employees; and any other factors that affected a beneficiary's duties and business role.

As previously indicated, the CEO of the Petitioner's parent stated that, as business director, the Beneficiary: created and implemented company goals and policies; defined new products and market strategies; analyzed cash flows; implemented customer service strategies; maintained standardized performance evaluations with the accounting, finance, and legal departments; entered into contracts with vendors and suppliers for products needed to maintain quality leasing equipment; and created, defined, and directed the implementation of strategies for product leasing, sales, and services. The CEO also stated that the Beneficiary created complex work plans for the parent's management and supervisory positions.

The record does not establish the executive nature of some of the Beneficiary's job duties described by the CEO. For example, maintaining performance evaluations, analyzing cash flows, and entering

into contracts with vendors and suppliers do not appear to constitute high-level, executive duties involving direction of the parent's management. As previously indicated, the CEO did not indicate how much time the Beneficiary spent on each duty. The record therefore does not establish that the Beneficiary *primarily* worked abroad in an executive capacity.

On appeal, the Petitioner notes that, in approving an initial L-1A petition and an extension request for the Beneficiary, USCIS found that he worked in Brazil primarily as a manager or an executive. The Petitioner states: "The examiner erred in listing this as a reason for denial as it had been previously approved."

USCIS, however, need not defer to its prior rulings, even if they involve the same parties and underlying facts. USCIS Policy Memorandum PM 602-0151, *Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status* 2-3 (Oct. 23, 2017), https://www.uscis.gov/legal-resources/policy-memoranda (last visited Apr. 13, 2020). "An adjudicator's fact-finding authority . . . should not be constrained by any prior petition approval, but instead, should be based on the merits of each case." *Id.* at 3. Therefore, contrary to the Petitioner's argument, USCIS did not have to follow its prior rulings regarding the nature of the Beneficiary's foreign employment.

For the foregoing reasons, the record does not establish the managerial or executive nature of the Beneficiary's employment abroad. We will therefore affirm the petition's denial.

III. THE NATURE OF THE PROPOSED U.S. EMPLOYMENT

The Petitioner states that, as chief of operations in the United States, the Beneficiary would spend the following percentages of his time performing the following duties:

- Coordinating and reviewing company performance with managers (10%);
- Supervising an IT [Information Technology]/consulting manager by discussing department performance, authorizing or rejecting proposed software development, determining department goals, overseeing costs and staffing needs, hiring and firing division personnel and supervising manager's hiring and firing of subordinates (20%);
- Supervising marketing, sales, and purchase manager by discussing department performance, determining department goals, overseeing costs and staffing needs, hiring and firing division personnel and supervising manager's hiring and firing of subordinate (10%);
- Determining customer satisfaction by requesting and analyzing data provided by division managers (5%);
- Meeting with the CEO and reporting performance of various divisions, determining objectives and goals, reassessing staffing levels and division funding (10%);
- Planning, developing, and implementing strategy for operation of the various divisions to meet agreed budgets and timescales (5%);
- Reviewing, evaluating, and revising systems for measuring operations of the divisions by analyzing data provided by managers, outside accountant, and export broker (5%);
- Delegating tasks to an executive assistant, as needed, such as generation of reports, summaries of meetings, etc. (5%);
- Communicating with clients to maintain networks and ensure customer satisfaction (5%);

- Networking and developing new clients and business opportunities (5%);
- Analyzing current market conditions, formulating strategies, and searching for new business opportunities and clients (5%);
- Dealing with outside professionals, such as attorneys, auditors, banks, etc. (5%);
- Representing the company throughout the external community (5%); and
- Attending industry-related trade shows and conferences (5%).

The Petitioner's job description does not describe the Beneficiary's actual day-to-day managerial- and executive-level duties sufficiently to establish that he would devote his time primarily to qualifying tasks. Given the Petitioner's assertion that the Beneficiary has performed this role in the United States since 2016, the lack of detail and documentation is particularly notable. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial or executive in nature; otherwise meeting the statutory definitions of the terms 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)."

