U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-T-C-U.S. LLC

DATE: APR. 17, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a cashew kernel trading company, seeks to temporarily employ the Beneficiary as general manager of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. *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 denied the petition, concluding that the Petitioner did not demonstrate that the new office would support the Beneficiary in a managerial or executive capacity within one year of approval of the petition. Further, the Director determined the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer.

On appeal, the Petitioner asserts that the submitted evidence clearly establishes the Beneficiary's eligibility.

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

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.*

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

[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.

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

We will first analyze whether the Petitioner established that it will employ the Beneficiary in a managerial capacity within one year. The Petitioner does not claim that the Beneficiary will be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary will be employed in a managerial 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.

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 the Beneficiary's foreign employer exports cashew kernels from Vietnam to countries around the world, including the United States, Europe, Canada, Australia, and Thailand. The Petitioner indicated that it has been established to sell and distribute the foreign employer's cashew products in the United States.

In a support letter provided along with the petition, the Petitioner explained that the Beneficiary would be responsible for acquiring a location for the U.S. based business, selecting staff, and "completing the organization." The Petitioner also stated that the Beneficiary would be tasked with directing and coordinating the company's activities, planning and developing its goals and policies, coordinating corporate objectives and investments, managing and overseeing day to day operations, ensuring conformance with the company's operating procedures and regulations, and maintaining "international business practices and corporate compliance." The Petitioner emphasized that the Beneficiary would be tasked with "ensuring [that] business marketing, sales revenue and growth are accomplished."

In response to the Director's request for evidence (RFE), the Petitioner stated that it had already established "a few clients in the U.S." for its cashew kernels and noted that the Beneficiary would travel back and forth between the United States and the foreign employer to report to the foreign employer director and board. The Petitioner indicated that the Beneficiary would "control our expansion operations" and "meet with the clients in a professional atmosphere." The Petitioner explained that the Beneficiary would be "totally responsible for operating expenses as well as operations activities with the set goal of expansion." Again, the Petitioner emphasized that the Beneficiary would be devoted to ensuring that "business marketing, sales revenue and growth are accomplished," and indicated that his actions would "lead to the fulfillment of the expansion goals and profitable revenues."

The Petitioner has submitted vague duty descriptions for the Beneficiary that do not adequately convey his actual proposed day-to-day tasks or establish that he would devote his time primarily to managerial duties within one year. The Beneficiary's duty description includes several general duties that could apply to any manager acting in any business or industry and they do not provide insight into the actual nature of his role. The Petitioner has provided few specifics related to how the Beneficiary's day-to-day duties fit specifically within the company's first year business plans; for instance, what specific actions he will take during the first year to assure that the business develops as necessary to support him in a managerial capacity within one year. In fact, the Beneficiary's duty description includes few references to the company's intended business. The Petitioner submits few examples of the staff the Beneficiary would select, activities he would direct and coordinate, goals and policies he would develop, or corporate objectives and investments he would coordinate. Likewise, the Petitioner does not clarify the day-to-day operations he would manage and oversee, operating procedures and regulations he will establish, and international business practices and corporate compliance he will monitor.

Although the Petitioner strongly emphasizes that the Beneficiary would be tasked with "ensuring [that] business marketing, sales revenue and growth are accomplished," it does not articulate the business marketing the Beneficiary will implement or any sales revenue and growth it is targeting. 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).

The fact that the Beneficiary would manage the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial 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" managerial in nature. Section 101(A)(44)(A) of the Act. Even though the Beneficiary would 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 in nature within one year.

B. Business Plan and Projected Staffing

The new office regulations recognize that a designated manager responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the managerial level and that often the full range of managerial responsibility cannot be performed in that first year. However, a petitioner's evidence in support of a new office petition should demonstrate a realistic expectation that the enterprise is prepared to commence business operations and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager who will primarily perform qualifying duties. Accordingly, the entire record must be considered to determine whether the proposed duties are 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).

The Petitioner submitted a projected organizational chart indicating that it planned on hiring two "directors" of a "sales/import department." The chart further reflected that the sales/import directors would supervise a warehouse manager who would, in turn, supervise an administrative assistant.

The Petitioner indicates on appeal that it has clearly established that the Beneficiary would act in a managerial capacity. 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. 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)(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 Petitioner has not supported its claim that the Beneficiary would supervise managerial and professional employees. The duties provided for the Beneficiary's proposed subordinates are vague and do not convey their day-to-day tasks in the context of the company's first year of development. The Petitioner provided a list of non-specific duties for the sales/import directors vaguely stating that they would be tasked with overseeing the "import/export of all products," that they would "prepare weekly/monthly status reports," and "assist with marketing activities."

