U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-C- LLC

DATE: SEPT. 10, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, which intends to operate a glass structure fabrication and installation business, seeks to temporarily employ the Beneficiary as president of its new office[1] 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 Texas Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the new office would support a managerial or executive position within one year; (2) the Beneficiary has been employed in a managerial or executive capacity abroad; (3) the Petitioner has secured sufficient physical premises to house the new office; and (4) the Beneficiary is qualified to perform the intended services in the United States.

On appeal, the Petitioner submits additional evidence and asserts that the Director made conclusory findings without taking into account all evidence and facts presented.

Upon *de novo* review, we will dismiss the appeal as the Petitioner has not overcome three of the four grounds for denial. However, we find that the record contains sufficient evidence to establish that the Beneficiary is qualified to perform the intended services in the United States and will withdraw the Director's adverse determination with respect to this issue.[2]

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

[2] The Petitioner provided the Beneficiary's educational credentials and evidence that he has relevant industry experience gained with the related foreign entity, which operates the same type of business the Petitioner intends to operate.

admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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 submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The first issue to be addressed is whether the Petitioner established that its new office would support a managerial position within one year. The Petitioner does not claim that the Beneficiary would be employed in an executive 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.

In the case of a new office petition, we review a beneficiary's proposed job duties as well as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year.

Accordingly, the totality of the evidence must be considered in analyzing whether the proposed managerial position is plausible considering a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

A. Job Duties

The Petitioner intends to operate a glass structure fabrication and installation business and seeks to employ the Beneficiary as its president. The Petitioner stated that he "will operate and direct company's marketing, advertisement, hiring and firing, make vital financial decision, including banking and future investment." However, it did not provide a detailed description of the duties to be performed by the Beneficiary, as required by 8 C.F.R. § 214.2(l)(3)(ii).

In the denial decision, the Director noted the lack of information regarding the Beneficiary's expected day-to-day duties in the United States, and stated that the broad responsibilities listed "could apply to

any manager or executive acting in any business or industry." We agree that the brief description provided by the Petitioner indicated that the Beneficiary would have the appropriate level of decision-making, but did not explain what types of activities would occupy his time on a regular basis as the president of a new glass construction and installation business during the first year of operations and beyond. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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).

The Petitioner has not directly addressed the Beneficiary's job duties in its appellate brief, other than noting that the evidence "clearly shows that the Beneficiary will be performing the type of managerial duties one would expect are required in the corporate office of a glass and glazing services company." The Petitioner has submitted a business plan in support of the appeal which addresses the Beneficiary's responsibilities, noting that these will include "developing and implementing high-level strategies, making corporate decisions, managing the overall operations and resources of a company and demonstrating safety leadership."

The position description included in the business plan is not specific to the Petitioner's business and portions of it read as if they were derived from a general template. For example, it states:

> In this role, it is imperative he leads by exercising the five critical components of safety leadership, including field presence, effective communication feedback, accountability and bench-marking. Safety Leadership by example is critical in keeping EMR rates, OSHA recordables and zero incident philosophy. In smaller companies, the CEO/President will often have a much more hands-on role in safety. The CEO/President should always routinely communicate and stress their company's safety mission statement and culture to all of their employees to ensure safety leadership.

The business plan also attributes the following responsibilities to the Beneficiary (bullets added):

- Advocating and promoting the organization and stakeholder changes related to the organization's mission;
- Supporting the motivation of employees in the organization's products/programs and operations, ensure that the staff have sufficient and up to date information;
- Looking to the future for change opportunities;
- Interfacing between the management and the employees;
- Interfacing between the organization and the community
- Formulating policies and planning recommendations, deciding and/or guiding courses of action . . . , overseeing operations of organization, creating and implementing plans;
- Managing human resources of the organization, managing financial and physical resources; and
- Oversees design, marketing, promotion, delivery of quality programs, all products and services, also recommends the yearly budget for Board approval and prudently manages organization's resources.

