U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10742943

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 its Assistant Vice President (Business Development) 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 a managerial capacity in the United States. 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;

[1] The Beneficiary was previously granted L-1A status authorizing his employment with a U.S. branch of [redacted] his former Indian employer, from August 25, 2016 through August 24, 2019, and this employer filed an extension request for him in August 2019, which was ultimately approved. The Petitioner indicated on the instant 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.

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.

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 Assistant Vice President (Business Development), "is a key member of our global executive and management team," who is "the North America Head and responsible for account management and business development activities in the United States." The Petitioner further indicated that the Beneficiary oversees an account portfolio valued at $22 million and is responsible for the profitable growth of the company in the North American region.

Initially, the Petitioner provided an eight-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 request for evidence (RFE) the Petitioner devoted more than 10 pages to describing the Beneficiary's responsibilities and provided additional examples of his "daily duties."

In the denial notice, the Director determined that the description provided in response to the RFE was identical to that provided initially and concluded that "[i]t appears that the beneficiary will spend the majority of his time performing non-qualifying duties." The Director did not explain which duties he deemed to be "non-qualifying" or further address the submitted job descriptions.

With respect to the Petitioner's claim that the Beneficiary will supervise and control a team of three professional employees (senior consultants), the Director stated "no documentary evidence was submitted to demonstrate that the beneficiary will directly supervise and control the subordinates indicated" and did not further address this claim.

Next, the Director's decision introduced potentially derogatory information from outside the record of proceeding that he had failed to mention in the RFE:

> [Y]ou indicated on your Form I-129 petition that the beneficiary will work at [redacted] IL [redacted] (Branch Office). However, when USCIS conducted a site check on March 26, 2019, USCIS discovered that no one was at the office and the property manager stated that the employees were rarely there. As such you have not demonstrated that the beneficiary will be working from this location.

A petitioner must be afforded an opportunity to review all derogatory information considered by the Director before a decision is rendered. *See, e.g.*, 8 C.F.R. § 103.2(b)(16)(i); *Matter of Cuello*, 20 I&N Dec. 94, 96-98 (BIA 1989). The Director's failure to provide the Petitioner with notice of this information in the RFE constitutes error.

The remainder of the Director's analysis focused on whether the Petitioner established that the Beneficiary qualifies as a function manager. However, the Petitioner has consistently claimed that he will be employed in a managerial capacity based on his control and supervision of subordinate personnel; it did not claim that the Beneficiary would manage an essential function of the company.

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.

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 improperly introduced derogatory information in the denial notice, 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 evidence submitted. For these reasons, the Director's decision did not adequately address why the Petitioner's evidence was insufficient to meet its burden of proof and the 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, his placement in the corporate hierarchy and the duties of his claimed subordinates. The Petitioner indicates that the Beneficiary is responsible for account management and

business development for all of North America through his oversight of three senior consultants. However, it also refers to him as a "high-level sales professional" who spends one-third of his time traveling to meet with and deliver presentations to current and prospective clients.

The Beneficiary's lengthy position description contains no references to the "senior consultants" that he will manage or his delegation of tasks to these employees. Rather, the description references his review of activities carried out by account managers, delivery managers, operations managers, project managers, lead analysts, and others, and indicates his interactions with a Vice President of Sales. None of these positions, however, appear on the partial U.S. organizational chart provided by the Petitioner. The Petitioner should be given an opportunity to submit a more comprehensive organizational chart that identifies the staff referenced in the Beneficiary's position description.

With respect to the Beneficiary's claimed subordinates, we acknowledge that the Petitioner submitted their job descriptions, payroll records, and evidence of their educational credentials. However, the job descriptions for the senior consultants do not clearly establish how they would support the Beneficiary's role or how they relieve him from non-managerial tasks associated with his area of responsibility (i.e., all business development activities in North America). For example, the Petitioner indicates that two of the three senior consultants will be "leading our engagement and delivery with a couple of accounts" and working closely with account managers, solutions and delivery teams. Their descriptions do not mention any interactions with the Beneficiary's position, and they do not appear to be responsible for any business development tasks involving new clients. The third senior consultant is described as working with a single client [redacted] and that company's own clients. It is unclear whether the senior consultants (who work in New York and California) are working at client sites or at the Petitioner's offices.

For these reasons, there is some ambiguity in the record regarding the Beneficiary's supervision of subordinate staff and the record does not adequately explain who would relieve him from non-qualifying duties associated with new business development if his own subordinates do not perform these duties.

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 subordinates. The Petitioner replied that it could not provide this evidence because the Beneficiary currently works for the Texas branch office of its parent company [redacted] However, all other evidence suggests that he has been working for this company's U.S. operations as an assistant vice president, with the same duties and responsibilities described in this petition. In addition, the Petitioner refers to at least one of the three senior consultants [redacted] as one of the Beneficiary's current subordinates. The Petitioner did not provide a reason for the change in employer, but it is unclear that whether any aspects of his employment would change, other than the identify of his 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 just weeks before the Petitioner filed the

instant petition. The Petitioner did not indicate that he would work concurrently for both entities. Nevertheless, as the matter will be remanded, the Petitioner should clarify why two nearly concurrent petitions were filed on behalf of the Beneficiary and confirm its intent to employ him in the United States if this petition, like the one filed by [redacted] is also approved.

As the Director did not sufficiently address the Petitioner's claims and supporting evidence, provide notice of derogatory information, 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, and should consider additional evidence submitted for the first time in support of the appeal before issuing a new decision.

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