U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15804247

Date: APR. 08, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, describing itself as a seller of home furnishings, seeks to temporarily employ the Beneficiary as the chief operating officer (COO) of its new office[1] 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, as required, that the Beneficiary would be employed in a managerial or executive capacity within one year of an approval of the petition.

On appeal, the Petitioner asserts it submitted "overwhelming evidence" to support that the Beneficiary would act in a managerial or executive capacity within one year of an approval. The Petitioner emphasizes financial projections asserting that it would earn over $7 million during its first four years of operation and contends this income would support the Beneficiary in a qualifying managerial capacity.

Upon *de novo* review, we will dismiss the appeal. Since In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361.

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 his or her 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.

The petitioner must 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. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to analyze is whether the Petitioner established that it would employ the Beneficiary in a managerial capacity within one year of the petition's approval. The Petitioner does not claim that the Beneficiary would be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in a managerial capacity.[2]

"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.

In order to determine whether the Petitioner established that its new office will support a managerial position within one year, we will review the Beneficiary's proposed job duties, along with the Petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the Beneficiary in the intended managerial capacity. The totality of the evidence must be considered in analyzing whether the proposed managerial position is plausible, considering a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

A. Duties

The Petitioner stated that it would be "dedicated to distributing Bath & Kitchen supplies" representing the "best top global brands," as well as "and other materials of final finishes in the construction and interior design industry." The Petitioner also indicated that its services would include providing professional advice to architects, developers, contractors, and designers on what products they should use for projects and renovations, creating official presentations for the brands it represents, organizing trade shows, and arranging agreements with hotel engineering and purchasing departments to provide products. The Petitioner submitted the following duty description for the Beneficiary as its proposed COO:

---

[2] On appeal, the Petitioner only generically contends it demonstrated that the Beneficiary would be employed in a "managerial *or* [emphasis added] executive capacity" within one year. However, on appeal and throughout the record the Petitioner did not, and does not, provide specific assertions as to how the Beneficiary would be employed in an executive capacity. In fact, prior to appeal, it only expressly stated that the Beneficiary would be employed in a managerial capacity. As such, we will only analyze whether the Beneficiary would be employed in a managerial capacity in this decision.

- Manage the entire U.S. organization. Direct and coordinate activities and operation of the U.S. Company including development the U.S. investment, executive and personnel actions – 10 hours per week
- Oversee all financial aspects of the company and set strategic policies and objectives – 3 hours per week
- Plan, formulate and implement administrative and operational policies and procedures – 3 hours per week
- Prepare annual budgets and ensure that company revenues and expenditures fall within budgeted amounts – 2 hours per week
- Control the expenditures of company funds in an orderly procedure, and ensuring that payments are recorded correctly in the register within operational and administrative objectives – 2 hours per week
- Coordinate and direct the accounting and administration processes of the company for the purpose of maintaining homogenous and cohesive policies to guarantee financial success – 3 hours per week
- Ensure that the managerial procedures and policies of the company abide by all current laws and regulations – 3 hours per week
- Establish the procedures for implementing the payroll process and company benefits in compliance with all laws and regulations – 2 hours per week
- Analyze current regulations and their affect in the company's economic and financial policies – 2 hours per week
- Oversee the Warehouse Manager, Freight & Logistics Manager, Project Sales Manager and Showroom Administrative Manager – 5 hours per week
- Supervise and exercise total direction over subordinate employees who perform the day-to-day work with authority to hire and fire the employees – 5 hours per week

The Petitioner submitted a duty description for the Beneficiary that does not credibly demonstrate he would primarily perform managerial tasks within the first year. The Petitioner did not sufficiently detail the managerial tasks the Beneficiary would perform during within one year. Although we acknowledge that the Petitioner generally indicated the Beneficiary would delegate tasks to the claimed subordinate managers it asserts it will hire, it did not sufficiently explain the asserted managerial tasks he would complete during the first year to successfully launch the new business operation. For instance, the Petitioner did not specify the U.S. investment the Beneficiary would "develop," financial aspects of the company he would oversee, strategic policies or objectives he would set, administrative and operational policies and procedures he would put in place, or annual budgets he would prepare and manage. Likewise, the Petitioner did not specifically describe the accounting and administration processes the Beneficiary would coordinate, the managerial procedures and procedures he would oversee, or regulations he would analyze.

