U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18967213

Date: SEP. 29, 2021

Appeal of Texas Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A)

The Petitioner, an import/export business, seeks to temporarily employ the Beneficiary as the corporate president of its new office[1] in the United States 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 Director of the Texas Service Center denied the petition concluding the record did not establish that the Beneficiary had one continuous year of qualifying employment abroad during the three years preceding the filing of the petition and did not establish that the Beneficiary's employment abroad was in a managerial or executive capacity.

On appeal, the Petitioner asserts the Director's decision is incorrect and does not comport with the law and facts of the petition. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence.[2]

Upon *de novo* review, we will dismiss the appeal.[3]

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 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 their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

---

[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] *See* section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

[3] *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

The petitioner must also 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. CONTINUOUS EMPLOYMENT ABROAD

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner identified the foreign employer as [redacted] a [redacted] company. The Petitioner stated that the Beneficiary has been employed with the [redacted] company since its inception in September 2012. In a letter in support of the petition, the foreign entity indicated the Beneficiary was the founding officer of the foreign entity, was elected president and continues to be president, and is the sole shareholder in the company.[4]

The record does not include the Beneficiary's passport and U.S. Citizenship and Immigration Services' records show that the Beneficiary was in the United States from March 4, 2018 to August 19, 2018 and again from February 21, 2019 to August 20, 2019. Thus, during part of the 2018 and 2019 years, the Beneficiary does not appear to have been working for the foreign entity in [redacted].[5] The record does not include probative evidence of the Beneficiary's full-time continuous employment for one year during the period July 1, 2016 to July 1, 2019, the three years preceding the filing of this petition on July 1, 2019. The Petitioner does not offer probative evidence or argument corroborating the Beneficiary's employment for the [redacted] entity on appeal. Without additional evidence demonstrating the Beneficiary's actual employment during the pertinent period, the record is insufficient to establish this essential requirement for eligibility for this nonimmigrant visa.

III. EXECUTIVE/MANAGERIAL CAPACITY WITH THE FOREIGN EMPLOYER

The Petitioner also has not established that the Beneficiary was employed abroad in a managerial or executive capacity. As a preliminary matter, the Petitioner does not clearly articulate whether the Beneficiary has been or is employed in a managerial or executive capacity abroad.[6] The Petitioner does not clarify whether the Beneficiary will be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. The

[4] The foreign entity also noted that the Beneficiary is a partial shareholder in a Pakistani company. The foreign entity does not discuss whether the Beneficiary is actively involved in work for the Pakistani company and if so when the work occurred or whether his role is more limited. Accordingly, it is not possible to ascertain the impact, if any, of the Beneficiary's involvement with the Pakistani company. The lack of information in the record regarding the Beneficiary's past employment for this separate entity, or others, precludes a conclusion that the Beneficiary worked full time for the [redacted] foreign entity during the three years preceding the filing of the petition.

[5] The regulation at 8 CFR 214.2(l)(1)(ii)(A) defines an intracompany transferee, in part, as one "who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a [qualifying entity], and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof . . . ." The regulation further states "[p]eriods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement." *Id.*

[6] The Petitioner does not claim and the record does not show that the Beneficiary was employed in a specialized knowledge capacity.

Petitioner must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are either in an executive or managerial capacity. The Petitioner must demonstrate that the Beneficiary's responsibilities meet the requirements of one or the other 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.

The statute defines "executive capacity" as an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

A. Duties

To be eligible for L-1A nonimmigrant visa classification as a manager or executive, the 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) or 101(a)(44)(B)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements for one or the other of these sections, we cannot conclude that the foreign position is a qualifying managerial or executive position.

In a support letter, the foreign employer indicated it was established in September 2012 and that it employed several people in the office. The foreign entity noted the Beneficiary is responsible for final approval on all major contracts for price and terms, that he directs the work of the staff, sets policy, hires, fires, and promotes staff, approves budgets and expanding market presence, as well as negotiates terms with carriers. In response to the Director's request for evidence (RFE) on this issue, the Petitioner submitted financial reports and statements signed by the Beneficiary in his capacity as director. The record also included the Beneficiary's verification of three employees for the foreign entity. Other than the Beneficiary's signature, the record does not include evidence of the Beneficiary's tasks in creating these documents, if any.

On appeal, the Petitioner submits a statement from the foreign entity's auditor who states that the Beneficiary is the director and chief executive officer of the foreign entity and has been since September 2012 and that he continues in that position. The auditor also indicates that the Beneficiary is responsible for: hiring, firing, and promoting staff or approving those actions; giving final approval on all major contracts; arranging or approving any corporate borrowing; setting corporate policies on hiring, firing, extension of credit to clients; giving final approval in the extension or change in product lines; and, giving final approval on plans for international expansion of the company's operations.

