U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-USA LLC

DATE: APR. 23, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner identified itself as an "investments" operation and seeks to temporarily employ the Beneficiary as its general manager 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 California Service Center denied the petition concluding that the Petitioner did not establish, as required, that it would employ the Beneficiary in a managerial or executive capacity under an extended petition.

On appeal, the Petitioner disputes the Director's decision, arguing that the decision was not consistent with the statutory provision which states that an individual who oversees supervisory or managerial subordinates can merit classification under the definition of "managerial capacity." The Petitioner contends that this not limited to only those individuals who oversee professional employees.

Upon *de novo* review, we find that the Director offered an incorrect analysis of the law and did not adequately discuss the evidence submitted so that the Petitioner was afforded a fair opportunity to contest the decision and to allow a meaningful appellate review. Therefore, we will remand the matter for further proceedings consistent with our discussion below.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, 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.

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf was approved for the period May 1, 2017, until April 30, 2018. 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.

§ 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.*

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).

II. BASIS FOR REMAND

As noted earlier, we find that the Director's decision did not adequately explain the deficiencies in the evidence. *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). The Director did not analyze the job description that corresponds to the Beneficiary's proposed position and based the denial on the sole finding that the Beneficiary would perform duties as a front-line manager because he would not be managing professional employees who possess college degrees "that are related to the functions they will perform."

Notwithstanding the Director's lack of a complete analysis, the record is currently insufficient to establish that the Beneficiary would be employed in a managerial capacity, as claimed. Namely, the record includes a broad job description that lacks sufficient detail about the specific tasks the Beneficiary would perform within the context of the Petitioner's "investments" operation, which includes a restaurant and a gas station/convenience store. The actual duties themselves 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). Although the Petitioner indicates that there is a manager overseeing the operations of each business, it does not adequately explain the Beneficiary's role with respect to these purchased businesses.

The definition of managerial capacity has two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See, e.g.*, *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533. The record as presently constituted does not meet these criteria.

In addition, the Petitioner is required to establish that it has been doing business for the previous year. 8 C.F.R. § 214.2(l)(14)(ii).[2] Based on this petition's filing date of April 17, 2018, the Petitioner must

[2] The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii)(H).

establish that it had been doing business as of April 2017. Although the Petitioner states that it is an "investments" business, the first purchase it made towards its investment endeavor did not take place until September 2017, when it purchased a restaurant. It is unclear what type of business activity, if any, the Petitioner conducted prior to this purchase date. Therefore, we find that the Petitioner has not established that it has been doing business for the previous year.

III. CONCLUSION

Although the Petitioner did not submit sufficient evidence to meet its burden of establishing that the Beneficiary will be employed in a managerial capacity and that the U.S. operation had been doing business for the one year prior to filing this petition, the Director's decision did not adequately analyze the facts of the matter and apply the law. As the Director did not satisfy this condition, we will remand the matter for entry of a new decision. The Director should request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period of time.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of M-USA LLC*, ID# 2458183 (AAO Apr. 23, 2019)