U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-J-, LTD.

DATE: MAY 24, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a cooperative supermarket chain with two employees in the United States, seeks to temporarily employ the Beneficiary as its international product development 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 the Beneficiary: (1) was employed abroad in a managerial, executive, or specialized knowledge capacity; and (2) would be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner asserts that it submitted sufficient evidence to establish that the Beneficiary was employed abroad in a specialized knowledge capacity and would be employed in its [redacted] office in the capacity of a function manager. The Petitioner contends that the Beneficiary will play a key role in managing over $30-37 million[1] in sales for the largest supermarket group in Japan.

Upon *de novo* review, we find that the Petitioner has not established that the Beneficiary will be employed as a function manager; 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 involves specialized

[1] We note that the Petitioner claimed in the petition and its support letter that the Beneficiary would be one of two employees in the [redacted] office responsible for "managing over $20 million in international sourcing and the Private Label Product Development Program in the United States for the largest supermarket group in Japan." In response to the Director's request for evidence (RFE), the Petitioner stated that the two employees in the [redacted] Office would be responsible for $30-$37 million in sales with a goal of achieving $45 million in sales. The Petitioner provides the $30-$37 million figure on appeal as well. Although these discrepant figures will not be addressed in this decision and do not form the basis of our decision, we note these figures in case the Petitioner chooses to file petitions in the future.

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 issue to be addressed in this decision is whether the Petitioner established that the Beneficiary will be employed in a managerial capacity. Specifically, the Petitioner claims that the Beneficiary will be performing the duties of a function manager; therefore, we will only address this claim.

"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 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).

A. Duties

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.

In the petition form supplement and support letter, the Petitioner stated that the Beneficiary will perform and compare market research analysis and foods trend analysis in Japan and the United States and identify potential products to introduce to the foreign parent's stores in Japan. The Petitioner also stated that the Beneficiary will be a close liaison with its partners and suppliers and exercise his

authority to select new business partners, negotiate contract terms, and enforce quality assurance in compliance with company strategy. The Petitioner stated the Beneficiary will "play a key role in managing over $20 million" in sales and perform the following summarized duties:

- Managing Product Development (70%)
  - Identifying products and suppliers (20%)
  - Coordinate cross-functional teams (20%)
  - Manage multiple supplier relationships (15%)
  - Audit supplier production facilities (10%)
  - Meet semi-annually with executives and directors (5%)

- Research & Analysis (30%)
  - Conduct analysis of supermarket trends and market dynamics (10%)
  - Maintain knowledge of supply base situation and provide reports to headquarters (10%)
  - Conduct U.S. supermarket tours (5%)
  - Lead business trips to trade shows and supplier factories (5%)

In response to the Director's RFE, the Petitioner provided a letter from its general manager who listed "specific responsibilities" that the Beneficiary would carry out in his proposed position that were substantially similar to the previously provided duties and responsibilities. Both job descriptions indicated that the Beneficiary's regular activities would include product development and research and analysis tasks. The general manager also stated that the two employees in the [redacted] Office would be responsible for $30-$37 million in sales with a goal of achieving $45 million in sales.

In the denial decision, the Director determined that the Beneficiary's job descriptions do not establish that the Beneficiary would primarily perform managerial job duties.

On appeal, the Petitioner contends that the Beneficiary's proposed role as international product development manager will be responsible for sourcing and purchasing a portfolio of grocery products in over a dozen countries in North America, South America, and Central America. The Petitioner also states that the Beneficiary, along with one other manager, will be responsible for an annual product portfolio of $30-$37 million. The Petitioner cites *Matter of G- Inc.* to support the claim that the Beneficiary assumes the role of a function manager. The Petitioner also disputes the Director's finding that there is insufficient evidence that the Beneficiary will be relieved from performing non-qualifying duties. The Petitioner specifically states the following on appeal:

> USCIS noted that there are support staff in Japan who perform many daily tasks, but discounted their involvement due to lack of supporting documents. In the middle of page 8 of the denial, USCIS says there are no identified employees who will relieve the beneficiary of performing non-qualifying duties. These statements are inaccurate.
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> . . .

> [The Beneficiary] will be relieved of the non-managerial duties associated with this role because he will be supported in Japan by teams responsible for Sales & Marketing, Quality Assurance, Artwork, and Logistics.

In the present matter, the Petitioner indicated that the Beneficiary's essential function would be "responsible for sourcing and purchasing a portfolio of grocery products in over a dozen countries in North America, South America, and Central America." The Petitioner stated that the Beneficiary would engage in various product development-based job duties. For example, the Petitioner stated that the Beneficiary would identify products and suppliers, coordinate cross-functional teams, manage multiple supplier relationships, and audit supplier production facilities. However, the Petitioner did not explain how these seemingly operational duties related to sales are higher-level, managerial duties. The Petitioner also stated that the Beneficiary would meet semi-annually with executives and directors to deliver presentations on product performance and initiatives, but it did not explain the Beneficiary's role and the support he receives in delivering presentations and how his part is a managerial duty. In addition, despite making multiple references to coordinating "cross-functional teams," the Petitioner did not explain the significance of these teams within the scope of its operation, state who (aside from the Beneficiary) form these teams, or clarify how the teams relate to the essential function that the Beneficiary is claimed to manage.

