U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-S-C-US, LLC

DATE: MAY 23, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an education content and project development company, seeks to temporarily employ the Beneficiary as an account manager under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 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 record did not establish, as required, that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity; and (2) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity.

On appeal, the Petitioner disputes the grounds for denial, stating that the Beneficiary has been and would be employed in the capacity of a function manager. The Petitioner contends that the Beneficiary reports to senior leadership in the business and her job duties are primarily managerial.

Upon *de novo* review, we find that the Petitioner has not established that the Beneficiary has been employed abroad in a managerial or executive capacity. Therefore, we will dismiss the appeal. Because of the dispositive effect of this finding, we will reserve the remaining issue.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involved specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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 also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The Petitioner claimed that the Beneficiary has been employed in a managerial capacity abroad as a function manager. Therefore, we will address this claim in our decision and will not contemplate whether the Beneficiary has been employed in an executive 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.

The term "function manager" applies generally when a beneficiary 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 managed an essential function, it must clearly describe the duties performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function was a clearly defined activity; (2) the function was 'essential,' i.e., core to the organization; (3) the beneficiary primarily *managed*, as opposed to *performed*, the function; (4) the beneficiary acted at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary exercised discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

When examining the claimed managerial capacity of a given beneficiary, we will look to the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Accordingly, we will discuss evidence regarding the nature of the foreign entity's business and its staffing levels along with evidence of the Beneficiary's job duties.

A. Staffing

The Petitioner submitted an organizational chart identifying the following structure for its foreign affiliate:

- Director of Operations [*G.O.*]
    - Associate Director [*Z.N.*]
        - Delivery Head [*R.M.*]

- Portfolio Manager [*S.D.*]
- Senior Delivery Manager [*S.K.*]
  - Portfolio Manager [Vacant]
- Delivery Head [*K.S.*]
  - Portfolio Manager [*C.K.*]
  - Portfolio Manager [*A.C.*]
  - Portfolio Manager [*A.L.*]
  - Account Manager [the Beneficiary]

- Delivery Head [*VL.N.*]
  - Portfolio Manager [Vacant]
  - Portfolio Manager [*M.P.*]
- Delivery Manager [*R.J.*]

As shown above, the foreign entity's organizational chart depicted a corporate structure consisting of 13 named employees and 2 vacant positions. The organizational chart indicated that the Beneficiary's position of account manager is subordinate to the position of delivery head and she does not have any direct reports.

In response to the Director's request for evidence (RFE), the Petitioner provided: (1) a statement that was endorsed by its EVP & COO; (2) three job descriptions for the positions of portfolio manager, delivery manager, and delivery lead with the Petitioner's foreign affiliate in [redacted] India; and (3) nine resumes of the Beneficiary's subordinates in India, including *C.K.* and *M.P.* The Petitioner's statement stated that the Beneficiary manages a $2 million publishing client and oversees a team of 15+ professionals in India, which includes 9 Delivery Managers, who indirectly manage a 120+ member team of authors, editors, and copy-editors across general and specialized disciplines.

The job description notices for the Beneficiary's subordinates[1] in India are similar to one another and contained the following duties:

Portfolio Manager ([redacted] India)	Delivery Manager ([redacted] India)	Delivery Lead ([redacted] India)
Overall accountability for all projects within the portfolio. Hold revenue targets for the year. Grow account from revenue standpoint.	Manage project execution including client's communication, scheduling, and monitoring of team activities. Lead and supervise a team of 50-60 people. Work as a single point of contact for customer.	Project planning, scheduling, and monitoring, resource allocation & utilization. Manage client communication. Own and be accountable for quality, productivity, and development of assigned projects and team members with acceptable benchmarks.

[1] The Petitioner submitted evidence in response to the RFE labeled "Job Descriptions for Subordinates" and "Resumes of Beneficiary's Subordinates." The submitted subordinates' job descriptions were labeled "Portfolio Manager," "Delivery Manager," and "Delivery Lead."

