U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31184612

Date: MAY 23, 2024

Appeal of California Service Center Decision

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

The Petitioner, a logistics services provider, seeks to temporarily employ the Beneficiary as its "trade lane manager and business development" under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 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 the Petitioner did not establish that the Beneficiary was employed abroad, and would be employed in the United States, in a managerial capacity. The matter is now before us on appeal pursuant to 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. LAW

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 their 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 them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

"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.

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The primary issue we will address is whether the Petitioner established that the Beneficiary would be employed in the United States in a managerial capacity.[1]

To establish that a beneficiary is eligible for L-1A classification as manager, a petitioner must show that they will perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

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. *See* section 101(a)(44)(A)(ii) of the Act. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *Id.*

The Director determined that the Petitioner did not meet its burden to establish that the offered position would meet all four prongs of the statutory definition of managerial capacity, either as a function manager or as a personnel manager. On appeal, the Petitioner asserts that it submitted sufficient evidence to demonstrate the Beneficiary's duties will be primarily managerial in nature, that he will manage an essential function of the company, and that he will manage personnel, including subordinate professionals.

When examining the managerial capacity of a given beneficiary, we will look to the petitioner's description of the job duties. *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. Here, after consideration of these factors, and for the reasons discussed below, we conclude that the Petitioner did not establish it would employ the Beneficiary in a managerial capacity.

[1] The Petitioner does not claim that the Beneficiary's U.S. assignment would be in an executive capacity, as defined at section 101(a)(44)(B) of the Act.

A. Function Manager

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).

In a letter submitted at the time of filing, the Petitioner stated that the Beneficiary's assignment in the United States will place him "fully in charge of the Commercial Team" and will involve the coordination and supervision of business activities carried out by the team. The Petitioner explained that the Beneficiary "will manage an essential function of the company as well as the employees within that function." In a supplemental letter submitted in response to the Director's request for evidence (RFE), the Petitioner further explained that "[t]he Commercial Department of the US company is essential as it is responsible for all the development of all kinds of business and securing new customers for [the Petitioner]," noting that the department "is literally the spine of the company and essential for its growth."

The Petitioner met its burden to demonstrate that the company's commercial team performs a clearly defined essential activity that is core to the organization. However, the record does not support a determination that the Beneficiary's would be employed as a function manager as contemplated by the statutory definition of "managerial capacity" and *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

The Petitioner submitted an organizational chart showing the overall structure of the U.S. company, including the "Commercial Team." The chart shows that the "Commercial Team" is headed by M-M-, whose job title is identified as "North American Director."[2] The existing departmental staff, according to the chart, include two sales employees (identified as "LA Sales" and "NY Inside Sales"), a "commercial pricing" employee, a customer service employee, and an "AE Desk" employee. It appears that all five of these employees currently report to the director who heads the Commercial Team. The Petitioner indicated that the Beneficiary, once hired, will directly supervise the pricing, customer service, and "AE Desk" employees, and that he will be responsible for hiring up to six additional staff (two inside sales staff, two sales executive and one or two commercial supervisors) over a period of five years, starting in his second year in the proposed U.S. position.

The Petitioner does not, however, indicate that the existing sales employees assigned to the commercial team will report to the Beneficiary, and therefore the record does not support the Petitioner's claim that the Beneficiary will oversee the entire team, department, or function. Rather, the record indicates his proposed position is being added to an existing commercial team that will continue to be led by M-M-, the director. The Petitioner indicates that the Beneficiary will "hierarchically only stand below [M-M-] in the function," but does not explain why the Beneficiary, as opposed to his supervisor (the head of the Commercial Team), should be considered to be "acting

[2] The Petitioner also refers to this employee as its "sales director."

at a senior level within the organizational hierarchy or with respect to the function managed," as required by section 101(a)(44)(A)(iii) of the Act. While the Beneficiary would supervise some of the company's existing commercial team staff, we cannot establish that his placement within this function, or within the Petitioner's overall organizational hierarchy, satisfies this statutory requirement. For this reason alone, the record does not establish that the Beneficiary would be employed as a function manager.

In addition, the Petitioner's description of the Beneficiary's proposed role does not establish that the Beneficiary, as of the date of filing, would primarily manage, as opposed to perform, the function.

The Petitioner's letter in support of the petition included a breakdown of the Beneficiary's proposed duties as "Trade Lane Manager and Business development," stating that he will allocate 40 percent of his time to "direct the management of the organization or a major component of the organization." The Petitioner included a lengthy list of duties associated with this area of responsibility which we will not repeat in its entirety. Some of the described duties indicate his proposed performance of certain higher-level duties. For example, the Petitioner stated he would be accountable for managing the growth of the company's air and ocean freight services in accordance with the sales strategy; monitoring trade lane performance against the budget and development plan; ensuring compliance with established sales objectives and targets; formulating and implementing business strategies; and ensuring that personal and team targets and KPIs are met. However, it is unclear how much time the Beneficiary would allocate to these specific duties, as they account for a relatively small proportion of the overall job description. Although the Director's RFE included a request for a more detailed breakdown of the proposed position with the percentage of time the Beneficiary would allocate to specific duties, the Petitioner's response did not include this evidence.

