U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11968914

Date: NOV. 27, 2020

Appeal of Texas Service Center Decision

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

The Petitioner seeks to continue employing the Beneficiary as welding 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, contrary to the Act and regulations, the Petitioner did not demonstrate the Beneficiary's employment abroad in a capacity that was managerial, executive, or involved specialized knowledge.

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.[1]

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 U.S. admission, 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. EMPLOYMENT ABROAD

The Petitioner does not specifically assert whether the Beneficiary worked abroad in a capacity that was managerial, executive, or involved specialized knowledge. We will therefore consider all three possibilities. The Petitioner, however, would not meet its burden of proof by claiming that the Beneficiary performed as a "hybrid" manager/executive who performed a combination of managerial

[1] On the Form I-290B, Notice of Appeal, the Petitioner indicated that it would submit a written brief and/or additional evidence within 30 days of the appeal's filing. As of the date of this decision, however, we have not received any additional materials from the Petitioner in this matter.

and executive duties. Rather, a petitioner must establish that a beneficiary's duties met all criteria stated in the definition of "managerial capacity," "executive capacity," or "specialized knowledge."

A. Managerial Capacity

The term "managerial capacity" means employment that "primarily" involved: 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 employment in a managerial capacity must demonstrate that his or her work met all four elements of the term's definition. A petitioner must also establish that a beneficiary "primarily" performed 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. The Petitioner does not assert the Beneficiary's management of an essential function abroad. We will therefore consider his foreign employment only as a personnel manager. A personnel manager must have "primarily" supervised and controlled 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 determining whether a beneficiary worked abroad in a managerial capacity, we consider the job duties of the foreign position. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring a "detailed description" of services performed). We also consider: the nature and structure of the foreign business; the existence of subordinates who relieved a beneficiary from performing operational tasks; the duties of a beneficiary's subordinates; and other factors that potentially affected the nature of a beneficiary's role abroad.

1. Job Duties

Here, the record indicates that the Petitioner and its parent company in India make and sell submerged arc-welded pipes for the oil and gas industry. The Petitioner states that, before the Beneficiary joined it in the United States in L-1A status in 2015, its parent employed him in India for more than a year as senior manager of welding operations. The Petitioner submitted a letter from its parent stating that the Beneficiary spent the following percentages of his time on the following duties:

- 20%. Interviewing and hiring workers. Preparing job descriptions and safety analyses for the welding department. Training supervisors, engineers, and technicians in welding techniques and job safety. Planning tasks and assigning them to workers. Directing welding workers engaged in set-up and operations of various welding machines. Supervising work to ensure completion and compliance with standards. Rewarding and disciplining workers. Addressing complaints and resolving issues.
- 20%. Setting budget and production targets. Ensuring efficiency of welding machines. Developing alternative vendors for welding parts. Developing spares for welding machines. Executing projects and planning development of welding productivity. Maintaining quality and consistency of welding equipment.
- 25%. Analyzing welding defects to correct and prevent them in the future through trouble-shooting tools. Analyzing weld quality issues and suggesting corrective and preventative measures. Developing new work instructions, job safety analyses, standard operating procedures, and training materials for all welding activities. Monitoring and controlling consumption of flux, welding wires, stores, and spares. Investigating, testing, and implementing improvements to welding procedures. Monitoring and maintaining cost-effective inventories of supplies, tools, and materials.
- 25%. Reviewing welding procedure specifications and process qualification records. Planning welding operations to meet customer specifications. Reviewing welding details in drawings. Preparing business plans for the department's financial years. Preparing rework and rejection reports and developing corrective and preventative measures with the quality control department. Arranging training for engineers and workmen. Minimizing pipe rejections by adhering strictly to parameters. Monitoring consumption.
- 10%. Training team on technical codes. Training employees for radiography testing of welds and seams. Ensuring implementation of safety standards. Training and qualifying engineers, supervisors, and operators. Monitoring job training and training supervisors.

