U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-T-G-, LLC

DATE: OCT. 31, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a proprietary trading company, seeks to employ the Beneficiary temporarily as its chief financial officer 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 or executive capacity.

On appeal, the Petitioner submits additional evidence and a brief contending that the Director failed to apply the preponderance of the evidence standard of proof in reviewing the record, and did not consider the petitioning organization's reasonable needs. The Petitioner asserts that the Beneficiary has been employed abroad and would be employed in the United States in a managerial capacity, specifically as a function manager.

Upon *de novo* review, we will sustain 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.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. EMPLOYMENT IN A MANAGERIAL CAPACITY

As stated above, the Director determined that the evidence did not establish that the Beneficiary was employed abroad and would be employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act. The Petitioner's Canadian subsidiary currently employs the Beneficiary as its finance manager and the Petitioner has offered him the position of chief financial officer at the company's U.S. headquarters.

In the denial decision, the Director discussed the Beneficiary's foreign and proposed positions and in both instances found that the Petitioner did not provide sufficient information about the job duties performed by the employees of the U.S. and foreign entities. The Director also found that neither entity's organizational structure appeared sufficient to support the Beneficiary in a managerial position.

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. The term "essential function" is not defined by statute or regulation. If a petitioner claims that a beneficiary will manage an essential function, a petitioner must clearly describe the duties to be performed in managing the essential function, or more specifically, identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, a petitioner's description of a beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform duties related to the function. See *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

On appeal, the Petitioner explains both entities' respective management and staffing hierarchies in greater detail, and clarifies who performed and will perform the primary portion of the operational tasks associated with the finance function that the Beneficiary has managed and will continue to manage. The statute does not require the Beneficiary to allocate 100% of his time to managerial-level tasks, so long as the Petitioner demonstrates that the non-managerial tasks the Beneficiary performed abroad and would perform in his proposed U.S. position were and would be only incidental to the respective positions. The Petitioner need only show that the Beneficiary's duties were and would be "primarily" managerial. *See* section 101(a)(44)(A) of the Act.

We find that the Petitioner has met this burden by providing additional evidence that clarifies prior ambiguities about the Beneficiary's role with respect to the finance function and each entity's chain of command, which places the Beneficiary in a senior position with respect to that function. The explanation provided on appeal also conveys a better understanding of the Beneficiary's level of discretionary authority with respect to the essential function and his ancillary managerial role with respect to those who performed and would perform the underlying operational tasks associated with the function. The new evidence also supports the Petitioner's claim that many of these operational tasks are handled by outsourced firms who take direction from the Beneficiary.

Overall, the record now establishes that the Beneficiary's current foreign and proposed U.S. roles require him to primarily manage the essential finance management function, to operate at a senior level with respect to this function, and to exercise discretion over the day-to-day operations of this function.

Accordingly, we find that the Petitioner sustained its burden of establishing that the Beneficiary was employed abroad and would be employed in the United States as a function manager.

III. CONCLUSION

As the Petitioner has overcome the two stated grounds for denial, the appeal will be sustained.

ORDER: The appeal is sustained.

Cite as *Matter of A-T-G-, LLC*, ID# 724786 (AAO Oct. 31, 2017)