U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6712152

Date: NOV. 21, 2019

Appeal of Texas Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (L-1A)

The Petitioner, describing itself as a steel sheet producer, filed a Form I-129, Petition for L-1A Manager or Executive seeking to temporarily employ the Beneficiary in the United States as its chief financial officer. 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 the Beneficiary was employed in a managerial or executive abroad.

On appeal, the Petitioner contends that the Director did not apply the preponderance of the evidence standard and carefully evaluate the submitted evidence. The Petitioner states that the Director disregarded detailed duties provided for the Beneficiary and asserts that it has demonstrated that she acted as a personnel manager abroad.

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 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 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. MANAGERIAL CAPACITY WITH THE FOREIGN EMPLOYER

The sole issues to analyze is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity. The Petitioner does not claim that the Beneficiary was employed

abroad in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary was employed abroad in a managerial 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 foreign managerial capacity of a given beneficiary, we will review the petitioner's description of the foreign job duties. The petitioner's description of the foreign job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial 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 foreign 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 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 duties, as opposed to ordinary operational activities alongside the foreign employer's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner submitted support letters from the Beneficiary's foreign employer that did not clearly describe its business activities; however, other supporting evidence on the record appeared to reflect that her foreign employer was part of a group of Chinese companies involved in the production of stainless steel. In support of the petition, the Petitioner stated that the Beneficiary had acted as general manager of finance beginning in January 2016 until her transfer to the United States as a nonimmigrant in January 2018. It indicated that the Beneficiary oversaw "5 managers at our subsidiary companies and the professional finance team" at her foreign employer. It listed the following duties for the Beneficiary:

- Manage all financial activities of [the foreign employer]. 50%
  - Oversee financial reporting, budgeting and other financial analysis including scheduled period end and year-end financial close procedures.

- Provide support in business strategy development for the group of companies by analyzing historic and projected financial data to identify development opportunities.
- Prioritize key financial initiatives and profitability improvement programs.

➢ Develop and implement internal financial and divisional accounting procedures to ensure best practice performance. 25%
- Monitor financial activities and details to ensure that general procedures relating to the input of information into system, reporting standards, and local legal regulations that followed.
- Develop and implement accounting and budgeting policies and procedures for the company.
- Serve as a leader of the broader global Finance Team and ensure finance departments in subsidiary companies are following the same internal guidelines.

➢ Oversee global finance projects for [the foreign employer] and be responsible for accuracy in the project deliverance. 25%
- Set and measure key KPM's.
- Assigning project work for appropriate finance professionals within the organization.

In a later request for evidence (RFE), the Director stated that the Beneficiary's duty description did not provide a detailed description of her actual daily duties and requested that the Petitioner submit a letter from the foreign employer describing her typical managerial tasks on a daily basis. In response, the Petitioner provided another support letter from the foreign employer listing largely the same duties for the Beneficiary, but it also indicated that she performed some the following personnel functions in relation to the financial managers and professionals she was claimed to oversee:

- Conduct performance assessments and appraisals of employees managed.
- Responsible for hiring and firing team members.
- Recommend promotion and salary increases.
- Approve leave requests and other administrative procedures related to employees managed.
- Ensure work product of direct reports is completed timely and in accordance with required financial standards.
- Oversee training of personnel to further develop talent, comprehension and adherence to company and legal regulations.
- Oversee and manage the preparation of financial reports and statements according to policies.
- Oversee, review, evaluate work product of finance professionals.
- Organize and allocate work to team to ensure completion of tasks on schedule.

The Beneficiary's duty description includes several generic duties, such as stating that she "manage[d] all activities of the financial department," "overs[aw] financial reporting, budgeting, and financial analysis," "develop[ed] and implement[ed] internal and divisional financial procedures," and "overs[aw] global finance projects." These duties could apply to any financial professional in any business or industry and they do not sufficiently substantiate the Beneficiary's role abroad. The

Petitioner provided insufficient examples and little supporting documentation to demonstrate the Beneficiary's performance of qualifying duties abroad, such as the financial reporting, budgets, and analysis she oversaw, the business strategies she developed, development opportunities she identified, key financial initiatives she prioritized, or profitability programs she put in place. Likewise, it did not sufficiently detail or document the accounting procedures the Beneficiary implemented, the "general procedures relating to the input of information into system[s]" she oversaw, accounting and budgeting policies she developed, global finance projects she put in place, or "KPMs" she set.

In addition, despite the Director's request for additional detail in the RFE, the Petitioner provided few credible specifics to sufficiently substantiate the Beneficiary's daily tasks, but only provided generic personnel manager duties, such as noting that she conducted performance assessments and appraisals, hired and fired team members, ensured "work product of direct reports," and oversaw "training of personnel." However, these vague personnel tasks provided little insight into the Beneficiary's actual daily duties and did not sufficiently corroborate that she acted as a personnel manager in relation to her subordinates. The lack of detail regarding the Beneficiary's asserted foreign capacity is particularly notable given that the Petitioner asserts that she has acted in this role for approximately two years from January 2016 through January 2018.[1] On appeal, the Petitioner asserts that the Director disregarded a "detailed" duty description submitted on behalf of the Beneficiary. For the foregoing reasons, we disagree with the Petitioner's contention that the Beneficiary's duty description is "detailed;" and on appeal, the Petitioner does little to address this evidentiary deficiency.

