U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10551868

Date: SEPT. 23, 2020

Appeal of California Service Center Decision

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

The Petitioner, a provider of management consulting and data analytics services, seeks to temporarily employ the Beneficiary as an account manager and extend his status under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 that the Petitioner would employ the Beneficiary in the United States in a managerial capacity. The matter 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, we will remand the matter to the Director for further consideration and entry of a new decision.

I. LAW

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.*

"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

[1] The record reflects that the Beneficiary was previously granted L-1A status authorizing his employment with a U.S. branch of [redacted], the Petitioner's Indian parent company, from September 2016 until September 2019. The Petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it was seeking a "change in employer" along with a two-year extension of the Beneficiary's status.

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.

To be eligible for L-1A nonimmigrant visa classification as a manager, a 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 a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then 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 the beneficiary's duties will be primarily managerial, we consider the description of the job duties, the company's organizational structure, the duties of the 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 the beneficiary's actual duties and role in the business.

II. WITHDRAWAL OF DIRECTOR'S DECISION

The Petitioner states that the Beneficiary, in his role as account manager, "is a key member of our global executive and management team," whose primary role is "to manage and grow" the petitioning company. The Petitioner indicated that he manages an account portfolio valued at $3.5 million, manages "a large team" of analysts, manages client relationships at a high level, and "is responsible for profitable growth for [the company] for the southeastern region" of the United States.

Initially, the Petitioner provided a four-page description of the Beneficiary's intended duties which was divided into nine categories and listed individual elements within each of those nine areas of responsibility. In its response to the Director's notice of intent to deny (NOID), the Petitioner devoted nearly nine pages to describing the Beneficiary's responsibilities and provided additional examples of his "daily duties."

In the denial notice, the Director primarily addressed only the broad categories of duties and noted slight changes in the amount of time the Beneficiary would devote to specific tasks as an adverse factor. For example, he observed that one job duty was initially assigned 2.5% of his time compared to 2% in response to the NOID. The Director acknowledged that the Petitioner identified additional duties in its response but determined that the description was still overly broad. In making this determination, the Director took words and phrases from the position description out of context, noting that the description included terms such as "devise, generate, negotiate, develop" that had not been sufficiently defined. Finally, the Director focused on a statement made by counsel in a letter accompanying the NOID response. Specifically, counsel stated that "[i]t is evident that the Beneficiary will perform primarily managerial duties, for more than 51% of his time." The Director's decision

implies that "more than 51%" is not "primarily" managerial as defined in immigration laws and regulations. In fact, the term "primarily" is not defined in the Act or regulations.

The Director concluded that the Petitioner did not establish the Beneficiary's employment in a "managerial or executive capacity" without addressing any additional evidence submitted in support of the Petitioner's managerial capacity claim. However, in determining whether a given beneficiary's duties will be primarily managerial, USCIS must consider the description of the job duties, along with evidence relating to the company's organizational structure, the duties of the 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 the beneficiary's actual duties and role in the business.

Further, an officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Here, the Director did not adequately explain why the submitted job description was deficient, nor does the brief analysis in the decision indicate that the Director's decision was based on a review of the totality of the record, including all evidence submitted in support of the Petitioner's claim that the Beneficiary would be employed in a managerial capacity. For these reasons, the Director's decision is withdrawn.

III. BASIS FOR REMAND

Although we withdraw the Director's decision, issues remain which the Petitioner must address before the petition can be approved. Accordingly, the matter will be remanded to the Director for further review and entry of a new decision.

Our remand order rests, in part, on our conclusion that the Director should have considered the Beneficiary's job descriptions along with the totality of the evidence, including evidence relating to the company's structure and his placement in the corporate hierarchy and the duties of his claimed subordinates.

First, the record does not clearly demonstrate the nature and scope of the Beneficiary's authority as an account manager. To be eligible for L-1A nonimmigrant visa classification as a manager, a 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. The Petitioner must establish, in part, that the Beneficiary "manages the organization, or a department, subdivision, function, or component of the organization" and "exercises discretion over the day-to-day operations of the activity or function" for which he has authority.

