U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17291883

Date: May 27, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a software company engaged in the development of identity verification and information gathering technologies, seeks to temporarily employ the Beneficiary as its "Project Manager" 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 record did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. The matter is now before us on appeal.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. BENEFICIARY'S EMPLOYMENT ABROAD

The record reflects that the Petitioner's Russian affiliate has employed the Beneficiary since 2017 in the position of "development team manager/software engineer." The Director denied the petition based on a determination that the Petitioner did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity.

On appeal, the Petitioner asserts that the previously submitted evidence was sufficient to establish that the Beneficiary has been employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act, and also submits additional evidence in support of that claim. The Petitioner further maintains that it has consistently claimed that the Beneficiary's position abroad is in a capacity that involves specialized knowledge as defined at section 214(c)(2)(B) of the Act, based on his leadership of the development of the company's core products. The Petitioner contends that the Director's decision does not acknowledge or address its specialized knowledge claim and emphasizes that the statute, regulations and pertinent caselaw permit a Beneficiary to be transferred from a position involving specialized knowledge to a managerial or executive position in the United States.

Upon review, the record supports the Petitioner's assertion that the Director did not consider its claim that the Beneficiary has been employed abroad in a capacity involving specialized knowledge. In at least one of its supporting letters, the Petitioner specifically referenced the regulatory definition of specialized knowledge at 8 C.F.R. § 214.2(l)(1)(ii)(D) and stated that the Beneficiary "possesses specialized knowledge and is qualified to hold a managerial position." Because the Director did not address the specialized knowledge claim made by the Petitioner, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision.

On remand, the Director should consider the Petitioner's claim that the Beneficiary's employment abroad as a development team manager/software engineer involves specialized knowledge as defined in the statute and regulations and allow the Petitioner an opportunity to submit additional evidence in support of this claim. The request for evidence issued prior to the denial of the was limited to evidence that would be needed to establish the Beneficiary's employment in a managerial capacity.

As noted, the Petitioner also offers additional evidence on appeal in support of its claim that the Beneficiary's employment abroad is in a managerial capacity, including evidence of educational credentials for some of his claimed subordinates. As the matter will be remanded, the Director should consider this evidence when issuing a new decision.

The Director should also request that the Petitioner address inconsistencies in the record regarding the nature of the Beneficiary's duties. A letter from the foreign entity's director provides a breakdown of the Beneficiary's position abroad, indicating that he spends 15% of his time reporting to the company president, a total of 60% of his time on supervisory and project management tasks, and the remainder of his time leading peer reviews. However, the Petitioner also submitted a copy of the Beneficiary's resume as supporting evidence. The Beneficiary indicates that his duties for the foreign entity include: designing, building, and maintaining business applications for PC and Mobile; building separate components and libraries for Android, Windows and Linux platforms; researching and building components for OCR including traditional computer vision algorithms and RNN; developing and optimizing algorithms for processing video streams for Android and Web platforms; developing program components for secure company intellectual property; writing unit and regression tests; code review; and writing documentation and providing technical support.

While all submitted descriptions indicate that the Beneficiary leads a team of software developers, his own account of his job duties indicates that he also participates in direct, hands-on product development, documentation, testing and support activities alongside the company's other software developers. These duties are notably absent from the Petitioner's description of duties provided in

response to the RFE. The descriptions of the Beneficiary's duties are inconsistent and therefore cast doubt on the accuracy and completeness of the Petitioner's breakdown of how he allocates his time. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies).

If supported by the record, the Director may notify the Petitioner of any other potential grounds of denial. The Director should afford the company a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, the Director should review the entire record and issue a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.