U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-N-T- CORP.

DATE: MAY 30, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an importer and exporter of food products, seeks to temporarily employ the Beneficiary as president of its new office[1] 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 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 Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of the petition. In addition, the Director determined that the Petitioner did not demonstrate that the Beneficiary was employed abroad in managerial or executive capacity.

On appeal, the Petitioner asserts that the Director failed to acknowledge the U.S. employees it already hired and contends that the duties of all the proposed U.S. positions are not yet clear because thus far they have not been filled. Further, the Petitioner states that the foreign duties of the Beneficiary demonstrate his managerial and executive capacity supervising subordinate managers and professionals.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). In addition, the beneficiary must

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

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 submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. MANAGERIAL OR EXECUTIVE CAPACITY WITH THE FOREIGN EMPLOYER

We will first analyze whether the Petitioner established that the Beneficiary is employed abroad in a managerial or executive 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.

The statute defines an "executive capacity" as an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

When examining the foreign managerial or executive 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 or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the foreign employer's organizational structure, the duties of a beneficiary's foreign subordinates, the presence of foreign employees to relieve a beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role abroad. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the foreign employer's business, its staffing levels, and its organizational structure.

A. Duties

Based on the definition of managerial and executive capacity, the Petitioner must first show that the Beneficiary performs certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary is *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the foreign entity's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner stated that the Beneficiary's foreign employer is a "major player" in the Chinese food import and export industry. In a support letter submitted in response to the Director's request for evidence (RFE), the foreign employer indicated that as president the Beneficiary spends 40% of his time on supervising and directing "the activities of the heads of the departments of the company" and another 30% on developing policies and formulating "business strategies." Further, the foreign employer explained that the Beneficiary devotes 20% of his time to directing the "negotiation of major contracts with vendors and/or distributors" and another 10% to making "final decisions on personnel matters."

The foreign employer also stated that the Beneficiary focuses on directing "the overall management and policy" of the company, noting that he spends a majority of his time on "supervising and directing the company's departmental and functional managers." It indicated that the Beneficiary regularly meets with his subordinate managers regarding "new products, hiring of new personnel, and [the] resolution of administrative issues." The foreign employer further explained that the Beneficiary had lately been focusing on how its operations would integrate with the Petitioner to "expand the product line." In addition, it also indicated that the Beneficiary had recently directed his subordinate purchasing manager "to implement protocols such as improved workflow and timesaving measures."

The Petitioner has not submitted a sufficiently detailed duty description that describes the Beneficiary's day-to-day managerial or executive-level duties abroad or credibly establishes that he devotes his time primarily to qualifying tasks. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The Beneficiary's duty description includes several generic duties that could apply to any manager or executive acting in any business or industry and they do not provide insight into the actual nature of his role abroad. In fact, the Beneficiary's duties do not mention the foreign employer's specific business, the import and export of food products. The Petitioner provided insufficient examples and little supporting documentation to demonstrate the Beneficiary's performance of qualifying duties abroad, such as policies or business strategies he formulated, vendor, distributor, or supplier contracts he negotiated, or personnel decisions he made. The foreign employer did not adequately detail or document administrative issues he resolved through his subordinate managers, long-term

business partnerships he developed, corrective changes he distributed to his managers, or workflow or timesaving measures he implemented. This lack of detail is particularly noteworthy since the foreign employer asserts that the Beneficiary has been acting as its president since 2007.

In contrast, the Petitioner provides foreign employer documentation suggesting the Beneficiary's involvement in non-qualifying operational level duties. For instance, the Petitioner submitted several "sales contracts" from 2016; however, these documents appear to be little more than order forms reflecting the foreign employer's purchase of goods abroad. Several of these purchase documents include the Beneficiary's name as a contact, suggesting that he is directly involved in day-to-day non-qualifying operational level duties. By comparison, we are provided with few specific examples and no supporting documentation reflecting the Beneficiary's delegation of non-qualifying duties to his subordinates.

Whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties would be managerial or executive functions and what proportion would be non-qualifying. The Petitioner submits evidence indicating the Beneficiary's involvement in operational level tasks that do not fall directly under managerial or executive duties as defined in the statute, but does not quantify the time he spends on these duties. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of a manager or executive abroad. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary holds a senior position within the foreign employer, the fact that he manages or directs the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a foreign position be "primarily" managerial or executive in nature. Sections 101(A)(44)(B) of the Act. The Beneficiary may exercise discretion over the foreign employer's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties abroad are primarily managerial or executive in nature.

B. Staffing

The Petitioner submitted a foreign organizational chart reflecting that the Beneficiary oversees a chief financial officer (CFO) and purchasing, marketing, sales, and logistics/warehouse managers. The chart further indicated that the CFO supervises an accountant, a cashier, and a financial assistant. In addition, the chart showed that the purchasing manager oversees "purchasing specialists" and that the marketing manager oversees "marketing specialists." The chart also reflected that the sales manager supervises "sales representatives" and that the logistics/warehouse manager oversees drivers and dockworkers. In a support letter, the foreign employer stated that each

of the Beneficiary's managers were "responsible for overseeing between three and ten employees respectively."

The Director denied the petition emphasizing that the Petitioner did not submit sufficient documentation to establish the Beneficiary's supervision of managerial subordinates. On appeal, the Petitioner points to the foreign employer support letter describing the Beneficiary's supervision of managerial subordinates holding bachelor's degrees. The Petitioner contends that the Director ignored the foreign employer's "multiple hierarchal layers" overseen by the Beneficiary.

