U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-A-S-S-T-USA, INC.

DATE: OCT. 18, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner describes itself as a service company that issues Guatemalan passports. It seeks to continue the Beneficiary's temporary employment as its project 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.

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 and would be employed in the United States in a managerial capacity.

On appeal, the Petitioner disputes the grounds for denial, stating that the Beneficiary has been and would be employed in the capacity of a function manager. The Petitioner contends that the Beneficiary deals with personnel and client technical support issues that rise above the level "of a mere employee."

Upon *de novo* review, we find that the Petitioner has not overcome the grounds for denial. Therefore, 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 CAPACITY

The Petitioner claims that the Beneficiary has been and would be employed in a managerial capacity. Therefore, we will address this claim in our decision and will not contemplate whether the Beneficiary would be employed in an executive 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.

A. U.S. Employment

As previously stated, the Director determined that the Petitioner did not provide sufficient evidence to establish that it would employ the Beneficiary in a managerial capacity.

1. Duties

Based on the statutory definition of managerial 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). The Petitioner must also 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); *Champion World*, 940 F.2d 1533.

Accordingly, in order to establish eligibility, the Petitioner must provide a job description that clearly describes the duties to be performed by the Beneficiary and indicate whether such duties are in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

In the petition form supplement, the Petitioner stated that the Beneficiary is responsible for setting up mobile passport facilities country-wide, arranging technical training for new employees, making arrangements to purchase and deploy mechanical equipment, overseeing technical staff and implementation activities, and generating progress reports. The Petitioner also provided a copy of the Beneficiary's daily work itinerary broken down into hourly increments in the course of a typical five-day work week. The itinerary indicates that the Beneficiary will carry out the following:

- Verify billing reports and production reports pertaining to shipping, printing, and customer service – 6 hours per week;
- Engage in production planning – 1 hour per week;

- Review and authorize staff reimbursements and payroll, travel expenses, payment services – 7.5 hours per week;
- Attend "external" and "internal" monitoring meetings – 6.5 hours per week;
- Review weekly production – 6.5 hours per week;
- "Verify" staff performance, including technical and administrative support – 2 hours per week;
- Assign "mobile activities" – 2.5 hours per week;
- Sign checks – 2.5 hours per week;
- Generate and review production reports – 2 hours per week; and
- Conduct systems verification – 1 hour per week.

The Petitioner did not elaborate on the subject matter that would be addressed during "external" and "internal" monitoring meetings or state who, other than the Beneficiary, attends these meetings. The Petitioner also did not identify specific actions involved in production planning or systems verification, nor did it define "mobile activities" within the scope of the Petitioner's business or state how the Beneficiary will "verify" staff performance.

In a request for evidence (RFE), the Petitioner was instructed to provide a statement describing the Beneficiary's typical managerial duties and the percentage of time he would devote to those duties. The RFE instructed the Petitioner to address the four elements that comprise the definition of managerial capacity, explaining how the Beneficiary's job duties satisfy each element. Further, the RFE noted that if the Petitioner claims that the Beneficiary assumes the role of a function manager, it would have to describe the function being managed and provide a list of the Beneficiary's proposed job duties that demonstrate that he would manage the function rather than perform the underlying operational tasks associated with that function.

In response, the Petitioner provided a letter from its president, who described the Beneficiary's role as one that would involve supervising a staff to ensure "compliance with administrative and operational processes, [and] availability, functionality[,] and operation of the hardware, software and consumables." stressed the Beneficiary's authority to make operational and administrative decisions, provide needed materials and spare parts, and recruit and hire personnel to provide technical and administrative services. She also listed the following "specific assignments" that the Beneficiary would carry out in his proposed position:

- Create an annual operational plan and establish ways to meet the plan's objectives;
- Manage the company's personnel;
- Authorize travel and other company expenses;
- Create status reports for "Executive Direction";
- Coordinate and authorize supply requirements;
- Create data reports and oversee monthly invoices;
- Identify business priorities and agree on operational planning activities;
- Oversee "implementation activities" and client technical support; and

- Generate reports that show weekly and monthly progress and account for performance difficulties.

In addition, the Petitioner provided a daily list of activities based on a five-day 40-hour work week. Although the new daily schedule did not assign specific time allocations to individual job duties, its content was substantially similar to the previously provided daily schedule; both schedules indicated that the Beneficiary's regular activities would include production report verification, internal and external monitoring meetings, and authorization of company expenses.

