U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-A- [redacted]

DATE: OCT. 29, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, [redacted], seeks to temporarily employ the Beneficiary a "Group 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 in a managerial or executive capacity abroad. In addition, the Director concluded that the Petitioner did not demonstrate that the Beneficiary would act in a managerial or executive capacity in the United States.

On appeal, the Petitioner asserts that the Beneficiary acted as a personnel manager abroad overseeing professional subordinates. In addition, the Petitioner indicates that the Beneficiary would also act as a personnel manager in the United States.

Upon *de novo* review, we will dismiss the appeal as the Petitioner has not established that the Beneficiary acted as in a managerial or executive capacity abroad for one continuous year in the three years preceding his entry into the United States as an L-1A nonimmigrant. However, we conclude that the Petitioner has demonstrated that the Beneficiary would act as a personnel manager overseeing professional subordinates in the United States; as such, this basis of the Director's denial is withdrawn.

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 them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. MANAGERIAL CAPACITY WITH THE FOREIGN EMPLOYER

The sole issue we will analyze is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity for one year in the three years preceding his entry into the United States as a nonimmigrant. The Petitioner does not claim that the Beneficiary was employed in an executive capacity abroad. Therefore, we restrict our analysis to whether the Beneficiary was employed in a managerial capacity for one continuous year abroad.

"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 foreign managerial capacity of a given beneficiary, we will review the petitioner's description of the foreign job duties. The petitioner's description of the foreign 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 foreign employer's organizational structure, the duties of a beneficiary's foreign subordinates, the presence of foreign employees to relieve a beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role abroad. Accordingly, we will discuss evidence regarding the Beneficiary's foreign job duties along with evidence of the nature of the foreign employer'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 performs 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 is *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the foreign employer's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner indicated that its foreign parent company "delivers off-shore services through its state of the art Product Development Centers…in India." The Petitioner indicated that the Beneficiary began his employment with the foreign employer in June 2011 as a senior management trainee and that he was promoted to the position of deputy manager in July 2012. It further stated that the

Beneficiary was again promoted to "Manager-BPS" in July 2014 and then to "Manager- Pre-Sales" when he was transferred to the United States in October 2015.

However, there is substantial question as to whether the Beneficiary acted in a managerial capacity overseeing professional subordinates abroad for one continuous year prior to his entry into the United States. For instance, the Petitioner submitted foreign paystubs covering the Beneficiary's entire time employed abroad with the foreign employer. These paystubs reflected the Beneficiary's position title by month and indicated that he was not promoted to the position of "manager" until January 2015; and at this time, his salary was increased from 190,720 rupees in December 2014 to 724,634 rupees in January 2015. Further, the foreign paystubs stated that prior to this time the Beneficiary was employed as deputy manager from September 2012 through December 2014. In addition, the Petitioner submitted a letter indicating the Beneficiary's promotion to "Manager in the E3 Band" effective January 7, 2014, approximately six months prior to the date of his asserted promotion to his personnel manager position. Therefore, the submitted evidence does not support the Petitioner's assertion that the Beneficiary worked in the position of manager-BPS overseeing professional subordinates as early as July 2014 as claimed. Further, this evidence appears to indicate that the Beneficiary was employed in this managerial position abroad for less than one year. The Petitioner must resolve this discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

With respect to the Beneficiary's stated position prior to promotion to the position of manager-BPS; namely, his employment as deputy manager, the Petitioner has not provided a detailed duty description for this position to establish that he primarily performed qualifying managerial duties in this role. In fact, it is noteworthy that two of the Beneficiary's professional subordinates in the United States, and three abroad, worked as deputy managers, his apparent position up until January 2015. The U.S.-based deputy manager positions were explained as being "responsible for working on pursuits, architecting and designing [redacted]" Meanwhile, one of the Beneficiary's subordinate deputy managers abroad, in his later position as manager-BPS, was responsible for "architecting technical and commercial solutions for customer positioning of [foreign employer] proprietary tools and products," while two other subordinate deputy managers were tasked with "further enhanc[ing] product offering[s] for [foreign employer] proprietary tools." In other words, the duties of the Beneficiary's claimed subordinates working in deputy manager positions indicate that they primarily performed non-qualifying operational duties in these positions. In turn, this would suggest that the Beneficiary more likely than not also primarily performed non-qualifying operational duties prior to his apparent promotion to manager-BPS in January 2015.

Whether the Beneficiary is a managerial capacity employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial for one continuous year abroad. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties were managerial, if any, while employed as a deputy manager prior to January 2015 and what proportion were non-qualifying. The Petitioner lists deputy manager duties including all administrative or operational tasks. For this reason, we cannot determine whether

the Beneficiary was primarily performing the duties of a manager while employed as a deputy manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary holds a senior position within the foreign employer, the fact that he manages or directs the 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 foreign position be "primarily" managerial in nature. *Id.* The Beneficiary may exercise discretion over the foreign employer'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 abroad are 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, the reasonable needs of the organization are taken into account in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Petitioner states that the Beneficiary qualified as a personnel manager abroad based on his supervision of professional subordinates. 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*).

Again, as we discussed, the Petitioner provided payroll documentation indicating that the Beneficiary was not promoted to his claimed managerial position abroad until January 2015 and that up until this time he worked as a deputy manager. The Petitioner has not submitted an organizational chart specific to the Beneficiary's time as a deputy manager to demonstrate that he primarily oversaw subordinate managers or professionals during this time. Beyond this, the Petitioner only provided a few emails applicable to the Beneficiary's apparent time as a deputy manager, and we do not find this evidence sufficient to establish that he was primarily tasked with supervising subordinate professionals prior to his promotion in January 2015. As such, the evidence does not indicate that the Beneficiary acted as a personnel manager for one continuous year prior to his entry into the United States as a nonimmigrant in October 2015.

For the foregoing reasons, the Petitioner has not established that the Beneficiary was employed for one continuous year in a managerial capacity abroad.

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 H-A-*[redacted], ID# 6206692 (AAO Oct. 29, 2019)