The Petitioner did not submit sufficient evidence to substantiate that the Beneficiary acts in a managerial or executive capacity overseeing an organization including subordinate managers and professionals. In the RFE, the Director requested that the Petitioner submit the names, job titles, duties, educations, and salaries of the employees within his immediate organizational structure. Although the Petitioner provided the names and titles of the Beneficiary's immediate managerial subordinates, it did not submit detailed descriptions of their duties, their specific education levels, or indicate their salaries.

On appeal, the Petitioner emphasizes information provided in foreign employer support letters and its "multiple hierarchal layers" overseen by the Beneficiary. However, the foreign employer support letters do not adequately describe and credibly substantiate the duties of the Beneficiary's asserted managerial subordinates. As noted, we examine the foreign employer's organizational structure, the duties of the Beneficiary's foreign subordinates, the presence of foreign employees to relieve the Beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a Beneficiary's actual duties and role abroad. However, the Petitioner has submitted little evidence to provide a credible picture of the foreign employer's actual organizational structure and the Beneficiary's place therein.

For instance, the Petitioner vaguely indicates that each of the Beneficiary's managers are "responsible for overseeing between three and ten employees respectively" and indicates that his managers supervise purchasing and marketing specialists, sales representatives, and other operational employees. However, it does not specify how many employees each subordinate manager oversees nor does it describe the duties of their asserted operational subordinates. In addition, submitted foreign employer financial documentation includes no indication that it pays wages or salaries and the Petitioner otherwise provides no supporting documentation to corroborate the employment of its foreign employees beyond its own statements. Further, although the Petitioner submits tax documentation reflecting that the Beneficiary earned a regular salary during 2016 there is no indication from what source he received this salary or that this was paid by the foreign employer.

The Petitioner also asserts that the Beneficiary supervises professional level employees, indicating that his subordinate managers hold bachelor's degrees. However, the Petitioner does not describe the degrees and education levels of the Beneficiary's subordinates, as properly requested by the

Director, nor does it submit duty descriptions and supporting documentation to demonstrate that his subordinates act in professional capacities.[2]

In conclusion, the Petitioner has not sufficiently described the Beneficiary's day-to-day duties abroad and the record includes substantial evidence indicating his involvement with non-qualifying operational tasks. The Petitioner has not corroborated that the Beneficiary is primarily removed from performing non-qualifying operational duties in his capacity abroad. In addition, the Petitioner has not properly substantiated that the Beneficiary supervises managers and professionals abroad as claimed. As such, the Petitioner has not established that the Beneficiary is employed abroad in a managerial or executive capacity. For these reasons, the appeal must be dismissed.

III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director also denied the petition finding the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of an approval of the petition. In denying the petition, the Director stated that the Petitioner did not submit proposed duty descriptions for the Beneficiary's projected subordinates. In its appeal, the Petitioner asserts that the Director failed to acknowledge already hired U.S. employees and contends that the duties of all its proposed positions are not yet clear because they have not yet been filled. Following a review of the evidence, we concur with the Director's decision that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States within one year.

The Petitioner stated that the Beneficiary would act as president of the new company and guide its "vision and growth strategy." The Petitioner indicated that the Beneficiary would establish "policies and objectives" of the company, "define the company's vision and formulate policies and procedures," "review activity reports and financial statements," "revise objectives," evaluate the performance of his subordinate managerial and professional subordinates, and "develop long-term and short-term goals and strategies."

Similar to the Beneficiary's asserted foreign duties, his U.S. duty description also includes several generic duties that could apply to any manager or executive acting in any business or industry; such duties do not provide insight into the actual nature of his role. The Petitioner provided few specifics related to how the Beneficiary's day-to-day duties fit specifically within the company's first year business plans. For instance, the Petitioner did not specify the actions the Beneficiary would take during its first year of operation to assure that it develops as necessary to support him in a managerial or executive capacity within one year. In fact, the Beneficiary's duty description

[2] In evaluating whether a beneficiary manages professional employees, we must 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"). 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."

includes no mention of the company's intended business, the purchase and sale of food products. The Petitioner also submits few examples of vision he will set, policies and procedures he will put in place, objectives he will implement, or long and short-term goals and strategies he will establish. Again, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd.*, 724 F. Supp. 1103, 1108.

Further, the Petitioner's first year business and investment plans do not adequately demonstrate that it is likely to support the Beneficiary in a managerial or executive capacity within one year. The Petitioner submits evidence indicating that the Beneficiary has invested $204,800 in the new U.S. venture. However, the Petitioner does not detail how this investment is sufficient, or how it will be used to launch the business. The Petitioner provides few details regarding specific actions it will take during the first year to launch the business. Likewise, it only vaguely states that it will hire operations, finance, procurement, and business development/marketing managers subordinate to the Beneficiary during the first year. However, it does not submit detailed duty descriptions for the Beneficiary's proposed subordinates to demonstrate how they would relieve him, if hired, from primarily performing non-qualifying duties within the first year.

Lastly, we acknowledge that the Petitioner provides state tax documentation indicating that it has likely hired two employees beyond the Beneficiary as of the filing of the petition. But, this alone does not demonstrate that the Petitioner will develop sufficiently during the first year to support the Beneficiary in a managerial or executive capacity. For these reasons, the Petitioner has not established that the Beneficiary would act in a managerial or executive capacity within one year.

IV. CONCLUSION

The appeal will be dismissed because the record does not include sufficient evidence establishing that the Beneficiary is employed abroad in a managerial capacity or that he would be employed in a managerial or executive capacity in the United States within one year of the petition's approval.

ORDER: The appeal is dismissed.

Cite as *Matter of C-N-T- Corp.*, ID# 1276417 (AAO May 30, 2018)