While lengthier than the previous description, this description does not provide further insight into the nature of the Beneficiary's proposed day-to-day tasks. The Petitioner does not describe the types of policies and plans the Beneficiary is expected to formulate, the nature of his interactions with the community, or the specific tasks associated with "overseeing operations of organization," or delivering quality programs. 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.*, 724 F. Supp. at 1108.

We acknowledge that the Beneficiary, as the Petitioner's most senior employee, would have authority to establish plans, policies, and objectives for the company, supervise any employees hired, and make decisions regarding the company's overall direction. However, the Petitioner must also establish that these types of responsibilities would primarily occupy the Beneficiary's time within one year, and to make this determination, we review the totality of the evidence. The Beneficiary's discretionary authority is only one of several factors we consider in determining whether the Petitioner would employ him in a qualifying capacity at the end of the one-year new office period.

The Director's decision reflects that he properly considered the evidence as a whole to determine whether the Petitioner met its burden to show that it would have a reasonable need for the Beneficiary to primarily perform the claimed managerial duties within one year. For the additional reasons discussed below, the Petitioner has not met this burden.

B. Business Plan and Proposed Staffing

In order to qualify for L-1A nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment, and establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

The Petitioner's initial evidence did not include a business plan or any statement regarding the new office's proposed staffing or organizational structure. In a request for evidence (RFE), the Director requested a statement from the foreign entity explaining the proposed number of employees and the types of position they will hold, as well as a business plan describing the new office's start-up plan and actions to be taken during the first year. The Director also requested a copy of the Petitioner's proposed organizational chart, listing all proposed positions with a summary of proposed duties and expected educational levels.

In response, the Petitioner submitted an organizational chart depicting the Beneficiary as "director" and showing that he would supervise a business development specialist [redacted] and a sales department staffed by an office assistant [redacted] and an account manager [redacted] The Petitioner did not provide position descriptions, educational credentials, or evidence that it had hired

the named individuals.[3] Further, the organizational chart did not include any vacant positions or any indication that the company, which intends to fabricate and install glass structures, anticipates hiring any fabricators, installers, or other personnel to actually provide these products and services.

In the denial notice, the Director acknowledged the organizational chart, but emphasized that the Petitioner did not provide the requested business plan or other evidence detailing its intended staffing plan, nor did it provide supplemental information regarding the positions identified on the chart to establish that the Beneficiary would be sufficiently relieved from performing non-managerial activities associated with the business' day-to-day operations.

On appeal, the Petitioner submits for the first time a business plan, which contains the company's personnel plan for its first five years of operation. According to the personnel plan, the Petitioner intends to employ the Beneficiary as CEO, [redacted] as a part-time office manager and dispatcher, two fabricators, and two sales people during its initial year of operations and it has no plans to hire additional staff at any point during the four years thereafter. The Petitioner does not provide a new proposed organizational chart or explain why the business plan's proposed staffing structure differs from the information provided on the previously submitted organizational chart.

At the same time, the Petitioner states in its brief that it "has hired an Account Manager, Business Manager, and Marketing & Office Manager to handle the day-to-day functions of the business." The Petitioner does not attempt to reconcile this staffing with the personnel plan described in the concurrently-submitted business plan, nor does it mention who would be responsible for fabricating and installing the company's products. Due to the unexplained inconsistencies in the submitted staffing plans, the Petitioner has not met its burden to describe the proposed organizational structure of its new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(*1*).

Nevertheless, we acknowledge that the Petitioner has submitted resumes for its claimed current employees as of the date of the appeal. [redacted] resume states that he has been employed by the Petitioner in a business development role since October 2017 (while concurrently employed by three other companies), and [redacted] resume indicates that the Petitioner hired her in a sales role in 2019. The Petitioner also submits a resume for [redacted] its newly claimed marketing and office manager, but she does not indicate any employment with the petitioning company. The record does not contain any additional evidence of wages paid to employees to confirm that the Petitioner has hired these individuals, or evidence that it has hired or contracted lower-level workers to fulfill its contracts with clients, some of which were signed prior to the date of filing.