Also, in response to the Director's written request for additional evidence (RFE), the Petitioner submitted a "detailed job description" of the Beneficiary's activities as senior manager of welding operations abroad. The description states that the Beneficiary had the following responsibilities:

1. Production. Achieving monthly production targets. Monitoring productivity and taking corrective action if required. Monitoring pipes in welding section. Coordinating between quality and maintenance. Checking "bottleneck" areas and initiating improvement action. Measuring and monitoring quality and quantity of individuals' work. Monitoring and maintaining conditions of machines. Monitoring flux recovery and effective use.
2. Job Planning. Preparing shift schedules. Preparing proposed welding procedure specifications for pipes and repairs and final welding procedure specifications. Establishing and maintaining QSP on shop floor.
3. Quality Control and Assurance. Monitoring quality issues and rejections, taking corrective and preventative actions. Coordinating with TPI. Checking process chart. Qualifying PQT and PQR. Checking quality of submerged arc-welding pipes.
4. Budget Control. Checking effective use of manpower, DV, SV, tools, and spares.
5. People Development. Training engineers and operators. Teaching and developing new skills in operators. Rotating jobs. Identifying training needs. Qualifying welders.

6. Industrial Safety. Preventing production nonconformity. Ensuring safe working conditions and practices.
7. Documentation and Records. Maintaining and monitoring records as needed to meet quality management system standards.

As the Director found, the job duties described in the Petitioner's RFE response differ from those first stated in the petition. For example, contrary to the initial list of duties, the most recent description does not indicate that the Beneficiary: interviewed and hired applicants; rewarded and disciplined workers; or addressed complaints and resolved issues. A petitioner must resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The unresolved discrepancies between the job-duty descriptions cast doubt on the Beneficiary's true duties abroad.

Also, the most recent job-duty description does not indicate the Beneficiary's authority to hire or fire workers or to recommend those and other personnel actions. *See* section 101(a)(44)(A)(iii); 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*). Thus, the Petitioner has not demonstrated that the Beneficiary's foreign job duties met all four elements of the definition of the term "managerial capacity."

On appeal, the Petitioner claims that the Director disregarded evidence of the Beneficiary's authority to hire and fire workers or to recommend personnel actions. The Petitioner notes that the initial letter from its parent states the Beneficiary's interviewing and hiring of applicants and his rewarding and disciplining of employees.

As previously indicated, however, the unexplained omission of those duties from the most recent job-duty description casts doubt on the Beneficiary's claimed authority to hire and fire or recommend personnel actions. *See Matter of Ho*, 19 I&N Dec, at 591 (requiring a petitioner to resolve inconsistencies of record). The Director therefore did not disregard the initial letter. Rather, the Director noted the letter's inconsistency with other evidence of record and, under *Ho*, required the Petitioner to explain, which it has not done in response to the RFE or on appeal.

The Petitioner also argues that, because the Beneficiary purportedly functioned at a senior level within the organizational hierarchy, the company need not demonstrate his authority to hire and fire or to recommend personnel actions. The Act and regulations, however, allow functioning at a senior level to satisfy the definition of "managerial capacity" only "if no other employee [wa]s directly supervised." Section 101(a)(44)(A)(iii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*). The job-duty descriptions state the Beneficiary's supervision of others' work, and the parent's organizational chart indicates his direct supervision of two employees. Thus, under the statutory and regulatory definition of the term "managerial capacity," the Petitioner must demonstrate that, pursuant to the first part of 101(a)(44)(A)(iii) of the Act, the Beneficiary had authority to hire and fire his subordinates or to recommend personnel actions.

As the Director also found, the job-duty description in the RFE response does not indicate how much time the Beneficiary spent on his purported foreign duties. The omission of amounts of time the Beneficiary devoted to his duties prevents USCIS from determining whether he "primarily" engaged in managerial duties. *See* section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B).

The Petitioner notes that the initial description of the Beneficiary's foreign duties includes a time percentage for each duty. But the lack of similar percentages in the later job-duty description, together with the listing of different job duties, casts doubt on the true amounts of time the Beneficiary spent on his duties. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record).

Moreover, the time percentages in the initial job-duty description do not demonstrate that the Beneficiary "primarily" supervised and controlled others' work abroad. The description states that he planned tasks and assigned them to employees, directed workers in the set-up and operations of welding machines, and supervised work to ensure completion and compliance with standards. But the description indicates that the Beneficiary spent less than 20% of his time on those managerial duties. The description indicates that he spent most of his time on other tasks, such as: setting budget and production targets; maintaining welding equipment; and training employees. The record does not establish that the duties on which the Beneficiary spent most of his time involved supervising and controlling the work of others.

