U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-T-T-V-, LLC

DATE: SEPT. 24, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a one-employee trucking company, seeks to continue the Beneficiary's temporary employment as chief executive officer (CEO) 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary would act in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner asserts that the Beneficiary acts as a function manager overseeing the foreign company's operations in the United States. The Petitioner states that the Beneficiary is relieved from performing non-qualifying duties by recently hired employees and contractors.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, 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 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.*

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period February 28, 2015, until February 27, 2016. 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 that involved a new office 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 first issue to be addressed is whether the Petitioner has established that the Beneficiary would act in a managerial capacity under the extended petition. The Petitioner does not claim that the Beneficiary would be employed in an executive capacity. Therefore, we will 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). Beyond the required description of the job duties, we examine 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 Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

Based on the definition 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 stated that it was established "to assist customers in transportation of water residue from the shale operations in South Texas" noting that it planned to acquire trucks and secure drivers to obtain contracts for this transport. The Petitioner also indicated that the company had expanded its operations into real estate development and explained the Beneficiary's involvement with managing commercial properties through affiliated companies. The Petitioner also submitted evidence indicating that it had acquired controlling interests in several companies during 2015,[2] including [redacted] In each case, supporting corporate documentation reflected that the Petitioner had acquired controlling interests in these entities through nominal payments of $10 to the Beneficiary, who was shown to have been the controlling owner of each entity for several years prior to 2015. Likewise, the Petitioner provided documentation related to another affiliated entity, [redacted] including a 2014 IRS Form 1065 indicating that this company was 99% owned by the Petitioner.

In sum, the Petitioner stated that the Beneficiary oversaw the Petitioner and the affiliates referenced above. Submitted 2015 financial statements and IRS Forms 1065 reflected that the Petitioner, [redacted] and [redacted] earned no revenue and paid no wages during 2015. Documentation with respect to [redacted] and [redacted] indicated that these companies owned properties and earned rental income, including $110,110 by [redacted] and $124,369 by [redacted] in 2015. However, submitted financial documentation and IRS Forms 1065 indicated that [redacted] and [redacted] paid no wages or salaries during 2015. Finally, the Petitioner provided financial information for [redacted] reflecting that it owned several trucks and vehicles, but that it earned only $2,284 in revenue during 2015 and paid no wages or salaries during that year.

In support of the petition, the Petitioner provided a duty description for the Beneficiary specific only to his role with the Petitioner. It stated that the Beneficiary would be responsible for the "development of business relationships," coordinating "the position of all projects within our company," and optimizing supplier and client relationships. The Petitioner indicated that the Beneficiary would also be tasked with defining resources needed to carry out company projects, monitoring the work of all divisions of the company, and setting priorities for the company's assistants, drivers, and sales persons. It further explained that the Beneficiary would "set priorities for a General Manager and assign staff . . . by [the] fourth year of the business" and oversee the prioritization of budgetary aspects and the inspection of purchased vehicles and materials.

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[2] We note that the Form I-129 was filed on February 24, 2016.

[3] 2015 IRS Forms 1065, Return of U.S. Partnership Income for each entity and related supporting documentation reflected that the Petitioner holds the following membership interests in these affiliated entities: [redacted] (70% membership interest), [redacted] (69.5% membership interest), [redacted] (69.5% membership interest), and [redacted] (70% membership interest).

In response to the Director's request for evidence (RFE), the Petitioner stated that the Beneficiary had been actively engaged in meeting "new and potential customers," "strengthening business relationships with partners and vendors," and noted its acquisition of the affiliated companies discussed above. It indicated that the Petitioner's operations continued to expand and that the Beneficiary "negotiated work agreements" for the company. The Petitioner provided the following additional description of the Beneficiary's duties:

