U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12260164

Date: NOV. 4, 2020

Appeal of California Service Center Decision

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

The Petitioner, a wholesale distributor and importer of food additives, seeks to employ the Beneficiary temporarily as its vice president of business development 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 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, as required, that: (1) the Beneficiary was employed abroad in a managerial or executive capacity; and (2) the Beneficiary's proposed position in the U.S. would be 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. *See* 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 their 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 primary issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity. The Petitioner does not claim that it will employ the Beneficiary

in an 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.

When examining the managerial capacity of a given beneficiary, we will review the petitioner's description of the proposed position, which must clearly describe the duties to be performed by the beneficiary. *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. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

To be eligible for 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 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).

The Petitioner, established in 2012, is engaged in the import and wholesale distribution of aromas and food additives. It seeks to employ the Beneficiary in the position of vice president of business development.

The Petitioner submitted a letter outlining the Beneficiary's proposed duties, indicating that she will allocate 52% of her time to "managing and supervising [the Petitioner's] business development department" and "supervising and controlling the work of subordinates with authority to hire, dismiss and discipline employees." The description identifies the following responsibilities within this broad area:

a. Promote and demote employees (monthly and quarterly basis) (3%)
b. Counsel and discipline employees (periodically) (4%)
c. Assess company's projects and achievements to ensure subordinates are fulfilling their mission to develop and distribute quality products to clients (7%)
    - Define responsibilities and deliverables for team members
    - Hold weekly meetings with teams

d. Supervise the entirety of the product design process (7%)
    - Hold training sessions
    - Oversee achievement of sales milestones executed by subordinates
    - Ensure clear and effective communication between subordinates and other departments
    - Conduct performance evaluation and development planning for subordinate employees
e. Manage chemical engineering design team and the aromatic (QC) supervisor in China through the designing phase, its cost process as well as schedule.
    - Hold training sessions
    - Ensure clear and effective communication between subordinates and departments
f. Lead interdepartmental meetings across research, engineering, design, and technical teams and provide input to design products that achieve better specification than what is seen in the worldwide market, keeping in mid both product cost to the company and customer approval amongst consumers (6%)
    - Hold training sessions
    - Define responsibilities and deliverables for team members
    - Hold weekly cross-department meetings with sales teams and R&D team
    - Conduct performance evaluation for subordinate employees
g. Oversee response to inquiries concerning product development, ensuring incorporation of customer feedback and input into product design and processes (5%)
    - Define responsibilities for team members
    - Conduct performance evaluation and development planning for subordinate employees
    - Ensure clear and effective communication between subordinates and departments
h. Coordinate production, customer service, and logistics of company employees ensuring employees respond to clients' feedback and concerns about a product (10%)
    - Define responsibilities and deliverables for team members
    - Hold weekly cross-department meetings with sales teams and R&D
i. Ensure that the design and engineering culture within the team of engineers and designers in China is maintained and communicated to effectively avoid any problems among the staff (5%)
    - Define responsibilities and deliverables for team members
    - Hold weekly cross-department meetings with sales teams and R&D team

The Petitioner stated that the remainder of her time will be devoted to exercising discretionary authority on daily business development operations and business development (43%) and communicating with executive level for company assessment (5%).

The Petitioner also submitted an organizational chart demonstrating that the Beneficiary would oversee a total of eight subordinate employees. Specifically, the Petitioner stated that the Beneficiary will directly oversee a general manager, who in turn will supervise a logistics director, a senior accountant, an office assistant, and two technical sales representatives not yet hired by the Petitioner. The Petitioner further indicated that the logistics director would oversee a warehouse manager, and the senior accountant would supervise a bookkeeper. The Petitioner also claimed that employees of the foreign entity's business development department would support the U.S. team until the Petitioner is fully staffed. According to the Petitioner, the seven U.S. employees under the general manager's supervision, along with the ten employees of the foreign entity, would be responsible for the administrative duties and will alleviate the Beneficiary from performing day-to-day non-managerial tasks.

