U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16709181

Date: MAY 25, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, describing itself as a manufacturer and seller of bedding and furniture, seeks to temporarily employ the Beneficiary in the United States as its general manager and store manager under the L-1A nonimmigrant classification for intracompany transferees. 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 the record did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. On appeal, the Petitioner asserts that the Director overlooked evidence submitted in response to the request for evidence (RFE) supporting the Beneficiary's managerial capacity in the United States. The Petitioner also contends that the Director did not sufficiently analyze its proposed organizational structure and the duties of the Beneficiary's subordinates. The Petitioner further asserts that the Director overemphasized the size of the company. Lastly, the Petitioner states that the Beneficiary would be employed as a function manager.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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*. 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. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity. The Petitioner does not claim on appeal that the Beneficiary would be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed 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 managerial capacity of a given beneficiary, we will review 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).

A. Duties

To be eligible for the L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must 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). In determining whether a given beneficiary's duties will be primarily managerial, we consider the Petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the 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.

The Petitioner stated that its foreign parent company, the Beneficiary's foreign employer, sells "a leading brand of upscale bedding system and furniture in China" and that they introduced their products to the United States market in 2014. The Petitioner indicated that it operates a "full[-]service specialty store" in [redacted] The Petitioner explained that the Beneficiary would act in a dual role as both the general manager of the company and as the store manager of its sole retail location in [redacted] The Petitioner listed the following duties for the Beneficiary:

- Oversee, direct and manage all aspects of the business operations of [the Petitioner] and its subsidiary specialty stores in the United States from daily operations to formulation of business strategies (4 hours);

- Set, establish and adjust company policies, procedures, strategic goals and operation regulations pursuant to Corporation Employment Guideline and general company directives (2 hours);
- Attend regular managerial meetings and report the overall operations of the U.S. subsidiary company and its business accomplishment and development to the CEO & General Manager of Department of Overseas Marketing at [the] parent company (2 hours);
- In charge of the managerial function of overseeing, implementation, and determination of the business expansion plan in the United States through working with business specialists and consultants for the establishment of future specialty stores and operations points (2 hours);
- Make decision on recruitment qualification, interview, recommendation, hiring and/or discharging subordinate supervising employees; determine raise range and bonus level for all present and future specialty stores in North American market (2 hours);
- Hold weekly meeting with 13 supervisory and non-supervisory employees to review work reports and performance of each department and subsidiary specialty stores to announce sales strategies targets, product information, and promotional/marketing activities, through online conference or on-site visit (1.5 hours);
- Identify and control supervisory employees' roles, responsibilities and deliverables, and supervise subsidiary store managers (2 hours);
- Periodically direct market research activities and validations of the corporate strategic positioning (1.5 hours);
- Oversee and direct the works of third party professional contractors/agents, i.e. professional marketing & advertising agency, certified public accountant, corporate lawyers, for the achievement of business goals (2 hours);
- Oversee and review the operation procedure, financial statements, sales and activity reports and other performance data, such as status in attaining objectives, strategic implementation, internal organization, demand and storage management etc., to measure productivity and goal achievement and to determine areas needing improvement (2.5 hours);
- Make decisions for the daily operations and business promotion of the store, ie. authorized sales, setting the discount sale price for special products/items for promotional purpose or clearance of inventories or for other legitimate purpose well-grounded in the general business circumstances and need of the community it served.
- Determine products and services to be sold, and set prices and credit terms based on forecasts of customer demand and market trend; formulate and decide pricing strategy on merchandise according to corporate guideline and requirements to profitability of store; Oversee the legal compliance of the store and its products (2 hours);
- Review company progress reports to determine marketing opportunities by identifying sales potential, customer expectation, and the pricing of products (2 hours);

- Review and approve business reports, sales and purchase agreements, contracts, and other related business documents; make decision on negotiation, approval and execution of important business agreements and contracts (2 hours);
- Work with legal counsel and attorney to draft, review and approve major terms for general contracts, sales contracts, and all related legal business documents (2 hours);
- Serving as the company's authorize representative or signatory in contract agreement and dealing with institutional clients, governments regulatory agencies as well as trade associations; act as management representative and spokesman in local communities to maintain a good store image and community relationship (2 hours).[1]

The Petitioner submitted supporting evidence suggesting the Beneficiary's direct involvement in non-qualifying operational-level duties leaving uncertainty as to its assertion that he would devote 90% of his time to qualifying managerial tasks. As noted, the Petitioner indicted that the Beneficiary would act in a dual role as both a general manager and store manager. However, the supporting documentation reflects the Beneficiary's likely engagement in the operation of its sole retail location in [redacted] alongside other colleagues, rather than his performance of managerial-level duties. For instance, the Petitioner submitted a document signed by the Beneficiary in August 2019 reflecting him ordering 23 additional pillows to be used as gifts for customers during a grand opening.[2] Likewise, the record included an invoice dated in July 2019 showing the Beneficiary as the contact ordering furniture and other inventory, while another invoice reflected him ordering space at a "hospitality design" exposition in June 2019. Lastly, the Petitioner also provided an email sent by the Beneficiary to colleagues in March 2019 discussing the specifics of its [redacted] retail space that he had visited with them.

