U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-T-L-, INC.

DATE: SEPT. 5, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a tannery, seeks to temporarily employ the Beneficiary as a cost accounting 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity; and (2) the Beneficiary has been employed abroad in a capacity that is managerial, executive, or involved specialized knowledge.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred by disregarding persuasive evidence of eligibility.

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 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 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 OR EXECUTIVE CAPACITY

The Director denied the petition based, in part, on a finding that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity. The Petitioner asserts that the

Beneficiary has been, and will continue to be, employed in a managerial capacity. Therefore, we restrict our analysis accordingly.

"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.

Based on the statutory definition of managerial capacity, a 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.

When examining the claimed managerial capacity of a given beneficiary, we will look to 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 or executive 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 and its staffing levels.

A. Duties

The Petitioner described the Beneficiary's intended duties in the United States and the approximate time he would devote to each:

- Manage Cost Accounting support for the four leather production facilities in the United States, Vietnam, Italy and China by directing the Cost Accounting team and ensuring that plant production costs stay within budget (20%);
- Approve of operating expense requests from other departments and confirm against budget impact for overall organization (5%);
- Lead meetings with other departments for costing control, including Purchasing, Receiving and Accounts Payable (10%);
- Coordinate auditing procedures by directing third party vendors' audits for coordination with our organization (5%);

- Proficiently control financial reporting, balance sheet reconciliations, budgeting, general ledger administration, forecasting, and financial review, with emphasis on revenue and expense on daily, weekly and monthly basis (10%);
- Supervise team on the gathering of all raw materials (raw leather and chemicals), purchase information, booking journal, and preparation of costs of goods sold and standard costing (20%);
- Prepare internal reporting to upper management on issues such as recommendations to improve the efficiency of cost controlling based on analysis of cost drivers, gross margin report, and consolidation of MFS (15%);
- Review, maintain, and enforce quality and chemicals consumption control of each plant (5%);
- Hire and train newly hired accountants and planners (10%).

With respect to the claim that the Beneficiary spends about 10% of his time hiring and training subordinates, the Beneficiary has very few subordinates and the record does not show much personnel turnover. Therefore, it is not evident that such personnel duties would occupy a significant amount of the Beneficiary's time.

The Petitioner stated that the Beneficiary's intended "position is similar to a Financial Manager . . . , as the Beneficiary is primarily supervising employees who do financial reporting and accounting." The Petitioner submitted printouts from the *Occupational Outlook Handbook*, published online by the Bureau of Labor Statistics. The *Handbook* entry for financial managers contains this passage:[1]

> Financial managers typically do the following:
> - Prepare financial statements, business activity reports, and forecasts
> - Monitor financial details to ensure that legal requirements are met
> - Supervise employees who do financial reporting and budgeting
> - Review company financial reports and seek ways to reduce costs
> - Analyze market trends to maximize profits and find expansion opportunities
> - Help management make financial decisions

The above list overlaps somewhat with the Beneficiary's responsibilities, but the Petitioner did not establish that those responsibilities rise to the level of a financial manager. It is significant that the Petitioner's organizational chart shows the Beneficiary as being subordinate to a financial manager (who also holds the title of vice president of finance and administration).

The Director denied the petition, stating that the Beneficiary's job description is vague and does not show "that the beneficiary's proposed duties would be primarily managerial in nature." On appeal, the Petitioner asserts: "The . . . Director failed to consider the abundant evidence . . . regarding the Beneficiary's job duties." Rather than go into more detail on this point, the Petitioner asserts that the evidence should be reviewed again, and then the Petitioner turns to the assertion that it will employ

[1] According to the submitted *Handbook* printout, the 2017 median compensation for a financial manager was $125,080 per year, which is more than double the Beneficiary's proposed salary of $54,000 per year. Another printout from the same source indicated that accountants and auditors earned a median annual salary of $69,350 in 2017, which is also significantly higher than the salary that the Beneficiary would earn while purportedly supervising accountants.

the Beneficiary as both a personnel manager and a function manager. We discuss each of these claims below.

B. Personnel Manager

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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." Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*4*). If a petitioner claims that a beneficiary directly supervises other employees, those subordinate employees must be supervisory, professional, or managerial, and the beneficiary must have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Sections 101(a)(44)(A)(ii)-(iii) of the Act; 8 C.F.R. §§ 214.2(l)(1)(ii)(B)(*2*)-(*3*).

To determine whether the 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 United States 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."

The Beneficiary's subordinates in China, who would continue to report to the Beneficiary after his transfer to the United States, include two cost accountants with the following responsibilities:

> [C]ontrolling inventory movement, preparing weekly and monthly inventory summary reports and liquidity reports for review, preparation of financial documents and reports including Gross Margin reports, balance sheet and inventory reconciliation reports, quality reports, forecasting, claim reports, energy and natural resources consumption reports, and more. [The cost accountants] are also responsible for the preparation of audit procedures, obtaining all the raw material purchase information, control warehouse datum, and general journal entries for monthly book closings.

