U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-A-H-, INC.

DATE: OCT. 22, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an international commuter airline company, seeks to extend the temporary employment of the Beneficiary as its "International Business Services 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 the Beneficiary had been employed abroad in a managerial or executive capacity. Further, the Director determined that the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial or executive capacity in the United States.

On appeal, the Petitioner states that the Beneficiary oversees its international business services division, asserts that this is an essential function of the business, and that he qualifies as a function manager. The Petitioner contends that the Beneficiary devotes 95% of his time to qualifying managerial duties overseeing this function in the United States. It also states that the Beneficiary will continue to oversee the operations of his former foreign employer and notes that two of his subordinates abroad are professionals.

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 their 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).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The first issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity. The Petitioner does not claim that the Beneficiary would be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in 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.

When examining the managerial capacity of a given beneficiary, we will review 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 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, its staffing levels, and its organizational structure.

A. Duties

Based on the 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). Second, the Petitioner must 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.

The Petitioner stated that it "has developed a worldwide reputation as [redacted] operators and experts in aircraft modifications and restoration," noting that it is the "largest [redacted] company in the United States offering [redacted] airline transportation services to more than 45 destinations" using a fleet of 25 planes. The Petitioner indicated that the Beneficiary would work in the United States as its international business development manager to continue to "develop business opportunities internationally," while also overseeing the operations of his former foreign employer in Uganda. It explained that while working for the foreign employer prior to his entry into the United States as a non-immigrant in 2015 the Beneficiary had created "a business concept to a full-service ground

transportation company with three safari vans and a 24-passenger bus, offering both guided safari trips and self-service rental services."

The Petitioner stated that the Beneficiary had been responsible for continuing to expand the foreign employer into the "motorcycle taxi business" and exploring an affiliation with "Uber Uganda." It further indicated that the Beneficiary had "procured a contract with Restore International NGO." In addition, it explained that the Beneficiary "oversees every single transaction regarding our international part sales, including customer relationship management" and that he was "currently developing a plan to bring [redacted] service to [redacted] [in Africa]."

The Petitioner also listed the following duties for the Beneficiary in his proposed role in the United States:

- plan, direct and manage [foreign employer] Managers and staff in support services of the organization, such as recordkeeping, communication, facility management, and maintenance; as well as managing records pertaining to payroll, vehicle maintenance, customer billing, and building maintenance,
- responsible for overseeing all customer communication, from first contact to customer satisfaction measurement metrics,
- continue to control the work for five full-time employees of [the foreign employer], as well as two contract employees,
- evaluate sites for operational feasibility for [redacted] operation locations in the [redacted], [redacted] and [redacted],
- oversee an economic viability study to evaluate the feasibility of operations in these international locations,
- develop local East African contacts for the development of the shore-side infrastructure,
- oversee business operations to ensure regulatory compliance and the consistent use of best business practices,
- ensure proof of insurance, mechanical reliability, and legal compliance of all company vehicles,
- responsible for [foreign employer] customer care, facilitating safe work offices, ensuring accurate and compliant accounting practices, and direct timely company communication,
- oversee and expand Petitioner's international parts sales,
- oversee compliance with all operating certification requirements, including limitations for N-registered aircraft, charter and scheduled air services in Uganda, Tanzania, and Kenya related to its potential expansion around [redacted]
- oversee all required customs processes and duty obligations,
- provide the staff in his division with valuable insight into the regulatory environment in Tanzania and Kenya,
- implement measures to protect the safety and security of office staff and facilities,
- create and oversee budgets for office contracts, equipment, and supplies, and develop and manage suppliers to provide the necessary equipment for [the foreign employer's] office,

- responsible for the purchase/lease for all company vehicles (motorcyles, cars, buses, etc.), and
- create and oversee best practices to help resolve cultural differences and environmental challenges.

The Petitioner submitted a duty description for the Beneficiary indicating his primary involvement in non-qualifying operational tasks related to the foreign employer's operations in Africa. The Petitioner asserts that the Beneficiary would be "overseeing" the company's foreign activities; however, it has not established that he would primarily delegate these tasks to subordinates. For instance, the Petitioner indicated that the Beneficiary was tasked with overseeing "all international parts sales" and "all customer communication," but there is no explanation as to how he delegates these functions to subordinates nor did it submit documentation to substantiate that he is relived from the operational sales and order processing tasks inherent in these asserted duties. Likewise, the Petitioner stated that the Beneficiary would himself evaluate the operational feasibility of various locations in the [redacted] and [redacted] and develop local contacts in East Africa. These duties appear consistent with a sales representative, but not a personnel or function manager primarily delegating operational tasks related to these responsibilities. For instance, the Petitioner stated that the Beneficiary would "oversee" an economic feasibility study related to international locations, but there is no indication who he would oversee in performing this task.