Further, most of the tasks the Petitioner included within this broad area of responsibility relate to the Beneficiary's proposed oversight of sales, marketing and business development activities and involve personnel supervision. For example, the Petitioner stated the Beneficiary will oversee subordinate staff efforts in new commercial development; oversee customer contacts; manage marketing and promotion; plan and oversee regular sales visits to develop business; review or manage commercial proposals and sales presentations; review market research conducted by staff; lead and develop the sales discipline; supervise the closing of sales; supervise sales campaigns; and manage and supervise market intelligence activities.

However, as discussed above, the record does not indicate that the Beneficiary would supervise the existing sales staff within the Petitioner's commercial team or that the company has any immediate plans to hire the sales and commercial staff who would eventually report to the Beneficiary. The three employees who would report to the Beneficiary initially (for his first year in the position and beyond) are not employed in sales, marketing, or business development roles. Therefore, the record does not establish that the Beneficiary's staff would relieve him from engaging in the sales and marketing activities the Petitioner claims he will manage, review, lead, or oversee as trade lane manager, or that his duties associated with these activities would be managerial in nature. The Petitioner must establish that the Beneficiary is eligible for the requested benefit at the time of filing. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978) (stating that the petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position).

The Petitioner indicated the Beneficiary would spend an additional 25% of his time exercising discretion over the day-to-day operations of an essential function by "overseeing the entire operation of the U.S. Commercial Team of the Company." As noted, the Petitioner's organizational chart indicates that the "entire" Commercial Team falls under the responsibility of the "North American Director," who is identified as the head of this team and would be the Beneficiary's immediate supervisor. Many of the duties listed under this area of responsibility are repetitive of duties listed elsewhere in the job description, and include overseeing market analysis, leading business development, managing staff handling of customers, performing internal follow up with "the sales team," and supervising meetings with customers, among others. These duties, like those described above, imply that there are subordinate staff within the department to perform the routine sales, marketing, and business development activities the Beneficiary is claimed to oversee, but the Petitioner indicated it had no immediate plans to hire such staff, suggesting that the Beneficiary himself would likely have to perform many of the operational activities rather than supervising or managing them.

Finally, the Petitioner stated that the Beneficiary would initially spend 25% of his time managing and overseeing the work of three U.S. employees (the pricing employee, AE Desk employee and customer service specialist), but these employees are not directly engaged in the sales, marketing and business development functions the Petitioner claims he will manage as the claimed head of the commercial team.

Overall, the record does not establish that the Beneficiary, based on his placement within the Commercial Team, would function at a senior level within the organization or with respect to the function he is claimed to manage. Nor has the Petitioner demonstrated the company's existing staff within the Commercial Team would relieve the Beneficiary from engaging in the sales, marketing, and business development activities the Petitioner claims he would oversee as a function manager. Therefore, we cannot determine that the Beneficiary would primarily manage, as opposed to perform, the function. The Petitioner cannot establish his eligibility based on a job description that is reliant on the company's future hiring plans and therefore largely prospective in nature. Accordingly, the record does not establish the Beneficiary would be employed as a function manager.

B. Personnel Manager

The Petitioner asserts on appeal that "the US position is primarily Managerial in nature, more specifically as a Functional Manager with personnel management responsibilities incidental to this role." Nevertheless, we will consider whether the Beneficiary qualifies, in the alternative, as a personnel manager.

Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. *See* section 101(a)(44)(A)(ii) of the Act. 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. Section 101(a)(44)(A)(iii) of the Act.

Notwithstanding the Petitioner's claim that personnel management responsibilities would be "incidental" to his U.S. position, the job description reflects that the Beneficiary would more likely than not allocate a significant proportion of his time to supervision of subordinate personnel. The Petitioner states that 35 percent of his time would be allocated to the personnel duties described at section 101(a)(44)(A)(ii) and (iii) of the Act, but supervisory duties are prevalent throughout the submitted job description. A position that is primarily supervisory in nature should be evaluated as a personnel manager. *See* section 101(a)(44)(A)(ii) of the Act; *see generally* 2 *USCIS Policy Manual* L.6(C)(1), https://www.uscis.gov/policy-manual.

Here, the record does not indicate that the Beneficiary's subordinates would be managers or have supervisory responsibilities.[3] Therefore, the Petitioner must establish that the employees he will supervise in the United States are professional employees. To determine whether a beneficiary manages professional employees, we evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation").[4] Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee.

The record indicates that the Beneficiary's subordinates will include a pricing employee, a customer service specialist, and a "Brazilian AE Desk" employee. The Petitioner stated that all three of these positions require "5 years of experience with Logistics" and specifically noted that the positions (both within the company and within the U.S. market) do not require a "university degree or a bachelor diploma." The Petitioner submitted an expert opinion letter from a professor at the [redacted] at [redacted] who concluded, without further explanation, that "it is apparent that the duties of [the Petitioner's] three initial U.S. direct reports would perform duties consistent with professional employment." However, the letter's author did not explain how he reached this conclusion or identify the definition of "professional" that informed his opinion, nor did he acknowledge the Petitioner's own assertion that the positions in question do not require a bachelor's degree or equivalent experience.[5]

Therefore, we agree with the Director's determination that the Petitioner did not meet its burden to demonstrate that the pricing employee, customer service specialist, and AE Desk employee hold professional positions for the purposes of demonstrating the Beneficiary's eligibility as a personnel manager under section 101(a)(44)(A)(ii) of the Act.