In a request for evidence (RFE), the Director requested additional details regarding the Beneficiary's proposed position and her relationship to her subordinate employees. In response to the RFE, the Petitioner explained that the Beneficiary will "mostly be preoccupied with making managerial and executive decisions on behalf of the company." It further stated that she will be involved in risk management, and will be tasked with "restructuring and managing the entire company's operations." With respect to personnel, the Petitioner provided brief overviews of the duties of each of the Beneficiary's subordinates, pointing out that several of these individuals hold bachelor's degrees and thus are considered "members of the professional class."

The Petitioner's response to the RFE did not further clarify the nature of the Beneficiary's primary day-to-day tasks. Although it described in further detail the duties of the Beneficiary's subordinates, the Petitioner's response did not elaborate on the manner in which "managing and supervising [the Petitioner's] business development department" and "supervising and controlling the work of subordinates with authority to hire, dismiss and discipline employees" would require 52% of her time. The Petitioner's response to the RFE did not meet the Petitioner's burden to clearly describe the proposed duties and to establish that the Beneficiary's actual duties would be primarily managerial in nature. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros.*, 724 F. Supp. at 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's proposed activities in the course of her daily routine.

We further note that the majority of the Beneficiary's duties, as originally stated, are not supported by the Petitioner's organizational composition or by its statements in response to the RFE. Again, the Petitioner states that the majority of the Beneficiary's time will be devoted to managing and supervising its business development department. However, the organizational chart does not identify such a department. The Petitioner also claimed in its initial statement of duties that she will "[h]old weekly cross-department meetings with sales teams and R&D team." Again, the organizational chart identifies a handful of employees arbitrarily grouped under the supervision of a "general manager." There is no indication in the record that a sales team or an R&D exists within the company, and we recall that the two "technical sales representative" positions are currently unstaffed. Finally, the Petitioner stated that the Beneficiary will "[l]ead interdepartmental meetings across research, engineering, design, and technical teams and provide input to design products that achieve better

specification than what is seen in the worldwide market...." Again, the record as constituted does not establish the existence of these four identified teams, raising questions regarding the validity of the Beneficiary's claimed duties.

The initial description of duties also indicated that 43% of the Beneficiary's time will be devoted to "exercising discretionary authority on daily business development operations and business development." While we acknowledge the Petitioner's claim that the U.S. company is growing and consequently requires "a capable and trusted new leader," we are not persuaded that the Beneficiary will be relieved from performing non-qualifying duties on a daily basis. The fact that a beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial. Here, the Petitioner indicates that the Beneficiary will exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making and personnel matters. However, due to the deficiencies discussed, the submitted position descriptions do not establish that her actual duties would be primarily managerial in nature.

B. Staffing and Organizational Structure

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

The definition of "managerial capacity" allows for both "personnel managers" and "function managers." Here, the Petitioner states that the Beneficiary will be employed in a managerial capacity based on her proposed supervision and control of subordinate personnel and does not claim that she will be employed as a function manager. 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."[1] *Id.*

At the time of filing, the Petitioner claimed seven employees, and supplemented the record with copies of its state quarterly wage reports to support this assertion. The Petitioner's organizational chart, as discussed above, demonstrated that the Beneficiary would directly oversee the Petitioner's general manager, who supervised a senior accountant, a logistics manager, and an office assistant. In turn, the

[1] To determine 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."

senior accountant would supervise a bookkeeper, and the logistics manager would supervise a warehouse manager.

As a preliminary matter, the Petitioner provided little supporting documentation to substantiate the Petitioner's asserted operations. This lack of evidence leaves substantial uncertainty as to the credibility of the Beneficiary's claimed role as vice president of business development. As noted above, we are not persuaded that the Petitioner's organizational structure and staffing at the time of filing would sufficiently relieve the Beneficiary from performing non-qualifying operational duties. The Petitioner claimed that the Beneficiary would be supervising and managing various teams, who would carry out various functions of the company in the area of sales, research and development, design, and engineering. No such teams have been defined by the Petitioner.

