U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-T-P- LLC

DATE: SEPT. 26, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a commercial real estate management company, seeks to temporarily employ the Beneficiary as its president and chief executive officer (CEO) 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 Vermont Service Center revoked the approval of the instant petition concluding that the Petitioner did not establish that the Beneficiary was employed in a managerial or executive capacity.

On appeal, the Petitioner asserts that the Director was mistaken about the status of its office following a site visit and contends that the Beneficiary acted as a personnel manager overseeing subordinate managers and professionals.

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 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.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of

intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).[1]

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner has established that the Beneficiary was employed in a managerial capacity. The Petitioner does not claim that the Beneficiary was employed in an executive capacity. Therefore, we will restrict our analysis to whether the Beneficiary was 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 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 performed 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 was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the

[1] An L-1A nonimmigrant intracompany transferee petition filed on behalf of the Beneficiary was approved on June 17, 2016, for the period June 9, 2016, to June 8, 2018. The Director later revoked this approved petition on October 17, 2017, following the issuance of a notice of intent to revoke (NOIR) on April 5, 2017. The Director concluded that the Beneficiary was no longer eligible for the nonimmigrant classification. *See* 8 C.F.R § 214.2(l)(9)(iii)(A)(*2*).

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 in 2010 to "develop a property portfolio of strip malls" and submitted documentation indicating that it had purchased a commercial shopping center with several rentable commercial spaces for approximately $9 million.

In support of the petition, the Petitioner stated that the Beneficiary devoted his time to the following duties:

- 20% overseeing "the business activities and the management [of the] company";
- 15% determining "areas needing cost reduction and program improvement";
- 10% establishing the "company's policies and initiatives";
- 5% managing "successful negotiations leading to the company's growth,"
- 15% coordinating "corporate activities";
- 5% training new employees and overseeing personnel processes;
- 5% monitoring "business and agencies";
- 5% overseeing "activities directly related to providing services and planning";
- 10% maximizing investments and increasing efficiency;
- 10% supervising "overall operations and goals setting for each operating unit"; and
- 5% providing "leadership and policies to develop customer portfolios."[2]

In September 2016, following the approval of the petition, USCIS conducted a site visit to the Petitioner's asserted office location at [redacted] FL. The Petitioner's business operations could not be verified so an immigration officer followed up with the Petitioner who indicated that it had changed its office location to [redacted], FL. USCIS then conducted a site visit to the newly asserted office location in December 2016 and concluded that it was found locked and vacant with no signage and the Beneficiary was not present.

The Director later issued a NOIR regarding the site visits and requested that the Petitioner submit additional evidence to establish that the Beneficiary acted in a managerial capacity, including a description of his responsibilities and typical managerial duties, evidence of managerial decisions he made or contracts he signed, copies of correspondence reflecting his responsibilities, or samples of work product produced or reviewed by him. In response, the Petitioner submitted the same duty description for the Beneficiary it had provided in support of the petition. The Petitioner did provide several agreements executed by the Beneficiary in 2016 and 2017, including an engineering agreement to expand rental space within one of its commercial properties and several commercial lease agreements. The Petitioner also provided evidence indicating that several commercial tenants were paying rent according to these lease agreements. The Director later revoked the approved petition, concluding that the Petitioner did not establish that the Beneficiary was acting in a managerial or executive capacity.

[2] It is noted that these duties add up to 105%.

On appeal, the Petitioner states that the Beneficiary was appointed to be responsible for "planning and managing the resources of the Company as well as making decisions involving the Company's commercial business investments" and notes that he is in charge of the "short, mid and long-term plan[s] of the Company." The Petitioner further indicates that the Beneficiary was tasked with communicating with its foreign affiliate's board of directors and liaising between it and "internal and external stakeholders." The Petitioner also explains that the Beneficiary was tasked with "working with management and department heads to plan, develop, and establish policies and objectives," "managing the organization's operations," "increasing the effectiveness and efficiency of support services," coordinating "between support and business functions," and overseeing "financial management," "systems and controls," and the "development of program budgets."

The Petitioner has not submitted sufficient examples or documentation to substantiate his day-to-day managerial-level duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily 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 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 areas of cost reduction and program improvement he determined, policies and initiatives he established, corporate activities he coordinated, new employees he trained or personnel processes he oversaw, business and "agencies" he monitored, or "activities directly related to services" he supervised. Likewise, the Petitioner did not articulate or document investments he directed, goals he set for operating units or departments, or policies he developed for "customer portfolios." This lack of detail is particularly noteworthy since the Beneficiary is stated to have acted in his role as president and CEO of the Petitioner since June 2011.

On appeal, the Petitioner provides no additional detail or documentation specific to the Beneficiary's managerial duties, but only provides additional vague statements as to his activities, despite the Director concluding that his duties were overly vague. For instance, the Petitioner does not describe or document company resources the Beneficiary planned and managed, business investment decisions he made, internal or external stakeholders he liaised with, policies and objectives he established, operations he managed, support and business functions he coordinated, financial systems and controls he put in place, or program budgets he developed.

We acknowledge that the Petitioner provided evidence indicating that the Beneficiary executed leases and other contracts relevant to the lease of commercial spaces in the strip mall it purchased in Florida. However, beyond this, the Petitioner submitted few details and little documentation regarding the Beneficiary's actual day-to-day managerial duties. In fact, several of his stated duties appear to bear little relation to his stated oversight of a strip mall; such as, references to programs and program budgets, "business functions," and "customer portfolios." Likewise, the Petitioner indicates that the Beneficiary was tasked with managing department heads; however, its submitted

organizational chart does not indicate that it has separate departments devoted to different business functions as asserted. In sum, the Beneficiary's duty descriptions do not demonstrate that the Beneficiary devoted his time primarily to managerial duties.

