U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7675452

Date: APR. 30, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a foreign entity, seeks to operate a restaurant in the United States where the Beneficiary would be temporarily employed as "owner and general manager" of the 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary was employed abroad in a managerial or executive capacity and that he would be employed in the United States in a managerial or executive capacity within one year of approval of the new office petition. The matter is now before us on appeal.

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. Upon *de novo* review, we will dismiss the appeal.[2]

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 secured sufficient physical premises to house its operation and disclose the proposed nature and scope

[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.

[2] We follow the preponderance of the evidence standard. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

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. ANALYSIS

As indicated above, the Director denied this petition based, in part, on the finding that the Petitioner did not provide sufficient evidence demonstrating that the Beneficiary's employment abroad either involved specialized knowledge or that it was in a managerial or executive capacity. On appeal, the Petitioner argues that because it filed a petition seeking to classify the Beneficiary under the L-1A nonimmigrant visa category, the Director's discussion of the Beneficiary's foreign employment within the context of specialized knowledge "was unreasonable" and indicates that the Director incorrectly "applied the legal standard of an L-1B petition" in this instance. We disagree and note that the Director's contemplation of whether the Beneficiary's employment abroad required specialized knowledge was consistent with the regulatory provisions that govern the filing of an L-1A petition.

Regardless of whether a petitioner seeks to classify a beneficiary as an L-1A or an L-1B nonimmigrant, the foreign employment criteria may be met either by establishing that the foreign position required specialized knowledge or that it was in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(iv). Thus, even though the Petitioner seeks to employ the Beneficiary in the United States in a managerial or executive capacity, the Petitioner may meet the foreign employment requirement by showing that the Beneficiary worked in a specialized knowledge abroad. The Director's references to the statutory framework and regulatory definition for specialized knowledge merely indicate that all relevant regulatory provisions were correctly applied in the adjudication of this petition. Moreover, the Director's statement, that the Petitioner "did not indicate" that the Beneficiary's employment abroad involved specialized knowledge, is consistent with the Petitioner's claim that the Beneficiary's employment abroad was in a managerial capacity and does not indicate that such employment required specialized knowledge. Thus, the Director did not err by referring to specialized knowledge in the denial decision.

Further, as noted above, the Director denied the petition because the Petitioner did not establish: (1) that the Beneficiary was employed abroad in a managerial or executive capacity; and (2) that the Beneficiary would be employed in the United States in a managerial or executive capacity within one year of approval of the new office petition. Each ground stands as an independent basis for the denial of the petition. With respect to the first ground, on appeal, the Petitioner offers only a general statement in which it disagrees with the Director's conclusion but does not explain how that the conclusion was inconsistent with the presented evidence or how the Director otherwise erred with respect to that ground. As the Petitioner does not address this issue on appeal, it has abandoned its claims. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). When an appellant fails to properly challenge one of the independent grounds upon which the Director based the overall determination, the filing party has abandoned any challenge of that ground, and it follows that the Director's adverse determination will be affirmed. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014); *United States v. Cooper*, No. 17-11548, 2019 WL 2414405, at *3 (11th Cir. June 10, 2019); *McCray v. Fed. Home Loan Mortg. Corp.*, 839 F.3d 354, 361-62 (4th Cir. 2016); *In re Under Seal*, 749 F.3d 276, 293 (4th Cir. 2014) (finding "an appellant must convince us that every

stated ground for the judgment against him is incorrect."); *United States v. Kama*, 394 F.3d 1236, 1238 (9th Cir. 2005). It is, therefore, unnecessary to analyze the remaining independent ground when another is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Aside from the Petitioner's failure on appeal to challenge the Director's conclusion regarding the Beneficiary's foreign employment, the previously submitted evidence is insufficient to show that the Beneficiary was employed abroad in a managerial capacity.[3] The only job description on record is contained in the Petitioner's Form I-129 L Classification Supplement and indicates that the Beneficiary performed a number of non-managerial job duties, including ordering goods, conducting research, addressing issues with shipping and vendors, promoting and marketing the business, and carrying out human resource functions, such as recruiting and training employees. As the Petitioner did not comply with the Director's request for evidence, which instructed the Petitioner to provide a more detailed job description and indicate how much time the Beneficiary spent on his various assigned job duties, it is unclear how much time the Beneficiary allocated to the non-managerial duties listed herein. Further, the Petitioner provided an organizational chart showing that it was comprised of three employees—the Beneficiary and his two subordinates. However, the Petitioner did not establish that a two-person support staff was sufficient to relieve the Beneficiary from having to allocate his time primarily to non-managerial job duties. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial capacity. *See, e.g.*, sections 101(a)(44)(A) of the Act (requiring that one "primarily" perform the enumerated managerial duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). In light of these deficiencies, the record as presently constituted precludes a finding that the Beneficiary was employed abroad in a managerial capacity.

In conclusion, because the Petitioner did not contest the Director's finding that the Beneficiary was not employed abroad in a managerial capacity, we consider this issue to be abandoned, and the appeal will be dismissed for this reason.[4] Further, notwithstanding the Petitioner's lack of a challenge to this ground for denial, the evidence does not establish that the Beneficiary was employed abroad in a managerial capacity.

ORDER: The appeal is dismissed.

[3] The Petitioner does not claim that the Beneficiary was employed in an executive and refers to elements of the statutory definition of a managerial capacity on appeal.

[4] Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's U.S. employment in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).