U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17291738

Date: May 19, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of vegetable oils and fats for the food ingredient, chocolate and confectionary industries, seeks to employ the Beneficiary as its controller 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 has been employed abroad, or would be employed in the United States, in a managerial capacity. 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 conclude that the Petitioner has met this burden. Accordingly, we will sustain the appeal.

The Petitioner, which has 500 employees in the United States and annual revenue of $700 million, has consistently claimed that the Beneficiary has been employed abroad and would continue to be employed in the United States in a managerial capacity as defined at section 101(a)(44)(A) of the Act. Specifically, the Petitioner indicates that his responsibilities have included and will include managing the accounting function, as well as supervising professional personnel who support the day-to-day activities of that function.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. The term "function manager" applies generally when a beneficiary does not directly supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy

or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

The record reflects that the Petitioner's foreign affiliate has employed the Beneficiary as its controller since 2013 and he has now been offered the same position within the U.S. company, managing accounting personnel and operations for its California-based facility. Based on the submitted position descriptions and organizational charts, the Beneficiary's current foreign position and proposed U.S. position involve substantially similar levels of authority, responsibilities, and placement within the companies' respective management hierarchies. In each instance, the Petitioner clearly articulated the Beneficiary's authority to manage the accounting function and established that the function is core to the organization's activities. The record also demonstrates his authority to exercise discretion over the day-to-day operations of the accounting function for the Mexican and U.S. affiliates, respectively.

Further, the Petitioner has established that, in both his current position abroad and proposed U.S. position, the Beneficiary is supported by lower-level accounting managers and professionals who perform the non-managerial duties that the function requires. The Petitioner clearly identified these individuals, documented their employment, and described their job duties and qualifications. The Beneficiary's own position descriptions indicate that he performs a number of higher level duties that include planning and strategizing the companies' finances, controls and investments alongside the finance director/CFO, establishing local accounting practices and procedures, and counseling regional and global executive leadership regarding the financial performance of the Mexican and U.S. operations. We note that the Director questioned whether the Beneficiary's responsibilities for preparing certain financial reports and analyses were qualifying duties. On appeal, the Petitioner provides additional explanation regarding the nature of these duties and explains how they are managerial in nature given the size and complexity of the petitioning group's global operations and the fact that the Beneficiary, with support from his subordinates, is required to synthesize regional information that global-level executives rely on for financial decision-making.

Finally, the Petitioner submitted organizational charts documenting the Beneficiary's senior position with respect to the accounting function. In both the current and proposed positions, the Beneficiary reports to a CFO-level employee whose responsibilities include executive oversight of multiple financial functions. However, the record establishes that the Beneficiary is the senior manager responsible for accounting. For example, in Mexico, the Petitioner leads a 15-person accounting department. He reports to a Finance Director, who also supervises a risk manager, head of financial planning, systems manager, and other managerial personnel. The Finance Director acts in an executive capacity and is not responsible for primarily managing the accounting function. Based on the evidence provided, the Petitioner has established that the Beneficiary has performed and will perform at a senior level within the company hierarchy and with respect to the function managed.

In sum, the Petitioner has provided sufficient information and evidence to establish, by a preponderance of the evidence, that the Beneficiary has been employed abroad, and would be employed in the United States, in a managerial capacity.

ORDER: The appeal is sustained.