In addition, the Petitioner also explained that the Beneficiary would be responsible for ensuring proof of insurance and the handling all of the purchasing and leasing of vehicles used in its foreign transportation business in Uganda. Similarly, it stated that the Beneficiary would handle all operating requirements and certifications on seaplanes used by the foreign employer and all customs processes and duty obligations. In contrast, the Petitioner provides few examples and little supporting documentation to corroborate that the Beneficiary had been and would be primarily delegating the non-qualifying operational tasks inherent in his duty description to subordinates. In fact, it is noteworthy that the record includes no evidence of the Beneficiary delegating duties to his subordinates abroad and it provided little indication as to what he would specifically be doing in the United States. In sum, the Beneficiary's stated duty descriptions reflect that he would more likely than not be primarily involved in non-qualifying operational level duties related to the operation of the Petitioner's operations in Africa, rather than performing managerial level tasks.

Whether the Beneficiary is a managerial turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner submits an explanation of the Beneficiary's role and a duty description including several non-qualifying operational duties, but it does not sufficiently document what proportion of his duties would be managerial and what proportion would be non-qualifying. In fact, the Petitioner vaguely stated on appeal that 95% of the Beneficiary's duties are managerial; however, this statement does not appear credible given the high incidence of apparent operational level tasks in his duty description. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In contrast, the Petitioner has submitted few details and little supporting documentation to demonstrate his qualifying tasks, such as how he managed payroll, customer billing, or business maintenance, best

practices he put in place related to customer care or accounting, guidance he provided as to certification and operating requirements, measures he implemented to ensure the safety of facilities and staff, or budgets or relationships with suppliers he managed. This lack of detail and documentation to particularly noteworthy since the Petitioner asserts that the Beneficiary has been acting in his claimed managerial role since his entry into the United States as a nonimmigrant on January 2016.[1]

Even though the Beneficiary holds a senior position within the organization, the fact that he 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.* 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; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial in nature.

B. Staffing

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 the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Petitioner indicated that the Beneficiary "does not directly manage any [Petitioner] employees in the United States," but that he would "continue to manage [the foreign employer's] five full-time employees and two contract employees." A submitted organizational chart reflected that the Beneficiary supervised a manager overseeing an employee responsible for motorcycle, taxi, and Uber services. The manager was also shown to supervise a lead driver overseeing two drivers. On appeal, the Petitioner contends that the Beneficiary qualifies as a function manager overseeing its "international services division" and that he also acts as a personnel manager supervising subordinate managers and professionals working for the foreign employer.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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." *Id.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

The Petitioner has not submitted sufficient evidence to demonstrate that the Beneficiary oversees subordinate managers and supervisors as necessary to qualify him as a personnel manager. First, the Petitioner submitted vague duty descriptions for the Beneficiary's claimed subordinate managers abroad that do not sufficiently establish that they act as supervisors. For instance, the Petitioner stated

[1] The petition was filed on October 15, 2018.

that the Beneficiary's immediate subordinate abroad was tasked with managing "[the foreign employer's] office and drivers," but otherwise provided no further detail as to her duties. Beyond this, the only other employee it asserts acts as a subordinate supervisor is the lead driver; and again, the Petitioner only generically indicated that he was responsible for operating vans and buses and overseeing drivers. However, it provides few details to substantiate the duties of his claimed subordinate managers abroad and little supporting documentation to demonstrate their asserted roles. In fact, the record includes no evidence of the Beneficiary delegating duties to these claimed subordinate supervisors abroad. Therefore, the Petitioner has not established that the Beneficiary qualifies as a personnel manager based on his supervision of subordinate supervisors or managers.

