U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21199784

Date: AUG. 3, 2022

Appeal of California Service Center Decision

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

The Petitioner, a chemical manufacturer, previously employed the Beneficiary as a technology steward/advanced engineer under the L-1B nonimmigrant classification for intracompany transferees with specialized knowledge. The Petitioner promoted the Beneficiary to technology leader and filed the present petition seeking to change the Beneficiary's nonimmigrant classification to L-1A. 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, as required, that the Beneficiary has been employed abroad in a qualifying 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 dismiss the appeal.

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.*

II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The Director determined that the Petitioner did not establish that the Beneficiary has been employed abroad in a capacity that was managerial, executive, or involved specialized knowledge. The Petitioner claims that the Beneficiary was employed abroad in a managerial capacity, and therefore we will restrict our analysis accordingly.

"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.

A petitioner must show that the beneficiary performed all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) of the Act. If a petitioner establishes that the position abroad meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary was *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 were 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 contribute to understanding the beneficiary's actual duties and role in the business.

Before entering the United States in January 2019 to work for the Petitioner, the Beneficiary worked for the Petitioner's subsidiary in Mexico. The Petitioner claims that the Beneficiary worked in two consecutive managerial positions in Mexico during the three years immediately preceding his entry into the United States. Specifically, the Beneficiary worked as an advanced maintenance engineer from October 2016 to March 2018, and as a product performance engineer from March 2018 until January 2019.

The regulation at 8 C.F.R. § 214.2(l)(3) requires the Petitioner to establish that, during the three years immediately preceding entry into the United States, the Beneficiary worked at least one continuous year in a capacity that was managerial, executive, or involved specialized knowledge. Because the Beneficiary worked as a product performance engineer for less than a year, his experience in that position cannot suffice, by itself, to establish the required year of qualifying employment; he would need to rely either entirely or in part on his earlier employment as an advanced maintenance engineer. Therefore, we will focus on his approximately 18 months of employment as an advanced maintenance engineer during the relevant three-year period.

For the reasons discussed below, we conclude that the Petitioner has not shown that he primarily managed a department, subdivision, function, or component of the Petitioner's subsidiary in Mexico.

In a letter submitted with the petition, the Petitioner stated that the Beneficiary performed the following duties as an advanced maintenance engineer, for the approximate percentages of time shown:

- Managing and supporting Maintenance Supervisors and Planners and optimizing work orders planning and execution (15%);

- Maintaining healthy maintenance administrative systems, auditing them and following up on actions (5%);
- Managing and reporting monthly maintenance spending and adjusting maintenance schedule to comply with the area budget (15%);
- Auditing maintenance work orders and notifications to verify compliance with [the company's] Work Process (5%);
- Managing of personnel (staff and technicians) overtime to comply with site target (5%);
- Verifying maintenance schedule completion and keeping schedule breaks below site target (5%);
- Supporting the Mechanical Integrity department when performing joint activities (5%);
- Having accountability of keeping Maintenance Bill of Materials, Maintenance Plans and Process Information in coordination with the maintenance planner (5%);
- Coordinating with operative area leaders to schedule major maintenance and turnarounds (10%);
- Approving Maintenance purchase orders over $10,000 in SAP (5%);
- Ensuring maintenance personnel availability by managing staff and technician coverage during holidays and vacation periods (5%);
- Promoting personnel recognition and continuous training (5%);
- Creating and following up on cost reduction initiatives and programs (10%); and
- Ensuring equipment availability for the Utilities and Acetate departments (5%).

An accompanying statement, said to include "further detail[s]," essentially repeats the same language.

The legal representative of the subsidiary in Mexico stated:

> As an Advanced Maintenance Engineer [the Beneficiary's] responsibilities were to maintain the acetate plant assets in peak condition . . . . This role combines 3 maintenance specialties (mechanical, electrical and instrumentation) within a single position and thus, with 5 direct reports and 28 indirect ones, he led these teams as a single group.

The same individual described "2 cost reduction projects" and "an external audit," although the submitted percentage figures indicate that such activities consumed only a small share of the Beneficiary's time.

In a request for evidence (RFE), the Director asked for further details about the Beneficiary's specific duties and tasks, stating that the description submitted by the Petitioner includes "generalized duties and responsibilities." In response, the Petitioner resubmitted the same job description. Counsel for the Petitioner stated that the Beneficiary "managed and had direct responsibility for [the foreign employer's] Utilities and Tow Department," but the record does not corroborate this claim. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). An earlier letter, signed by a company official, indicated that the Beneficiary "was in charge of overseeing the planning, scheduling and execution of maintenance jobs" *within* the "Utilities and Tow Department," and was "also

responsible for managing the capital and project budget" for that department, but did not state that the Beneficiary managed the department. Rather, the Beneficiary "was fully responsible for leading the overall direction of the . . . maintenance teams under his control."

