U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-V-K-, INC.

DATE: OCT. 18, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR NONIMMIGRANT WORKER

The Petitioner, a restaurant operator, seeks to continue employing the Beneficiary as general manager under the L-1A nonimmigrant classification. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). This classification allows an international business to transfer a qualifying foreign employee to the United States to temporarily work in a managerial or executive capacity.

The Director of the California Service Center denied the petition. The Director concluded that, contrary to the Act and Department of Homeland Security regulations, the Petitioner did not demonstrate that the Beneficiary worked abroad in a managerial or executive capacity, or that the U.S. entity would support him in such a role.

On appeal, the Petitioner submits additional evidence. It asserts that the record establishes the executive nature of the Beneficiary's position abroad and his proposed U.S. employment as a manager.

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

I. LEGAL FRAMEWORK

To obtain L-1A status, a petitioner must establish that, within the three years before a beneficiary's admission into the United States, the petitioner or its parent, subsidiary, or affiliate employed the foreign national abroad in a managerial, executive, or specialized knowledge capacity for at least one continuous year. Section 101(a)(15)(L) of the Act. A petitioner must also demonstrate that a beneficiary will temporarily serve it or a qualifying organization in a managerial or executive capacity. *Id.*

This petition initially involved the opening of a "new office," an organization that had conducted business in the United States for less than a year. *See* 8 C.F.R. § 214.2(l)(1)(a)(ii)(F) (defining the term "new office"). Therefore, the Petitioner must also demonstrate that it has conducted business for the past year, and that it and the Beneficiary's foreign employer maintain a qualifying relationship. 8 C.F.R. §§ 214.2(l)(14)(ii)(A), (B). The Petitioner must also describe its staffing and the Beneficiary's past and proposed job duties. 8 C.F.R. §§ 214.2(l)(14)(ii)(C). In addition, the

company must submit evidence of its financial status and payment of its employees' wages. 8 C.F.R. §§ 214.2(l)(14)(ii)(C), (D).

II. EMPLOYMENT ABROAD IN AN EXECUTIVE CAPACITY

The Petitioner claims that the Beneficiary worked abroad in an executive capacity. The term "executive capacity" means an assignment where an employee primarily: 1) directed the management of an organization, or a major component or function of it; 2) established the goals and policies of the organization, its component, or function; 3) exercised wide latitude in discretionary decision-making; and 4) received only general supervision or direction from higher-level executives of the organization, its board of directors, or its stockholders. Section 101(a)(44)(B) of the Act.

A petitioner must show that a beneficiary performed the high-level duties described in the term's statutory definition. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). A petitioner must also prove that a beneficiary primarily performed executive duties, as opposed to operational tasks. *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

When determining whether a beneficiary worked abroad in an executive capacity, U.S. Citizenship and Immigration Services (USCIS) examines the description of the job duties of a foreign position. USCIS also considers: a foreign employer's organizational structure and the nature of its business; whether other employees relieved a beneficiary from performing operational duties; the job duties of a beneficiary's subordinates; and other factors affecting a beneficiary's duties and role in the business.

A. Job Duties

The Petitioner states that, from 2012 until the Beneficiary's L-1A admission into the United States in 2017, he worked in an executive capacity for its parent company in Venezuela as president.[1] The record indicates that the foreign company transports, stores, and delivers international goods for businesses and individuals.

The Petitioner's president stated that the Beneficiary, as president of the foreign company, determined and formulated policies and provided overall direction to the firm. She stated that he managed the organization by directly supervising a vice president and general manager, daily planning and reviewing business strategies and management operations with them. She stated that he established goals and policies by analyzing managerial reports and financial results, and by considering recommendations from managers. The Petitioner's president stated that the Beneficiary

[1] The Petitioner stated on the L Classification Supplement to Form I-129 that it and the Venezuelan company maintain the same qualifying relationship as when the Beneficiary last worked for the foreign firm. Copies of the Petitioner's stock certificates, however, indicate that the Venezuelan company did not become the Petitioner's majority shareholder until about two months before the filing of this extension petition. *See* 8 C.F.R. § 214.2(l)(1)(a)(ii)(K) (defining a "subsidiary" to include a corporation that a parent controls and owns more than half of). The record indicates that the Venezuelan company acquired its shares in the Petitioner from the Beneficiary and the foreign firm's other, individual, 50% owner.

spent about 35% of his time establishing controls and procedures for the foreign company, about 35% of his time developing the company's operations, and about 30% of his time supervising and overseeing the firm's finances.

