U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10546721

Date: OCT. 5, 2020

Appeal of California Service Center Decision

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

The Petitioner, which provides electrical and mechanical services to marine vessels, seeks to temporarily employ the Beneficiary in the United States as an electrical service project manager 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 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.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Beneficiary will be employed in the United States in a managerial or executive capacity; and (2) the Beneficiary has been employed abroad in a capacity that is managerial, executive, or involves specialized knowledge. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish 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.

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 qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

The Petitioner asserts that the Beneficiary has worked abroad, and will work in the United States, in a managerial capacity. The Director determined that the Petitioner did not establish that the Beneficiary's position (which is largely the same abroad and in the United States) qualifies as a managerial capacity.

"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.

To be eligible for L-1A nonimmigrant visa classification as a manager, a petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether the beneficiary's duties will be primarily managerial, we consider the description of the job duties, the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding the beneficiary's actual duties and role in the business.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business and its staffing levels.

A key threshold issue in this case is the requirement that the Petitioner must meet all eligibility requirements at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

The Petitioner initially stated that the U.S. company "employs . . . skilled specialists and labor of all types for construction and electrical installations in industrial shipyards around the US and abroad," and "handles the brand's administration, logistics and US operations." It further stated that their "location also contains a sprawling warehouse that houses much of the electrical equipment and tools that we utilize for various projects" and that [the Petitioner] currently has 14 employees." The Petitioner indicated that the Beneficiary would be the highest-ranking employee in the Electrical Services I division of the Project Services department, comprising the following positions:

- Electrical Service Project Manager (the Beneficiary);
- HVAC Electrical Design Specialist/Manager (elsewhere called by variant titles such as HVAC Mechanical Design Engineer/Supervisor; hereafter "Supervisor");
- Five Electrical Specialists (three named, two vacant); and
- Eight Electrician Contractors (no further information provided).

Regarding the Beneficiary's proposed position in the United States, the Petitioner initially stated:

> As head of our electrical services department, [the Beneficiary] will oversee the work of an HVAC Electrical Design Specialist/Supervisor and a team of electrical specialists who, in turn, will supervise a team of various contractors. . . . [W]e are anticipating hiring additional electrical specialists and contractors in the US to carry out technical layouts and construction projects on our clients' intricate electrical systems.

A detailed job description focused on the Beneficiary's authority over subordinate staff and interaction with clients in the context of ongoing projects.

A submitted organizational chart did not indicate that any of the 14 U.S. employees at the time of filing were in the electrical services division. In an annotation to the organizational chart, the Petitioner stated: "We are in the process of transferring all of the divisions in the Project Services Department, including that of the [B]eneficiary, from the foreign affiliate to the US Company." In a separate letter, the Petitioner stated:

> [W]e would like to transfer key personnel from our foreign affiliate to our US office in order to facilitate the implementation of our services here in the US. [The Beneficiary] would be an essential component to the development of the electrical services department, as this division of the company is currently being handled abroad by our affiliate.
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> . . . We have managed to bring in some critical personnel from the foreign affiliate to join our new department, including the [Beneficiary's] direct subordinate . . . [and] we are anticipating hiring additional electrical specialists and contractors in the US to carry out technical layouts and construction projects on our clients' intricate electrical systems.

The Director asked for payroll documentation to establish "wages paid to all employees [in the United States who would be] under the [B]eneficiary's direction." In response, the Petitioner showed that the supervisor received an L-1B nonimmigrant visa in July 2019, shortly before the present petition's filing date that September. The Petitioner did not show that any other subordinates were present in the United States at the time of filing. Instead, the Petitioner stated that it was "in the process of obtaining visas for the remainder of the personnel within the electrical services department," and that "we have tasked the [B]eneficiary with not only recruiting additional employees to work in the United States, but [he] will also lead the development of the department." A revised organizational chart indicated that, of the five electrical specialist positions, three were "pending visa" and the other two were "vacant."

The chart again referred to "8 electrician contractors," but the Petitioner did not identify the contractors; document existing arrangements for them to work for the Petitioner; or submit contracts or other evidence establishing the nature and extent of the Beneficiary's control over those contractors. Job descriptions in the record indicate that the electrician contractors rely heavily on preparatory and support work performed by the electrical specialists, who were not present at the time of filing.

In the denial notice, the Director concluded that the Electrical Services I division was almost totally unstaffed at the time of filing. The Director also indicated that future staffing plans could not establish eligibility at the time of filing.

On appeal, the Petitioner points to its prior statements that the Beneficiary would be "[a]ssisting in the hiring, training and mentoring of specialists and contractors," and would "lead the development of the department." The Petitioner maintains that these responsibilities are, themselves, managerial, even in the absence of subordinate staff. Moreover, the Petitioner contends that a manager *must* perform these tasks in order to prepare the division for the operational work to follow.

The submitted job descriptions – both initially and revised in response to a request for evidence – refer to operational tasks which would require the presence of subordinate staff. The Petitioner has not provided comparable details to establish that the Beneficiary would act in a managerial capacity during the developmental stages. It is evident that the Petitioner was not ready, at the time of filing, to employ the Beneficiary in the capacity outlined in the job description. Furthermore, the Petitioner has not shown that the necessary subordinate structure was imminent at the time of filing. The Petitioner asserts that three subordinates were slated to relocate to the United States, "pending visa," but the Petitioner submits no evidence that visa petitions were, in fact, pending for those named employees at the time of filing.

The Petitioner cites *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016), to support the proposition that a position can be managerial even in the complete absence of subordinate employees. Significant factors distinguish *Z-A-* from the present case. *Z-A-* involved an extension petition for a new office, which began doing business less than one year before the filing of the initial petition, rather than a long-established U.S. business in the process of gradually transplanting a foreign component into the United States. Also, in *Z-A-*, we held that the Petitioner "must consider evidence presented by the Petitioner of personnel employed by another related entity within the qualifying organization who perform day-to-day non-managerial tasks for the petitioning entity." *Id.* at 4. Here, the Petitioner has not shown that day-to-day tasks would be delegated to employees at the foreign affiliate. Rather, the Petitioner's stated intention to relocate the electrical specialists to the United States indicates that the Petitioner does not believe these workers could effectively perform their duties remotely, from abroad.

For the reasons discussed above, the Petitioner has not shown that it was prepared to employ the Beneficiary in a qualifying managerial position at the time of filing. As such, the filing of the petition was, at best, premature.

Discussion of the remaining ground for denial, concerning the question of whether the Beneficiary worked in a managerial capacity abroad, cannot change the outcome of this appeal, and we therefore reserve that issue.[1]

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).