The record also lacks evidence supporting a finding that the Beneficiary's research and analysis-based duties are higher-level, managerial duties. The Petitioner stated that the Beneficiary would "conduct analysis of supermarket trends and market dynamics," "maintain knowledge of supply base situation . . . and provide timely reports to [Headquarters]," "conduct U.S. supermarket tours," and "[l]ead business trips to trade shows and supplier factories." The Petitioner's submitted evidence and statements convey little detail about how these research and analysis-based duties are managerial duties. It is not evident from the record that the Beneficiary is managing, as opposed to performing the underlying, operational duties related to research and analysis, and that the Beneficiary would be devoting his time to primarily managing the claimed function.

In light of the above described deficiencies, we cannot conclude that the Petitioner has established that the Beneficiary would primarily perform the duties of a function manager.

B. Staffing and Organizational Structure

Beyond the required description of the job duties, we also examine the company's organizational structure, the duties of the Beneficiary's subordinate employees, the presence of other employees to relieve the Beneficiary from performing operational duties, and the nature of the business along with any other factors that will contribute to an understanding of the Beneficiary's actual duties and role within the petitioning organization.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, USCIS takes into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

In support of the petition, the Petitioner provided an organizational chart listing two positions, including an office manager at the top of the hierarchy, followed by an international product development manager – the Beneficiary's proposed position – as the direct subordinate. The international product development manager position was not depicted as supervisory with respect to other subordinate positions. Further, the Petitioner stated that the Beneficiary will be replacing *W.A.* as its international product development manager.

The Petitioner also provided job descriptions for its positions of general manager and international product development manager, currently occupied by *C.H.* and *W.A.*, respectively. The duties for the position of general manager are: managing office, accounting, contract issues, and product development, while the duties for the position of international product development manager are: in charge of procurement of consumer food products from North America for distribution and sale to member stores in Japan.

An overview of the Petitioner's values, along with the products that will be assigned to the Beneficiary were submitted in response to the Director's RFE. The product and category management chart indicated that the Petitioner's general manager (*C.H.*) will be responsible for sourcing the following products: liquor, meat, produce, product planning and development, seafood, and western-style daily (cheese), while the Petitioner's current international product development manager (*W.A.*), whose position will be assumed by the Beneficiary, will be responsible for sourcing the following products: confectionary, Japanese-style daily (blueberries, potatoes, and U.S. frozen vegetables), processed food, and product planning and development. The Petitioner also provided a list of business trip, supermarket tour, and trade show itineraries that will presumably be executed by either its general manager, international product development manager, or both.

On appeal, the Petitioner submitted its business process flow chart that diagrams its product proposal, product development, and procurement and delivery activities, as well as identifying its logistics team.

The Petitioner's organizational chart identified *C.H.* as its office manager at the top of its 2-person hierarchy.[2] Despite claiming on appeal that the Beneficiary will primarily manage an essential function, neither the Petitioner's organizational chart nor the Beneficiary's job description support this claim. For instance, the Petitioner's organizational chart depicted the Beneficiary in a position with no subordinates, while the job descriptions for the positions of general manager and international product development manager (the Beneficiary's position) indicated that they are both synonymous with operational duties: "product development" and "procurement of consumer food products," respectively. The Petitioner's organizational chart does not indicate that anyone beyond the Beneficiary and his superior would perform its operational duties. The Petitioner states that the Beneficiary will "[g]uide cross-functional teams, including both team members and management from Sales & Marketing, Quality Assurance, Artwork, and Logistics departments, through the product development process . . . ." The Petitioner's and foreign entity's organizational charts[3] do not reference these departments or their corresponding personnel. Although the Petitioner claims that the

[2] As noted above, the Petitioner also identifies C.H. as "General Manager." C.H.'s resume states that he is the "Senior Manager of Product Management, The Americas."

[3] It appears that the foreign entity's organizational chart submitted by the Petitioner is a chart only depicting the "Joint Delivery Department."

Beneficiary will be supported by teams in Japan, we agree with the Director that the Petitioner did not submit evidence of who will be performing the day-to-day tasks related to the claimed function and what these employees' duties entail.

While the Petitioner provided job descriptions for the Beneficiary and his superior, it is not clear that a two-person staff, which includes a general manager and an international product development manager, is sufficient to relieve the Beneficiary from having to allocate his time primarily to the Petitioner's operational and administrative tasks. Given the previously noted deficiencies in the Beneficiary's job description and the lack of a detailed statement clarifying the Petitioner's precise role in the grocery product sourcing process, we are unable to determine whether the two-person staff would be sufficient to carry out the non-managerial tasks that comprise the essential function the Beneficiary is claimed to manage.

In light of the evidentiary deficiencies described above, the Petitioner has not established that it has the requisite staff and organizational structure to support the Beneficiary as a function manager.

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 C-J-, Ltd.*, ID# 3257386 (AAO May 24, 2019)