U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-B-S-, LLC

DATE: MAY 23, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a manufacturer of cleaning products, seeks to continue the Beneficiary's temporary employment as its general 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity.

On appeal, the Petitioner disputes the Director's findings, asserting that the Beneficiary will be employed in a managerial capacity.

Upon *de novo* review, we will dismiss the appeal.

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 involves 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.*

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The primary issue to be addressed is whether the Petitioner established that the Beneficiary will be employed in a managerial capacity. The Petitioner did not claim that the Beneficiary would be

employed in an executive capacity; therefore, our analysis will address only the Petitioner's claim that the Beneficiary's proposed position would be 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 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 Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels and its organizational structure.

A. Duties

In a letter submitted in support of the petition, the Petitioner stated that the Beneficiary will occupy the managerial position of general manager and will oversee the Petitioner's five departments: administrative, production, purchase, warehouse and distribution, and research and development. According to the Petitioner, the Beneficiary will have authority to hire and fire administrative personnel in any of the Petitioner's departments. The Beneficiary's summarized duties are as follows (including percentages of time):

- Analyze financial statements and goals (15%),
- Establish goals (10%),
- Manage and oversee the company's finances (10%),
- Oversee operations (10%),
- Design, evaluate, and maintain marketing campaigns (8%),
- Develop and plan strategies for the company's short and long term goals (7%),
- Direct and maintain inventory, product mix, and merchandise standards (5%),
- Make decisions regarding the company's premises or expansion (5%),
- Make decisions regarding hiring and firing of employees (5%),
- Oversee, assist, and supervise the company's managers (5%),
- Prepare, modify, or correct the company's annual budget (5%),
- Plan and implement strategies for the company sales (4%),

- Ensure compliance with sanitary standards and manufacturing procedures (3%),
- Evaluate, implement, manage, and monitor required state programs (3%),
- Obtain reports and evaluate them as presented by the departments (3%), and
- Evaluate, analyze and identify customer's needs (2%).

In a request for evidence (RFE), the Director stated that the Petitioner had not sufficiently described the Beneficiary's duties. The Director asked the Petitioner to explain how the Beneficiary's position meets the requirements of managerial capacity. In response, the Petitioner provided a statement from its attorney that stated:

> [W]hen the first L-1A was issued to [the Beneficiary], USCIS requested evidence on this regard and applicant provided that evidence of his managerial capacity. Your office has plenty of evidence for this case showing this. We kindly ask your office to closely review these documents, the ones submitted with the L-1A renewal, and the enclosed documents. This proves that the Petitioner and Beneficiary comply with the elements needed to get this visa renewed; indeed, we are meeting the burden of proof with clear and convincing evidence, a standard beyond the lower standard of proof required for this USCIS case, which is preponderance of evidence . . . .

The Director denied the petition, finding that the Beneficiary's duties are not primarily managerial and that the Beneficiary does not oversee other supervisory, professional, or managerial employees within the company.

On appeal, the Petitioner asserted that the Beneficiary will continue to be employed in the position of general manager, which is the top position at the U.S. entity. The Petitioner also included a description of the Beneficiary's duties and the percentage of time spent on each duty verbatim to that initially submitted.

Again, the two job descriptions are verbatim to one another, however, they each lack sufficient detail. For instance, the job descriptions stated: "Establish organization goals, performance objectives, guidelines and best practices and implement what is necessary to achieve these goals" and "Overseeing operations based on the goals, objectives, and standards of the organization." The descriptions are so general that they could describe virtually any managerial position with any company. They provide only vague information that focuses on the Beneficiary's discretionary authority, but says little about the actual tasks he will perform. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial 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). Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Id.* Here, the Petitioner has not provided the necessary details; neither version of the job description provides much information about the actual tasks that the Beneficiary will perform for the company.

In addition to the percentage breakdown, the Beneficiary's job descriptions indicated that he "design, evaluate, and maintain marketing campaigns within the budget to maximize sales . . . and increase sales," "lead the company's sales strategies and finances," and "plan and implement strategies for the company's sales." Neither the Petitioner's letter, nor its organizational chart identified a sales department or personnel, respectively.

The job descriptions resemble a general template. They stated, for instance, that the Beneficiary will oversee, assist, and supervise the Petitioner's managers for the different departments. They also contained a number of references to subordinate employees, which do not exist within the company. Neither of the job descriptions provide substantive, verifiable details that can be reliably correlated to activities documented in the record.