Thus, the job duties provided by the Petitioner do not establish that the Beneficiary primarily worked abroad as a personnel manager.

2. Structure and Staffing

As previously indicated, the Petitioner submitted an organizational chart from its foreign parent indicating that, as senior manager of welding operations, the Beneficiary directly supervised two employees. The chart describes the subordinates as "shift incharge [sic] welding" and states that they were "[r]esponsible for shiftwise production in [the] welding section." The chart also indicates their direct supervision of eight engineers.

As the Director found, however, the record lacks sufficiently detailed job duties of the Beneficiary's foreign subordinates. The record does not demonstrate that the Beneficiary's subordinates performed duties relieving him from operational tasks and allowing him to primarily focus on managerial duties. *See* section 291 of the Act (placing the burden on a petitioner to demonstrate eligibility for a requested benefit).

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's employment abroad in a managerial capacity. We will next consider the executive nature of his foreign work.

B. Executive Capacity

The term "executive capacity" means employment that "primarily" involved: 1) directing the management of an organization or a major component or function of it; 2) establishing the goals and policies of the organization, component, or function; 3) exercising wide latitude in discretionary decision-making; and 4) receiving only general supervision or direction from higher-level executives, a board of directors, or stockholders of an organization. Section 101(a)(44)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(C).

In determining whether a beneficiary worked abroad in an executive capacity, we consider the job duties of the foreign position. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring a "detailed description" of services performed). We also consider: the nature and structure of the foreign business; the existence of subordinates who relieved a beneficiary from performing operational tasks; the duties of a beneficiary's subordinates; and other factors potentially affecting the nature of a beneficiary's role abroad.

First, as previously indicated, the Petitioner provided inconsistent descriptions of the Beneficiary's foreign job duties. The unresolved discrepancies cast doubt on the Beneficiary's true duties as senior manager of welding operations in India and the amounts of time he spent on those duties. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record).

Also, the job-duty descriptions do not establish that the Beneficiary "primarily" engaged in executive-level duties, as opposed to operational tasks. *See* section 101(a)(44)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(C). The description in the RFE response does not indicate the amounts of time the Beneficiary spent on his duties. Also, the initial job-duty description states that the Beneficiary set budget and production targets and developed operating procedures for the welding department. But the initial description indicates that the Beneficiary spent less than half his time on these duties.

For the foregoing reasons, the Petitioner has not demonstrated that the Beneficiary primarily worked abroad in an executive capacity. We will next consider whether the Beneficiary's foreign work involved specialized knowledge.

C. Specialized Knowledge

The term "specialized knowledge" means "special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures." 8 C.F.R. § 214.2(l)(ii)(D).

The Petitioner does not assert the Beneficiary's special knowledge of specific organizational products, services, research, equipment, techniques, management, or other interests. The company also does not assert his special knowledge in their applications in international markets. In addition, the Petitioner does not claim the Beneficiary's possession of an advanced level of knowledge in the organization's processes and procedures. The Petitioner therefore has not demonstrated the Beneficiary's foreign employment in a capacity involving specialized knowledge.

The Petitioner asserts that the Director "failed to adequately address and consider each piece of evidence provided." The Petitioner contends that the Director's denial "fails to address any of the specific evidence and documentation actually submitted in the RFE response."

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, however, 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. Also, contrary to the Petitioner's assertion, the Director's decision *did* discuss documentation in the company's RFE response. As previously indicated, the Director noted that job duties described in the RFE response differ from those described in the petition.

The Petitioner also asserts that the Director requested more evidence than required. The Petitioner contends that the initial letter from its parent alone demonstrated the Beneficiary's claimed, qualifying employment abroad.

In most 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, the Director requested supporting documentation. Also, as previously discussed, the initial letter did not demonstrate the Beneficiary's primary employment abroad in a requisite capacity. Thus, the letter alone did not demonstrate the Beneficiary's qualifying foreign employment. *See* section 291 of the Act (requiring a petitioner to demonstrate eligibility for a requested benefit).

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's employment abroad in a capacity that was managerial, executive, or involved specialized knowledge. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.