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

[3] The Petitioner submitted a partial copy of its New York state quarterly wage report for the fourth quarter of 2018. This document shows that the Petitioner had two employees as of December 2018, and paid total wages of $3,400 during this 13-week period. However, the one page that was submitted did not provide employee names.

supervisory duties unless the employees supervised are professional."[4] *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*).

Here, while the Petitioner consistently indicates that the Beneficiary will supervise subordinate personnel, it has not consistently identified what positions it intends to fill. As noted, the business plan indicates that the company will operate with two fabricators, two sales people, and a part-time office worker, while the Petitioner elsewhere asserts that all of the Beneficiary's subordinates will have managerial job titles. The record does not contains sufficient detailed, consistent, and credible information for us to determine the number or types of positions that would be filled within on year. Although the Director requested the information, the Petitioner did not provide an adequate summary of duties for all proposed subordinate positions, nor did it provide the level of education required for those positions. Therefore, the record does not establish that the Beneficiary would supervise subordinate professionals. Further, the Petitioner has also not shown that the Beneficiary's subordinates would supervise other employees, such that they can be classified as managers or supervisors, other than in position title. Thus, the Petitioner has not shown that the Beneficiary would be supervising a subordinate staff of supervisory, professional, or managerial employees, as required by section 101(a)(44)(A)(ii) of the Act.

On appeal, the Petitioner emphasizes that it submitted copies of contracts valued at $477,271.86 as proof that it already has "an established and ongoing stream of business" generated by its new office. However, as discussed above, it remains unclear how it intends to fulfill the contracts for fabrication and installation of glass structures if it plans to employ only a president, sales and business development staff, and a marketing employee. The submitted contracts indicate that the Petitioner may use subcontractors for some work, but the financial projections in its business plan do not account for any contractor expenses. Therefore, the signed contracts alone are not sufficient to show that the company will be able to support the Beneficiary in a managerial capacity within one year.

We must take into account the reasonable needs of the organization and the company's size alone may not be the only factor in determining whether the Beneficiary would be employed in a managerial or executive capacity. *See* section 101(a)(44)(C) of the Act. However, it is appropriate to consider the proposed size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS,* 153 F. Supp.

[4] 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."

Therefore, 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.

2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record. *See Systronics*, 153 F. Supp. 2d at 15.

After reviewing the totality of the evidence, we find that the Petitioner has not adequately described what the Beneficiary will be doing during the initial year of operations or beyond, nor has it sufficiently or consistently explained the intended staffing of the new office. Accordingly, the Petitioner did not demonstrate that the Beneficiary would primarily engage in managerial duties, or that the new office would support a managerial position, within one year of approval of the petition.

III. PHYSICAL PREMISES

The next issue to be addressed is whether the Petitioner established that it has sufficient physical premises to house the new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

At the time of filing in September 2018, the Petitioner submitted a [redacted] which indicated that the Petitioner had leased a six-person office. In the RFE, the Director requested additional evidence to establish that a standard office lease would be sufficient premises to house the staff, materials and equipment needed for a glass fabrication and installation business. The Petitioner re-submitted its membership agreement in response to the RFE.

Accordingly, the Director determined that the Petitioner did not meet its burden, as it did not identify the specific amount and type of space requirement to operate its business, or provide sufficient evidence of its expected staffing levels for the first year of operations.

On appeal, the Petitioner submits photographs of its New York office and states that it is intended "to provide work space for the beneficiary and his staff" to perform their "managerial, corporate and administrative duties," and not to manufacture or store glass products. The Petitioner maintains that the space is sufficient to accommodate the "first year growth projected in the Business Plan."