The Petitioner further emphasizes on appeal that two of the Beneficiary's foreign based subordinates have bachelor's degrees, noting that this qualifies him as a manager of professionals. To determine 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." 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 Petitioner submits evidence indicating that the Beneficiary's subordinate "manager" abroad earned a bachelor's degree in development studies and that the employee responsible for taxi and Uber services received a degree in business. However, the Petitioner has not established that a bachelor's degree is actually necessary to perform the duties of either of these positions. First, it does not appear without further explanation and evidence, that an employee tasked with coordinating taxis, Ubers, motorcycles, and automobiles would perform duties requiring a bachelor's degree. In addition, the Petitioner provides an extremely brief and vague duty description for the claimed manager working directly below the Beneficiary abroad, this duty description does not demonstrate that this position requires a bachelor's degree. Again, it is also noteworthy that the Petitioner provides no evidence of the Beneficiary delegating duties to these two claimed professional subordinates. As such, the Petitioner did not establish that the Beneficiary would qualify as a personnel manager based on his supervision of subordinate professionals.

As previously noted, the Petitioner further contends that the Beneficiary qualifies as a function manager in the United States overseeing its "international services division." The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead 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." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

The Petitioner has not submitted sufficient evidence to demonstrate that the Beneficiary would act as a function manager in the United States. Indeed, as we discussed in the previous section, the Petitioner submitted a duty description for the Beneficiary including several apparent operational duties, but it does not detail or document how he would be relieved from these non-qualifying tasks. For instance, the Petitioner regularly states that the Beneficiary is responsible for "overseeing" or "managing" various activities, such as economic viability studies related to [redacted] operation, customer care, compliance with aircraft certifications, international parts sales, customs and duties obligations, and contracts for equipment and supplies. However, the vague duty descriptions provided for the Beneficiary's few subordinates abroad do not demonstrate that they would have any responsibility related to these tasks, only that they would perform duties related to the operation of its transportation business in Uganda.

Therefore, it appears likely that the Beneficiary is alone tasked with all of the operational aspects inherent in the function he is said to oversee, including scouting locations for [redacted] operations, making contacts at these locations, submitting necessary paperwork for aircraft certifications, processing customs and duty paperwork, paying for these certifications and customs fees, and processing international part orders. In other words, the Beneficiary's duty description strongly indicates that he would be almost entirely responsible for performing his function, rather than managing it.

The Petitioner points to *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017) as persuasive in demonstrating that the Beneficiary qualifies as a function manager. In that matter, the petitioner provided substantial evidence to establish that the beneficiary directed the work of various teams across its five business units and six geographic delivery areas and that they provided revenue estimates to the chief executive and board of directors. In addition, the evidence in that case reflected that the beneficiary's subordinate personnel performed the routine duties associated with the function, enabling them to primarily develop policies and goals and oversee the execution of long-term strategies. *Ibid.* at 5. However, in the current matter, the Petitioner has provided no evidence to corroborate that the Beneficiary would be primarily relieved from performing the non-qualifying operational tasks of his claimed function. In fact, it submits a duty description reflecting that the Beneficiary would likely perform nearly all of the duties of his claimed international business function, beyond certain aspects of its vehicle transportation business in Uganda. As such, the Petitioner has not established that the Beneficiary would qualify as a function manager.

For the foregoing reasons, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary would act in a managerial capacity under an extended petition.

III. FOREIGN EMPLOYMENT IN A MANAGERIAL CAPACITY

As we have discussed, the Director also denied the petition concluding that the Petitioner did not establish that the Beneficiary was employed in a managerial capacity in his former position abroad. Because of the dispositive effect of the above finding of ineligibility; namely, our affirmation of the

Director's conclusion that the Petitioner did not establish that the Beneficiary would act in managerial capacity in the United States, we will only briefly address the remaining issue addressed by the Director.

In denying the petition on these grounds, the Director emphasized that the Petitioner had submitted insufficient evidence to substantiate that the Beneficiary's foreign subordinates acted as supervisors or professionals. As we discussed in the previous section, the Petitioner states that the Beneficiary had and would continue to oversee the same foreign employer organizational structure in the United States that he did abroad. Therefore, our analysis of this organizational structure in reference to his proposed U.S. employment is the same with respect to his former foreign employment; namely, that the Petitioner has not established that the Beneficiary acted as a supervisor of subordinate managers or professionals or that he primarily managed a function abroad.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary was employed in a managerial capacity abroad.

IV. 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 K-A-H-, Inc.*, ID# 6441672 (AAO Oct. 22, 2019)