In contrast, there is little supporting documentation or detail to substantiate that the Beneficiary would likely devote 90% of his time to managerial tasks as of the date the petition was filed. For instance, there is little detail as to the "policies, procedures, strategic goals, and regulations" the Beneficiary would set, the "business expansion plan" or "future specialty stores" he would likely establish, the "promotional" or "marketing" activities he would direct, or the "third party professional contractors/agents" he would oversee. Similarly, it is not clear what "high-level contracts" the Beneficiary would negotiate and execute or "important clients and business partners" he would meet with to maintain relationships. It appears more likely when reviewing the supporting documentation that the Beneficiary would be tasked with operational-level tasks related to the operation of its sole retail location, such as "storage management," making daily decisions on the operation and promotion of the store, setting prices and discounts, and ordering inventory.

Whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not credibly document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. The Petitioner lists the

[1] The Petitioner indicated that the Beneficiary's duty description reflected his proposed 40-hour work week, but the hours allocated to his description amounted to only 33.5 hours.
[2] The petition was filed in August 2019.

Beneficiary's duties and submits supporting documentation reflecting both managerial tasks and administrative or operational tasks, but it does not sufficiently quantify the time he would spend on these different duties. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Although we do not expect the Petitioner to articulate and document every managerial task performed by the Beneficiary, it is reasonable to expect that it would provide sufficient detail and documentation to corroborate his performance of qualifying duties, particularly since it appears to assert that he is already acting in his claimed managerial role as of the date the petition was filed. Further, it also states that the Beneficiary acted in a similar role for a different U.S. affiliate from July 2016 to May 2018.[3]

Even though the Beneficiary holds a position with a managerial title within the organization, the fact that he will manage or direct a portion of the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial in nature. *Id.* The Beneficiary may exercise discretion over some of the Petitioner's day-to-day operations and possess some requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that her actual duties would be primarily managerial in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we take 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.

The Petitioner appeared to emphasize that the Beneficiary would qualify as a personnel manager based on his oversight of subordinate supervisors. 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. 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. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

In support of the petition, the Petitioner provided an organizational chart reflecting 10 positions subordinate to the Beneficiary; however, it only identified one employee by name within the chart. Later in response to the RFE, the Petitioner provided an organizational chart showing 13 positions, including three employees working for its "wholesale supplier" based in [redacted] specifically a "Assemby/After-sale/Warehouse Manager" supervising a warehouse assistant and an assembler. Within the Petitioner's [redacted] "specialty store" the Beneficiary was shown to oversee a finance

[3] The Petitioner indicated in the L Classification Supplement to Form I-129 that the Beneficiary "was physically present in the U.S. on [a] valid L-1 Visa" from July 27, 2016 to May 18, 2018.

and human resources manager supervising a vacant bookkeeper position and a "Design Consultant and Sales Manager" overseeing four "Design Consultant and Sales Associates." The chart also reflected that within the [redacted] store the Beneficiary supervised an assistant general manager and another "Assembly/After-sale/Warehouse Manager" overseeing a warehouse assistant and an assembler.

In denying the petition, the Director emphasized that the Petitioner submitted a state employer's quarterly wage report from the fourth quarter of 2018 reflecting that it employed only four individuals. The Director concluded that this left question as to whether the Petitioner was sufficiently developed to support the Beneficiary in a managerial capacity overseeing subordinate supervisors. On appeal, the Petitioner contends that the Director overlooked evidence demonstrating that it transferred several employees from a now dissolved affiliate to work for the Petitioner. The Petitioner also states that "there is no statutorily requirements [*sic*] that petitioner has to list every single supervising employee and employee position to qualify a beneficiary to work in a position of managerial capacity."

Upon review, we agree that the Petitioner has not sufficiently established that the Beneficiary would qualify as a personnel manager supervising subordinate supervisors or managers.[4] In support of the petition, and then in response to the RFE, the Petitioner submitted organizational charts reflecting more than ten employees, including subordinate supervisors reporting to the Beneficiary. As correctly noted by the Director, the only submitted employer's state quarterly wage report specific to the Petitioner reflected that it employed only four individuals. However, the Petitioner did not submit in response to the RFE, and still does not on appeal in December 2019, sufficient supporting documentation to substantiate that it employs the 13 employees listed in its organizational chart. The Petitioner only provided IRS Forms W-2, Wage and Tax Statements specific to employees working for another affiliated company and asserted that these employees had been transferred to the Petitioner.

