U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-A-, LLC

DATE: SEPT. 14, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an importer and exporter of commercial goods, seeks to extend the Beneficiary's temporary employment as its general manager and chief executive officer under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 record did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner submits additional evidence and asserts that the record establishes that the Beneficiary will be employed in a managerial capacity.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the Beneficiary's application for admission into the United States. 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, executive, or specialized knowledge capacity. Section 101(a)(15)(L) of the Act.

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period February 10, 2016, to February 9, 2017. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

A petitioner seeking to extend an L-1A petition based on a previously approved new office petition must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The Director found that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity under the extended petition. Specifically, the Director found that the Beneficiary's duties indicated that he would more likely be primarily engaged in the performance of non-qualifying duties under the extended petition.

On appeal, the Petitioner contends that the Director did not consider all of the Beneficiary's duties, but rather focused on non-qualifying duties that would require only on a small portion of his time. The Petitioner asserts that it has submitted sufficient evidence to demonstrate that the Beneficiary would act in a managerial capacity based on his supervision of subordinate personnel and management of essential functions.

The Petitioner does not claim that the Beneficiary will be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary will be employed in a managerial capacity.

The term "managerial capacity" is defined as "an assignment within an organization in which the employee primarily":

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) 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;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) 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. Further, "[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 staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) takes 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.

When examining the managerial capacity of the Beneficiary, we will look first 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 capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, USCIS examines the claimed managerial capacity of a beneficiary, including 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 business and its staffing levels.

A. Duties

Based on the definitions of managerial capacity, the 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.

The Petitioner is self-described as an "importer and exporter of commercial goods." The Petitioner emphasized in its business plans that its original focus was the export of vehicles from the United States to China. The Petitioner states that the focus of the business has shifted to the purchase and sale of frozen meats and the development and manufacture of luggage.

The Petitioner submitted a duty description for the Beneficiary that lacks sufficient detail, is inconsistent with the nature and scope of the business, and which does not otherwise demonstrate that the Beneficiary will primarily perform managerial duties under the extended petition.

The Beneficiary's duties are broadly described such that they could refer to any senior position in almost any company. The regulations require a detailed description of what the Beneficiary does on a day-to-day basis within the scope of the Petitioner's operations. However, the Petitioner only provided broad managerial tasks, including "completing performance evaluations"; "developing short and long-term goals"; "setting up company structures"; "review[ing] company forecasts" to

ensure consistency with annual projections; "explaining the policies and procedures of the business model, company policy and rules, [and] operation procedures"; "creating cost-effective advertising programs and merchandising strategies"; "review[ing] departmental forecasts"; and "develop[ing] strategic new business plan," amongst others. These responsibilities provide little insight into the nature of the Beneficiary's daily tasks as the senior employee in an operation that buys and sells automobiles and frozen meats. For instance, the Petitioner did not sufficiently explain or document short- and long-range goals the Beneficiary formulated, structures he implemented, forecasts he reviewed, policies or procedures he established, or advertising programs or merchandising strategies he implemented. 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).

Although the evidence supports that the Petitioner has purchased some used cars in the United States and bought an inventory of frozen meats, the record does not show that the Beneficiary would be spending most of his time developing short and long-term goals, setting up company structures, and explaining the policies and procedures of the business model, company policy and rules, and operation procedures. 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).

Overall, the Petitioner has not established that the Beneficiary's duty description accurately or completely reflects the Beneficiary's actual duties as of the date of filing. Even though the Beneficiary holds a senior position within the organization, the fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position description alone is insufficient to establish that his actual duties would be primarily managerial in nature.

B. Staffing

The Petitioner asserted on the Form I-129, Petition for a Nonimmigrant Worker, and in an accompanying organizational chart that it employs eight individuals, including managers of asserted departments of finance, sales and marketing, international business, frozen foods, administration, and new products. The organizational chart indicates that the Petitioner employs seven managerial employees and one employee responsible for the import and export of automobiles; or more specifically, providing "daily company updates to Chinese buyers on the latest car releases" and arranging for the delivery and transportation of purchased automobiles.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 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."[2] Section 101(a)(44)(A) of the Act. 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.

The Petitioner did not state the educational requirements for its subordinate positions, nor has it provided evidence of the educational credentials for the individuals who fill these positions. Therefore, the record does not establish that the Beneficiary would supervise subordinate professionals. We note that six of the Beneficiary's subordinates have managerial or supervisory job titles; however, we must examine their actual duties in the context of the company's operations to determine whether they should be considered managers or supervisors.