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[3] Although the Petitioner anticipates that the Beneficiary would supervise at least one "commercial supervisor" within two years and indicates this position will "oversee the work and schedules of departmental employees," the position is not depicted as a supervisory role on the Petitioner's proposed organizational chart, and it is therefore unclear which "departmental employees" would report to the position. The Petitioner indicates that any sales executives or inside sales staff hired would report to the Beneficiary.

[4] Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

[5] USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* USCIS may even give less weight to an opinion that is not corroborated. *Id.*

We acknowledge the Petitioner's assertion that one of the Beneficiary's responsibilities will include hiring up to six staff (including professional staff) after his first year in the proposed U.S. position. The Petitioner asserts that this authority "corroborates the fact that the Beneficiary would occupy a Managerial position with the power and responsibility to hire, fire, promote and build his team as he sees fit." We do not question that the Beneficiary has the requisite authority over future hiring, firing and other personnel decisions within the scope of his assigned team, and that such authority satisfies one element of the statutory definition of "managerial capacity" at section 101(a)(44)(A)(iii) of the Act.

However, for the purpose of determining whether the Beneficiary would be supervising and controlling the work of subordinate professionals, supervisors or managers, eligibility must be established as of the date of filing. *See* 8 C.F.R. § 103.2(b)(1). The Petitioner does not claim that the Beneficiary will supervise subordinate supervisors or managers; therefore, it must show that the position, as of the date of filing, would involve the supervision and control of subordinate professionals. The Petitioner has not met that burden, as it claims that the Beneficiary will hire subordinate professionals at some point during his second year in the proposed U.S. assignment. Accordingly, we agree with the Director's determination that the Petitioner did not show that the Beneficiary would be employed in a managerial capacity as a personnel manager.

Finally, regardless of whether the Beneficiary is claimed to be employed as a function manager or as a personnel manager, the Petitioner must establish that his actual duties will be primarily managerial, and that he will be relieved from having to perform the day-to-day operational duties associated with the activities he is claimed to manage. As discussed above, many of the duties attributed to his position involve the supervision of sales, marketing, and business development activities, and imply the existence a team of professional employees responsible for performing the more routine duties associated with such activities. It is well-established in the record that the Petitioner has no immediate intent to hire these employees.

While the record indicates that the Beneficiary would supervise three non-professional employees, they do not directly perform sales and marketing functions. Therefore, it is unclear who would relieve the Beneficiary from significant involvement in the non-managerial aspects of sales, marketing, and business development during his initial one to two years in the position. For this reason, the record does not support a determination that the Beneficiary's actual duties would be primarily managerial in nature at the time the petition was filed. The fact that the Beneficiary will exercise a certain degree of discretionary and supervisory authority does not demonstrate his eligibility to be classified as an L-1A nonimmigrant in a managerial capacity. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial in nature. Sections 101(A)(44)(A) of the Act.

Based on the foregoing discussion, the Petitioner has not established that it will employ the Beneficiary in a managerial capacity in the United States. Accordingly, the appeal will be dismissed.

III. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The Director also denied the petition based on a conclusion that the Petitioner did not establish the Beneficiary was employed abroad in a managerial capacity. We acknowledge that the Petitioner contests this determination on appeal. However, the Petitioner has not established that it will employ

the Beneficiary in a managerial capacity in the United States. Because this issue is dispositive of the appeal, we need not address whether he was employed abroad in a managerial capacity. Accordingly, we reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n. 7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

Although we reserve this issue, we observed discrepancies in the submitted evidence that were not discussed in the Director's decision. The Petitioner indicates that its Brailizian affiliate has employed the Beneficiary in the claimed managerial position of "Trade Lane Manager" since 2020 and states that he supervises a sales executive and a sales analyst. However, the Beneficiary's payment slips issued by the Brazilian entity (for the period January 2022 through February 2023) indicate that his job title is "sales executive," which is the position the Petitioner claims he held prior to his promotion in 2020.

The initial evidence also included employment contracts and recent pay statements for the Beneficiary's subordinates within the Brazilian affiliate. According to this evidence, the individual identified as "sales executive" was hired as a "foreign trade assistant" in April 2020 and held the job title of "junior foreign trade analyst" as of February 2023. The record shows the employee identified as a "sales analyst" was hired as a "commercial assistant" in November 2021 and was promoted to the role of "junior commercial analyst" as of February 2023. These discrepancies may be material to the Petitioner's claim that the Beneficiary has been employed abroad in a managerial capacity and should be addressed and resolved in any future filing in pursuit of the instant petition.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not established that the Beneficiary would be employed in the United States in a managerial capacity. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.