U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-&A-T-S-, INC.

DATE: NOV. 9, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a two-employee travel agency, seeks to temporarily employ the Beneficiary as its general manager under the L-1A nonimmigrant classification for intracompany transferees. *See* 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 California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary (1) had been employed in a managerial or executive capacity for the foreign entity; and (2) would be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner asserts that it has provided details of the Beneficiary's activities and documentary evidence sufficient to establish that the Beneficiary spends more than 50 percent of her time in a managerial capacity at the foreign entity, and that the Beneficiary will primarily perform in a managerial capacity for the U.S. entity. The Petitioner, on appeal, has established that the Beneficiary performs duties in a managerial capacity for the foreign entity and we will withdraw the Director's decision on this issue.[1]

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

[1] The Petitioner submits evidence from the foreign entity establishing the Beneficiary's primary duties for the foreign entity for one full-year prior to filing the petition. The duties and the foreign entity's employees demonstrate that the foreign entity employs sufficient staff, including supervisors, to relieve the Beneficiary from performing the foreign entity's non-qualifying duties. Accordingly, the record is sufficient to establish that the Beneficiary worked for the foreign entity for one full-year in a managerial capacity.

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.*

An individual L-1A petition filed on Form I-129, Petition for a Nonimmigrant Worker, must include evidence that the petitioner will employ the beneficiary in a managerial or executive capacity, including a detailed description of the services to be performed. 8 C.F.R. § 214.2(l)(3)(ii).

The Act defines the term "managerial capacity" as an assignment within an organization in which the employee primarily manages the organization or a department, subdivision, function, or component; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function; if the employee directly supervises other employees, has the authority to take personnel actions, or if no other employee is directly supervised, functions at a senior-level within the organization 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.[2]

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The Petitioner was organized in February 1991 to explore new business opportunities and develop and market its parent company's travel products and services in North America. The Petitioner noted that it also provided real estate management assistance. The foreign entity was established as a leisure and tourism company in China and has 16 subsidiaries and branch offices in over 12 countries.

The Director found that the Petitioner had not established that its organizational structure was sufficient to elevate the Beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees and that it had not submitted evidence to demonstrate that the Beneficiary will be employed as a function manager.

We will address both the Petitioner's description of the Beneficiary's intended duties as well as the Petitioner's staffing to determine whether the Petitioner has established this eligibility requirement. We note that when reviewing staffing levels as a factor in determining whether an individual is acting in a managerial or executive capacity, we must 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.

A. Duties

When examining the managerial capacity of a beneficiary, we look first to a petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The definition of managerial capacity has two parts.

[2] As the Petitioner does not claim that the Beneficiary will perform duties in an executive capacity, we will restrict our analysis to the Beneficiary's claimed managerial capacity.

First, the petitioner must show that the beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Second, 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, e.g., Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

In the letter of support, the Petitioner claims that the offered position is a managerial-level position and that the Beneficiary will manage the daily operations of the Petitioner through the supervision of other managerial, professional, and supervisory employees. The Petitioner also outlines the Beneficiary's proposed duties and time spent in this position and repeats the description in response to the Director's request for evidence, and again on appeal.

The Petitioner asserts that the Beneficiary will devote 40 percent of her time to recruiting, training, and directing the management team and assigning them job duties. To carry out this duty, the Beneficiary will determine qualifications of the managerial personnel and recruit additional employees to assist with the Petitioner's daily operations. In addition to managing employees, she will also train managers based on the foreign entity's requirements, assign job duties, review work schedules, oversee performance, and supervise department managers to recruit lower-level employees. The Petitioner also noted that the new managers will help with organizing and arranging U.S. tours both inbound and outbound. The Petitioner claims that the current two employees and the additional workers "will completely relieve the [B]eneficiary from performing non-managerial duties and the day-to-day operations of the U.S. entity." These duties as generally described do not sufficiently differentiate between non-qualifying duties and managerial duties. For example, without additional details, assigning job duties, reviewing work schedules, and supervising others are non-qualifying duties. Moreover, the requirement that the Beneficiary recruit and hire additional employees to carry out day-to-day operations demonstrates that the Petitioner did not have sufficient staff to do so when the petition was filed. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

The Petitioner added that the Beneficiary will spend 10 percent of her time setting out "the company's operational strategy and vision" which will include determining the long-term goals for the U.S. entity and planning and establishing the business goals, company policies, and procedures of the U.S. entity. She will spend an additional 10 percent of her time making final company decisions and managing and supervising overall operations through managers under her supervision. This time will include meeting with managers, revising strategies and policies, and providing guidelines and instructions to the managers so they will perform their duties more efficiently. The combined 20 percent of time the Beneficiary will allocate to these duties are not sufficiently detailed so that we may analyze whether such duties incorporate managerial, executive, or non-qualifying duties. Reciting the 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 Petitioner has not provided the necessary detail or explanation of the Beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the

employment. *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 Petitioner states that the Beneficiary will spend 10 percent of her time managing the company to attain its business goals which will involve supervising all of the Petitioner's departments to ensure that each operates efficiently and effectively while staying within budgetary limits. However, the Petitioner had only an administration department and an operations department, with one employee each, when the petition was filed. Thus, it is not clear from this description that these duties incorporate managerial duties as defined by the Act. Moreover, these duties occupy only a limited amount of the Beneficiary's time.

The Beneficiary will spend 10 percent of her time determining the company's annual financial and budgetary plans making adjustments as needed, as well as determining the funding for new and continuing projects. The Beneficiary will spend an additional 20 percent of her time reporting to the foreign entity on a quarterly basis, or when necessary, regarding the company's operating status. These duties also lack specificity. The Petitioner provides minimal information about specific tasks the Beneficiary will perform relating to these duties. The fact that the Beneficiary will manage a 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 position be "primarily" managerial in nature. Sections 101(A)(44)(A) of the Act. While the Beneficiary may exercise some discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, the position description alone is insufficient to establish that her actual duties will be primarily managerial in nature.

