U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12008801

Date: NOV. 27, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a manufacturer of pipes for the oil and gas industry, seeks to employ the Beneficiary as a technical manager under the L-1A nonimmigrant visa classification for intracompany managers and executives. *See* 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. The Director concluded that the Petitioner did not demonstrate the Beneficiary's employment abroad - or his proposed U.S. work - in the claimed managerial capacity.

The Petitioner bears the burden of establishing eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. INTRACOMPANY MANAGERS AND EXECUTIVES

An L-1A petitioner must demonstrate that it would employ a beneficiary in a managerial or executive capacity in the United States and that the beneficiary has the qualifications for the proposed work. Section 101(a)(15)(L) of the Act; 8 C.F.R. §§ 214.2(l)(3)(i), (iv). An L-1A petitioner must also establish that, for at least one continuous year of the three-year period before a beneficiary's admission into the United States, the petitioner, a branch, parent, affiliate, or subsidiary employed the beneficiary full-time in a capacity that was managerial, executive, or involved specialized knowledge. Section 101(a)(15)(L) of the Act; 8 C.F.R. §§ 214.2(l)(3)(iii), (iv).

II. PROPOSED U.S. EMPLOYMENT

The term "managerial capacity" means employment that would "primarily" involve: 1) managing an organization or its department, subdivision, function, or component; 2) supervising and controlling the work of other supervisory, professional, or managerial employees, or managing an essential function within the organization, department, or subdivision; 3) having the authority to hire and fire subordinates or to recommend those and other personnel actions or, if no employee was supervised, functioning at a senior level within an organizational hierarchy or regarding the function managed;

and 4) exercising discretion over daily operations of the activity or function for which the employee had authority. Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B).

A petitioner claiming a beneficiary's proposed employment in a managerial capacity must demonstrate that his or her work would meet all four elements of the term's definition. A petitioner must also establish that a beneficiary would "primarily" perform managerial-level duties, as opposed to operational tasks. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988) (stating that "[a]n employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity").

The definition of the term "managerial capacity" allows for both managers of personnel and essential functions. In its letter supporting the petition, the Petitioner at one point referred to the Beneficiary as a "function manager." On appeal, however, the Petitioner neither claims that he would work as a function manager nor faults the Director for not considering him in that role. We will therefore consider the Beneficiary only as a personnel manager. A personnel manager must "primarily" supervise and control the work of other supervisory, professional, or managerial employees. *See* section 101(a)(44)(A)(ii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*). "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; 8 C.F.R. § 214.2(l)(ii)(B)(*4*).

In considering the managerial nature of proposed employment, U.S. Citizenship and Immigration Services (USCIS) examines the job duties of the offered position. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring a "detailed description of the services to be performed"). We also consider: the nature and structure of the U.S. business; the existence of subordinates who could relieve a beneficiary from performing operational tasks; the duties of subordinates; and other factors potentially affecting the nature of a beneficiary's proposed role in the United States.

Here, the record shows that the Petitioner makes and sells submerged, arc-welded pipes for the oil and gas industry. In December 2016, the Beneficiary transferred to the United States from the Petitioner's parent company in India in L-1B nonimmigrant visa status to work as an internal coating specialist and coordinator.[1] The Petitioner states that it later promoted the Beneficiary to the offered position of technical manager and seeks to extend his U.S. stay in L-1A status.

As the Director found, the Petitioner did not demonstrate that the Beneficiary's proposed U.S. employment would meet all four elements of the definition of "managerial capacity." Specifically, the record does not establish the Beneficiary's prospective authority to hire and fire subordinates or to recommend those and other personnel actions. *See* section 101(a)(44)(A)(iii) of the Act, 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

The Director's written request for evidence (RFE) notified the Petitioner of the evidentiary deficiency. The Petitioner's RFE response included copies of employee evaluations and documentation of training

[1] L-1B status allows qualified foreign nationals to temporarily work in the United States in positions involving "specialized knowledge." *See* 8 C.F.R. § 214.2(l)(1)(ii)(D) (defining the term "specialized knowledge").

sessions that the Beneficiary conducted in the proposed position. These materials, however, do not demonstrate the Beneficiary's authority to hire and fire or to recommend personnel actions.

On appeal, the Petitioner argues that the Director disregarded the Beneficiary's resume. The resume states that, in the current offered position of technical manager, the Beneficiary "[r]ecommend[s] hiring and firing of hourly employees."

On the L Classification Supplement to Form I-129 and in the Petitioner's letter supporting the petition, however, the company did not state the Beneficiary's authority to hire and fire or recommend personnel actions. Also, in listing the Beneficiary's proposed job duties, the L Classification Supplement refers to the Petitioner's letter, not to the Beneficiary's resume. Thus, the unexplained discrepancies between the Beneficiary's resume and the L Classification Supplement and the Petitioner's letter cast doubt on his proposed authority to recommend personnel actions. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record).

The Petitioner also asserts that the Director requested more evidence than required. The Petitioner contends that its letter alone demonstrated the managerial nature of the Beneficiary's proposed employment.

In L-1 extension petitions, "supporting documentation is not required, *unless requested by the director*." 8 C.F.R. § 214.2(l)(14)(i) (emphasis added). Here, pursuant to *Ho*, the Director requested supporting documentation. Also, as previously discussed, the Petitioner's letter did not state the Beneficiary's authority to hire and fire or to recommend personnel actions. Thus, even if only a letter was required, the Petitioner's letter would not have demonstrated the Beneficiary's proposed employment in a managerial capacity.

The Petitioner further asserts its submission of a letter stating the Beneficiary's responsibility of "recommending [the] hiring, firing, and disciplining" of employees. That letter, however, is from the Petitioner's parent and describes the Beneficiary duties in his last position abroad. The parent's letter therefore does not demonstrate that the Beneficiary would hire and fire or recommend personnel actions in the United States.

Also, although unaddressed by the Director, the record does not establish that the Beneficiary would "primarily" supervise and control the work of others as required of a personnel manager. *See* section 101(a)(44)(A)(ii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). The Petitioner stated that the Beneficiary would spend 20% of his time in training-related activities that appear to be supervisory in nature. But the record does not establish that the Beneficiary's other duties - such as: ensuring smooth and uniform quality of coatings; ensuring proper documentation for process parameters; and monitoring budgets for capital projects - would involve supervision and control of others' work. Thus, contrary to the requirements of a personnel manager, the record does not establish that the Beneficiary would "primarily" supervise and control others' work. Thus, in any future filings, the Petitioner must submit additional evidence that the Beneficiary would primarily serve as a personnel manager.

The Petitioner asserts that the Director "failed to adequately address and consider each piece of evidence provided." The Petitioner cites a U.S. district court case where USCIS "failed to consider

the key piece of evidence" included in a petitioner's RFE response. *Barchart.com v. Koumans*, 2020 WL 820878 *3 (D.D.C. Feb. 19, 2020).

Federal district court decisions do not bind us in other matters. *See, e.g., Matter of H-G-G-*, Adopted Decision 2019-01 6 n.9 (AAO July 31, 2019) (citations omitted). Moreover, unlike in *Barchart.com*, the Petitioner here has not demonstrated the Director's disregard of relevant evidence.

For the foregoing reasons, the record does not establish the Beneficiary's proposed employment in the United States in the claimed managerial capacity. We will therefore affirm the Director's decision.

III. EMPLOYMENT ABROAD

The petition is not approvable. We therefore need not decide and hereby reserve judgment on the claimed managerial nature of the Beneficiary's employment abroad. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (holding that "agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

IV. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's proposed work in the United States in the claimed managerial capacity. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.