U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19895167

Date: FEB. 07, 2022

Appeal of California Service Center Decision

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

The Petitioner, a manufacturer and wholesaler of fine jewelry, seeks to temporarily employ the Beneficiary as its product development manager under the L-1A classification for intracompany transferees. Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 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 work temporarily in the United States in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish, as required, that it 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. By a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will sustain the appeal.

"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 statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." In denying the petition, the Director determined that the Petitioner did not clearly articulate whether the Beneficiary would act as a personnel manager or a function manager and concluded that the record did not otherwise establish that "the nature and scope of [the Petitioner's] business activities and corporate structure are adequate to support him in a managerial position." The

Director noted that the Petitioner did not claim that the Beneficiary's subordinates are managerial, supervisory, or professional employees, as required to establish his eligibility as a "personnel manager." With respect to the Beneficiary's qualifications as a function manager, the Director determined that the Petitioner did not adequately describe the function to be managed by the beneficiary or establish that it would have sufficient staff "exclusively supporting the beneficiary's proposed duties and position," and relieving him from performing non-managerial duties.

We agree with the Director's determination that the record does not establish that the Beneficiary would be employed in a managerial capacity based on his supervision of subordinate personnel. The Petitioner clarifies on appeal that it did not intend to claim that the Beneficiary qualifies for L-1A classification based on his supervision of subordinate personnel. Rather, the Petitioner contends that it established by a preponderance of the evidence that the Beneficiary will primarily manage an essential function of the company.

The term "function manager" applies generally when a beneficiary does not directly 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 (AAO Nov. 8, 2017).

The Petitioner established that it is a well-established jewelry manufacturer established in 1994, with approximately 50 employees at its California location, annual sales of $26 million, and products that are sold by fine jewelry retailers throughout the United States. The Petitioner provided a statement explaining why the company's product development function is essential to ensuring that its final products are both marketable and profitable, and detailing the design, technical and financial decision-making involved in the process of developing and launching new products and product lines. The Petitioner's evidence is sufficient to establish that product development is a clearly defined activity that is essential to the organization.

The record further establishes that the offered position is at a senior level within the organization, reporting only to the company's executive partners, and that it involves discretion over the day-to-day operations of the product development department and function. As noted, the Petitioner must also establish that the Beneficiary primarily manages, rather than performs, the function for which he is responsible. However, it does not need to demonstrate that all staff who support the essential function managed do so "exclusively" as stated in the Director's decision. Although the product development department has a relatively small staff responsible for generating new designs, models, molds and prototypes, the Petitioner explained that the product development manager is required to work closely with senior staff in sales, marketing, purchasing, production, and other departments, and relies on staff within these components for support in managing the product development function. Based on the structure of the organization and the nature and scope of the business, we conclude that the Petitioner established its ability to support a managerial position responsible for product development activities.

Finally, while the record reflects that the Beneficiary would be required to perform some operational tasks associated with the function he manages, the Petitioner has established that he, more likely than not, would primarily perform duties consistent with the definition of managerial capacity at section 101(a)(44)(A) of the Act. Accordingly, we will sustain the appeal.

ORDER: The appeal is sustained.