- Direct and coordinate the organization's financial and budgetary activities to fund operations, maximize investments, and increase efficiency. – 20%
- Confer with board members in both Mexico and use the US to discuss issues, coordinate activities, and resolve problems. – 5%
- Analyze operations to evaluate performance of the corporate group and its staff in meeting objectives or to determine areas of potential cost reduction, program improvement, or policy change. – 10%
- Direct, plan, and implement policies, objectives, and activities of organization or businesses, to ensure continuing operations, maximize returns on investments, and to increase productivity. – 15%
- Consult with accountant in Mexico and the accountant in the US to make sure the budget is broken down into manageable cash flow. – 5%
- Direct and coordinate activities of the staff, whether internal or outsourced, concerned with property management, rent collections, sales planning of the 33-house subdivision that belongs to the Group. – 10%
- Negotiate or approve contracts or agreements with suppliers, distributions, federal or state agencies, or other organizational entities. – 10%
- Review reports submitted by overseer of truck yard. Review sales opportunities for [redacted] other than for oil companies. Review plans for new houses within the subdivision and for construction in general. He issues decisions to recommend approval or to suggest changes based on said reports. – 5%
- Appoint outsourced construction and maintenance crews to make sure properties do not decay and lose value. – 10%
- Direct human resources and outsource teams activities, including the approval of those plans or activities, or establishment and organization of major departments. – 10%

The Petitioner submitted evidence indicating that the Beneficiary devotes his time primarily to non-qualifying operational level duties. For instance, the Petitioner states that the Beneficiary oversees its development along with the five other affiliates in which it holds a controlling interest. The submitted documentation indicates that only [redacted] and [redacted] earned over $100,000 in revenue during 2015, a fiscal year ending only approximately three months prior to the date the petition was filed. However, the Petitioner states that the Beneficiary is its only employee and it did not submit any evidence to demonstrate that its affiliates had employees to perform the non-qualifying operational aspects of these businesses, such as collecting rent, maintaining properties, or advertising them for rent. In fact, the Petitioner provided bank account documentation

specific to [redacted] dating from January 2016 through September 2016 indicating that the Beneficiary was performing operational duties, including writing checks to pay the company's cable bill, water bill, utilities, plumbing, air conditioning, landscaping, and pest control contractors, as well as other contractors to provide repair and maintenance of its properties. There is no evidence to indicate that the Beneficiary was primarily delegating non-qualifying operational level tasks as it and its affiliate were not shown to have any employees.

Likewise, in its business plan, the Petitioner stated that its affiliated company [redacted] identifies and screen tenants, handles complaints, emergencies, move outs, and evictions, and provides maintenance and repairs with respect to their properties. However, there is little indication as of the date the petition was filed that the Beneficiary was delegating these operational duties, as neither the Petitioner nor [redacted] are shown to have paid any wages during 2015 or thereafter. Similarly, with respect to the rental income earned by [redacted] the record includes no evidence that these same non-qualifying functions are being performed by anyone other than the Beneficiary, activities presumably requiring the collection of rent, securing tenants, coordinating repairs and maintenance on the properties, amongst other administrative tasks.

In addition, there is no indication that the Petitioner had any employees to whom the Beneficiary could delegate non-qualifying tasks specific to the Petitioner's limited operations as of the date the petition was filed. For instance, the Petitioner states that the Beneficiary had "made significant achievements in identifying quality projects, opening marketing opportunities and growing business…these achievements would not have been possible without the constant travel and visits to clients." Even if the Beneficiary's asserted achievements and opportunities with respect to the Petitioner's operations were sufficiently documented, this statement suggests that he is handling all of these functions. In sum, there is little indication and supporting evidence to demonstrate that the Beneficiary was primarily relieved from qualifying operational level duties as of the date the petition was filed.

Further, the Petitioner has submitted few examples and little documentation to substantiate that the Beneficiary primarily performs qualifying managerial duties. The Beneficiary's duty description includes several generic duties that could apply to any manager acting in any business or industry and they do not provide insight into the actual nature of his role. The Petitioner provided insufficient examples and little supporting documentation to demonstrate the Beneficiary's performance of qualifying duties, such as financial or budgetary activities he coordinated, objectives he set for the greater organization, areas of cost reduction, program improvement, policy change he determined, or investments he maximized. The Petitioner also does not articulate or document staff he directed and coordinated, suppliers, distributors, or government agencies he negotiated contracts with, decisions he issued with respect to the company's "truck yard," problems he resolved in coordination with the foreign company board, or human resources plans and activities he approved. 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).