Further, some of the duties that the Petitioner claims the Beneficiary will perform appear to be operational duties. There is no indication on the organizational chart that there are subordinates who will relieve the Beneficiary from performing these operational duties such as designing and maintaining marketing campaigns, maintaining inventory, and ensuring compliance with sanitary standards and manufacturing procedures.

For these reasons, the Petitioner has not established that the Beneficiary's duties are primarily managerial in nature.

B. Staffing and Organizational Structure

The Petitioner claimed 10 U.S. employees at the time of filing. The organizational chart identified the following structure:

- General manager [the Beneficiary]
  - Independent Salesmen and Distributors
  - Line Supervisor [*J.R.G.*]
    - Line Operator [*D.P.*]
      - Line Assistant [*I.M.*]
      - Line Assistant [*J.A.P.*]
  - Administrator [*S.M.*]
    - Office Manager [*M.L.*][1]
      - Associated Vendor - [redacted] [*B..A.*]
      - Associated Vendor - [redacted] [*M.G.*]
      - Associated Vendor - [redacted] [*G.T.*]
      - Associated Vendor - [redacted] [*M.G.*]
      - Associated Vendor - [redacted] [*L.V.*]
      - Associated Vendor - [redacted] [*E.C.*]
    - Outsourced IT Services - [redacted] [*M..A.*]
    - Outsources Financial Services - [redacted] CPAs [*R.G.*]
  - Distribution & Warehouse Supervisor [*J.G.*]

[1] The office manager is in a position over six vendors.

- Driver [*E.P.*]
- R & D, Quality Assurance, Quality Control [*R.D.S.*]

The initial evidence also included a copy of: (1) the Beneficiary's subordinates' academic credentials and resumes and (2) the Beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, for 2015.

The Beneficiary's subordinates' resumes identified the following:

- From December 2012 to present, *J.R.G.* was employed with the Petitioner in [redacted] Florida, in the position of warehouse operator;
- From December 2016 to present, *D.P.* was employed with the Petitioner in [redacted] Florida, in the position of warehouse operator;
- From an unknown date to an unknown date, *I.M.M.* was employed with the Petitioner in the position of production line assistant;
- From March 2016 to present, *J.A.P.* was employed with the Petitioner in [redacted], Florida, in the position of warehouse operator;
- From an unknown date to an unknown date, *S.M.* was employed with the Petitioner in the position of business development and administration;
- From January 2013 to present, *M.L.* was employed with the Petitioner in [redacted] Florida, in the position of office manager purchase;
- From an unknown date to an unknown date, *J.C.P.* was employed with the Petitioner in the position of distribution warehouse supervisor; and
- From February 2016 to present, *E.P.* was employed with the Petitioner in [redacted], Florida, in the position of driver.

In the RFE, the Director requested more information about the Beneficiary's subordinates. In response, the Petitioner provided: (1) the Petitioner's IRS Form 941, Employer's Quarterly Federal Tax Return, for second-quarter 2016, the quarter in which the instant petition was filed; and (2) the Petitioner's IRS Form W-2, Wage and Tax Statement, for 2016, the year in which the instant petition was filed.

The Petitioner's IRS Form W-2 for 2016 indicated that 23 employees received the following wages, tips, and other compensation for this year:

- *P.M.M.*, $76,800.00
- *M.L.*, $26,000.00
- *R.D.S.*, $26,000.00
- *J.R.G.*, $25,281.00
- *S.G.M.*, $13,986.00
- *V.G.*, $12,799.00
- *D.P.*, $11,907.67
- *Y.B.*, $6,166.58
- *J.P.*, $4,917.52
- *J.C.*, $4,248.13
- *D.M.*, $3,878.46

- *Y.R.*, $3,545.95
- *Y.A.*, $2,900.00
- *E.P.*, $2,690.00
- *F.M.*, $2,016.90
- *O.N.R.*, $2,005.95
- *E.F.*, $931.89
- *I.M.*, $883.75
- *J.R.H.*, $824.70
- *Y.E.*, $577.51
- *F.S.*, $450.63
- *E.C.*, $382.50
- *F.C.*, $310.63

In denying the petition, the Director acknowledged the Petitioner's submission of an organizational chart, but found that the Petitioner did not provide an explanation of how the Beneficiary's subordinates' relieve him from performing non-qualifying duties. The Director concluded that the Petitioner did not show that it currently employs individuals that would relieve the Beneficiary from non-qualifying duties.

On appeal, the Petitioner asserted that the Beneficiary supervises four departments: production, administrative, warehouse distribution, and quality. The Petitioner also stated that the administrative department has an administrator and an office manager and they supervise eight employees.

