U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32829948

Date: AUG. 9, 2024

Appeal of California Service Center Decision

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

The Petitioner, an information technology consulting company, seeks to temporarily employ the Beneficiary as president and general manager of its new office 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 that the new office will support a managerial or executive position within one year following the approval of the petition. The matter is now before us on appeal under 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 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).

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

The Petitioner submitted a business plan, showing an intention to hire 11 employees during the company's first three years of operations. Five of those employees would be hired during the first year, with the following hierarchy:

- President and General Manager (the Beneficiary)
    - Project Manager, "tasked with ensuring the proper execution of the projects"
        - Engineer, to "engage[] in data services projects"
    - Sales Director, "who will oversee the sales activities"
    - Consulting Services Manager, "responsible for developing the consulting services"

The business plan indicated that the Petitioner would hire an executive assistant, additional engineers, a sales assistant, and a consultant after the first year. The Petitioner did not say who would perform the duties of those positions during the first year.

The Director issued a request for evidence, asking for more information about the intended duties of the Beneficiary and his subordinates. The Director stated that the Petitioner's initial evidence "does not explain how the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees."

In response, the Petitioner provided job descriptions and stated that the Beneficiary would "[d]irectly supervise the professionals under his/her [sic] responsibility."

The Director concluded that the Petitioner had not shown that, at the end of its first year of operations following the approval of the petition, any of the Beneficiary's subordinates would qualify as managers. Therefore, the Director concluded, the Petitioner had not established that the Beneficiary "would primarily direct the management of the company given the proposed staff within the first year." Directing the management of the company is an element of an executive capacity. As a result, the Director concluded that the Petitioner had not shown that the new office would support an executive position before the end of its first year of operations.

The Petitioner's response to the request for evidence included a cover letter that twice referred to the Beneficiary's intended U.S. position as "managerial." The Director did not take this information into account. Instead, the Director stated that the Petitioner "did not indicate the beneficiary's proposed position is managerial in nature."

The Director also concluded that "the evidence submitted does not demonstrate the proposed position is primarily managerial," but the Director did not elaborate on that conclusion.

A manager's subordinates need not be managers themselves; they may also be supervisors or professionals. *See* 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*). The Petitioner stated that the Beneficiary would supervise professionals. The Director did not fully address this aspect of the petition, and therefore we will remand the matter in order for the Director to consider whether the Petitioner has established that the new office would support a managerial capacity within one year of approval of the petition. In making such a determination, the Director should consider the extent to which the Petitioner has shown how it intends to provide the services specified in its business plan. If the Director deems necessary, the Director may request additional evidence in order to more fully develop the record with respect to the Beneficiary's claimed managerial capacity.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.