U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF PTRI- INC.

DATE: AUG. 9, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a lumber and furniture importer and exporter, seeks to temporarily employ the Beneficiary as the president and chairman of its 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 California Service Center denied the petition, concluding that the record did not establish, as required, that the new office would support a managerial or executive position within one year of approval of the petition.

On appeal, the Petitioner asserts that the Director ignored evidence submitted and contends that it has submitted sufficient evidence to establish eligibility.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. 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, executive, or specialized knowledge capacity. Section 101(a)(15)(L) of the Act.

[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.

An individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, must include evidence that the petitioner will employ the beneficiary in an executive or managerial capacity, or in a position requiring specialized knowledge, including a detailed description of the services to be performed. 8 C.F.R. § 214.2(l)(3)(ii).

If the Form I-129 indicates that the beneficiary is coming to the United States in L-1A status to open or to be employed in a new office, 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 includes information regarding the new office's physical premises, the proposed nature and scope 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. NEW OFFICE

The Petitioner's parent company (the Beneficiary's foreign employer in this matter) manufactures furniture in Vietnam from locally and foreign sourced wood. The Petitioner states that the parent company employs a workforce of 200 employees who are craftsmen, shipping and administrative staff, design professionals, and their supervisors and managers.

A. Business Plan

The Petitioner plans to export lumber from the United States to Vietnam building on existing relationships with U.S. lumber suppliers and to import and distribute furniture manufactured in Vietnam to the United States by developing and maintaining relationships with American furniture retailers and wholesalers.

In response to the Director's request for evidence (RFE), the foreign entity identified the proposed activities of the new office as establishing and maintaining business relationships with U.S. suppliers, conducting market research, coordinating export of goods, and ensuring customers' satisfaction. The foreign entity explained further that the petitioning subsidiary will be better able to focus on the American market and work more efficiently with suppliers, retailers, and wholesalers located in the United States than its staff in Vietnam. The foreign entity also noted that it will pay the Petitioner in advance when placing orders for American goods and that the payments will cover the cost of goods, the Petitioner's business expenses, and a reasonable profit. The Petitioner asserted that because of the advance payment it does not need a larger capital contribution or shareholder loan to fund its business operations.

The Petitioner did not submit copies of its bank statements, or copies of contracts or invoices between its parent company and other U.S. lumber or furniture companies. Thus, we cannot ascertain whether the foreign entity's plan to advance the Petitioner payment for goods purchased is realistic. The record also does not include evidence of market research or estimates supported by market research demonstrating how the Petitioner will plausibly develop to a point that it will be able to support a manager or executive position within one year. The lack of detail and the lack of

supporting information in the record regarding the proposed new office precludes a determination that the Petitioner will grow sufficiently to support a manager or executive position within one year.

B. Duties

In the letter submitted in support of the petition, the Petitioner stated that the Beneficiary "will primarily manage all aspects of lumber acquisition and export, as well as furniture import and distribution" and that he will "[d]irectly and indirectly manage all employees, including recruiting and training new hires in the US while continuing to have the support of the employees at the parent company." The Petitioner advised that "the position offered is an employment position with our company and the end-product of this position is directly related to [its] business." The Petitioner's business plan identified the Beneficiary as its representative in the United States.

In response to the Director's RFE, the foreign entity asserted that "the same staff who already report to [the Beneficiary] in Vietnam will continue to report to him and support the functions that he manages in the U.S." The foreign entity added that "[w]ith the support of the employees in the U.S. and Vietnam performing professional and support staff services, [the Beneficiary] can concentrate his attention on managing [the Petitioner]." The foreign entity emphasized that the Beneficiary "is required as a leader who can work closely with our suppliers to manage relations and grow [the Petitioner's] presence in the U.S."

The new office regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. However, a petitioner's evidence in support of a new office petition should demonstrate a realistic expectation that the enterprise is prepared to commence business operations and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. Accordingly, the entire record must be considered to determine whether the proposed duties are plausible considering a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

Here, other than asserting that the Beneficiary will work as the Petitioner's leader or manager, the Petitioner does not detail the Beneficiary's proposed duties. The record does not include sufficient information regarding the Beneficiary's proposed position to determine whether he will perform primarily managerial or executive duties. Reciting vague job responsibilities, such as managing relations with suppliers, or broadly-cast business objectives, such as growing the Petitioner's presence in the United States, is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. The Petitioner has not provided any detail or explanation of the Beneficiary's activities in the course of his daily routine. 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 has not sufficiently delineated

the Beneficiary's specific daily tasks or explained how the proposed position would meet the four-prong definition of executive or managerial capacity.

The totality of the record does not include sufficient, probative evidence establishing the Beneficiary's actual role at the Petitioner. Thus, we cannot determine that the proposed position, as generally described, is plausible considering the Petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

C. Staffing

The Petitioner's business plan indicated that the Petitioner will employ one manager, three salespersons, one purchaser, and two "forwarding" staff after one year of operation. Its proposed organizational chart shows each of these employees report directly to the Beneficiary. However, the record does not include position descriptions or describe how these individuals will relieve the Beneficiary from performing primarily non-qualifying duties. For example, the foreign entity claimed that one of the Petitioner's activities would be to conduct market research. However, neither the business plan nor the Petitioner's organizational chart identifies an employee who will actually perform marketing duties.

We have also considered the petitioning organization's claim that the foreign staff will support the Beneficiary in his management of the Petitioner. However, the Petitioner does not offer evidence or plans that demonstrate the relationship between the foreign employees and the Beneficiary's duties for the Petitioner. Additionally, the Petitioner does not explain how the foreign employees will be inserted into its proposed operations. Nor does the Petitioner clarify how the foreign employees will relieve the Beneficiary from performing non-operational duties within one year of approval of the petition. Although the foreign entity's organizational chart shows a number of teams responsible for building furniture, as well as an "office group" and a security team, the chart does not identify individuals in administrative, financial, or marketing positions. We have also reviewed the submitted foreign entity's corporate profile which includes a different organizational chart for the foreign entity. The profile chart identifies a number of departments, including administrative, financial, sales/marketing, planning, quality control/design, material procurement, and maintenance departments, but does not identify the Beneficiary's foreign position and does not identify a security department. The Petitioner does not explain the differences in the charts. Additionally, the record does not include payroll or other evidence substantiating the employment of individuals in any of the foreign entity's positions.

The record does not include sufficient probative evidence establishing that the Petitioner's or the foreign entity's employees will relieve the Beneficiary from performing non-qualifying duties within one year of approval of the petition. The Petitioner has not fully developed the record so that we may analyze the viability of its plans to open and operate a new office in the United States. The record is insufficient to establish that the Petitioner will be sufficiently complex to support the Beneficiary in a managerial or executive position within one year.

III. CONCLUSION

The appeal will be dismissed because the record does not include sufficient evidence to establish that the Petitioner will support the Beneficiary in a managerial or executive capacity within a one-year period.

ORDER: The appeal is dismissed.

Cite as *Matter of PTRI-Inc.*, ID# 486381 (AAO Aug. 9, 2017)