U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33091405

Date: AUG. 8, 2024

Appeal of Texas Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner is a real estate company that seeks to continue the Beneficiary's temporary employment as "CEO" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity.[1] *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity. First, the Director addressed the Beneficiary's proposed job duties, finding that the Petitioner did not provide examples of policies, strategies, or goals the Beneficiary has or would develop and implement. The Director also noted that the Petitioner provided a deficient response to a request for evidence (RFE) where it was asked to provide a percentage breakdown of the Beneficiary's typical execute job duties explaining how the Beneficiary would satisfy the four prongs of the statutory definition of executive capacity. The Director determined that the briefly listed duties – directing financial and organizational operations, preparing staff schedules and assignments, analyzing data to assess operational effectiveness, and developing organizational goals and policies – were generic and offered no insight about the executive nature of the Beneficiary's role within the U.S. organization. Ultimately, the Director determined that the Petitioner provided information that did not reflect the Beneficiary's actual daily tasks and thus it did not establish that the Beneficiary would perform primarily executive-level duties.

Next, the Director discussed the Petitioner's proposed staffing, taking into consideration the organizational chart that depicts the Beneficiary at an elevated level within the staffing hierarchy as well as the Petitioner's claimed four-person staff and its intent to hire a part-time office assistant. The Director noted, however, that the Petitioner did not discuss the job duties carried out by the support staff, provided insufficient evidence of wages paid to support staff, and did not furnish documentation explaining how the Petitioner would relieve the Beneficiary from having to perform operational tasks.

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf. That petition was approved for the one-year period from November 10, 2022, until November 9, 2023. 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.

The Director determined that given the Petitioner's limited staffing composition, the Beneficiary would likely be required to perform operational tasks to meet the organization's immediate needs, thus concluding that the evidence does not establish that the Beneficiary would primarily direct the management of the organization.

The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

Further, we adopt and affirm the Director's decision with respect to the two cited grounds. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Petitioner submits a brief in which it argues that the Director "disregarded and misinterpreted the evidence" but it does not specify which evidence was disregarded or what precisely was misinterpreted. The Petitioner also states that the Beneficiary sets strategies for achieving objectives and policies that he plans, but it does not identify any objectives or policies specifically, a deficiency that was also previously noted in the RFE. Instead, the Petitioner highlights the Beneficiary's discretionary authority over the organization, stating that he will focus on "strategic direction, financial, oversight, and organizational leadership" as well as executive decision-making and long-term financial planning. However, despite providing a new job duty breakdown in support of these assertions, the Petitioner has not adequately demonstrated that the Beneficiary would likely allocate his time primarily to executive-level tasks. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring a petitioner to provide a detailed description of the services to be performed).

First, the new job duty breakdown, while offering more information than what was provided in the RFE response, still contains considerable ambiguities, such as general claims about the Beneficiary's roles in managing the Petitioner's finances and human resources as well his role in the Petitioner's property management operations. 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). Here, the job description broadly states that the Beneficiary will "provide guidance and assistance. . . in making strategic decisions," oversee property management activities, and ensure compliance with legal requirements while promoting "best practices." It also does not specify the daily or weekly activities the Beneficiary will perform in "actively manag[ing] the relationship with the parent company," nor does it state how the Beneficiary will "[l]ead efforts to secure bank financing" or "[m]aintain proactive involvement in financial matters." Likewise, the Beneficiary's role with respect to human resources management is unclear and includes other vaguely stated duties, such as "foster[ing] a culture of empowerment and collaboration" and "ensur[ing] inclusivity and equal treatment of all team members." In sum, the supplemental job description does not impart a meaningful understanding of the specific types of job duties the Beneficiary would perform within the context of the Petitioner's real estate operation.

In addition, the record indicates that the Beneficiary's broadly stated job duties would be performed within the scope of a limited personnel structure, which leads us to further question whether, at the time of filing, the Petitioner could support the Beneficiary in a position that would require him to allocate his time primarily to executive-level duties. Despite providing an organizational chart showing a four-person staff, the petition form shows that only one employee was claimed at the time of filing and the only evidence that the Petitioner paid employee wages was provided in the form of documents titled "Full Cash Requirements Report," which list fourth quarter 2023 wages for the Beneficiary and [redacted] whom the Petitioner identified as "President & FL General Manager." It is unclear why, given evidence showing wages paid to two people, the Petitioner claimed only one employee at the time of filing. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that inconsistencies must be resolved through the submission of independent, objective evidence).

The RFE response also listed a "VP & Head Property Manager" and an assistant property manager as part of the Petitioner's staff, listing both positions as contractors and further noting that their respective salaries are paid in part (in the case of the head manager) or in whole (in the case of the assistant manager) by [redacted] a separate entity which was referenced in the Petitioner's business plan as the subject of the Petitioner's "substantial takeover." The record does not, however, include documents specifying the terms of the referenced "substantial takeover" or documenting any arrangement for using [redacted] staff to assist the Petitioner in matters concerning its property management operation. The Petitioner's response also did not provide a Form 1099-MISC for the individuals it identified as its head property manager or assistant property manager, nor was other evidence provided establishing that either or both individuals were providing the Petitioner with property management services at the time this petition was filed. *See* 8 C.F.R. § 103.2(b)(1) (requiring each petitioner to establish eligibility for the requested benefit *at the time of filing* the benefit request and continuing until the final adjudication). In light of the noted evidentiary deficiencies concerning the Petitioner's staffing, it is unclear whom the Petitioner employed and/or contracted at the time of filing to relieve the Beneficiary from having to primarily perform the organization's operational duties.

In determining whether a given beneficiary's duties will be primarily executive, we consider the petitioner's description of the job duties, the company's organizational structure, the duties of a 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 a beneficiary's actual duties and role in a business. Having applied this wholistic approach in the matter at hand, we conclude that the record contains evidentiary deficiencies that preclude a favorable determination. As discussed above, the record contains a deficient job description and ambiguities concerning the Petitioner's organizational hierarchy. We therefore cannot conclude that the Beneficiary would more likely than not be employed in an executive capacity under an approved petition.

ORDER: The appeal is dismissed.