Without additional detailed information on the Beneficiary's proposed position, the Petitioner has not established the Beneficiary's managerial role within the U.S. company and has not established that she will perform in a managerial capacity.

B. Staffing

Beyond the required description of the job duties, we review the totality of the record when examining the claimed managerial capacity of a beneficiary, including 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.

The Petitioner claims that the Beneficiary will work as the general manager and identifies two subordinates in the positions of administration manager and operations manager. The record shows that the Petitioner employed the two individuals in these subordinate positions the year prior to filing the petition. The organizational chart indicates that the Petitioner outsources a certified public accountant position and a corporate attorney position, but the record does not include evidence that the Petitioner has contracted with firms to perform its accounting and legal duties. The remaining

positions on the chart are vacant.[3] The Petitioner notes that it plans to hire an administrative assistant, a tour supervisor and three inbound/outbound tour operations within two months once the general manager is in position. The Petitioner asserts on appeal that it has demonstrated that the Beneficiary will be employed in a managerial or executive capacity within one year of approval of the petition. However, this is not a "new office" petition which allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). 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). Petitioners that do not meet the definition of a new office must establish that they can support a beneficiary in a managerial or executive capacity as of the date the petition is filed. When the petition was filed in this matter, the Petitioner employed two individuals. The record does not include evidence of any employees other than the administrative and operations managers. The Petitioner's plans to hire additional employees to support the Beneficiary and its operations do not establish the Beneficiary's managerial capacity when the petition was filed.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) 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." Section 101(a)(44)(A)(iv) of the Act. 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*).

The administrative manager, one of the Petitioner's two employees, is described as coordinating and directing support services, managing the office environment, providing support to other departments and managers, proving leadership, training, and development of administrative staff, meeting with other members of management, and being responsible for overall work performance. The operations manager position is described as supervising and coordinating all aspects of tour operations, coordinating with other departments to staff substitute tour operations, reviewing and investigating issues, preparing correspondence on tour issues, answering mail and phone requests for information on tour routes, analyzing current and long-term tour transportation requirements, evaluating tour supervisors' performance, assisting the general manager in meeting the management plan and advising the general on the department's budgetary needs. Both positions are depicted on the organizational chart as reporting to the general manager.

However, when the petition was filed the two positions subordinate to the Beneficiary did not perform supervisory or managerial duties. The record does not include any evidence that the

[3] Although the organizational chart does not explicitly state that the marketing supervisor and customer service representative positions are vacant, the Petitioner otherwise claims that it only had two employees, the administration manager and operations manager, at the time the petition was filed.

Petitioner employed staff or contracted with outside suppliers to perform its operations other than the administrative and operations manager. The descriptions for these two positions also do not establish that the positions are professional positions.[4] The record does not establish that the Beneficiary will be a personnel manager of other supervisory, managerial, or professional employees when the petition was filed.

The Petitioner also has not articulated a specific function that the Beneficiary will manage. 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. The term "essential function" is not defined by statute or regulation. If a petitioner claims that a beneficiary will manage an essential function, a petitioner must clearly describe the duties to be performed in managing the essential function, or more specifically, identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, a petitioner's description of a beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform duties related to the function. See *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016). In this matter, the Petitioner has not articulated a specific function for the Beneficiary to manage and has not provided evidence that there are employees to perform the tasks of a specific function, thereby allowing the Beneficiary to primarily manage the function.

On appeal, the Petitioner asserts that it has repeatedly stated that the Beneficiary will recruit and hire additional employees in the United States based on the foreign entity's requirements. The Petitioner adds that "[t]he [B]eneficiary was assigned as general manager of the U.S. entity to manager [*sic*] the U.S. entity because the foreign entity is dissatisfied with the present management of the U.S. entity (all local employees) and its inability to manage expenses and create profits." The Petitioner avers that the Director did not consider this factor when analyzing its staffing levels. The Petitioner also claims that while the Beneficiary may perform some marketing and administrative tasks, she will primarily engage in managerial functions.

As discussed above, the Petitioner has not established that the Beneficiary's duties will involve the supervision and control of other supervisory, professional, or managerial employees, or the management of an essential function. This is an element necessary to demonstrate managerial

[4] When evaluating whether a beneficiary manages professional employees, we 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." Therefore, we focus on the level of education required by the position, rather than the degree held by 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 record here does not include sufficient evidence to establish that any of the positions subordinate to the Beneficiary's require a bachelor's degree to perform them.

capacity. The absence of employees to carry out the non-managerial duties when the petition was filed precludes the Petitioner from establishing that the Beneficiary will perform primarily in a managerial capacity.

We have considered the Petitioner's claim that its reasonable needs require the foreign entity's representative to recruit additional employees to enable it to become profitable. However, to establish that the reasonable needs of the organization justify a beneficiary's job duties, a petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. The Petitioner has not explained how the reasonable needs of the petitioning enterprise, a company established in 1991, justify the Beneficiary's direct involvement in non-managerial tasks. The Petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Furthermore, the reasonable needs of the Petitioner will not supersede the requirement that the Beneficiary must be "primarily" employed in a managerial or executive capacity, and not spend the majority of his or her time on non-qualifying duties. *See* sections 101(a)(44)(A) and (B) of the Act.

III. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary will be employed in the United States in a managerial capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of C-&A-T-S-, Inc.*, ID# 698266 (AAO Nov. 9, 2017)