U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-T- INC.

DATE: OCT. 10, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which arranges for third-party telecommunications services, seeks to continue the Beneficiary's temporary employment as its commercial director 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 the Petitioner would employ the Beneficiary in the United States in a managerial or executive capacity.

The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and maintains that the Beneficiary has an executive level of responsibility.

Upon *de novo* review, we will dismiss 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.*

II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity. The Petitioner does not claim that the Beneficiary will be employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary will be employed in an executive capacity.

"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.

Based on the statutory definition of executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in executive 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); *Champion World*, 940 F.2d 1533.

When examining the claimed executive capacity of a given beneficiary, we will look to 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). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

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. Duties

The Petitioner broke down the Beneficiary's duties into 10 areas of responsibility, abridged below, each occupying 10% of the Beneficiary's time:

- Direct . . . the overall management of the commercial department . . . to include sales, goal setting and budget plans.
- Direct and formulate . . . hiring and firing policies. . . .
- Direct . . . performance standards, monitoring subordinate managerial and personnel performance.
- Direct the development of business strategies, product and service plans . . . expanding and developing the marketing strategy. . . .
- Direct, review and consolidate monthly operating budgets. . . .
- Direct the development, organization, strategies and objectives of the company . . . [and] ensure compliance with procedures and practices.
- Direct [and] develop local and foreign contacts with companies. . . .
- Coordinate weekly meetings with staff. . . .

- Direct and implement the international buying strategy and negotiation with suppliers. . . .
- Direct and control international sales and advertising strategies for the [redacted] office. . . .

The Petitioner stated that the Beneficiary's duties satisfy all four elements of the statutory definition of an executive capacity:

- The Beneficiary would direct the management of the organization by "directing and managing the overall operations of the company" and "overseeing the activities of an upper-level managerial employee . . . and two professionals." We will discuss the Petitioner's staffing further below.
- The Beneficiary would establish the organization's goals and policies by "directing the overall operations of the company, developing business strategies, and spearheading the company's marketing initiatives.
- The Beneficiary will exercise wide latitude in discretionary decision making because "he will be responsible for various important decisions" involving hiring, firing, contracts, and expansion.
- The Beneficiary "only receives general supervision or direction from the company's President," and "will operate much under his own command."

The Petitioner submitted a letter from an associate dean at the University of [redacted], who quoted large portions of the Beneficiary's job description and concluded, without further discussion or explanation, that the Beneficiary "will function in an Executive position for the company."

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a beneficiary's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* USCIS may even give less weight to an opinion that is not corroborated or is in any way questionable. *Id.* In this instance, the author of the letter claims no personal familiarity with the petitioning company or with the Beneficiary's role therein.

The Director found that the Beneficiary's job description "includes many generic duties" and "few, if any, specific references to [the petitioning] company's business operations." The Director acknowledged the letter from the associate dean, but found that he "has not adequately supported his conclusions."

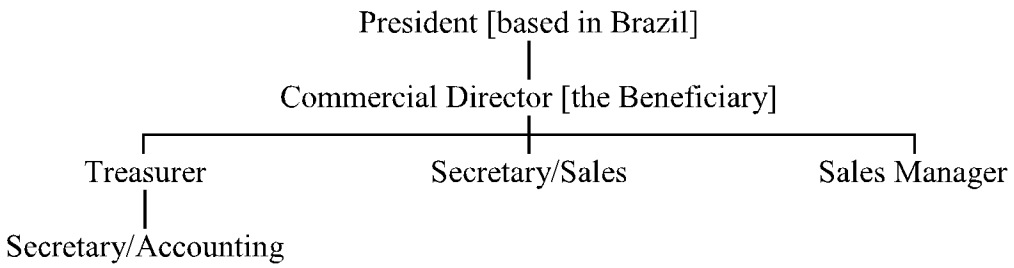
On appeal, the Petitioner repeats the job description submitted previously, without addressing the Director's concerns regarding the lack of specific details. The Petitioner also submits copies of contracts and communications as examples of the Beneficiary's decisions.

The Director did not dispute the Beneficiary's authority to negotiate contracts on the Petitioner's behalf. The submitted examples, however, do not show that the Beneficiary spends a majority of his time on executive-level tasks and duties.

A significant issue is the extent to which the Beneficiary would direct the management of the company. To address this issue, we must examine the company's staffing.

B. Staffing

The Petitioner's organizational chart showed the following structure:



The Petitioner referred to the treasurer as an "upper-level managerial employee" and the secretary/sales and sales manager as "professional employees." The record does not support these characterizations.

Direct supervision of professionals is not a statutory element of an executive capacity. Even then, the Petitioner has not shown that the identified positions are professional; that is, whether they 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 United States 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."

The secretary/sales has a bachelor's degree, but the possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity. We must focus on the level of education required by the position, rather than the degree held by the subordinate employee. The job description for the secretary/sales included administrative and clerical tasks such as ordering supplies, processing incoming orders, making copies, and answering the telephone. The Petitioner has not shown that these duties require a bachelor's degree.

Furthermore, that employee's degree is in "Interior Design," a field with no demonstrable relevance to sales activities for a telecommunications company. The degree or major must be academically appropriate to the occupation. *See Matter of Katigbak*, 14 I&N Dec. 45, 46 (Reg'l Comm'r 1971) (citing *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966)). Therefore, the Petitioner has not shown that the subordinate employees are professionals.

The Petitioner indicated that the sales manager earned a two-year degree from taking "Sales courses," rather than a four-year bachelor's degree. The Petitioner indicated that the sales manager manages "the company's sales functions" and "sales activities," but that employee has no subordinates to whom to delegate those functions and activities. The implication is that the sales manager personally performs those non-managerial tasks.

Likewise, the Petitioner did not show that the treasurer is an "upper-level managerial employee." The treasurer's own responsibilities include compiling financial data, monitoring financial activity, and vague responsibilities such as "[e]xecut[ing] the company's policies and procedures" and "[e]nsur[ing] the efficient and effective management of the company." The treasurer's only subordinate employee is the secretary/accounting, whose responsibilities include "incoming calls," "incoming and outgoing mail," scheduling meetings, and maintaining files.

In the denial notice, the Director found that the subordinate employees' job "descriptions are overly general and vague." On appeal, the Petitioner submits essentially the same job descriptions, except for some adjustments to the duties attributed to the two secretaries. The Petitioner acknowledges that "[t]he majority of duties performed by the secretary are clerical in nature comprised of answering calls, setting appointments, [and] filing."

As evidence of the treasurer's work, the Petitioner submits "financial reports . . . prepared to provide financial forecasts and business activity." The documents consist of a weekly "payment schedule," two "Statements of Account" showing monthly payments collected from clients; and a table of the Petitioner's bank transactions in September 2019. The Petitioner did not establish that compilation of basic financial data, such as tracking invoice payments, is an "upper-level managerial" task; the submitted materials appear to show activity more akin to bookkeeping or data entry.

The Petitioner has not overcome the grounds for denial identified in the Director's decision. Based on the deficiencies discussed above, the Petitioner has not established that it will employ the Beneficiary in an executive capacity under the extended petition.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of B-T- Inc.*, ID# 5134528 (AAO Oct. 10, 2019)