The auditor notes that even though the Beneficiary "is outside the country at the present time [October 28, 2020], he continues to perform these executive duties."

The descriptions of the Beneficiary's duties abroad are generic and could apply to any manager or executive acting in any business or industry. They provide little insight into the actual nature of the Beneficiary's role abroad. Reciting the 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 Petitioner has not provided the detail or explanation of the Beneficiary's activities in the course of their daily routine. The actual duties themselves will reveal the true nature of the employment. *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 did not provide examples of the Beneficiary's work, did not identify contracts negotiated, did not submit evidence of corporate policies created, and did not include evidence of particular product lines. The record reveals little about the foreign entity's trading business and the Beneficiary's role in directing the management of the organization or managing the organization. Likewise, the Petitioner did not adequately detail or document financial resources discussed, plans created, or marketing expansion designed. The Petitioner also did not articulate or provide supporting documentation to substantiate the Beneficiary's management and oversight of subordinates. Lastly, the Petitioner did not detail or corroborate the major business partners and clients the Beneficiary maintained relationships with, expense proposals or funding requests approved or denied, or final hiring or personnel dismissal issues decided. The lack of detail and documentation related to the Beneficiary's asserted foreign capacity is noteworthy given that the Petitioner asserts the Beneficiary had been in this role since September 2012. The record does not include supporting documentation to demonstrate the Beneficiary's performance of qualifying duties abroad.

The descriptions of the Beneficiary's claimed duties are not substantive and do not include the percentage of time allocated to specific tasks or categories of tasks. We are unable to determine whether the majority of the Beneficiary's duties are non-qualifying administrative or operational duties or whether the duties constitute primarily managerial or executive duties. That is, the descriptions of the Beneficiary's job duties for the foreign entity do not establish what proportion of the duties is managerial or executive in nature, and what proportion is non-managerial and non-executive. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

The fact that the Beneficiary will manage or direct a business, which has not been established in this record, 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. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. While 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, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial or executive in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the reasonable needs of the organization are taken into account in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and they must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Similarly, a personnel manager[7] is 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)(iv) 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*).

The record here does not include an organizational chart showing the employees at the foreign entity. In addition, the references to the foreign employees in the record is inconsistent. Initially, for example, the foreign entity noted it employed a financial officer who is responsible for banking operations, reviewing, and recommending credit for customers, preparing financial documents to send goods internationally, and who directs the preparation of invoices, bills of lading, as well as coordinating the creation of a budget with the Beneficiary. In response to the Director's RFE, although the Beneficiary verifies the employment of a part-time clerk, a sales representative, and a stockkeeper, an individual performing the duties described for the financial officer is not included as one of the foreign entity's employees. Similarly, the foreign entity initially stated it employed a shipping director who directed suppliers including cargo firms and freight carriers, two quality control inspectors, and sales representatives in some countries. Other than verifying the employment of a sales representative, the record does not include verification letters of any of the employees initially mentioned.

Moreover, the record does not include sufficiently detailed duty descriptions for any of the foreign entity's claimed employees such that we may review and analyze their duties. The record does not

[7] The Petitioner does not claim and the record does not include evidence to suggest that the Beneficiary's foreign position is a function manager. 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. Here, the Petitioner does not articulate a specific function that the Beneficiary managed for the foreign entity.

substantiate that any subordinate employees at the foreign entity provide supervisory, managerial, or professional tasks rather than primarily performing the necessary operational and administrative tasks of the organization. Accordingly, it is not possible to conclude that the Beneficiary would "direct the management" of the organization or would primarily supervise and control the work of other supervisory, professional, or managerial employees. The record is deficient in establishing the roles and claimed responsibilities of the foreign entity's employees.

Further, even if the Petitioner establishes that the offered position meets all elements set forth in one of the statutory definitions, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive 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). An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). Without consistent and probative evidence substantiating its employees and their duties and roles within the foreign entity's operations, the Petitioner has not established that it employs subordinate staff sufficient to relieve the Beneficiary from performing non-qualifying duties.

For the foregoing reasons, the Petitioner has not established that the Beneficiary has been or is employed abroad in a managerial or executive capacity.

IV. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that: 1) the Beneficiary had one continuous year of full-time qualifying employment abroad during the three years preceding the filing of this petition, and 2) that the Beneficiary's employment abroad is in a managerial or executive capacity. As these issues are dispositive in this case, we need not reach other issues in this matter including whether the Petitioner has established a qualifying relationship with the Beneficiary's foreign employer and whether the Beneficiary would be employed in a managerial or executive capacity in the United States within one year. Accordingly, those issues are reserved.

ORDER: The appeal is dismissed.