While the space secured appears to be sufficient to accommodate up to six office workers, the referenced business plan states that the Petitioner would be hiring fabricators and that it will offer its clients more than 15 types of glass structures and systems. While we agree with the Petitioner that it does not need to demonstrate that its leased office is suitable for the manufacture and storage of glass products, it is reasonable to expect that the Petitioner have some physical premises to accommodate its "fabricators" and the products it intends to customize and install. Accordingly, we find that the evidence submitted on appeal does not overcome the Director's determination.

IV. BENEFICIARY'S EMPLOYMENT ABROAD

The Director also determined that the Petitioner did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. The Director determined that the Petitioner submitted a very general position description for the Beneficiary and did not provide sufficient evidence of the foreign entity's staffing and organizational structure. The Director also emphasized that the Petitioner did not submit relevant evidence requested in the RFE, such as the job duties of the

Beneficiary's subordinate staff or independent documentation of the subordinates' salaries and educational levels.

On appeal, the Petitioner emphasizes that the petition and the previously submitted letter state that the Beneficiary's duties included "supervising the company's production, marketing, finances and budget, approving contracts and making hiring and firing decisions." In addition, the Petitioner notes that the organizational chart showed that the Beneficiary supervised department managers (sales manager and technical director) with their own subordinate employees, as well as a chief accountant, a marketing director, and two drivers. The Petitioner maintains that "the picture painted by these documents makes it clear that the Beneficiary was working in a managerial capacity at [the foreign entity] and was not responsible for the day-to-day functions of the company."

The Petitioner's appeal does not adequately address the deficiencies discussed in the Director's decision. Accordingly, we will affirm the Director's adverse determination with respect to the Beneficiary's employment capacity abroad. We agree with the Director's determination that the submitted position description is not sufficient to establish that the Beneficiary's actual duties have been primarily managerial in nature. In the RFE, the Director requested a statement describing the Beneficiary's specific duties and the percentage of time he allocated to each task. While the Petitioner submitted a letter from the foreign entity's deputy director, the duties contained therein were too vague to provide any meaningful insight into the nature of the Beneficiary's day-to-day tasks while employed abroad.

For example, the Petitioner stated that the Beneficiary's duties included "to ensure that state taxes, insurances and other payments are made timely and correctly," "to carry out works in the direction of improving the living conditions of employees," "to conduct personal meetings with employees to take care for the purpose of improving their social life," "to control over execution of decisions she/he/it took," "to control over not going beyond the law of the official documents of the company and displaying indifference to the preparation of orders," and "to control that employees are fully provided a technical security in working condition." This position description was not responsive to the Director's request for a description of the specific, day-to-day tasks the Beneficiary performed as the director of the foreign entity, a glass manufacturing company. The description noted that the Beneficiary was charged with determining the targets and strategies of the company, which is indicative of his senior most placement in the hierarchy, but it did not provide the detail necessary to establish that his actual duties were primarily managerial or executive in nature. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. *Fedin Bros.*, 724 F. Supp. at 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The Director had also requested an organizational chart along with job duties for all subordinate employees and evidence of their educational qualifications and salaries. The Petitioner submitted an organizational chart depicting the Beneficiary as the foreign entity's "director" with a total of 11 direct and indirect subordinates; however the Petitioner did not provide the evidence necessary to establish that the Beneficiary supervises subordinate managers, supervisors or professionals as it did not provide job descriptions or evidence of the educational qualifications of subordinate staff. The Director had also requested supplemental evidence establishing the Beneficiary's managerial authority over

subordinate employees, such as performance reviews or evidence of hiring and firing decisions, as well as information regarding the subordinate employees' salaries, which would have assisted in corroborating their employment with the foreign entity.

Contrary to the Petitioner's assertion, an overly broad position description and an organizational chart alone are not sufficient to paint a "clear picture" of the Beneficiary's actual job duties within the foreign entity. Further, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The fact that the Beneficiary managed or directed the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act.

Accordingly, the Petitioner has not overcome the Director's determination with respect to the Beneficiary's employment abroad, and the appeal will be dismissed for this additional reason.

V. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. 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 G-C- LLC*, ID# 5902508 (AAO Sept. 10, 2019)