U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W- CORP.

DATE: NOV. 24, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer and marketer of [redacted] seeks to amend and extend the Beneficiary's temporary employment from that of a senior accountant under the L-1B nonimmigrant classification for intracompany transferees to that of a freight and warehousing finance 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.[1]

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 or executive capacity or in a position requiring specialized knowledge.

The matter is now before us on appeal. In its appeal, the Petitioner provides a brief addressing the Beneficiary's position abroad and specifying the characteristics that speak to the position's managerial qualities.

Upon *de novo* review, we find that the Petitioner has provided sufficient evidence to overcome the ground for denial. Therefore, we will sustain 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 qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

[1] The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The statute defines the term "managerial capacity" as an assignment in which an 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; has the authority to hire and fire or recommend those as well as other 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.

II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

As indicated above, the Director determined that the evidence did not establish that the Beneficiary was employed abroad in a managerial capacity as defined at section 101(a)(44)(A) of the Act; 8 U.S.C. § 1101(a)(44)(A). The Beneficiary was employed abroad in the position of "FP&A Manager, Asia North Region."

In the denial, the Director incorrectly relied on facts that pertain to the Beneficiary's proposed position to determine that the Petitioner provided inconsistent evidence regarding the Beneficiary's former employment with the foreign entity. The Director also did not clarify what led her to conclude that the tasks of the Beneficiary's subordinates did not require a bachelor's degree.

On appeal, the Petitioner clarifies relevant facts that pertain to the Beneficiary's employment abroad, pointing out that the Beneficiary managed a five-person team comprised of managerial and professional employees. The Petitioner also differentiates between the Beneficiary's position abroad and her proposed position in the United States, which appear to have been conflated in the Director's decision. The Petitioner goes on to specify each subordinate's educational credentials and establishes that the duties of their respective positions are consistent with positions that 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"). The Petitioner points to the subordinates' job duties and explains that they relieved her from having to primarily perform nonmanagerial duties within her department.

In sum, the Petitioner's explanation on appeal further clarifies the Beneficiary's level of discretion within the department she managed and clarifies her managerial role with respect to the professional subordinates who comprised the department and performed its operational tasks.

Accordingly, we find that the Petitioner sustained its burden of establishing that the Beneficiary was employed abroad in a managerial capacity.

III. CONCLUSION

As the Petitioner has overcome the stated ground for denial, the appeal will be sustained.

ORDER: The appeal is sustained.

Cite as *Matter of W- Corp.*, ID# 774167 (AAO Nov. 24, 2017)