The Petitioner has not submitted a sufficiently detailed duty description that describes the Beneficiary's actual day-to-day managerial level duties abroad or which credibly establishes that she devoted her time primarily to qualifying tasks. Specifics are clearly an important indication of whether a beneficiary's duties are primarily 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).

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 an managerial capacity within the meaning of section 101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a foreign position be "primarily" managerial in nature. *Id.* 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 in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial 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.

[1] The petition was filed on January 30, 2019.

As discussed, the Petitioner asserts that the Beneficiary acted in a managerial capacity abroad. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) 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." *Id.* 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*). Since the Petitioner does not specifically assert that the Beneficiary acted as a function manager abroad and states that she supervised subordinate managers and "financial professionals," we will only analyze whether she acted as a personnel manager abroad.

There is substantial uncertainty as to whether the Beneficiary acted as a personnel manager abroad because the Petitioner submitted conflicting organizational charts on the record. In support of the petition, the Petitioner submitted a foreign organizational chart reflecting that the Beneficiary supervised the "managers of Financial departments" working for four subsidiary companies, listing the names of each of these companies and the names of the four subordinate financial managers. Each one of these financial managers was shown to supervise a substantial amount of employees, ranging from 22 to 135 within their respective companies. However, elsewhere in support letters and in a submitted organizational chart provided in response to the Director's RFE, the Petitioner provided a foreign organizational chart indicating that the Beneficiary oversaw five general managers of finance departments at five subsidiary companies; further, the names of each of these listed financial managers did not match the claimed subordinates provided in the initial foreign organizational chart.

Likewise, in the foreign organizational chart submitted in response to the RFE and its support letters the Petitioner indicated that the Beneficiary oversaw a deputy general manager of finance, a chief accountant, a general manager of audit department, and a chief auditor, all working for her foreign employer. However, these subordinates were not listed in the foreign organizational chart that was submitted in support of the petition. In addition, it is notable that the Beneficiary's subordinate managers listed in the organizational chart provided with the petition were all shown to oversee large departments ranging from 22 to 135 employees, whereas the foreign organizational chart provided in response to the RFE did not indicate how many employees each of her nine claimed subordinate managers oversaw. These material discrepancies leave material question as to the identity and nature of the Beneficiary's actual subordinates abroad. The Petitioner must resolve this discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In both organizational charts however, the Petitioner asserts that the Beneficiary supervised subordinate managers and supervisors abroad; however, it has submitted little supporting documentation to substantiate this assertion. For instance, the Petitioner provided claimed performance evaluations the Beneficiary completed every two months during 2017 for four of her claimed subordinates listed in the organizational chart provided in response to the RFE. These evaluations were specific to three of the general managers of finance working for foreign employer subsidiary companies and one of her claimed subordinates working for the foreign employer, the deputy general manager of finance.

However, the foreign organizational chart submitted in response to the RFE reflected that the Beneficiary supervised general managers of finance at five subsidiary companies and a deputy general manager of finance, a chief accountant, a general manager of audit, and a chief auditor working for the her foreign employer, or a total of nine subordinate managers. The Petitioner has provided asserted performance evaluations related to only four of her claimed nine subordinate managers. Further, the asserted performance evaluations are not credible, as they include no indication that they were completed by the Beneficiary. The evaluations are also generic and lack credible commentary specific to each employee and each lists the same generic duties for each employee, despite their differing roles, such as indicating that they are responsible for "capital receipt and payment," "risk control," "supervis[ing] and inspect[ing] the cashiers work," and "domestic procurement and sales business." In addition, one of the performance evaluations is relevant to a [redacted] lists this employee as the general manager of the financial department of the foreign employer; however in apparent conflict, this employee is asserted elsewhere on the record as the general manager of finance of [redacted]

Beyond these problematic performance evaluations, the Petitioner submits little evidence to reflect the Beneficiary's personnel authority over her claimed managers. We acknowledge that the Petitioner provided a "transfer application form" dated in December 2017 related to the Beneficiary's claimed general manager of finance department asserted as working for the subsidiary company, [redacted] This one personnel document is not sufficient to demonstrate that the Beneficiary had personnel authority over nine high level finance managers as claimed. The lack of supporting documentation to corroborate the Beneficiary's claimed high level role leaves doubt as to whether she acted in her asserted role.

The Petitioner further provided meeting minutes to substantiate that the Beneficiary acted in a managerial capacity abroad. However, this documentation again did not sufficiently corroborate the Beneficiary's claimed personnel manager role. For instance, the Petitioner provided meeting minutes from April 2017 which listed the Beneficiary as a participant, but this document made no reference to her involvement in the meeting and did not reflect her providing direction to her claimed subordinates. Further, the participants of the meeting included only one of the asserted subordinates listed in the RFE organizational chart, while also notably listing two of her stated subordinates in the conflicting organizational chart provided in support of the petition. Again, submitting one example of a meeting the Beneficiary attended does not properly substantiate that she acted as a higher level manager overseeing nine subordinate supervisors as claimed.

