U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10742858

Date: SEPT. 23, 2020

Appeal of California Service Center Decision

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

The Petitioner, which intends to operate a furniture manufacturing and distribution business, seeks to temporarily employ the Beneficiary as the President/General Manager of its new office[1] 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 California Service Center denied the petition, concluding that the record did not establish, as required, that (1) it has secured sufficient physical premises to house the new office, (2) it will employ the Beneficiary in the United States in a managerial or executive capacity within one year, and (3) the Beneficiary has been employed in a managerial or executive capacity abroad. The Director dismissed the Petitioner's subsequent motion to reconsider, and the Petitioner filed an appeal. We withdrew the Director's motion decision and remanded the matter to the Director.[2] On remand, the Director issued a new decision denying the petition on the same three grounds, and that decision is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, the Petitioner has not met this burden. Accordingly, we will dismiss the appeal.

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] On appeal, the Petitioner claims that our remand decision, dated December 11, 2019, "shows that Petitioner successfully demonstrated eligibility for the immigration benefit sought" and "confirms that the California Service Center's decision denying the I-129 Petition was incorrect." We did not reach these conclusions in our remand decision. We determined that the Director's decision dated December 17, 2018, in which he dismissed the Petitioner's motion to reconsider, did not sufficiently address the merits of the brief submitted in support of that motion.

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. PHYSICAL PREMISES

The Director denied the petition, in part, based on a finding that the Petitioner did not establish that it had secured sufficient physical premises to house its new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

To establish that it met the physical premises requirement, the Petitioner submitted a lease agreement specifying the amount and type of space it had secured, color photographs of the premises, a letter from its landlord confirming its occupancy, and evidence of its rental payments. The Director determined that the Petitioner did not demonstrate that the 2500 square foot premises would accommodate the company's projected staffing levels.

Upon review, we conclude that the Petitioner has provided sufficient evidence that the secured premises, which includes warehouse/manufacturing space, offices, a loading area and parking spaces for employees, will more likely than not accommodate the company's intended operations and its projected staff of seven employees. Accordingly, the Petitioner has established that it meets the sufficient physical premises requirement, and the Director's decision with respect to this issue is withdrawn.

III. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The next issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity within one year. Although it initially described the Beneficiary's proposed duties as "managerial and executive," the Petitioner has since clarified that it does not intend to employ him 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 seeks to employ the Beneficiary as the president/general manager of its new furniture manufacturing and distribution company.

The Petitioner has consistently submitted the same proposed job description for the Beneficiary. While the description is lengthy, we note that many of the 39 listed duties are repetitive and stated in broad terms that provide little insight into the nature of his expected day-to-day tasks. For example, the description indicates that the Beneficiary will "exercise discretion over the operations of the organization," "plan, develop and recommend policies and procedures for successful company operations," "plan and develop policies and procedures in order to successfully complete sales," "establish procedures to regulate the activities of each department," "supervise and train subordinate managers and professionals (including hiring and firing)," and "exercise final hiring authority on new personnel." While these duties paraphrase portions of the statutory definitions of managerial and executive capacity, we note that conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *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); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Other broad duties attributed to the Beneficiary's proposed position include "make decisions and solve problems," "analyze information and evaluate results to choose the best solution," "maintain contact with employees of the company to encourage a harmonious work environment," "establish constant communication with staff members," "direct service provision simplification and standardization," "analyze reports provided by personnel" and "oversee the resolution of problems." While these duties suggest the Beneficiary's heightened level of authority, they do not convey an understanding of the nature of his daily activities.

Many of the remaining job duties listed relate to the company's sales activities and suggest that the Beneficiary would be required to perform both managerial and non-managerial duties in order for the Petitioner to meet its sales goals. For example, the Petitioner indicates that the Beneficiary will establish sales and market share targets and formulate pricing policies, but also states that he would be responsible to cultivate business relationships with U.S. clients, "pursue new markets and new customers for the sale of furniture," "direct institutional sales, including large clients, regular as well as sporadic clients," "supervise the negotiation of sales," and "support sales by attending important negotiation meetings with clients." As discussed further below, the Petitioner does not indicate that it

intends to employ any sales personnel, nor has it assigned sales activities to any of the subordinate personnel.

Therefore, based on the position description provided, we are unable to determine whether the claimed managerial duties would constitute the Beneficiary's primary activities within one year, or whether he would primarily perform non-qualifying administrative or operational duties, such as sales functions. In a request for evidence (RFE), the Director noted the lack of specificity and observed that the Petitioner had not provided the percentage of time that the Beneficiary is expected to dedicate to specific tasks. Although the Petitioner provided this information for the Beneficiary's subordinates in response to the RFE, it did not address the Director's concerns regarding the Beneficiary's job duties and simply re-submitted the same job description.

Accordingly, the Petitioner's description of the Beneficiary's job duties does not establish what proportion of the duties is managerial in nature, and what proportion is non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). 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, *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's proposed activities in the course of his daily routine.