However, there is little supporting evidence to substantiate that these employees were employed by the Petitioner and that the Beneficiary would oversee subordinate supervisors as of the date the petition was filed in August 2019. For instance, the Petitioner did not provide any other state quarterly wage reports after the third quarter of 2018 to support that it employs its claimed 13 employees. The asserted organizational chart reflected that the Beneficiary supervised three subordinate supervisors, an "Assembly/After-sale/Warehouse Manager" working in a California warehouse, another such manager working in its [redacted] store, and a design consultant & sales manager.[5] However, the record includes little objective evidence to substantiate that these managers, or their subordinates, were employed by the Petitioner when the petition was filed. For instance, the Petitioner's IRS Form 1120, U.S. Corporation Income Tax Return reflected that it paid only $33,000 in wages during this entire year, an amount that does not appear to support the Beneficiary's subordinate supervisors and their operational subordinates. We acknowledge that the Petitioner provided internal wage reports reflecting a dramatic increase in this payroll during 2019; however, there is no objective evidence to

[4] Since the Petitioner does not explicitly assert that the Beneficiary would qualify as a personnel manager based on his personnel authority over professional subordinates, we will only analyze whether he would qualify based on his supervision of subordinate supervisors or managers.

[5] We acknowledge that the chart also listed an assistant general manager and a finance and human resources manager; however, the assistant general manager was not shown to have subordinates of his own in the organizational chart as the bookkeeper position subordinate to the finance and human resources manager appeared as vacant in the organizational chart.

support this increase in wages and employees during that year. Further, the Petitioner also appears to suggest that the Beneficiary is already acting in his role as store manager, yet there is no supporting documentation showing his delegation of duties to subordinate managers or his personnel authority over them near to the date the petition was filed.

Despite multiple chances to clarify this discrepancy with additional objective evidence, the Petitioner has not provided clear evidence to support its claimed organizational structure. In fact, the Petitioner questionably emphasizes that the law does not require it to "list every single supervising employee and employee position." However, we note that it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. As such, its continued reluctance to properly document its claimed organizational structure with objective evidence as of the date the petition was filed leaves uncertainty as to its assertions. The Petitioner must resolve discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Therefore, the Petitioner did not sufficiently establish that the Beneficiary would qualify as a personnel manager based on his supervision of subordinate supervisors or managers.

On appeal, the Petitioner further asserts that the Beneficiary would qualify as a function manager. 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. *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 Petitioner has not sufficiently demonstrated that the Beneficiary would qualify as a function manager as of the date the petition was filed. More specifically, the Petitioner has not established that the Beneficiary would primarily manage his asserted function rather than being primarily engaged in performing the function. As discussed, the Petitioner provided supporting documentation dated near to the date the petition was filed reflecting the Beneficiary's engagement in non-qualifying operational tasks, such as him ordering additional inventory and arranging for space at an industry exposition. Further, several of the Beneficiary's listed duties are indicative of his performance of these operational-level tasks alongside his colleagues, such as him monitoring and ordering inventory or setting prices and discounts, rather than performing qualifying managerial tasks. In fact, the Petitioner's managerial duties, particularly those assigned to his function manager role, are focused on expanding its business to additional locations, including the "recruitment of additional store managers and employees for the future specialty stores and authorized dealerships" and his development of these future locations. However, it is not clear, as of the date the petition was filed, who would relieve the Beneficiary from performing the inherent operational-level tasks involved in this proposed expansion, such as performing research, identifying additional locations, launching these additional locations, amongst other similar tasks. Therefore, the Petitioner did not sufficiently demonstrate that the Beneficiary would primarily manage his function rather than perform it.

Lastly, the Petitioner correctly observes that we must take into account the reasonable needs of the organization and that a company's size alone may not be the only factor in determining whether the Beneficiary is or would be employed in a managerial or executive capacity. *See* section 101(a)(44)(C) of the Act. However, it is appropriate for us to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company or a company that does not conduct business in a regular and continuous manner. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record. *See Systronics*, 153 F. Supp. 2d at 15. As such, we do not agree with the Petitioner's contention that the Director improperly considered the size of the company in denying the petition.

For the foregoing reasons, the Petitioner has not established that the Beneficiary would act in a managerial capacity under an approved petition.

ORDER: The appeal is dismissed.