U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF G-3 CORP.

DATE: APR. 5, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a health/scientific research/sale business, seeks to temporarily employ the Beneficiary as its President/CEO under the L-1A nonimmigrant classification for intracompany transferees.[1] *See* 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 petition, concluding that the Petitioner did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity. On appeal, the Petitioner disputes the Director's findings, claiming that the Beneficiary will be employed in an executive capacity.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision.

## 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).

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf, approved for the period from July 20, 2015, until July 19, 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). This evidence must demonstrate that the beneficiary will be employed in a managerial or executive capacity, as defined at sections 101(a)(44)(A) and (B) of the Act, under the extended petition.

Under U.S. Citizenship and Immigration Services 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).

## II. EXECUTIVE CAPACITY IN THE UNITED STATES

The Director initially approved the petition and granted the Beneficiary a two-year extension of status from July 20, 2016, to July 19, 2018. Following approval of the extension petition, an administrative site visit was conducted at the address listed on the petition on February 17, 2017. According to the Director, the evidence obtained during the site visit failed to show that the Petitioner has been and will continue to do business, and that the Beneficiary is employed in a qualifying managerial or executive position in the United States. The Director issued a notice of intent to revoke (NOIR) to the Petitioner requesting evidence of the Petitioner's operations and the Beneficiary's employment.

Following receipt of the Petitioner's response to the NOIR, the Director issued a notice of revocation and determined that the record does not establish that the Beneficiary is employed in a qualifying managerial or executive position in the United States. Under the regulation at 8 C.F.R. § 214.2(l)(9)(iii)(A), the approval was revoked because the Beneficiary is no longer eligible under section 101(a)(15)(L) of the Act.

In the revocation decision, the Director noted that the Petitioner's statements concerning the Beneficiary's job duties restated portions of the L-1A regulations. She stated that while the Beneficiary's "level of discretionary authority is not in dispute," the description of the Beneficiary's duties does not establish that they are primarily managerial or executive in nature, or that the Beneficiary would be relieved from performing primarily non-qualifying duties. She also noted that the duties are not consistent with the size, scope, and number of employees of the business. The Director also determined that the record does not show that the Beneficiary is supervising and supervisory, professional, or managerial workers and that she is performing as a first-line supervisor. The Director further stated that "it appears that the beneficiary is primarily engaged in sales and promotion of [the Petitioner's] organization and its offerings, and is not employed in a managerial or executive capacity." Thus, the Director revoked the approval of the petition.

While we agree with that the job description submitted for the Beneficiary may be lacking in detail, the Beneficiary's duties were not analyzed in any meaningful way to support the conclusions reached. The decision does not reflect that the Director considered the evidence in its totality, nor does the decision adequately explain how that evidence led the Director to conclude that the Beneficiary does not primarily perform managerial or executive duties. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Beyond the required description of the job duties, the Director should have reviewed the company's organizational structure, the duties of the Beneficiary's subordinate employees, the presence of other employees to relieve her from performing operational duties, the nature of the business, and any other evidence submitted to support the Petitioner's claims. While the revocation decision states that the Director reviewed "the totality of evidence," there is no discussion of the Petitioner's organizational chart, staffing levels, employee job descriptions and resumes, payroll records, or other evidence the Petitioner submitted to establish that it had sufficient staff to relieve the Beneficiary from involvement in its day-to-day operations.

Accordingly, we will withdraw the Director's decision and remand the matter for issuance of a new decision on this issue, which should take into account and fully discuss the totality of the evidence submitted in support of the Petitioner's claim that the Beneficiary will be employed in an executive capacity.

## III. CONCLUSION

The Director's decision will be withdrawn for the foregoing reasons, and the matter will be remanded. The Director should review the totality of the evidence and the issues addressed above, and, if warranted, issue a new NOIR prior to entering a new decision.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of G-3 Corp.*, ID# 2596938 (AAO Apr. 5, 2019)