The Petitioner also appeared to assert in response to the RFE that the Beneficiary worked on acquiring its various affiliates; however, the evidence indicates that he merely transferred the ownership of these companies from himself to the Petitioner for nominal value and that they had been established many years before.

Even though the Beneficiary holds a senior position within the organization, the fact that he will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in an 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 the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial in nature.

B. Staffing and Operations

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.

In the Form I-129, the Petitioner indicated that it had only one employee, and confirmed elsewhere in support letters that this was the Beneficiary. The Petitioner did not state whether its various affiliates had employees or submit organizational charts for these companies. In the RFE, the Director requested that the Petitioner submit a detailed listing of its employees, including supporting tax and payroll documentation, as well as an organizational chart with each of the Petitioner's departments, and the job titles, duties, and salaries of its employees and contractors.

In response, the Petitioner confirmed that the Beneficiary was its only employee. In the Beneficiary's duty description, the Petitioner indicated that he was responsible for directing and coordinating the "activities of staff, whether internal or outsourced, concerned with property management, rent collections, [and] sales planning of the 33- house subdivision that belongs to the Group." Likewise, the Petitioner explained that the Beneficiary was tasked with overseeing the "overseer of the truck yard" presumably managed by its affiliate who was shown to own several vehicles and trucks in its financial statements. It further stated that as the Petitioner continued to develop "its subsidiaries will continue to pursue their objective of growing the US organizational and structure, further hiring proposed positions as depicted in the updated Business Plan attached as needed." The business plan provided in response to the RFE did not list or indicate the nature of these referenced positions.

On appeal, the Petitioner submits an organizational chart indicating that the Beneficiary oversees an accounting and a payroll employee and a contracted management consultant. Further, the chart indicates that the Beneficiary supervises and and lists several

independent contractors, including two maintenance contractors, a landscaper, a roof technician, a plumber, and a door maintenance contractor.

The Petitioner asserts that the Beneficiary acts as a function manager and cites *Matter of G- Inc.* Adopted Decision 2017-05 (AAO Nov. 8, 2017) as persuasive authority in this matter. 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.

First, the Petitioner has not clearly described the Beneficiary's function and why it is essential to the foreign employer's operations as asserted. In fact, the Beneficiary's function in the United States is not altogether clear, reflecting a focus on both launching an oil shale transportation business and managing rental properties owned by his previously held companies. Regardless, the Petitioner does not clearly articulate the essential nature of the Beneficiary's activities in the company's greater international corporate structure, but only vaguely states that he has the "full support" of his former foreign employer.

The Petitioner has also not demonstrated that the Beneficiary would primarily manage his asserted function as opposed to performing it. We note that the relevant organizational structure to analyze is that existing 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). This is particularly relevant in the case of a new office extension, where the Petitioner must demonstrate that the new office has developed sufficiently within one year of the new office approval to support the managerial position. If a business does not have the necessary staffing after one year to sufficiently relieve the beneficiary from performing operational and administrative tasks, the petitioner is ineligible for an extension. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D).

In *Matter of G-*, the evidence supported that the beneficiary in that case directed the work of various teams across that petitioner's five business units and six geographic delivery areas and that he was supported by six direct and three indirect reports. *Matter of G- Inc.*, Adopted Decision 2017-05. In contrast, the Petitioner did not submit sufficient evidence to establish its organizational structure as of the date the petition was filed. In fact, it acknowledged that the Beneficiary was its only employee and made only vague references to contractors and other individuals who managed its affiliate's rental properties and oversight of a largely unexplained truck yard. As requested by the Director, the Petitioner provides no evidence to demonstrate the staff the Beneficiary was asserted to direct or their duties. In fact, 2015 financial statements and IRS Forms 1065 for the Petitioner and

all of its mentioned affiliates do not indicate that they paid any wages or salaries during that year, and no other documentary evidence supports that they had employees as of the date the petition was filed. Therefore, the Petitioner did not sufficiently demonstrate that the Beneficiary was relieved from performing non-qualifying operational duties specific to its operations and those of its claimed affiliates.