There is also a cost accountant assistant, whose "responsibilities include registering new product articles, controlling warehouses datum, reviewing inventory data and checking the finance system to verify warehouse data, and providing output weekly reports."

The Petitioner asserted that all three of these individuals are professionals, and submitted a printout from the *Handbook* showing that accountants and auditors typically need bachelor's degrees. The Petitioner, however, did not establish that the Beneficiary's subordinates all hold bachelor's degrees or that their positions require them. The Petitioner showed that one of the cost accountants holds a four-year bachelor's degree in accounting, but the other cost accountant earned a three-year degree in finance. The Petitioner submitted an evaluation of the four-year degree, but not the three-year degree.

Because both individual hold the same position, it is significant that only one of them appears to hold a bachelor's degree. The record therefore indicates that the degree is not a requirement for the position.

An organizational chart showed dotted lines between the Beneficiary and an accounting supervisor, and between the Beneficiary and a chief accountant, indicating links in the "[o]rganizational structure" but not in the "[d]isciplinary structure." A second chart showed the Beneficiary and the accounting supervisor on the same hierarchical level, immediately below the financial manager. The Petitioner did not explain the extent, if any, of the Beneficiary's managerial authority over the accounting supervisor and chief accountant, but we note that the Petitioner repeatedly left those positions out when listing the Beneficiary's subordinates.

The Petitioner submitted "[w]ork product examples demonstrating the professional accounting information prepared and provided to the Beneficiary by those who work in his department." The Petitioner did not explain how these materials – essentially spreadsheets showing items, prices, and sometimes dates – amount to "professional accounting information" representing inherently professional-level work rather than data entry or bookkeeping.

The Director found that the Petitioner did not provide enough information about the duties of his subordinates, or show that those subordinates are managers, supervisors, or professionals. The Director acknowledged the Petitioner's submission of printouts from the *Occupational Outlook Handbook* and educational materials regarding two subordinates, but the Director found that these materials did not show that the subordinates are professionals.

On appeal, the Petitioner asserts that the Director "failed to consider the abundant evidence that the Beneficiary would be serving in a managerial role for the Appellant in the United States." The Petitioner notes that the *Handbook* printouts identified cost accounting as a professional occupation, but, as the Director noted, the *Handbook* is a general guide. The Petitioner did not establish that its own cost accounting positions are professional, and the employment of a cost accountant with a three-year degree tends to suggest otherwise.

The Petitioner has not established that it would employ the Beneficiary as a personnel manager.

C. Function Manager

The Petitioner described cost accounting as an essential function. In the denial notice, the Director found that "the record does not contain sufficient information describing what function the beneficiary will be managing." The Petitioner contests this assertion on appeal, saying:

> The Beneficiary will be in charge of managing the Cost Accounting Function for Mississippi and for providing financial advice to the company's top executives. [The Beneficiary] will be responsible for managing the cost accounting function for all three leather plant facilities located in the United States, Vietnam, and China. This position is critical for the Mississippi operation as it continues to grow and become more profitable. The Cost Accounting Manager position is necessary to help the organization

> handle its growth and help to prepare the company for continued increases in inventory and staff.

The term "function manager" applies generally when a beneficiary's managerial capacity derives not from supervising or controlling a subordinate staff, but instead from primarily 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). In this matter, the Petitioner has not described or provided evidence that the Beneficiary manages an essential function. The Beneficiary will not act at a senior level within the organizational hierarchy or with respect to the function managed, because he will continue to report to the financial manager. While financial matters relate to an essential function, the Petitioner has not shown that cost accounting, specifically, is an essential function by itself rather than a subset of the essential function of financial management (overseen by a higher-level official).

Based on the deficiencies discussed above, the Petitioner has not established that it would employ the Beneficiary in a managerial capacity in the United States.

III. FOREIGN EMPLOYMENT IN A QUALIFYING CAPACITY

The Director also found that the Petitioner did not establish that the Beneficiary was employed abroad in a capacity that is managerial, executive, or involved specialized knowledge. Because our findings regarding the Beneficiary's proposed employment in the United States warrant denial of the petition and dismissal of the appeal, we need not reach this additional issue, and therefore reserve it. Our reservation of this issue is not a stipulation that the Petitioner has overcome it, and should not be construed as such. Rather, there is no constructive purpose to addressing the issue here, because it cannot change the outcome of the appeal. We further note that the Beneficiary worked in essentially the same capacity abroad, with the same subordinates, and therefore many of the above findings would apply to the Beneficiary's employment abroad as well as to his proposed employment in the United States.

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 M-T-L-, Inc.*, ID# 2573653 (AAO Sept. 5, 2019)