U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18407286

Date: SEP. 13, 2021

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, describing itself as a "non-profit organization," seeks to temporarily employ the Beneficiary in the United States as its development director 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 Director of the California Service Center denied the petition on multiple grounds, concluding the Petitioner did not establish that: 1) it had a qualifying relationship with the Beneficiary's foreign employer; 2) the Beneficiary is employed in a managerial or executive capacity abroad, and 3) the Beneficiary would be employed in a managerial or executive capacity in the United States.

On appeal, the Petitioner asserts that the Director did not sufficiently cite applicable law to establish why it and the foreign entity do not have a qualifying relationship as non-profit entities, and further contends that they share common control. In addition, the Petitioner states that the Director's determination that the Beneficiary did not act abroad in a managerial or executive, and that she would not act in this same capacity in the United States, was "subjective" and not sufficiently explained.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner did not establish that it the Beneficiary would be employed in the United States in a managerial or executive capacity. Because the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding whether it has a qualifying relationship with the Beneficiary's foreign employer or whether she was employed abroad in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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 CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity. The Petitioner does not claim on appeal 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).

A. Duties

To be eligible for the L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, 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). In determining whether a given beneficiary's duties will be primarily managerial, we consider the Petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the 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.

The Petitioner stated that it is a non-profit entity engaged in supporting "the provision of medical services at the [redacted] in Venezuela" and "dedicated to funding medical research and promoting the development of medical infrastructure." The Petitioner indicated that the Beneficiary's foreign employer operated similarly in Venezuela for many years supporting the [redacted] The Petitioner explained that its purpose is to "financially support [redacted]' through fundraising efforts in the United States and noted that it planned to expand fundraising efforts in the [redacted] area since an "important part of the [foreign employer] donor base has moved abroad." In support of the petition, the Petitioner submitted the following duties for the Beneficiary as its proposed development director:

- Provide vision, objectives and implementation of fundraising strategies;
- Implement fundraising efforts, including planning and execution of fundraising events;
- Hold meetings with Board of Directors to review strategic goals and initiatives;
- Manage the recruiting, hiring, and providing appropriate training for any fundraising support staff;
- Serve on strategic planning committees with the Board of Directors;
- Manage donor relationships and work closely with donors to ensure legacy giving;
- Oversee and manage fundraising budget to ensure all events are cost-effective and successful; and
- Authority over planning, development and implementation of fundraising goals and policies to maximize giving.

In another duty description provided in support of the petition the Petitioner stated that the Beneficiary would be tasked with "finding and cultivating new prospects," "handl[ing] VIP donors," "organizing direct marketing campaigns," "managing social media," and "organizing and executing Fundraising events," including "Charity Sports Tournaments, Galas, [and] dinners."

Later in response to the Director's request for evidence (RFE), which asked for more detail related to the Beneficiary's proposed U.S. duties, the Petitioner provided the following duty description:

- Design the annual strategic plan for fundraising– 20%;
- Run the fundraising campaigns and events– 40%
- Create effective strategies to maximize donations and cultivate new donors– 30%
- Managing budget and advise use of funds– 10%

Further, the Petitioner listed some of the following tasks for the Beneficiary in her U.S. role:

- Design the strategic annual plan and manage the team for this purpose, as well as for the execution and post/event program analysis,
- Responsible for the proper execution of the funds during the events and manage/make the calls needed before, during and after the event,
- Accountable for all the operational aspects of the foundation,
- Work on cultivating donors and establishing long term relationships with other organizations, finding potential sponsors for recurrent campaigns and events, and
- Have the power for making decisions with a set of predetermined guidelines discussed with the Board of Directors.

The Beneficiary's duty descriptions do not sufficiently demonstrate that she would primarily devote her time to qualifying managerial-level tasks while employed in the United States. In fact, several of the Beneficiary's stated duties are indicative of her direct involvement in the non-qualifying operational aspects of the business, such as "work[ing] closely with donors to ensure legacy giving" and "ensur[ing] *all* [emphasis added] events are cost-effective and successful." Likewise, the Petitioner indicated that the Beneficiary would be engaged in "finding and cultivating new prospects," "handl[ing] VIP donors," "organizing direct marketing campaigns," "managing social media," and organizing and executing "Charity Sports Tournaments, Galas, [and] dinners." The Petitioner also explained that the Beneficiary would be responsible for the "execution of the funds during the events," "manag[ing]/mak[ing] the calls needed before, during and after the event," and "being accountable for *all* [emphasis added] the operational aspects of the foundation." In sum, these tasks are reflective of the Beneficiary's primary engagement in non-qualifying operational duties directly related to the provision of services.