In addition, the Petitioner did not provide separate duty descriptions for the warehouse manager and his or her assistant, but just generally stated that the warehouse staff would be responsible for "timely distribution," ensuring "compliance with all regulations," and managing and leading workshops "for a smooth and efficient running of operation of the warehouse." We note that the Petitioner had not secured warehouse space as of the date of filing and its business plan does not document plans to rent or purchase a warehouse in the future. Therefore, it is unclear that these positions would be filled during the initial year of operations.

The vague duty descriptions for the Beneficiary's subordinates do not sufficiently and credibly demonstrate the nature of these positions or that they would be supervisory or professional level positions. In fact, the Petitioner provided additional duties for the Beneficiary in the organizational chart indicating that he would be tasked with "approving purchases" and "authorizing marketing promotions," and that he would be responsible for ensuring "smooth warehouse operations." In contrast, these same duties state that the subordinate sales/import directors would only "assist with marketing activities," indicating that the Beneficiary will be substantially involved in the non-qualifying operational matters of the business. Otherwise, the Petitioner does not articulate how the Beneficiary would be relieved from non-qualifying tasks within the first year by subordinate managers and professionals.

The Petitioner also has not submitted sufficient detail regarding its business plans, information critical to assessing whether it is likely that the business will develop sufficiently during the first year. For example, the Petitioner only vaguely states that it already has clients for its cashews in the United States. Beyond this, it provides no details regarding its first year business plans such as when it plans on hiring the Beneficiary's proposed subordinates or specific actions its plans on undertaking to launch the business during the first year. Without a hiring plan and projected financial information, we cannot determine that the Petitioner intends to hire, and could feasibly pay, the salaries of the proposed staff during its initial year of operations.

The Petitioner asserts that the Beneficiary's foreign employer has invested $30,000 in the new venture, but it does not outline in detail what the company's start-up costs and initial operating expenses will be, nor is it clear how this investment will be used to launch the business. Again, although the Petitioner states that the Beneficiary will ensure that "business marketing, sales revenue and growth are accomplished" and "expansion goals and profitable revenues" are fulfilled, it provides no detail regarding planned marketing or projected revenue, expansion, goals, or profits. In sum, the Petitioner has submitted little evidence to support that it will grow sufficiently during the first year to support the Beneficiary is a qualifying managerial capacity.

On appeal, the Petitioner submits a decision of the Board of Immigration Appeals and a former decision of our legacy office within the former Immigration and Naturalization Service (INS). However, the Petitioner does not articulate the relevancy of these decisions to the current matter. Indeed, the latter decision, *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978), relates to an L-1B specialized knowledge visa and does not involve a new office petition. Further, the submitted Board decision discusses the Petitioner's burden of proof. However, as we have addressed, the Petitioner has submitted insufficient evidence to meet its burden. It has submitted a vague duty description for the Beneficiary which does not outline his proposed actions to launch the business during the first year. The Petitioner also does not explain or document how the company will specifically develop during the first year and it has provided insufficient detail regarding its first year business plans to show that it would have a reasonable need for the Beneficiary to perform primarily managerial duties within one year.

The record does not include sufficient probative evidence establishing that the Beneficiary will be relieved from performing non-qualifying duties within one year of approval of the petition. The

Petitioner has not fully developed the record so that we may analyze the viability of its plans to open and operate a new office in the United States.

III. QUALIFYING RELATIONSHIP

The Director also denied the petition concluding that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer. The Director pointed to discrepancies in the submitted evidence related to the Petitioner's ownership and further emphasized that these documents were questionably dated after the filing the petition.

In its appeal, the Petitioner does not specifically address this basis for denial or provide any additional evidence related to its ownership. After reviewing the evidence, we concur with the Director's decision that the Petitioner has not established a qualifying relationship with the foreign employer. Since the issue of the Beneficiary's proposed managerial capacity in the United States is dispositive of the Petitioner's appeal and it has not specifically objected to the Director's conclusions as to qualifying relationship, we will not address this issue further. Nevertheless, we note that if the Petitioner seeks to employ the Beneficiary in this classification in the future, it will need to submit sufficient evidence to establish that it has a qualifying relationship with the foreign employer.

IV. CONCLUSION

The appeal will be dismissed because the record does not include sufficient evidence to establish that the Beneficiary would act in a managerial or executive capacity within a one-year period or that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer.

ORDER: The appeal is dismissed.

Cite as *Matter of T-T-C-U.S. LLC*, ID# 1041370 (AAO Apr. 17, 2018)