As noted, the Petitioner represented the Beneficiary's position as one that is part of its "global executive and management team," and responsible for expansion of business in the southeastern United States, as well as management of an account portfolio that includes several accounts. However,

beyond those individual accounts, the Petitioner indicated that he develops partnership strategies, identifies new markets, and is responsible for "profitable growth" in the assigned geographic region including management of "the region, revenues, teams." However, the evidence reflects that the Beneficiary, his supervisor (a "Group Account Manager"), and his subordinates are and would be working on-site for a client [redacted] based at its Atlanta location.[2] A letter from [redacted] refers to the Petitioner as "a technical resource" working at its location, and indicates that his supervisor ensures that on-site employees like the Beneficiary "properly carry out their responsibilities." Further, the job descriptions provided for the Beneficiary's claimed subordinates suggest that their duties relate exclusively to services that the Petitioner provides to [redacted]

If the Beneficiary will be managing a portfolio of several major accounts and have business development responsibilities for an entire U.S. region, it is unclear why he would be assigned full-time as a "technical resource" at single client site, or why all of his subordinates would be assigned to a single account. In addition, if his supervisor is also placed at this client site, this raises questions as to whether the Beneficiary is the employee charged with managing this "department, subdivision, function, or component of the organization" and exercising discretion over related day-to-day activities, or whether these responsibilities fall to his supervisor. As this matter will be remanded, the Petitioner should be given an opportunity to clarify the scope of the Beneficiary's authority, including whether it extends beyond projects being implemented for [redacted] in [redacted]. An organizational chart depicting the structure of the Petitioner's complete on-site team at the client worksite would also assist in demonstrating where the Beneficiary's position is placed within the Petitioner's hierarchy. The Petitioner should also identify any other employees (and their direct and indirect reports) who report to the Beneficiary's manager.

As noted, the Petitioner has consistently stated that the Beneficiary will supervise three senior analysts and one manager who will also work onsite in [redacted], including authority to hire or fire or recommend those as well as other personnel actions. Prior to the denial of the petition, the Director requested copies of performance appraisals or reviews conducted by the Beneficiary for any subordinate employees or any other evidence demonstrating his managerial authority over subordinate employees. The Petitioner replied that it could not provide this evidence because the Beneficiary currently works for its parent company [redacted] However, other evidence indicates that he has been working for this company's U.S. operations as an account manager based at [redacted]'s worksite in [redacted], performing the same duties described in this petition, and supervising the same subordinates. The Petitioner did not provide a reason for the change in employer, but it appears that the only change in his employment would be the responsible payroll employer. The Petitioner should be given an opportunity to clarify whether there are any other changes in the Beneficiary's previously approved L-1 employment. If not, then it may submit evidence of his supervisory responsibilities performed as an employee of [redacted]

Related to this issue, USCIS records indicate that the Beneficiary's initial L-1A employer, [redacted], filed a petition to extend his L-1A status on September 6, 2019, three weeks after if filed the instant petition. The information provided on the latter Form I-129 indicates that the request was for a "continuation of previously approved employment without change with the same

[2] One of the Beneficiary's claimed subordinates, whose title is "Manager," resides and works at a remote site in Florida according to his recent pay statements.

employer" and it does not appear that there was a request that he be authorized for concurrent employment with both the Petitioner and the parent company's U.S. branch. The Director of the California Service Center approved that petition on November 29, 2019, authorizing the Beneficiary's employment with [redacted] from September 2019 until September 2021.

As this matter will be remanded, the Director should request that the Petitioner clarify why two nearly concurrent petitions were filed on behalf of the Beneficiary and confirm its intent to employ the Beneficiary in the United States if this petition is approved.

As the Director did not sufficiently address the Petitioner's claims and supporting evidence or provide notice of the evidentiary deficiencies addressed herein, the matter will be remanded for further review and entry of a new decision. The Director should allow the Petitioner an opportunity to submit additional evidence that relates to the issues discussed above. The Director may also notify the Petitioner of additional, potential grounds of denial if supported by the record.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.