In the denial decision, the Director determined that the Beneficiary's job descriptions indicate that the Beneficiary would primarily perform non-managerial job duties.

On appeal, the Petitioner contends that the Beneficiary is "solely responsible" for hiring employees, "drafting the technical manuscript for creating the data transfer requirements," and serving as "the conduit . . . for the seamless transfer of technology"; it goes on to state that the Beneficiary "exceeds the parameters of a mere employee" because he has addressed personnel issues and "technical support of clients." The Petitioner cites *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017), to support the claim that the Beneficiary assumes the role of a function manager; however, it does not establish that the facts in this matter are analogous to those in the cited case.

The term "function manager" applies generally when a beneficiary is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Id.*

In the present matter, the Petitioner describes the Beneficiary's essential function as "the implementation and coordination of satellite [i]dentification offices" that serve Guatemalan citizens who live in the United States. We find, however, that the Petitioner has not provided an adequately detailed job description to illustrate the Beneficiary's role as a function manager in the passport issuing process. Not only is there a lack of clarity as to the Petitioner's specific role in the issuance of passports, which is typically a government-run function, but there is also a lack of clarity as to the actual duties the Beneficiary would perform in managing this ambiguous process. For instance, despite claiming that the Beneficiary will allocate his time primarily to managing an essential function, the Petitioner makes multiple references to the Beneficiary's role in various human resource functions, including recruiting, hiring, and firing in-house employees and contractors and overseeing them in their performance of assigned tasks. While some personnel management may be incidental to managing an essential function, without further details regarding the Beneficiary's role

in recruiting, hiring, and firing of employees, it is unclear that these duties are sufficiently high-level responsibilities.

Further, in the original work itinerary, the Petitioner stated that the Beneficiary would engage in various production-based job duties, including planning and reviewing production, and generating and reviewing production reports. However, it did not explain how the Beneficiary would carry out these duties or discuss the production factors that are relevant within the scope of a passport issuing service. The Petitioner also did not sufficiently explain how these production-based responsibilities are higher-level duties. And despite making multiple references to external and internal "monitoring meetings," the Petitioner did not explain the significance of these meetings within the scope of its operation, state who (aside from the Beneficiary) attends the meetings, or clarify how the meetings relate to the essential function that the Beneficiary is claimed to manage.

In the list of the Beneficiary's "specific assignments," the Petitioner included several vague activities that conveyed no meaningful content about the actual underlying tasks. Namely, the Petitioner broadly stated that the Beneficiary would "[d]esign and [e]xecute an annual operational plan," "[i]dentify priorities" that relate to "the operation," and "[o]versee implementation of activities . . . and technical support to the clients." However, the Petitioner did not discuss the duties that are associated with creating and executive an operational plan, nor did it specify how priorities are defined within the context of its operation, identify the Beneficiary's role in providing clients with technical support, or describe the "activities" the Beneficiary would implement.

The fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial in nature. *Id.* While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, these elements alone are not sufficient to establish that his actual duties would be primarily managerial in nature. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). As such, a detailed job description is critical to a determination of whether the Beneficiary would be employed in a managerial capacity. Here, the record lacks a job description that delineates the Beneficiary's specific tasks within the context of the Petitioner's operation. Therefore, while we agree with the Director's finding of ineligibility, we cannot affirmatively conclude – as the Director did – that the Beneficiary would primarily perform non-managerial job duties. Such a conclusion necessarily requires a detailed job description that conveys enough information to provide an understanding of the Beneficiary's actual daily activities. In light of the above described deficiencies, the instant record lacks such a job description and thus we cannot conclude that the Petitioner has established that the Beneficiary would primarily perform duties of a managerial nature.

2. Staffing

Beyond the required description of the job duties, we also examine 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, and the nature of the business along with any other factors that will contribute to an understanding of the Beneficiary's actual duties and role within the petitioning organization.

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, USCIS takes 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.

In the present matter, the Petitioner claimed that it had seven employees at the time of filing and generated a net income of over $3 million, although no evidence was provided to show how this revenue was generated. In support of the petition, the Petitioner provided an organizational chart listing eight positions, including "Executive Direction" at the top of the hierarchy, followed by a project manager – the Beneficiary's proposed position – as the direct subordinate. The project manager is shown as overseeing four positions – customer service, operations, accounting, and cleaning – with the "operations" position overseeing printing and shipping positions, respectively. The customer service, accounting, and cleaning positions were not depicted as supervisory with respect to other subordinate positions.