The Petitioner also claimed that two technical sales representatives would "assess competitors by analyzing and summarizing competitor information and trends," "build rapport with clients," research and identify potential accounts, and negotiate contracts with clients. However, as confirmed by the Petitioner, the two sales positions are currently vacant, and there is no other defined team or employee tasked with sales and client relations duties. According to the Petitioner, its rapid growth in the industry requires the leadership of the Beneficiary; however, absent the presence of any sales representatives, it is unclear who is performing these essential operational tasks.

The Petitioner did not sufficiently establish that the Beneficiary qualifies as a personnel manager based on her supervision of subordinate managers or supervisors. The Petitioner did not submit sufficiently detailed duty descriptions for the Beneficiary's claimed supervisory subordinates to substantiate that they act in their claimed roles, and numerous discrepancies exist within the record.

The Petitioner states that the general manager, the Beneficiary's direct subordinate employee, would "assess the company's current projects and coordinate timelines for project's deadlines," as well as "make decisions regarding which potential new clients to approach." These duties overlap with both the duties of the Beneficiary as well as those attributed to the sales representatives, thereby raising questions regarding the true nature of the general manager's role. If the general manager is engaged in the acquisition of clients, it is unclear that the duties of that position are primarily managerial in nature as claimed by the Petitioner. If the general manager is also engaged in the same tasks delegated to the Beneficiary, it is unclear whether the general manager is in fact relieving the Beneficiary from performing non-qualifying duties.

Moreover, the Petitioner states that the logistics manager is tasked with organizing itineraries for conventions, booking conferences, and ordering company resources. As noted above, it is unclear to what extent the Petitioner is engaged in conventions and conferences absent a sales team or sales department. Moreover, although the Petitioner indicates that the logistics manager oversees another managerial employee, namely, the warehouse manager, the role of the warehouse manager is likewise unclear. The Petitioner states that the warehouse manager will "schedule and oversee the warehouse teams to meet the demands of the fulfilment center," and that he is responsible for supervising all activities "across the company's three warehouse locations." The Petitioner has not provided evidence that it employs a warehouse "team" under the direction of the warehouse manager, nor has it sufficiently explained how its current organizational structure supports three warehouses absent evidence of a sales staff and the reference warehouse "team."

Finally, although the remaining employees include an office manager, a senior accountant, and a bookkeeper, the nature of these positions and their level of authority is unclear. Again, another discrepancy exists when examining the duties of the bookkeeper, which include working closely with the senior accountant "and the accounting department." Again, the Petitioner repeatedly refers to non-existent teams and departments which will relieve the Beneficiary from performing non-qualifying duties. The record as currently constituted, however, does not support such an assertion.

It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the Petitioner provided details regarding the duties performed by each individual listed on the organizational chart, the stated duties do not properly corroborate their claimed roles. In addition, the Petitioner has provided no supporting documentation to substantiate the Beneficiary delegating duties to her claimed managerial subordinate, the general manager, or otherwise reflecting her personnel authority over the general manager. Therefore, the Petitioner has not sufficiently established that the Beneficiary was employed as a personnel manager of subordinate managers or supervisors.

In the alternative, the Petitioner did not demonstrate that the Beneficiary qualifies as a personnel manager based on her supervision of professional subordinates. In evaluating whether the 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. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), 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." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, we must focus on the level of education required by the position, rather than the degree held by the subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity. The Petitioner has not explained in detail why the duties of the general manager, who is the only direct subordinate of the Beneficiary, require her to hold a bachelor's degree. As discussed, the Petitioner provided generic duty descriptions for the Beneficiary's subordinates that do not sufficiently corroborate their roles, nor do they demonstrate that these positions would require bachelor's degrees. In addition, the Petitioner provided no supporting documentation to support her personnel authority over, or her delegation of duties to, professional subordinates. As such, the Petitioner has not established that the Beneficiary will act as a personnel manager based on her management of subordinate professionals.

For the foregoing reasons, the Petitioner has not established that the Beneficiary will be employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act.

III. EMPLOYMENT ABROAD

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its arguments regarding whether the Beneficiary was employed abroad in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.