U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-I- INC.

DATE: AUG. 6, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a distributor of stone and granite products, seeks to continue the Beneficiary's temporary employment as its president 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, determining that the Petitioner did not establish that its "new office in the United States would be able to support an executive or managerial position in one year."

On appeal, the Petitioner contends that the Director's decision contains erroneous conclusions of fact regarding its business and the Beneficiary's role. The Petitioner maintains that it will employ the Beneficiary in an executive capacity under the extended petition and that it grew sufficiently during its initial year of operations to support the executive position.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision.

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. § 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 Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period January 4, 2017, until January 3, 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.

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. ANALYSIS

The record shows that the Petitioner properly indicated on the Form I-129, Petition for Nonimmigrant Worker, that it was seeking to continue the Beneficiary's employment in her current L-1A position, and that its prior petition on behalf of the Beneficiary was a new office petition approved for a one year period. The Petitioner also provided evidence showing that it had commenced business operations and hired or contracted several subordinate staff members during the previous year. As such, the initial evidence showed that the Petitioner was seeking an extension of a petition involving a new office.

However, the Director's decision improperly cited to the regulations applicable to an initial new office petition, rather than those applicable to a new office extension. Moreover, the decision repeatedly discusses whether the Petitioner established that it would be able to support a managerial or executive position "within one year," and notes that the Petitioner's "explanation of the proposed business lacks sufficient detail." These statements suggest that the Director adjudicated this petition as a new office and did not inadvertently cite to the incorrect regulations.

When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence did not to satisfy its burden of proof pursuant to section 291 of the Act. 8 C.F.R. § 103.3(a)(1)(i). The numerous errors in the decision raise questions as to whether the Director properly reviewed the record in its entirety. Accordingly, we will withdraw the Director's decision.

However, we find that the record as presently constituted contains insufficient evidence to show that the Petitioner would employ the Beneficiary in an executive capacity, as claimed. The job descriptions the Petitioner provided at the time of filing and in response to a request for evidence are overly broad and do not detail the specific tasks she would perform on a day-to-day basis within the Petitioner's business. For example, the Petitioner stated that the Beneficiary will spend the largest proportion of her time (30%) continuing to "oversee the entire company's business activities and performances." Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. 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).

The Petitioner provided evidence that it operates from a 23,700 square foot warehouse, office, and showroom, where the Beneficiary works along with subordinates identified as a general manager, a sales director, and an "outside sales representative" who did not receive any payments during the

company's first year of operations. The Petitioner also indicates that it hired a full-time sales representative in December 2017, who started in January 2018, after the petition was filed. The Petitioner did not explain its current need for three tiers of managerial or supervisory employees in a company with no more than four employees. Further, the general managerial duties assigned to the subordinates appear to be incongruous with the company's current stage of development, given that it reported sales of less than $12,000 in the company's first year of operations.

Further, the submitted invoices show that the company provides installation of the countertops it sells, but it did not claim to have an installation employee at the time of filing. The Petitioner also did not claim to have any administrative staff, warehouse workers, delivery personnel, or purchasing staff, and did not identify who would perform these functions.

The Petitioner must establish eligibility as of the date of filing, therefore, additional evidence is needed to establish exactly whom the company employed at the time of filing, the nature of each employees' actual day-to-day duties, and an explanation of how the non-managerial work was allocated among the three- to four-person staff. As this matter will be remanded, the Petitioner should be instructed to clarify its staffing levels and organizational structure, and document all claimed employees and contractors, and their employment dates, from the date of filing and beyond.

We are remanding this matter so that the Director can properly make the initial determination on the issue of the Beneficiary's proposed employment in an executive capacity after a thorough review and analysis of the Petitioner's evidence under the appropriate regulatory requirements at 8 C.F.R. § 214.2(l)(14)(ii). 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 matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of L-I- Inc.*, ID# 1604293 (AAO Aug. 6, 2018)