The Director denied the petition, concluding that the Petitioner had not established that the advanced maintenance engineer position meets all the requirements of a managerial capacity. On appeal, the Petitioner asserts that the Director "erred by failing to consider . . . whether the Advance Maintenance Engineer role qualified as a foreign 'managerial' role." But in the denial decision, the Director quoted the above job description in full, demonstrating the Director was aware of the position and considered it. The appellate brief repeats substantial portions of the RFE response, including the assertion that the Beneficiary "managed and had direct responsibility for [the foreign employer's] Utilities and Tow Department." We have already discussed the Petitioner's response to the RFE.

In the RFE, the Director stated that the job description for the advanced maintenance engineer position lacks specificity. We agree. Verbs such as "managing," "ensuring," and "supporting" refer to areas of responsibility but do not show what tasks the Beneficiary performed to meet those responsibilities. 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).

There is no evidence that the Beneficiary managed the foreign subsidiary's Utilities and Tow Department, and the Petitioner has not shown that the maintenance activities that the Beneficiary oversaw amount, in themselves, to a department, subdivision, function, or component of the company.

For the above reasons, we cannot agree with the claim that the Beneficiary "primarily managed a department" of the employing entity in Mexico.

With regard to subordinate personnel, the Petitioner indicated that the Beneficiary supervised five subordinate employees, specifically a maintenance supervisor; two maintenance planners; a training coordinator; and an HVAC supervisor. The record contains no further information or evidence concerning the "28 indirect" reports mentioned in the letter from the Petitioner's subsidiary. The Petitioner indicated that the maintenance supervisor, HVAC supervisor, and one of the maintenance planners were professionals. The Petitioner does not explain the implied conclusion that only one of the two maintenance planners was a professional. Although some of these claimed subordinates have supervisory titles, the Petitioner did not provide any information or evidence to show whom those individuals supervised.

The Petitioner initially submitted printouts of LinkedIn profiles for the individuals named for three of those positions. Those profiles, however, are not consistent with the Petitioner's assertions.

The claimed maintenance supervisor stated his title as "Maintenance Scheduler" on LinkedIn. The person named as training coordinator did claim that title, but indicated that his primary responsibility was as a maintenance planner – a role, according to the Petitioner, assigned to two other employees.

The most serious discrepancy involves the individual named as the HVAC supervisor. On his LinkedIn page, he did not claim ever to have held that title. Instead, he stated that he worked for the Petitioner's Mexican subsidiary until 2011, most recently as a project engineer. He further indicated that he has worked since 2015 for another company located in [redacted] hundreds of miles from the Petitioner's subsidiary in [redacted]

In the RFE, the Director stated that the Petitioner had not submitted adequate evidence about the Beneficiary's claimed subordinates abroad. In response, the Petitioner submitted another LinkedIn printout for the individual whom the Petitioner identified as one of two maintenance supervisors under the Beneficiary's authority in Mexico. This printout indicates that the individual had worked as a "Programmer" since 2014.

In the denial notice, the Director concluded that the Petitioner had not provided enough evidence to support its claims about the Beneficiary's supervision of professional employees. On appeal, counsel for the Petitioner repeats assertions previously submitted in response to the RFE.

The Petitioner claims that the Beneficiary supervised five direct subordinates when he worked in Mexico as an advanced maintenance engineer, but the record does not adequately support this claim. Some of these claimed subordinates are called supervisors, but the supervisory nature of their duties is not evident; the Petitioner has submitted evidence about only three of these claimed subordinates; and the submitted evidence (self-reported job details on the third-party LinkedIn website) is not consistent with the Petitioner's assertions about the individuals in question.

The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Given the discrepancies and gaps in the submitted evidence, we cannot conclude that the Petitioner has met its burden to establish that the Beneficiary supervised the work of supervisory, managerial, or professional employees during his time as an advanced maintenance engineer in Mexico.

It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Ho*, 19 I&N Dec. at 588-89; *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966); *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019). Based on the deficiencies discussed above, the Petitioner has not met its burden to establish that the Beneficiary worked abroad for at least one continuous year in a managerial capacity during the three years immediately preceding his entry into the United States.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.