U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34870548

Date: NOV. 21, 2024

Appeal of Texas Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, describing itself as a marketing services and solutions company, seeks to temporarily employ the Beneficiary as the managing member 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 Director of the Texas Service Center denied the petition concluding 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. The matter is now before us on appeal. 8 C.F.R. § 103.3. Upon *de novo* review, we will dismiss the appeal. 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.

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 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).

[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.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY WITHIN ONE YEAR

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity in the United States within one year of an approval of the petition.

"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.

"Executive capacity" means 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.

As a preliminary matter, the Petitioner did not clearly articulate whether the Beneficiary would qualify as an executive or manager within one year, or both. A petitioner claiming that a beneficiary will perform as a "hybrid" manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each criterion set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity. Therefore, the Petitioner's lack of clarity as to his managerial or executive capacity leaves substantial initial uncertainty as to his asserted eligibility.

When examining the 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).

A. Duties

The Petitioner stated that it would be "a bespoke agency that specializes in effective niche marketing, and execution of briefs uniquely [sic] created solutions tailored to meet clients' targeted markets and audiences." The Petitioner described the Beneficiary's proposed duties as managing member as follows:

Hiring Strategy: [The Beneficiary] will spearhead a collaboration hiring process, leveraging the expertise of both the parent company and local stakeholders. Together, they will craft recruitment strategies to assemble a dynamic team aligned with the company's vision and the unique demands of the US market. This approach will ensure a workforce primed for success and growth.

Strategic Planning and Market Entry: As Managing Member, [the Beneficiary] will develop a comprehensive strategic plan tailored to the intricacies of the US market. Through meticulous market research and analysis, he will identify key opportunities for growth and differentiation. By devising strategies that capitalize on [Petitioner] strengths while addressing market challenges, he will drive successful market penetration and brand recognition.

Operational Excellence and Efficiency: [The Beneficiary's] leadership will be characterized by a commitment to operational excellence and efficiency. He will implement robust frameworks and performance metrics to streamline operations and enhance productivity. By embracing innovation and leveraging technological advancements, he will ensure [the Petitioner] remains agile and responsive to market dynamics, fostering a culture of continuous improvement and success.

Talent Development and Empowerment: Recognizing the importance of talent development, [the Beneficiary] will prioritize initiatives to empower and nurture the workforce. Through comprehensive training programs and mentorship opportunities, he will cultivate a culture of learning and growth, enabling team members to thrive in their roles and contribute to the company's success. By fostering a collaborative and inclusive work environment, he will empower employees to innovate and drive [the Petitioner] towards its goals.

Stakeholder Engagement and Relationship Building: As the face of [the Petitioner] in the US market, [the Beneficiary] will focus on building and nurturing strategic partnerships with key stakeholders. By actively engaging with industry players, government agencies, and community organizations, he will enhance the company's visibility and credibility. Through transparent communication and a commitment to delivering value, we will build trust and forge lasting relationships, positioning [the Petitioner] as a trusted leader in the US market.

Thought Leadership and Innovation: [The Beneficiary] will champion thought leadership and innovation within [the Petitioner], driving the company's evolution in the US market. By fostering a culture of creativity and experimentation, he will encourage team members to explore new ideas and approaches. Through thought-provoking content, industry insights, and participation in key events, he will elevate [the Petitioner's] profile and establish it as a leading voice in the US media and marketing landscape.

The Petitioner submitted a duty description for the Beneficiary that does not credibly demonstrate that he would primarily perform managerial or executive-level tasks within the first year. The Petitioner did not sufficiently detail the managerial or executive-level duties the Beneficiary would perform during the first year, including the tasks he would complete during this time to successfully launch the new business operation. For instance, the Petitioner did not specify the hiring recruitment strategies he would utilize, the strategic plan he would develop, the frameworks and performance metrics he would implement, or the technological advancements he would leverage. Likewise, the Petitioner did not detail the day-to-day tasks inherent in him establishing comprehensive training and mentorship opportunities, the strategic partnerships he will nurture with key stakeholders, or the thought leadership and innovation he would champion.

The duty description the Petitioner provided for the Beneficiary is generic, vaguely referring to leadership philosophies and approaches that could apply to any manager or executive working in any business or industry and it makes little reference to its specific business or how it would be launched during the first year. The duty description does not sufficiently articulate the Beneficiary's daily tasks both during and at the end of the first year. The Petitioner also did not sufficiently indicate how the Beneficiary would be primarily relieved from performing non-qualifying operational tasks within one year. Although we do not expect to the Petitioner to detail every managerial or executive-level task of the Beneficiary, the lack of this detail leaves substantial uncertainty as to whether he would primarily perform managerial or executive-level duties within the first year. Specifics are clearly an important indication of whether a beneficiary's duties would be primarily managerial or executive 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).

