U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6642290

Date: NOV. 21, 2019

Appeal of California Service Center Decision

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

The Petitioner, a provider of computing products and services, seeks to temporarily employ the Beneficiary as "Director, Product Management – IT" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary was employed abroad in a managerial, executive, or specialized knowledge capacity or that he would be employed in a managerial or executive capacity in the proposed position with the U.S. entity. With respect to the Beneficiary's foreign employment, the Director found that the Beneficiary was not relieved from having to primarily perform non-qualifying job duties and therefore performed primarily operational tasks. The Director also found that the Petitioner did not provide sufficient evidence showing that the Beneficiary managed professional subordinates and that he had managerial authority over those subordinates. The Director made nearly identical findings with regard to the Beneficiary's proposed position with the petitioning entity.

The matter is now before us on appeal. The Petitioner reasserts the claim that the Beneficiary was and would be employed in a managerial capacity. More specifically, the Petitioner contends that the Beneficiary's job duties and placement within the foreign and U.S. entities are consistent with those of a function manager.

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 find that the Petitioner has met its burden of establishing that the Beneficiary was more likely than not employed abroad and would more likely than not be employed in the United States in a managerial capacity.

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. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in

managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

We find that the Director did not properly assess the essential nature of the functions the Beneficiary has and would manage, and misinterpreted the Beneficiary's role and the impact of that role on the organization's chief objectives concerning product delivery. The Petitioner submitted detailed job duty breakdowns that explain the Beneficiary's essential functions and highlight specific elements that illustrate the essential nature of those functions. The Petitioner also submitted evidence of the monetary value of the Beneficiary's contributions to the organization and provided a detailed description of the reporting structures of each entity, demonstrating the Beneficiary's senior placements with respect to the functions he managed and would manage. The Petitioner established that the Beneficiary's role abroad and in the U.S. inherently involve discretionary authority over professional subordinates who carried out and who would carry out the underlying tasks of each essential function. In light of these findings, the Petitioner has provided sufficient evidence showing that the Beneficiary was employed abroad and would be employed in the United States in a managerial capacity.

ORDER: The appeal is sustained.