The Petitioner indicates that each of its six department heads are responsible for supervising subordinates and developing policies and procedures within their departments. However, the organizational chart reflects that the Petitioner has hired only one lower level employee within one of these departments working in the "import and export sales center" and reporting to the manager of the sales and marketing department. Notably, the Petitioner emphasized that it is now moving away from the purchase and export of vehicles given certain unexplained changes in Chinese law. As such, the Petitioner claims to have hired only one operational employee in a department that it states will likely no longer exist in the future.

Otherwise, the organizational chart shows vacancies for lower level, operational positions within all other departments. These vacancies include an "inventory staff member" and accounts receivable positions reporting to the manager of the finance department, "strategic marketing staff" to be overseen by the manager of the sales and marketing department, sales and marketing staff members reporting to the manager of the frozen foods department, a "staff member" and "coordinating staff member" to be supervised by the manager of the new products department, and an "office supplies & maintenance" employee reporting to the manager of the administration department. As these lower level employees have not yet been hired, it is reasonable to conclude that the department managers are charged with performing the operational duties of their respective departments, rather

[2] 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."

than supervisory or managerial duties. 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).

The evidence must substantiate that the duties of a beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy. Assignment of managerial job titles to employees is not probative of their employment in supervisory or managerial positions, and does not establish that an organization is sufficiently complex to support an executive or manager position. Here, the evidence does not support a conclusion that the Beneficiary's subordinates are supervisors, managers, or professionals. Instead, the Beneficiary's subordinates perform the actual day-to-day tasks of operating the Petitioner's business. The Petitioner has not provided evidence of an organizational structure sufficient to support the Beneficiary in a supervisory position higher than a first-line supervisor of non-professional employees. Therefore, the Beneficiary does not qualify as a personnel manager under the statutory definition of managerial capacity. *See* section 101(a)(44)(A) of the Act.

Furthermore, the Petitioner did not provide sufficient evidence to corroborate its claimed staffing levels. As noted, the Petitioner states that it employs eight individuals, including the Beneficiary. However, a submitted California Quarterly Contribution Return and Report of Wages for the fourth quarter of 2016 reflects that the Petitioner employed only two individuals, the Beneficiary and the individual identified as the finance department manager.[3] The Petitioner provided a 2016 IRS Form 1120, U.S. Corporation Income Tax Return, and 2016 IRS Forms W-2, Wage and Income Tax Statements also indicating it only paid wages to these two employees. The Petitioner provided IRS Form 1099s indicating that it paid three other employees a total of $38,500 as independent contractors during that year, including its claimed managers of the international business and sales and marketing departments; and the aforementioned operational employee working in the "import and export sales center." However, the 2016 Form 1120 shows no significant expenses for payments made to independent contractors, indicating it only spent $300 on this expense during that year. Otherwise, the Petitioner provides little objective supporting documentation to substantiate that it employs eight employees as asserted.

On appeal, the Petitioner asserts in the alternative that the Beneficiary will act as a function manager under the extended petition. 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

[3] We note that the petition was filed on January 30, 2017.

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).

In this matter, the Petitioner has not provided sufficient evidence to demonstrate that the Beneficiary will primarily manage an essential function. First, the Petitioner generally states that the Beneficiary will "carry out" or manage "essential functions," but does not articulate with specificity or document these functions. Further, as we have discussed, there are inconsistencies in the evidence leaving question as to the Petitioner's asserted organizational structure. For instance, the Petitioner claims to have seven managers and only one operational level employee and supporting tax documentation does not support its claimed personnel levels. Therefore, these discrepancies leave significant question as to whether the Beneficiary will primarily perform qualifying managerial duties as opposed to focusing on the operational tasks inherent to the Petitioner's three lines of business. Finally, as noted, the position description provided for the Beneficiary is overly broad and does not sufficiently describe his actual duties, such that they can be classified as primarily managerial. Therefore, the Petitioner has not submitted sufficient evidence to demonstrate that the Beneficiary will act as a function manager under the extended petition.

III. CONCLUSION

The appeal must be dismissed as the Petitioner did not establish that it will employ the Beneficiary in a managerial capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of R-A-, LLC*, ID# 590976 (AAO Sept. 14, 2017)