U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-C- LLC

DATE: APR. 23, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a construction and design company, seeks to temporarily employ the Beneficiary as a "President/CEO" 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 California Service Center denied the petition concluding that the Petitioner did not establish, as required, that its foreign affiliate continues to provide goods or services on a regular, systematic, and continuous basis. The Director determined that the Petitioner did not overcome adverse findings regarding certain financial documents that were provided in response to a notice of intent to deny (NOID).

On appeal, the Petitioner once again explains its system of accounting for its profits and losses and provides additional business invoices and bank statements as evidence of the foreign entity's ongoing business activity.

Upon *de novo* review, we will withdraw the Director's decision because we find that the Petitioner has submitted sufficient evidence to establish that it is more likely than not that the foreign entity has been and continues to provide its services in a regular, systematic, and continuous manner.

Notwithstanding our decision to withdraw the denial, we find that the record as presently constituted does not contain sufficient evidence establishing that the Beneficiary would be employed in the United States in an executive capacity.[1] As such, we will remand the matter for further consideration.

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

[1] The Petitioner claims that the Beneficiary's proposed U.S. employment would be in an executive capacity and does not claim that the Beneficiary would be employed in a managerial capacity.

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.*

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

Based on the statutory definition of executive capacity, the petitioner must first show that the beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). The petitioner must also prove that the beneficiary will be *primarily* engaged in executive 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); *Champion World*, 940 F.2d 1533.

The petitioner must provide a job description that clearly describes the duties to be performed by the beneficiary and indicate whether such duties are in an executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine 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 will contribute to understanding the beneficiary's actual duties and role in a business. Accordingly, the beneficiary's job duties as well as the nature of the petitioner's business, its staffing levels, and its organizational structure all play a critical role in determining whether the position in question is in an executive capacity.

II. BASIS FOR REMAND

As stated above, we find that the Petitioner has not provided sufficient evidence establishing that the Beneficiary would be employed in the United States in an executive capacity. We note that the actual duties themselves will reveal the true nature of the employment. *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). As such, a detailed job description is critical to a determination of whether the Beneficiary would be employed in an executive capacity.

In the present matter, although the Petitioner described the Beneficiary's U.S. position in its initial cover letter, the job description it provided was primarily comprised of vague statements that referenced the Beneficiary's "extensive knowledge" and focused on his discretionary authority, but did not delineate specific job duties that the Beneficiary would perform within the context of a building design and construction operation. Namely, the Petitioner stated that the Beneficiary would be responsible for job duties in each of four categories – developing "high quality business strategies," developing the organization, leading and motivating subordinates, and overseeing the operation.

Although the Petitioner provided further information about the components of each category, the underlying information was vague and included broad references about the Beneficiary's role in developing long- and short-term goals, keeping "open communications" with the board of directors, developing organizational policies and objectives, maintaining "overall executive control," and building "an effective and cohesive executive management team."

The fact that the Beneficiary manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(44)(B) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive in nature. Sections 101(A)(44)(B) of the Act. While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, these elements alone are not sufficient to establish that his actual duties would be primarily executive in nature. Here, the Petitioner listed broad job responsibilities that can be applied to virtually any executive or senior management position with any company; the Petitioner did not list the Beneficiary's actual executive job duties within the scope of a U.S. building and construction operation.

Further, although the Petitioner provides an organizational chart and indicates that it relies on contractors to carry out a number of services that are critical to its operation, it does not adequately describe the roles of the Beneficiary's subordinates or establish that it is adequately staffed to relieve the Beneficiary from having to carry out primarily non-executive job duties.

As a result of the above described deficiencies, we find that the record as presently constituted does not warrant approval.

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

Cite as *Matter of M-C- LLC*, ID# 2052874 (AAO Apr. 23, 2019)