As discussed, the Petitioner provides an organizational chart on appeal suggesting that the Beneficiary oversees an accounting and a payroll employee. However, there is no supporting documentation to corroborate that these asserted employees were employed by the Petitioner as of the date the petition was filed; in fact, provided payroll documentation specific to those claimed employees begins in October 2017, approximately twenty months after the date the petition was filed, and reflects that these administrative employees worked only 8 hours bi-weekly. Further, the Petitioner provides IRS Forms 1099, Miscellaneous Income specific to various contractors engaged by its affiliate during 2016. However, the IRS Forms 1099 indicate that it paid only nominal amounts to these contractors asserted as a part of its organizational structure, including the plumbing ($893), maintenance ($1083.62 and $1050 respectively), roofing ($680), garage door ($725), and landscaping ($3545) contractors. Again, this evidence does not reflect that the contractors could be considered the Beneficiary's subordinates or that they were engaged sufficiently to primarily relieve him from performing non-qualifying operational level duties.

The 2016 IRS Forms 1099 also reflects that paid $20,000 to the claimed management consultant overseen by the Beneficiary, but the Petitioner does not describe the duties of this claimed member of its organizational structure nor how he would primarily relieve the Beneficiary from performing the operational duties specific to There is also no evidence to demonstrate that this claimed management consultant was engaged by the Petitioner at the time the petition was filed. In fact, as we have discussed, the record includes bank statements from January 2016 (just prior to the petition) through September 2016 (eight months after the petition) reflecting the Beneficiary writing checks to all the above referenced contractors, indicating his responsibility for monitoring properties and coordinating services. Furthermore, the evidence provided on appeal also raises question as to who was performing the non-qualifying tasks specific to the Petitioner itself and its other affiliates, including the asserted management of a truck yard and the maintenance of these vehicles, and oversight of properties earning nearly as much rental income as The Petitioner does not articulate or document who was relieving the Beneficiary from the non-qualifying duties inherent in its operations, and that of its affiliates, as of the date the petition was filed. Indeed, on appeal, the Petitioner asserts that the Beneficiary is relieved of these tasks based on newly hired employees and contractors, suggesting that previously, he was not primarily relieved of these tasks.

In conclusion, the Petitioner has not sufficiently detailed or documented the Beneficiary's qualifying managerial duties, and to the extent it provides details and documentation specific to his duties, this evidence is indicative of his performance of non-qualifying operational tasks. The Petitioner has not demonstrated with sufficient documentary evidence that the Beneficiary was responsible for

overseeing an essential function and primarily relieved from performing the non-qualifying duties of the function. For these reasons, the appeal will be dismissed.

III. DOING BUSINESS

Although not addressed by the Director, we find that the Petitioner has not demonstrated that it is doing business as defined by the regulations. A petitioner must demonstrate that it is engaged in the "regular, systematic, and continuous provision of goods or services and does not represent the mere presence of an agent or office in the United States." 8 C.F.R. § 214.2(l)(1)(ii)(H).

The Petitioner asserted when it filed the petition that it planned on launching an oil shale trucking business, but indicated in response to the RFE that these plans had been slowed by a global oil industry recession. As of the date of the appeal nearly two years later, there is no evidence that the Petitioner itself is providing goods or services, garnering revenue, or paying salaries. As we stated, the Petitioner's 2015 IRS Form 1065 and accompanying financial statements reflected that it had earned no revenue during that year, and it otherwise provides no evidence that it is continuously providing goods and services.

We acknowledge that the Petitioner submitted evidence that it holds ownership interests in several affiliates, two of which were shown to earn rental income during 2015. However, there is no indication or evidence that the Petitioner is directly providing goods and services related to these properties or that it is earning revenue from these activities. For these reasons, the Petitioner has not established that it was doing business as of the date the petition was filed.

IV. CONCLUSION

The appeal must be dismissed as the Petitioner did not establish that the Beneficiary would be employed in a managerial capacity under the extended petition and that it was doing business as required by the regulations.

ORDER: The appeal is dismissed.

Cite as *Matter of T-T-T-V-, LLC*, ID# 1583938 (AAO Sept. 24, 2018)