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 or executive capacity within the meaning of section 101(a)(44) of the Act. We acknowledge that the Beneficiary, as the Petitioner's senior employee, would have authority to establish goals for the company, oversee its finances, supervise its employees, and make decisions regarding the company's overall management. 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. We must also consider 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

The Petitioner indicates that it would employee seven employees during its first year of operations, including the Beneficiary, a vice president (his spouse, whose employment authorization is contingent upon approval of this petition), and five staff who have already been hired.

The Petitioner's proposed organizational chart depicts a four-tier structure among the seven-person staff. Specifically, it shows that the Beneficiary would directly supervise a vice president, who would, in turn, supervise an administrator who oversees the lower-level staff (a painter, a carpenter, an

upholsterer, and a seamstress). The Petitioner indicates that it will initially rely on an "outsourced transport company" and "outsourced finishing company."[3]

The Petitioner's initial evidence included position descriptions for the subordinate staff and the Petitioner later added the percentage of time the subordinates would allocate to each duty. The Petitioner indicated that the vice president would allocate 25% of her time to directing financial or budget activities, 15% to analyzing operations to evaluate the company's performance, 15% to directing and planning policies, objectives and activities of the company, 15% to implementing plans to solve problems, and 10% to establishing departmental responsibilities. These duties, accounting for 80% of her time, are not demonstrably different from the duties assigned to the Beneficiary and the Petitioner did not explain why it would require two employees to perform the same duties.

The Petitioner submitted two dissimilar position descriptions for the administrator position. The first indicated that he would "supervise and coordinate all activities," "review the productivity of each department," "ensure the company is running at its most optimum levels," "ensure that the company's mission and vision is being fulfilled," "develop and implement policies and procedures for each department," approve the use of vendors, review and approve major contracts with clients, and "meet with subordinate assistants" to review departmental productivity and "enforcement of policies and procedures." Some of these duties also overlapped with the Beneficiary's own duties, and the record did not support the Petitioner's statements that the company would have multiple departments to be managed or that the administrator will have multiple "assistants."

In response to the RFE, the Petitioner submitted a list of 20 duties for the administrator that bore little resemblance to the initial description. The Petitioner indicated that he would implement furniture manufacturing policies, organize carpentry materials, read blueprints and other specifications to determine requirements, estimate material and worker requirements to complete jobs, assign work, examine and inspect work progress, enforce safety regulations, order materials and supplies, perform general office duties, and handle payroll and other human resources documents. The Petitioner did not provide an explanation for the substantial changes made to the position description.

The Petitioner claimed that the administrator position, unlike the general manager and vice president positions, was already filled at the time of filing. Because the Petitioner claimed to have five employees, the Director requested that the Petitioner provide evidence of wages paid to its staff. The Petitioner did not respond to this request; however, its initial evidence had included copies of paychecks issued to some of the claimed staff. According to the Petitioner's organizational chart and business plan, it employs [redacted] in the full-time administrator position at a monthly salary of $2500. The Petitioner provided a copy of a check issued to [redacted] on August 1, 2018, just prior to the filing of the petition. The check was for $1,000 and indicates that he was paid for "*servicio tapicería*," which translates to "upholstery services." A petitioner that files a new office petition is not required to establish that it is fully staffed at the time of filing. Here, however, the Petitioner claimed that most of its staff were already in place at the time of filing, and it is reasonable to expect it to submit credible

[3] The Petitioner provided letters from representatives of both companies. The transport company indicated that its services would be provided "two to three times per month," while the finishing company indicated that it expects to provide its services "fifteen days per year."

documentation of that staffing. If the claimed administrator is in fact working as an upholsterer, this raises questions as to whether or when the administrator position would be filled.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. The Petitioner has not claimed that the Beneficiary will be employed as a function manager. 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."[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*).

The Petitioner maintains that the Beneficiary would supervise two tiers of managerial or supervisory employees (the vice president and administrator). As discussed, the Petitioner indicates that the vice president will perform duties that are also included in the Beneficiary's job description, while it submitted two very different job descriptions for the administrator and did not sufficiently corroborate its claim that it already filled the position. The Petitioner's evidence must substantiate that the duties of a beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; a chart depicting tiers of subordinate employees and managerial job titles are not probative and will not establish that an organization will be sufficiently complex to support a managerial position. Further, even if we found that the Petitioner established that the Beneficiary will supervise a subordinate supervisor, it must still establish that his actual duties will be primarily managerial in nature within one year.

According to the Petitioner's business plan, it has projected sales of more than $490,000 in its first year of operations. The Beneficiary is the only employee in the company whose duty description includes any sales and business development responsibilities and therefore it is reasonable to determine that he will spend a substantial amount of his time on attracting clients and selling the company's products and services in order to ensure that it reaches its goals. Further, the Petitioner does not indicate that it anticipates hiring any staff to assist with these duties in its first year of operations, or even in its first five years.

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 explained how the Beneficiary would be relieved from significant involvement in the non-managerial day-to-day sales activities of the business within one year. 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. For this reason, the appeal will be dismissed.

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[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."

IV. RESERVED ISSUE

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding whether the Beneficiary has been employed abroad in an 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).

ORDER: The appeal is dismissed.