The record casts doubt on the veracity of the Petitioner's corporate structure. For instance, the Petitioner claimed 10 U.S. employees on Form I-129, however, the Petitioner's IRS Form 941 for second-quarter 2016[2] indicated that 14 employees received wages, tips, or other compensation for this pay period.

The Petitioner's organizational chart indicated that the Beneficiary as general manager is over independent salesmen and distributors (unidentified); however, the record does not support this claim. For instance, IRS Form 1099, Miscellaneous Income, instructions for Box 7, Nonemployee Compensation states: "Enter nonemployee compensation of $600 or more. Include fees, commissions, prizes and awards for services performed as a nonemployee, other forms of compensation for services performed for your trade or business by an individual who is not your employee, and fish purchases for cash. Include oil and gas payments for a working interest, whether or not services are performed . . . ." *See* https://www.irs.gov/pub/irs-pdf/i1099msc.pdf (last visited Apr. 11, 2019). The record does not contain documentation: IRS Form 1099 or otherwise, corroborating the Petitioner's use of independent salesmen and distributors.

The Petitioner's organizational chart also indicated that the administrator is over two information technology and financial service providers (companies) who provide IT and financial services, respectively, and that the office manager is over six vendors (companies) who provide various services. The Petitioner's depiction of service providers and vendors in its corporate structure is misleading as these services are comparable, for instance, to routine business expenses: bookkeeping, Internet,

[2] The quarter that the instant petition was filed.

janitorial, lease agreement, marketing campaigns, payroll processing, telephone, utilities, and water and sewage, to name a few.

The Petitioner's organizational chart also identified *J.R.G.* as its line supervisor, however, this employee's resume identified his position as warehouse operator with the following duties: "attached identifying tags to goods; make cleaning products; move freight, stock and other materials to and from storage and production areas and loading; packing and quality control; and production line machine." The resume does not contain duties that are commensurate with the position of line supervisor. The record does not corroborate *J.R.G.*'s position of line supervisor that is identified on the organizational chart. Equally important, the Petitioner's organizational chart identified *D.P.* and *J.A.P.* as its line operator and line assistant, respectively; however, these employees' resumes identified both of their positions as warehouse operator. Finally, the Petitioner's organizational chart indicated that *J.R.G.*, *D.P.*, and *J.A.P.* occupy positions that are distinct from one another; however, these employees' resumes are verbatim to one another (including format and duties), with the sole exception of *J.R.G.*'s resume containing one additional duty: "make cleaning products."

The Beneficiary's IRS Form 1040 for 2015 identified *R.D.S.* and *S.M.* as his spouse and daughter. The Beneficiary's IRS Form 1040 for 2015 also identified *R.D.S.*'s position as housewife, while the Petitioner's organizational chart indicated that *R.D.S.* occupied the position of research and development employee. The record neither clarified nor explained this discrepancy.

The Petitioner's organizational chart also indicated that the position of administrator (*S.M.*) is superior to the position of office manager (*M.L.*); however, these employees' Form W-2 for 2016[3] indicated that the administrator received wages, tips, and other compensation of $13,986.00 for this year, while the subordinate position of office manager received wages, tips, and other compensation of $26,000.00 for this year, which is higher than his superior. The Petitioner's organizational chart also identified *J.A.P.* as its line assistant, however, the record does not contain documentation: Form W-2 or otherwise, corroborating this individual's employment.

The Petitioner's Form W-2 for 2016 indicated that *D.M.*, *E.C.*, *E.F.*, *F.C.*, *F.M.*, *F.S.*, *J.P.*, *J.R.H.*, *O.N.R.*, *V.G.*, *Y.A.*, *Y.B.*, *Y.E.*, and *Y.R.* received wages, tips, and other compensation of $3,878.46, $382.50, $931.89, $310.63, $2,016.90, $450.63, $4,917.52, $824.70, $2,005.95, $12,799.00, $2,900.00, $6,166.58, $577.51, and $3,545.95, respectively, for this year. However, the Petitioner's organizational chart does not include these employees in its corporate structure. The record neither clarified nor explained these employees' roles within the context of the Petitioner's operations.

In light of the deficiencies and discrepancies described above, we find that the Petitioner has not established that the management and staffing hierarchy of the petitioning organization is sufficient to relieve the Beneficiary from having to allocate his time primarily to performing the non-managerial tasks. For these reasons, we find that the Petitioner did not establish it will continue to employ the Beneficiary in a managerial capacity.

[3] The year that the instant petition was filed.

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 F-B-S-, LLC*, ID# 2291071 (AAO May 23, 2019)