The uncertainty as to the Beneficiary's proposed duties is heightened by the Petitioner's apparent lack of employees and subordinates. The Petitioner did not submit a U.S. organizational chart, assert that it had any employees beyond the Beneficiary, or provide any supporting evidence to indicate that she would have any subordinates as of the date the petition was filed. For instance, the Petitioner's most recent 2019 IRS Form 990-EZ, Short Form Return of Organization Exempt from Income Tax, reflected that it collected just under $58,000 in donations in the year just prior to the date the petition was filed and incurred only approximately $6,000 in expenses during that year.[1] This leaves substantial question as to what "fundraising support staff" or "teams" the Beneficiary would oversee and to whom she would delegate the apparent non-qualifying tasks discussed above. For example, it is not clear who would be tasked with collecting donations, organizing events, soliciting donors, paying vendors, performing the company's accounting, amongst other reasonably foreseeable operational tasks.

The Petitioner's assertions and the supporting evidence reflect very limited operations and suggest that it would be the Beneficiary's sole responsibility to establish its position in the United States. Again, given these limited operations it is not clear who, other than the Beneficiary, would perform the non-qualifying aspects of sufficiently establishing its fundraising activities in the United States as of the date the petition was filed. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Whether the Beneficiary is a managerial employee 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 does not credibly document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. The Petitioner lists the Beneficiary's duties, and submits supporting documentation, indicating her substantial performance of administrative and operational tasks necessary to establish its operations, but it does not sufficiently quantify the time she would spend on these non-qualifying duties as compared to managerial tasks. For this reason, we cannot determine whether the Beneficiary would primarily perform 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).

[1] The petition was filed in February 2020.

In contrast, the Petitioner provided little detail to substantiate the Beneficiary's proposed managerial duties as of the date the petition was filed. For instance, there is little detail as to the "strategic plans" the Beneficiary would establish, "effective strategies to maximize donation" she would implement, budgets she would manage, guidelines she would implement from the board of directors, or long-term relationships with "other organizations" she would foster. Although we do not expect the Petitioner to articulate and document every managerial task performed by the Beneficiary, it is reasonable to expect that it would provide sufficient detail and documentation to corroborate her likely performance of qualifying managerial duties.

Even though the Beneficiary holds a position with a managerial title within the organization, the fact that he will manage or direct a portion of 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 position be "primarily" managerial in nature. *Id.* The Beneficiary may exercise discretion over some of the Petitioner's day-to-day operations and possess some requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that her 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.

As discussed, the Petitioner contends on appeal that the Beneficiary would be employed in a managerial capacity. 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*).

As previously noted, the Petitioner did not submit a U.S. organizational chart, duties for any asserted subordinates to the Beneficiary, or any other assertions or documentation to indicate that it had any employees as of the date the petition was filed. In fact, the Form I-129, Petition for a Nonimmigrant Worker reflected in part 5, section 14 that it had "0" employees. Given this, the Petitioner does not clearly assert or demonstrate with supporting evidence that the Beneficiary would be employed as a personnel manager overseeing subordinate supervisory, professional, or managerial employees as of the date the petition was filed.

Therefore, the only remaining consideration is whether the Beneficiary would be employed as a function manager. The Petitioner vaguely asserts on appeal that the Director "use[d] an incorrect legal

standard by ignoring or rejecting qualification by [the Beneficiary through] managing a function." 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 sufficiently demonstrated that the Beneficiary would qualify as a function manager. On appeal, the Petitioner points only to the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and its description of "Public Relations and Fundraising Managers." In pointing to this definition, the Petitioner states that the Beneficiary's position is "by definition" managerial. However, according to this reasoning, a petitioner's burden of proof would be merely based on their assigned title and a reference to a generic definition promulgated by the DOL. The Petitioner has not articulated the specific function that the Beneficiary would manage or indicated why it is essential. It only generally indicates that the Beneficiary would be the company's executive director overseeing the establishment of its entire U.S. operations.

Further, the Petitioner has not properly demonstrated how the Beneficiary would primarily manage a function, even if clearly defined, rather than perform the function. As we have discussed in this decision, the Petitioner has provided a duty description for the Beneficiary indicating her wide engagement in non-qualifying operational activities necessary to establish the Petitioner's fundraising activities in the United States. The Petitioner has not sufficiently articulated or documented how the Beneficiary would be primarily relieved of these non-qualifying duties, and as noted, it appears to have no staff to discharge her of these tasks. As such, the Petitioner has not demonstrated that the Beneficiary would be employed as a function manager.

For the foregoing reasons, the Petitioner has not established that the Beneficiary would be employed in a managerial capacity in the United States.

ORDER: The appeal is dismissed.