U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17305985

Date: May 26, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a global supplier of fiber-based engineered products, seeks to continue the Beneficiary's temporary employment as its "Senior Director, Strategic Initiatives" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. 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 that the Petitioner did not establish, as required, that it would employ the Beneficiary in a managerial or executive capacity under the extended petition. The matter is now before us on appeal.

In these proceedings, the petitioner bears the burden to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, the Petitioner has established that the Beneficiary will more likely than not be employed under the extended petition in a managerial capacity as defined at section 101(a)(44)(A) of the Act. Accordingly, we will sustain the appeal.

The Petitioner is a publicly traded company with over 2500 employees, locations in ten countries, and approximately $1 billion in annual sales revenue. It transferred the Beneficiary from its European operations to its U.S. headquarters to serve as Operations Director for one of its business units in 2015 and promoted him to his current position of Senior Director, Strategic Initiatives in 2020. The Petitioner indicates that he reports to its Senior Vice President and Chief Commercial Officer and is responsible for leading the company's strategic growth initiatives, which it describes as "a critical function and component" of its global organization.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. The term "function manager" applies generally when a beneficiary does not directly 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 sufficiently explained and documented how the strategic and business growth initiatives that fall under the Beneficiary's management responsibility qualify as an "essential function" within its organization. The evidence demonstrates that the Beneficiary, with support of technical and business teams throughout the organization, is charged with identifying product areas and processes to stimulate new business and directly advising senior executives in identifying, evaluating and executing business growth strategies such as mergers, acquisitions and joint ventures, as well as counseling them on technological aspects of the business. Information contained in the Petitioner's latest annual report confirms that the company is undertaking a "major strategic transformation" that includes process improvements and a reshaping of its business portfolio, and supports its claim that the Beneficiary's area of responsibility is core to the business.

In a detailed letter describing the offered position, the Beneficiary's manager explains that he is vested with discretionary decision-making authority to define and manage the company's strategic initiatives and provide high level oversight of several business growth, product development, and process development projects with only general supervision from the chief commercial officer. The evidence establishes that the Beneficiary acts at a senior level within the company's organizational hierarchy, just below the executive level, and is not required to engage in the non-managerial, day-to-day operations of the company's product and business initiatives, which are carried out by lower level managers, scientists, technicians and other specialists, as well as his two direct subordinates, who are both professionals. While the Petitioner's detailed description and breakdown of the Beneficiary's duties indicates that he is called on to apply his technical expertise in performing some of his responsibilities, the evidence as a whole supports a conclusion that he primarily performs higher-level duties that are consistent with the definition of managerial capacity at section 101(a)(44)(A) of the Act.

In sum, the Petitioner has met its burden to establish, by a preponderance of the evidence, that the Beneficiary will be employed in a managerial capacity under the extended petition.

ORDER: The appeal is sustained.