The description of the Beneficiary's foreign job duties lacks sufficient details to establish his employment in an executive capacity. The Petitioner did not provide specific examples of goals or policies that the Beneficiary implemented, or explain how he established them. The regulations require a detailed description of a beneficiary's job duties. "General descriptions are inadequate to satisfy the implementing regulations because . . . '[t]he actual duties themselves reveal the true nature of the employment.'" *Saga Overseas, LLC v. Johnson*, 200 F.Supp.3d 1341, 1348 (S.D. Fla. 2016) (quoting *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)).

On appeal, the Petitioner states additional information about the Beneficiary's foreign job duties, including percentages of time he spent on each duty. But the information largely repeats vague job duties that the Petitioner appears to have modeled on the statutory definition of "executive capacity." *See Fedin Bros. Co.*, 724 F.Supp at 1108 (stating that repeating the language of the statute does not establish the nature of a beneficiary's employment). For example, the Petitioner states that the Beneficiary:

- "Established goals and policies and approved … operational procedures,"
- "Planned, developed and established management, operations, sales and marketing policies and objectives,"
- "Supervised productivity,"
- "Directed marketing strategies," and
- "Established strategies and policies" regarding financial goals.

The Petitioner, however, does not provide examples of the goals, policies, procedures, and strategies that the Beneficiary purportedly established, approved, planned, developed, or directed. Without specific examples, the job-duty descriptions are just conclusory assertions.

Also, the Petitioner describes other job duties that appear to be non-executive. For example, the record does not establish the qualifying nature of the Beneficiary's purported development and maintenance of relationships with financial institutions and his establishment of commercial relationships. Thus, the Petitioner has not provided enough details of the Beneficiary's job duties abroad to establish his employment in primarily an executive capacity.

B. Organizational Structure and Staffing

As noted above, 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 understanding 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, we take into account the

reasonable needs of the organization, in light of its overall purpose and stage of development. *See* section 101(a)(44)(C) of the Act.

The Petitioner provided an organizational chart indicating that, as of the Beneficiary's last year of employment abroad, the Venezuelan company had 11 other workers. As previously indicated, the Petitioner's president stated that the Beneficiary managed the foreign company by directly supervising a vice president and general manager.

The record, however, does not support the Beneficiary's employment as an executive. First, contrary to the statement of the Petitioner's president, the organizational chart of the foreign company does not indicate the Beneficiary's direct supervision of both a vice president and general manager. Rather, the chart's top level above the general manager lists both the Beneficiary and the vice president. Also, contrary to the Director's written request for additional evidence (RFE), the Petitioner did not provide a summary of the job duties of the Beneficiary's subordinates in Venezuela. *See* 8 C.F.R. § 103.2(b)(14) (authorizing USCIS to deny a petition where a petitioner does not submit requested evidence that precludes a material line of inquiry). The statutory definition of the term "executive capacity" focuses on an elevated position within a complex, organizational hierarchy and authority to direct an organization. *See* section 101(a)(44)(B) of the Act. Under the Act, an executive must have the ability to "direct the management" and "establish the goals and policies" of an organization. An organization must therefore demonstrate that the Beneficiary directs or influences the work of employees who primarily focus on the organization's broad goals and policies, not its day-to-day operations. Here, by omitting the job duties of the Beneficiary's subordinates, the Petitioner has not established his direction of the foreign company's management. The record does not explain the role of the foreign company's vice president, whom the organizational chart indicates shared top, executive authority with the Beneficiary. The record also does not explain whether the vice president, the Beneficiary, or both directly supervised the general manager. In addition, without the job duties of the general manager, the record does not demonstrate her managerial role, or the scope of the Beneficiary's purported authority over the management of the organization.

Thus, based on the job duties of the Beneficiary's former position and the organizational structure and staffing of the Petitioner's parent company, the record does not establish the claimed executive nature of the Beneficiary's employment abroad. We will therefore affirm the petition's denial.

III. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The Petitioner states that it would employ the Beneficiary in the United States in a managerial capacity. The term "managerial capacity" means an assignment where an employee primarily: 1) manages an organization, or a department, subdivision, function, or component of it; 2) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, its department, or subdivision; 3) has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and 4) exercises discretion over the day-to-day operations of the activity or function managed. Section 101(a)(44)(A) of the Act.

As with executive capacity, when determining the managerial nature of an offered position, we examine a petitioner's description of the job's duties. A petitioner must submit "a detailed description of the services to be performed." 8 C.F.R. § 214.2(l)(3)(ii). We also consider a petitioner's organizational structure and the nature of its business, whether other employees would relieve a beneficiary from performing operational duties, the duties of a beneficiary's subordinate employees, and any other factors affecting a beneficiary's duties.