In the RFE response, the Petitioner provided another organizational chart, which depicted the company's president at the top of the hierarchy, followed by the Beneficiary, who was depicted as overseeing five people – two customer service employees, one printing/shipping employee, one accounting employee, and one "cleaning" employee. The organizational chart was accompanied by an employee list containing each employee's name, salary, and job description. The Petitioner also provided all four quarterly wage reports for 2017. Although the first two quarterly wage reports consistently listed 14-15 employees, those numbers dropped drastically in the two remaining quarters, going from five employees in July 2017 to only three employees in August and September 2017 and going from eight employees in October 2017 to seven employees in November and December 2017. Although this information is not inconsistent with the petition form, which was filed in January 2018 and indicates that the Petitioner had seven employees at the time of filing, the Petitioner did not state why it experienced such a drastic staffing decrease, nor did it explain how the decrease affected its overall operation and the Beneficiary's job assignment, which likely changed when the Petitioner went from employing 15 people during the first half of 2017 to a staff of only seven people by the end of that year and the beginning of 2018 when this petition was filed.

Although the Petitioner provided job descriptions for the Beneficiary's support staff, it is not clear that a five-person support staff, which includes an office cleaning person, is sufficient to relieve the Beneficiary from having to allocate his time primarily to the Petitioner's operational and administrative tasks. Given the previously noted deficiencies in the Beneficiary's job description and the lack of a detailed statement clarifying the Petitioner's precise role in the passport issuance

process, we are unable to determine whether the diminished seven-person staff, only four of whom would carry out tasks that are directly related to a key function,[1] would be sufficient to carry out the non-managerial tasks that comprise the essential function the Beneficiary is claimed to manage.

Furthermore, despite claiming on appeal that the Beneficiary will primarily manage an essential function, neither the Petitioner's organizational chart nor the Beneficiary's job descriptions support this claim. Namely, the Petitioner's latest organizational chart shows the Beneficiary in a managerial position with five subordinates. The chart does not indicate that anyone other than the Beneficiary would have the authority to oversee these five individuals, thereby indicating that this supervisory role would fall solely to the Beneficiary.

The organizational chart's depiction of the Beneficiary in the role of a personnel manager, rather than that of a function manager, is consistent with the Beneficiary's job descriptions, which contain multiple references to job duties that pertain directly to managing the Petitioner's staff. In other words, despite identifying an essential function within the organization and claiming that the Beneficiary manages that function, the Petitioner did not offer sufficient evidence to support this claim. Instead, it assigned personnel management job duties to the Beneficiary's proposed position and provided an organizational chart depicting a hierarchy where the Beneficiary is the only supervisory employee with respect to the company's entire support staff; however, the Petitioner has not established that the Beneficiary's support staff is comprised of managers, supervisors, or professional employees who are required to possess baccalaureate degrees.[2]

In light of the evidentiary deficiencies described above, the Petitioner has not established that it had the staff to support the Beneficiary as either a personnel or a function manager.

B. Employment Abroad

Because of the dispositive effect of the above findings of ineligibility based on factors that pertain to the proposed U.S. employment in a managerial capacity, we will only briefly address the remaining issue pertaining to the Beneficiary's employment abroad.

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[1] Although the Petitioner included a cleaning person as part of its organizational hierarchy, the job duties performed by this position are not relevant to the organization's key function.

[2] In evaluating whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions 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"). 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." Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. 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.

The Director determined that the Petitioner did not establish that the Beneficiary was employed abroad in a managerial capacity. Based on our review of the Petitioner's supporting evidence, including the Beneficiary's job descriptions and the foreign entity's organizational and management structures within the scope of its business, we find that the Petitioner has not adequately demonstrated that the Beneficiary assumed a position where the primary portion of his time was devoted to performing duties that primarily involved managing an essential function or a staff of supervisory or professional employees. Therefore, we agree with the Director's finding and will not further address this issue in the instant decision.

III. CONCLUSION

For the reasons discussed above, we find that the Petitioner has not established that the Beneficiary was employed abroad and will be employed in the United States in a managerial capacity. The appeal will be dismissed for this reason.

ORDER: The appeal is dismissed.

Cite as *Matter of T-A-S-S-T-USA, Inc.*, ID# 1668719 (AAO Oct. 18, 2018)