Some of the Beneficiary's proposed job duties appear to be higher-level tasks consistent with the definitions of both managerial and executive capacity. The job description, however, is repetitive and conflicts with other evidence of record, casting doubt on the description's accuracy and reliability. For example, the Petitioner states that the Beneficiary would spend a significant amount of time (30%) supervising and overseeing an IT/consulting manager and a manager of marketing, sales, and purchasing. These employees, however, do not appear on the Petitioner's three organizational charts. The discrepancies between the Petitioner's job description and its organizational charts cast doubt on the accuracy and reliability of the Beneficiary's proposed duties. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with independent, objective evidence). In addition, many of the proposed job duties appear to be redundant. Coordinating and reviewing company performance with managers would seem to include the duties of supervising the IT/consulting manager and the manager of marketing, sales, and purchasing, as well as the task of reviewing, evaluating, and revising systems for measuring operations. Also, developing new clients and business opportunities appears to be the same duty as searching for new business opportunities and clients. The inconsistencies, vagueness, and repetitiveness of the Petitioner's description of the Beneficiary's job duties significantly diminishes the company's credibility. Therefore, the description does not support the Beneficiary's proposed employment in the United States in a managerial or executive capacity.

The record also does not establish the Petitioner's ability to support the Beneficiary in a managerial or executive capacity. The company's two most recent organizational charts each list 10 employees, including the Beneficiary. The descriptions of the employees' job duties describe five of the positions as full-time, entailing at least 35 hours of work a week. But copies of state payroll tax returns indicate that, from the first quarter of 2018 through the first quarter of 2019, the Petitioner employed no more than three people in a single month and, in March 2019, the month before the petition's filing, only one worker. Copies of payroll records show that, from January 2019 through August 2019, the Petitioner employed a total of nine people.[3] But the records indicate that no more

[3] The payroll records do not show any payments to the Beneficiary. In any future filings in this matter, the Petitioner

than five worked in the same month, and that, from January 2019 through May 2019, the Petitioner employed only three people, with no more than two working in the same month. Thus, despite the listing of 10 employees on the Petitioner's organizational charts, the record indicates that the company typically employs only two or three people in a single month. The 2019 payroll records also indicate that most of the Petitioner's employees work less than 35 hours a week.

The record indicates that the Petitioner contracts the services of a manager, who performs administrative, operational tasks such as: filing; organizing; dictation; answering telephone calls; taking messages; monitoring emails and correspondence; scheduling meetings and appointments; and maintaining office supplies. The description of her job duties states that she works weekdays, 35 hours a week. But, as previously discussed, the record indicates that the Petitioner does not regularly employ all its purported, full-time workers. Thus, the record does not establish the manager's full-time performance of her administrative duties. The Petitioner's descriptions do not indicate that any of its employees perform the manager's job duties. The record therefore does not demonstrate the Petitioner's ability to relieve the Beneficiary from performing administrative, operational duties and to allow him to primarily focus on high-level managerial or executive tasks.[4]

For the foregoing reasons, the record does not establish that the Petitioner would employ the Beneficiary in a managerial or executive capacity.

IV. CONCLUSION

The Petitioner has demonstrated neither the Beneficiary's employment abroad in a managerial, executive, or specialized knowledge capacity, nor the managerial or executive nature of his proposed position in the United States. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

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must explain whether the Beneficiary remains on its payroll and submit evidence of his continued employment.

[4] In determining whether the Beneficiary would work in a managerial or executive capacity, we considered the Petitioner's staffing levels. Pursuant to section 101(a)(44)(C) of the Act, however, we did not limit our analysis to the company's size. We also considered descriptions of the proposed job duties of the Beneficiary and other employees, inconsistencies in the Petitioner's stated number of employees, and its use of contractors.