Monitor and manage project health across the portfolio. Manage and provide accurate revenue and invoice projections for the portfolio. Act as a first level of escalation point for all projects within the portfolio and manage escalations. Facilitate healthy working environment with cross-functional teams. Mentor and groom a set of project managers. Create a positive work environment driven by commitment, passion, and performance.	Actively deal with new acquisitions.	Define requirements for improvements to workflow systems and process and drive these requirements into projects. Work with authors, editors, copy editors, instructional designers, and subject matter experts to execute projects. Actively deal with new acquisitions and escalations.

The organizational chart and the Petitioner's statement regarding her subordinates appear to contradict one another. The organizational chart depicts a corporate structure in which *C.K.* occupied the position of portfolio manager, which is subordinate to the position of delivery head occupied by *K.S.* The organizational chart also depicted a corporate structure in which *M.P.* occupied the position of portfolio manager, which is subordinate to the position of delivery head occupied by *VL. N.* However, the Petitioner submitted resumes of the Beneficiary's subordinates including two portfolio managers, *C.K.* and *M.D.*. The Petitioner did not explain, nor state the reason for this anomaly with the foreign entity's organizational structure. The Petitioner's statement stated: "With regard to the mid-level management, she is also involved in staffing, training, rewards & recognitions, and performance review meetings." It is not clear who her subordinates are and whose performance she reviews. We note that the Director's RFE specifically requested "copies of performance appraisals or reviews conducted by the Beneficiary for any such subordinate employees"; however, no such evidence was submitted. Also, the Director's RFE specifically requested "a letter from an authorized representative of the foreign entity describing the Beneficiary's managerial position abroad." Nonetheless, the Petitioner provided a statement that was endorsed by the Petitioner's EVP & COO.

Although the Petitioner provided job descriptions for the claimed subordinates of the Beneficiary, given the inconsistencies discussed above, we are unable to determine whether the Beneficiary's claimed support staff would carry out the non-managerial tasks that support the essential function the Beneficiary is claimed to manage and whether the Beneficiary acts at a senior level within the organizational hierarchy with respect to the function managed.

B. Duties

Based on the statutory definition of managerial capacity, the petitioner must show that the beneficiary performs certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). The petitioner must also demonstrate that the beneficiary *primarily* engages in managerial duties, as opposed to ordinary operational activities alongside the foreign entity's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

In the petition form supplement, the Petitioner stated that the Beneficiary has been employed as an "Account Manager" from July 2017 to the present and provided the following description:

> In 2017, as part of an internal posting, [the Beneficiary] was selected to take on the role of Account Manager, wherein her objectives are strongly aligned toward client engagement, client satisfaction, and the growth of the business. Given the focus of the India-based team is primarily managing Delivery and owing to the geographical constraint, [the Beneficiary], in her current role as Account Manager has limited opportunities to meet, interact with, and manage client relationships.
>
> [The Beneficiary's] interaction with clients is currently limited to the project being executed, and hence, she is unable to effectively allocate the ideal amount of time on building and managing client relationships . . . .

The Petitioner further stated that the Beneficiary as an account manager performs the following duties:

- Project Management, Budgeting, and Planning 30%
    - Alert delivery on upcoming projects to ensure staffing
    - Negotiate and close business opportunities and work with the Delivery teams to determine the implementation plan
    - Identify the need for additional staff and / or consultants and recommend to the Product Portfolio Manager
    - Use CRM tools like Salesforce to create and track potential and lost opportunities
    - Approve the process workflow for projects
    - Coordinate with Delivery leads and Program Managers and overseeing Project Execution to ensure execution happens as per the plan
    - Ensure documentation that the client needs
    - Help teams prioritize projects in case of competing priorities from the clients
    - Consult with the Vice President to determine price and margins and approve project quotes based on cost estimates provided by the delivery teams
    - Ensure that the quotes are in line with customer's expectations
    - Monitor client satisfaction related to the projects
    - Negotiate account management contracts and agreements with clients