The Petitioner also provided several emails including the Beneficiary's name; however again, they did not clearly indicate that she acted as a personnel manager in relation to her claimed subordinate managers. For instance, only two of the emails reflect the Beneficiary communicating with her claimed subordinates listed in the RFE and neither of these two emails showed her providing direction to these claimed subordinates. Further, a few of the submitted emails from one of her claimed subordinates include other apparent discrepancies. For example, emails dated in July and October 2017 from the asserted general manager of finance of [redacted] indicate that this employee actually worked for [redacted] Otherwise, the submitted emails did not sufficiently establish that the Beneficiary exacts regular personnel authority over subordinate managers and supervisors.

Furthermore, the Petitioner also submitted three policy documents on the record; however, it is not clear how these demonstrate the Beneficiary's personnel manager capacity abroad. For example, the Petitioner submitted a document titled "Subsidiaries Internal Audit Procedures" dated in March 2017; however, it provided no context as to how this document relates to the Beneficiary and the document did not include her name. The Petitioner also provided a one page document called "Integrated Management Department Document Release Form" signed by the Beneficiary in January 2017; but again, it does not explain the relevancy of this document and its vague nature does not sufficiently demonstrate that she acted as a personnel manager. Lastly, the Petitioner submitted only one other policy signed by the Beneficiary named "Approval & Signature Flow," also signed by the Beneficiary in January 2017. However, this document is also generic and the Petitioner does not explain its probative nature, the Beneficiary's involvement in this claimed policy, nor does not describe how this demonstrates that she is a personnel manager. Therefore, for the foregoing reasons, the Petitioner has not provided sufficient supporting evidence to establish that the Beneficiary acted as a personnel manager abroad.

In the alternative, the Petitioner also states that the Beneficiary supervised "financial professionals," suggesting that she qualifies as a personnel manager based on these grounds. 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." Therefore, we must 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 Petitioner has not submitted sufficient evidence to establish that the Beneficiary qualifies as a personnel manager based on the supervision of subordinate professionals. First, as we have noted, the Petitioner presented two conflicting organizational charts thereby leaving uncertainty to her actual subordinates abroad. Further, as we have discussed, the Petitioner provides little supporting documentation to demonstrate that the Beneficiary exercises regular personnel authority over her claimed subordinates despite stating that she was responsible for "overseeing, reviewing and appraising their work product, issuing performance reviews," and performing all other matter of personnel actions with respect to them. As noted, the Petitioner provides performance evaluations related to only some of these subordinates, which did not even substantiate that they were completed by the Beneficiary. Based on these same reasons, there is substantial question as to whether she qualifies as a personnel manager of professional subordinates.

In addition, we acknowledge that the Petitioner submitted degree information for the Beneficiary's asserted subordinates working for the foreign employer, including the general manager of finance, the chief accountant, general manager of the audit department, and the chief auditor. However, the Petitioner does not indicate why these subordinates should be deemed professional according to the regulatory definition. Further, the Petitioner provided vague duty descriptions for each of the Beneficiary's claimed foreign employer subordinates. For example, it vaguely stated that the general

manager of the finance department was tasked with "handling execution and accounting affairs" and performing "analysis of annual budget," but there is insufficient detail to properly substantiate this subordinate position, such as detail on the accounting affairs they handled or the budgets they analyzed.

Likewise, the Petitioner indicated that the chief accountant was responsible for "financial accounting and assisting in the company's analysis" and "assessment of annual budget and final accounting," yet it does not submit credible specifics such as the accounting issues they resolved or dealt with or budgets they assessed. The Petitioner also provided similarly generic duty descriptions for the general manager of the audit department and the chief auditor which could apply to any employees generally involved in finance. These generic duty descriptions do not sufficiently corroborate the claimed professional positions subordinate to the Beneficiary. Therefore, the duty descriptions for the Beneficiary's claimed professional subordinates were not sufficiently detailed to establish that these positions required a bachelor's degree to perform their duties.

In conclusion, the Petitioner provided a generic foreign duty description for the Beneficiary and submitted little detail and supporting documentation to substantiate her primary involvement in qualifying managerial level tasks abroad. Further, the Petitioner submitted conflicting foreign organizational charts leaving uncertainty as to the Beneficiary's actual subordinates abroad. The record also included little evidence of the Beneficiary delegating duties to her claimed subordinates or documentation reflecting her personnel authority over them. In addition, the Petitioner submitted vague duty descriptions for the Beneficiary's claimed professional subordinates that did not sufficiently demonstrate that these positions required bachelor's degrees. In sum, the provided evidence does not sufficiently establish that the Beneficiary acted in a managerial capacity abroad.

ORDER: The appeal is dismissed.