A. Job Duties

The Petitioner operates a restaurant specializing in Venezuelan cuisine and offering breakfast, lunch, and dinner. The Petitioner's president stated that, as general manager, the Beneficiary would continue to manage the organization, and supervise and hire other supervisory, professional, or managerial employees. She stated that he would assume responsibility for the company's overall direction and management, and that he would develop, direct, and control the company's operations by directly supervising a business developer. The Petitioner's president stated that the Beneficiary would spend 40% of his time establishing internal control procedures, and hiring and supervising professional and supervisory managers; 30% of his time establishing relationships with individuals and companies to develop the company's business; 15% of his time reviewing financial statements and conferring with the business developer to ensure achievement of the company's financial objectives; and 15% of his time supervising the business developer and directing marketing objectives and programs.

As with the Beneficiary's job duties abroad, however, the description of his proposed U.S. duties lacks sufficient details. The record does not provide examples of controls and procedures that the Beneficiary would implement, or financial and marketing objectives that he would monitor. *See Saga Overseas*, 200 F.Supp.3d at 1348 (holding that "general descriptions . . . fall short of the detailed descriptions necessary to determine whether an employer's actual duties will be primarily managerial"). Without additional details, we cannot determine how these broad objectives affect the Beneficiary's day-to-day activities. The record does not explain these general duties within the context of the Petitioner's business. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. At 1108. Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's activities in the course of his daily routine.

Moreover, the duties assigned to the Beneficiary are not supported by the record. For example, the Petitioner has not explained how the Beneficiary would spend 40% of his time or 16 hours per week continuously developing internal controls and hiring and supervising managers. Given the type of business and the existence of only one direct subordinate, this time allotment does not appear credible. Further, the Petitioner has not demonstrated that the 30% of the Beneficiary's time spent developing relationships with individuals and companies is managerial rather than operational. The descriptions of the job duties of the offered position therefore do not establish that the Petitioner would support the Beneficiary's employment in a managerial capacity.

B. Organizational Structure and Staffing

As noted above, 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 understanding 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 a managerial capacity, we take into account the reasonable needs of the organization, in light of its overall purpose and stage of development. *See* section 101(a)(44)(C) of the Act.

The Petitioner's organizational chart indicates that, including the Beneficiary, the company employs 12 employees. The Petitioner's president is at the top of the chart above the Beneficiary. The chart indicates that the Beneficiary would directly supervise a business developer. The business developer, in turn, would oversee a kitchen manager.

The record, however, does not establish that, pursuant to the Act's definition of "managerial capacity," the Beneficiary would supervise and control the work of another supervisory, professional, or management employee. The organizational chart indicates that the business developer, the Beneficiary's sole direct subordinate, would supervise the kitchen manager. But the Petitioner's president stated that the job duties of the business developer would include choosing and coordinating sales strategies, coordinating distribution of flyers promoting the Petitioner's products, and photographing new food dishes and services for use in advertising the restaurant. The Petitioner's president did not state that the business developer would supervise the kitchen manager or any other employee. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies). The job duties of the Beneficiary's subordinate do not indicate that her position is supervisory in nature. The organizational chart therefore does not establish that the Beneficiary would supervise another supervisory or managerial employee.

The record also does not establish the position of business developer as professional in nature. The Petitioner submitted evidence that its current business developer has an economist degree from a Venezuelan university. But her possession of a degree does not demonstrate that the position requires one. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "professional" to include "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). The Petitioner's president indicated that the position involves non-professional duties, such as coordinating distribution of flyers and photographing new food dishes. The Petitioner therefore has not established the position of business developer as professional in nature.

Based on the job duties of the offered position and the Petitioner's organizational structure and staffing, the record does not demonstrate that the Beneficiary would supervise or control the work of another supervisory, professional, or managerial employee. The record therefore does not establish that the Petitioner would employ the Beneficiary in a managerial capacity.

The submitted evidence is not persuasive in demonstrating that the Beneficiary has been or will be employed in a managerial capacity in the United States. If the business does not have the necessary structure after one year to sufficiently relieve the Beneficiary from performing operational and administrative tasks, the Petitioner is ineligible for an extension.

IV. CONCLUSION

The record on appeal does not establish the Beneficiary's employment abroad in an executive capacity or the claimed managerial nature of his proposed U.S. employment. We will therefore affirm the petition's denial. A petitioner bears the burden of establishing eligibility for a requested benefit. Section 291 of the Act; 8 U.S.C. § 1361. Here, the Petitioner did not meet that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-V-K-, Inc.*, ID# 5777619 (AAO Oct. 18, 2019)