B. Business Plan and Projected Staffing

In the case of a new office petition, we review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in analyzing whether the proposed managerial or executive position is plausible based on a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

The Petitioner submitted hiring projections reflecting that it planned on hiring four employees within the first five years, including an office assistant, a digital media expert, a sales and marketing specialist, and a part-time content creator. A provided table showing the company's hiring timeline indicated that it would only hire the office assistant in addition to the Beneficiary during its first year of operation.

Based on the Petitioner's hiring projections during the first year, the Petitioner did not demonstrate that he would act in a managerial capacity in the United States within one year. 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 did not specifically assert that the Beneficiary would be employed as a function manager and submitted evidence indicated that he would oversee subordinate staff, we decline to analyze whether he would qualify as a function manager within one year.

The Petitioner did not sufficiently establish that the Beneficiary would be employed as a personnel manager within one year of an approval of the petition. First, the Petitioner's asserted hiring plans reflect that it would only hire one employee, the office assistant, within the first year. As such, the submitted evidence indicates that the Beneficiary would not oversee subordinate supervisors or managers within one year.

In the alternative, a petitioner may establish a beneficiary as a personnel manager by establishing that they would have personnel authority over subordinate professionals, in this case, within the first year of operations. 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 Petitioner did not demonstrate that the Beneficiary would have personnel authority over professional subordinates within one year. The Petitioner stated that the requirements for the office assistant position required "a high school diploma or equivalent" and "prior experience in office administration or customer service preferred." The Petitioner did not articulate that a bachelor's degree was required to perform the duties of the office assistant position. The Petitioner did not substantiate that the Beneficiary would likely have personnel authority over subordinate professionals within its first year of operation. Therefore, the Petitioner did not sufficiently establish, as required, that the Beneficiary would be employed as a personnel manager within one year of an approval of the petition.

Further, the Petitioner did not establish that the Beneficiary would be employed in an executive capacity within one year. The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive

title or because they "direct" the organization, major component, or function as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Again, the Petitioner's hiring projections showed that it planned to hire only an office assistant subordinate to the Beneficiary during the first year. Therefore, it is not clear how the Beneficiary would operate in an elevated position focusing primarily on the broad goals and policies of the organization and how he would be primarily relieved from the non-qualifying operational tasks of the business, such as its proposed digital media, sales and marketing, and content creator services. For these reasons, the Petitioner did not demonstrate that the Beneficiary would be employed in an executive capacity within one year.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the managerial-level and that often the full range of managerial responsibility cannot be performed. To qualify for the L-1 nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment and establish that the proposed enterprise will support a managerial or executive position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying managerial or executive-level duties.

The Petitioner has not sufficiently established that it would develop sufficiently within one year to support the Beneficiary in a managerial or executive capacity. As discussed, the Petitioner projected that it would only hire one other office assistant within the first year. Therefore, it is not clear based on the submitted evidence whether the Petitioner would be sufficiently staffed to relieve the Beneficiary from primarily performing non-qualifying operational duties within the first year. In addition, the Petitioner provided vague business plans for the first year, leaving substantial question as to whether it would sufficiently develop during this time to support the Beneficiary in a qualifying managerial or executive-level position. For instance, in its submitted business plan, the Petitioner submitted general statistics related to the U.S. economy as a whole and provided little detail as to how the business would be successfully launched during the first year. The Petitioner generically discussed monthly goals, sales and marketing plans, campaigns, initiatives, seminars, clients and partners, improvement ideas and strategies, and social media, but provided little detail as to each or specific plans as to how it would accomplish any of its asserted timelines and goals. In fact, the foreign employer stated that it had been "inundated with requests from...clients across disciplines and majorly [sic] in the marketing, advertising and branding sector requesting for trainings and study visits in the USA and as such establishing [the Petitioner]...will cater to this need as well." This statement from the foreign employer leaves even further question as to the Petitioner's actual business plans within the first year. The Petitioner must resolve discrepancies and ambiguities 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).

For the foregoing reasons, the Petitioner has not established that the Beneficiary would be employed in a managerial or executive capacity within one year of an approval of the petition.

ORDER: The appeal is dismissed.