  - Provide input on scope management, time management, risk management, and quality management to delivery teams for the project plan
  - Establish best practices and explore further improvements, automation and cost optimization for the customer

- Communication 25%
  - Alert the delivery team on new projects that are in the pipeline
  - Gain visibility on bandwidth availability by speaking to the teams accordingly
  - Provide client perspective to the internal teams and mentor project managers to efficiently communicate with the customer
  - Communicate project risks and issues to relevant stakeholders and escalating where appropriate in line with escalation process
  - Manage Escalations on Timeliness, Quotes, and Quality-related issues
  - Communicate with the client on behalf of Program managers and/or delivery teams when they are unavailable
  - Track emails for the respective regions (across) to ensure that the delivery teams are responding to emails as required
  - Understand and communicate client feedback and explain our standpoint to the client as needed
  - Coordinate the involvement of company personnel, including support, service, and management resources, in order to meet account performance objectives and customers' expectations
  - Attend recurring client calls as and when her presence is required

- Stakeholder management/Client engagement 15%
  - Function as the lead point of contact for matters with regard to ongoing or upcoming projects, escalations, progress updates, negotiations, or follow-ups with existing clients
  - Build and maintain, [*sic*] strong, trusted relationships with existing stakeholders
  - Increase the business with existing clients and identify and develop new business opportunities with . . . .
  - Communicate with Brand managers and Product developers on a bi-weekly or monthly basis to track their expectations of ongoing and/or upcoming projects
  - Understand the client's requirements by conducting detailed discussions/meetings with client, functional users, functional/technical consultants & process owners to collect requirement specifications, metrics & key performance indicators
  - Operate as a single-point of contact for specific clients on projects that require coordination with multiple teams internally
  - Engage with clients and internal teams to address grievances related to projects

  - Work closely with the Vice President to ensure customer satisfaction and problem resolution and to understand the areas of focus from the Account perspective
  - Proactively evaluate and validate customer needs on an ongoing basis
  - Respond to requests for Information, as well as support project delivery
  - Participate and contribute in knowledge sharing sessions across client teams

- Mentoring 20%
  - Coach, Mentor and train delivery leads and managers to improve project management practices and motivate them to take positive action and accountability for their assigned work
  - Provide feedback from clients and suggestions for improvement to internal teams
  - Facilitate team meetings to discuss issues, share knowledge, and share achievements

- Governance 10%
  - Provide project progress and forecast reports to key stakeholders on a monthly and quarterly basis
  - Conduct project reviews with the delivery teams to assess outcomes of projects, against established baselines, and to evaluate effectiveness of project management practices
  - Lead or participate in internal improvement initiatives
  - Document and publish all lessons learned
  - Share the learnings with both internal and external stakeholders to address and implement action items

The Petitioner's initial submission also included the Beneficiary's resume. The resume's summary section states: "currently managing one of the biggest accounts in my organization," "[h]as helped me successfully manage multiple projects with stringent timeliness while keeping people in the team inspired and motivated," and "my project management skills are my primary strength that can be applied in the field of content publishing along with my writing and editing skills." The Beneficiary's summarized duties as an account manager are:

- Functioning as the lead point of contact for all client-specific-matters–with regard to ongoing or upcoming projects, client expectations, escalations, grievances, progress updates, negotiations, or follow-ups
- Building and maintaining strong, trusted relationships with key stakeholders–both internal and external
- Identifying and developing business opportunities with existing and new clients to achieve sales targets
- Understanding project requirements with clients and internal delivery teams to finalize scope & key performance indicators and monitoring these parameters to ensure customer satisfaction
- Participating in knowledge sharing sessions across client teams

- Using CRM tools to create and track potential and lost opportunities
- Working with delivery teams to plan for new projects with regard to scope, budgets, workflow, timeliness, resources, etc. and ensuring that these are in line with the client's expectations . . . .