Even though the Beneficiary holds a senior position within the organization, the fact that he manages or directs 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. Sections 101(A)(44)(A) of the Act. The Beneficiary may have exercised discretion over the Petitioner's day-to-day operations and possessed the requisite level of authority with respect to discretionary decision-making; however, the job description alone is insufficient to establish that his actual duties were primarily managerial in nature.

B. Staffing

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.

The Petitioner submitted identical organizational charts in support of the petition and in response to the Director's NOIR. The charts indicated that the Beneficiary directly oversaw one employee – an operations manager – and the operations manager supervised a client relations specialist, a property manager, an on-site property supervisor, and contracted accountants. In addition, the chart reflected that the client relations specialist oversaw an administrative assistant, the property manager supervised a receptionist, and the on-site property supervisor oversaw "general and sub-contractors."

However, in response to the NOIR and on appeal, the Petitioner states that the Beneficiary directly oversaw all six subordinate employees, which calls into question the tiered structure depicted in the organizational chart. The Petitioner asserts that the Beneficiary qualifies as a personnel manager due to his oversight of these subordinate employees. We have reviewed the evidence submitted by the Petitioner and conclude that even if the Beneficiary directly oversaw more than one employee, the Beneficiary did not qualify as a personnel manager.

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. As the Petitioner does not assert that the Beneficiary qualifies as a function manager, we will restrict our analysis to whether he acted as a personnel 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." Section 101(a)(44)(A) of the Act. 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*).

As noted, a USCIS officer conducted two site visits to the Petitioner's asserted office locations, the first to [redacted] FL, the employment location claimed on the petition, and a second to the Petitioner's new location, [redacted] FL. In the NOIR, the Director noted that when the inspector visited [redacted] in December 2016, it was "locked" and "vacant." In response, the Petitioner asserted that the office was closed for the holidays and that the Beneficiary had been traveling in Germany at the time, thereby explaining his absence from the office location.

However, the Petitioner provided no explanation as to why this property was vacant. This discrepancy leaves question as to whether the Beneficiary was overseeing an office with subordinate managers as claimed. The Petitioner provides little supporting documentation to substantiate that the Beneficiary oversees an office with multiple managers or evidence indicating his delegation of duties and authority to its asserted managers. In fact, there is no documentary evidence on the record of the Beneficiary's subordinates performing duties for the company. As noted, the Director suggested in the NOIR that the Petitioner submit copies of correspondence reflecting his responsibilities or samples of work product produced or reviewed by him. However, there is insufficient evidence on the record to substantiate the existence of an office with multiple managers, beyond evidence indicating that the company owns several commercial spaces which could be used for an office. The Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, the Petitioner has not submitted a sufficiently detailed duty description for the Beneficiary's sole direct subordinate indicated on the organizational chart, the operations manager. For instance, the Petitioner stated that the operations manager was tasked with conducting periodic planning sessions with other members of the company, identifying operational needs from the on-site property supervisor, implementing systems and procedures, supervising outsourced accounting services, implementing budget control procedures, and developing service agreements with vendors. However, the Petitioner submits insufficient evidence, beyond annual company tax returns, to substantiate that the operations manager oversees or supervises outsourced accounting services. The operations manager's duties also do not clearly articulate supervisory responsibility, such as his or her claimed supervision of a subordinate property manager, an on-site property supervisor, and a client relations specialist.

Moreover, even if the Beneficiary directly managed the operations manager's subordinates depicted on the organizational chart, there is a lack of supporting evidence to demonstrate that the client relations specialist, property manager, and on-site property supervisor could be deemed managers. For example, there is little evidence to establish that the contractors are regularly engaged such that they could be considered members of the Petitioner's organizational chart and subordinates to the on-site property supervisor.

Record evidence does not support that the Petitioner has multiple tiers of management and the record does not contain sufficient duty descriptions and other supporting documentation to substantiate that the Beneficiary is primarily responsible for managing subordinate managers and supervisors.

In the alternative, the Petitioner did not demonstrate that the Beneficiary supervised professional subordinates. In evaluating 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."

The Petitioner indicated that some of the members of its organizational chart hold bachelor's degrees; for instance, it stated that the property manager holds a bachelor's degree in nursing and the on-site property manager a bachelor's degree in civil engineering. However, the Petitioner submits no supporting documentation to substantiate that the Beneficiary's only immediate subordinate on the organizational chart, the operations manager, holds a bachelor's degree or that this position requires a bachelor's degree. Further, even if we were to consider the other employees of the company, we must focus on the level of education required by the position, rather than the degree held by these subordinate employees. The possession of a bachelor's degree by a subordinate employee does not automatically lead to a conclusion that an employee is employed in a professional capacity. Even if they reported directly to the Beneficiary, the Petitioner does not describe why bachelor's degrees are required for the property manager and on-site property manager positions. Therefore, the Petitioner has not submitted sufficient evidence to demonstrate that the Beneficiary supervised professional subordinates.

For the reasons discussed above, we conclude that the Director properly revoked the previously approved petition, as the Petitioner did not establish that the Beneficiary acted in a managerial capacity. For this reason, the appeal will be dismissed.

III. CONCLUSION

The Petitioner has not established that the Beneficiary was employed in a managerial capacity; therefore, the revocation of the approved petition will not be disturbed.

ORDER: The appeal is dismissed.

Cite as *Matter of G-T-P- LLC*, ID# 1471656 (AAO Sept. 26, 2018)