Although we do not expect to the Petitioner to detail every managerial-level task of the Beneficiary during the first year, the lack of these specifics leaves substantial uncertainty as to whether he would primarily perform managerial-level duties within the first year. In fact, the Beneficiary's duties could apply to any individual acting in a managerial capacity within any company in any industry. Specifics are clearly an important indication of whether a beneficiary's duties would be 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).

B. Business Plan and Projected Staffing

In the case of a new office petition, we review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in analyzing whether the proposed managerial position is plausible based on a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

The Petitioner submitted a proposed organizational chart reflecting that the Beneficiary would supervise warehouse, freight and logistics, project sales, and showroom administration managers. The chart further indicated that the warehouse manager would oversee a warehouse coordinator and two warehouse employees, the freight and logistics manager would supervise an assistant, and the project sales manager would oversee a project sales representative. Lastly, the chart reflected that the showroom administrative manager would supervise a showroom sales manager who would oversee three sales representatives.

The Petitioner stated in support letters that the Beneficiary would "control the work of other subordinate supervisors," appearing to assert that he would be employed as a personnel manager within one year. 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. We note that the Petitioner does not contend that the Beneficiary would act as a function manager within one year; as such, we will only analyze whether he would qualify 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*).

The Petitioner has not sufficiently demonstrated that the Beneficiary would likely be employed as a personnel manager based on his supervision of subordinate managers or supervisors within one year. First, the Petitioner did not submit duty descriptions or education requirements for his asserted supervisory subordinates to sufficiently corroborate these proposed positions, despite this evidence being directly requested by the Director. Further, the Petitioner provided no hiring timeline or credible financial projections on how or when it would hire the thirteen positions within its projected organizational chart. The Petitioner also submitted no concrete list of actions it would take during the first year to successfully launch the business and hire the numerous members of its projected organizational structure. The Petitioner only provided a generic business plan setting forth certain information about its industry and market place but few credible business plans specific to its proposed venture.

For instance, the Petitioner's business plan appears to indicate that it would open a total of five retail stores, including two in each of its first three years of operation. However, there is little explanation or evidence as to how the Petitioner would accomplish this expansion and it is not clear how its expansion over three years is relevant to demonstrating how the Beneficiary would act in a managerial capacity within the required one year. Likewise, the Petitioner emphasizes on appeal that it would earn over $7 million in the first four years of operation, but there is little credible explanation as to how this level of revenue would be achieved and this vague assertion does not demonstrate how it would be sufficiently operational within one year to support the Beneficiary in his proposed role, along with his many claimed subordinates. The Petitioner vague business and hiring plans and the lack of information with respect to his proposed subordinates leaves substantial uncertainty as to whether the Petitioner would successfully support an organizational structure with a level of subordinate supervisors below him within one year. The Petitioner has not sufficiently established that it is more likely than not that the Beneficiary would be primarily disengaged from non-qualifying operational tasks and delegating non-qualifying tasks to subordinate supervisors within one year.

Furthermore, as discussed by the Director, the Petitioner has not sufficiently established the size of its investment in the new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The Petitioner submitted a chart reflecting that three of its partners were contributing funds to support the new venture amounting to a total of $1.2 million. However, there is little supporting evidence to substantiate this asserted investment by its claimed partners. The Petitioner submitted bank account statements dated from November 2018 through November 2019 reflecting various deposits into this account amounting to approximately $958,000 during this time. However, only $50,000 of these funds were clearly transferred from the partners of the company as claimed. Otherwise, the funds were transferred from unexplained sources such as "[redacted]," "[redacted]" and "[redacted]," among others. Despite the Director discussing this material discrepancy in the denial decision, the Petitioner provides no explanation or additional evidence on appeal to address this noted ambiguity. The Petitioner must resolve this inconsistencies and ambiguities 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).

In addition, the Petitioner bank account records from this period indicate that the aforementioned deposited amounts were being spent as they were deposited during the approximately one year prior to the date the petition was filed, since the highest ending account balance during this period was less than $277,000. However, the Petitioner provides no explanation as to how these deposited amounts were spent or what actions were taken to launch its proposed business venture during this period. Further, the lack of the availability of these funds as of the date the petition was filed leaves substantial uncertainty as to whether the Petitioner would have sufficient funds to launch and sustain its business during the first year and hire sufficient staff to support the Beneficiary's asserted managerial position. Therefore, the Petitioner did to sufficiently establish the size of the investment in the new office as required by the regulations.

For the foregoing reasons, the Petitioner has not established that the Beneficiary would act in a managerial capacity within one year of an approval of the petition.

ORDER: The appeal is dismissed.