In the RFE, the Director stated that the Petitioner had not sufficiently described the Beneficiary's duties abroad. The Director asked the Petitioner to explain how the Beneficiary's position meets the requirements of managerial capacity. In response, the Petitioner provided the following statement from its EVP and COO:

> [I]n her current role as Account Manager, [the Beneficiary] manages a $2 million client and works with the Delivery teams in India and the United States to deliver products across various divisions within [the Petitioner]. She is able to leverage the experience that she has gained over the years to facilitate management and successful execution of large projects for [the Petitioner]. Since Q1 of 2017, [the Beneficiary] has managed and executed more than 200 projects within 5 portfolios for [the Petitioner] . . . .

The Petitioner's response also included a description of the Beneficiary's duties and the percentage of time spent on each duty verbatim to that initially submitted.

In the present matter, the Petitioner states that the Beneficiary oversees "all activities pertaining to the Petitioner's account with [the Petitioner's client]." We find, however, that the Petitioner has not adequately explained the Beneficiary's role as a function manager in the content publishing process and within the organization. There is a lack of clarity as to the Petitioner's specific role in content publishing operations and the actual duties the Beneficiary performs in managing this ambiguous process. The Petitioner makes references to the Beneficiary's role in various business development and client management functions, however, several of these duties appear to overlap with the claimed subordinates of the Beneficiary in India. For example, the Petitioner stated that the Beneficiary "[f]unctions as the lead point of contact for matters with regard to ongoing or upcoming projects, escalations, progress updates, negotiations, or follow-ups with existing clients"; however, the Petitioner also provided duties for her subordinate, a "delivery manager," who "[w]orks as a single point of contact for customer."

Further, the Petitioner states that the Beneficiary "[i]dentifies the need for additional staff and / or consultants and recommend to the Product Portfolio Manager" while the subordinate portfolio manager's duties state that the portfolio manager "[w]orks with practice managers to project, staff and ensure that sufficient team members are staffed for projects on time." In addition, the Petitioner states that the Beneficiary is responsible for "[i]ncreasing the business with existing clients and identify and develop new business opportunities" while the Beneficiary's subordinate, the portfolio manager, is responsible for "[g]rowing the account from [a] revenue standpoint." Without further details regarding the Beneficiary's specific role within the foreign entity, it is unclear that these duties are sufficiently high-level responsibilities, particularly in light of the duplicative duties performed by the Beneficiary's subordinates.

Further, both the petition form supplement and the Beneficiary's resume stated that the Beneficiary engages in various production-based job duties, including ensuring documentation that the client needs and monitoring client satisfaction related to the projects. However, they do not explain how the Beneficiary carries out these duties or discuss the production factors that are relevant within the scope of a content publishing operation. The Petitioner also did not sufficiently explain how these production-based responsibilities are higher-level duties. And despite making references to meetings, the Petitioner did not explain the significance of these meetings within the scope of its operation, state who (aside from the Beneficiary) attends the meetings, or clarify how the meetings relate to the essential function that the Beneficiary is claimed to manage.

In the list of the Beneficiary's specific assignments, the Petitioner included several vague activities that conveyed no meaningful content about the actual underlying tasks. Namely, the Petitioner broadly stated that the Beneficiary "build[s] and maintain[s] strong, trusted relationships with existing stakeholders," "proactively evaluate[s] and validate[s] customer needs on an ongoing basis," and "document[s] and publish[es] all lessons learned." However, the Petitioner did not discuss the actual duties that are performed to execute these vaguely stated objectives. Also, some of her duties such as "alert delivery on upcoming projects," "communicate project risks and issues," and "provide project progress and forecast reports," to name a few, appear to be operational duties associated with working on a particular project.

The record indicates that the Beneficiary works on one of the organization's largest, if not the largest, client's account, however, without further details of the Beneficiary's responsibilities and the factors distinguishing her from her subordinates, we cannot find that the Beneficiary's work abroad on this account qualifies her as a function manager. The record does not support a finding that the Beneficiary performed the duties of a function manager abroad.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of A-S-C-US, LLC*, ID# 3104169 (AAO May 23, 2019)