U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF H-L-A- INC.

DATE: AUG. 15, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a provider of transportation services, seeks to continue[1] the Beneficiary's employment as its president 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 Petitioner did not establish, as required, that the Beneficiary would be employed in an executive capacity under an approved petition.

On appeal, the Petitioner asserts that the Director's decision contains several errors of fact and law. First, the Petitioner notes that the Director misinterpreted one of the Petitioner's organizational charts, which was intended to reflect staffing during the first year "new office" phase of its operation. The Petitioner points out that it provided another organizational chart to show its current staffing structure, which includes more employees to staff its two business locations and an expanded management tier that the Beneficiary relies upon to "direct[] the management of the organization." Section 101(a)(44)(B)(i) of the Act. The Petitioner contends that its expanded management tier is evidence of the growth in its business activity and notes that the additional staff was necessary to accommodate its growing business needs. It emphasizes that the Director overlooked this current organizational chart as well as job descriptions provided for the Beneficiary's subordinate employees. The Petitioner also argues that the Director incorrectly

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's; that petition was approved for the period April 1, 2016, until March 31, 2017. 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. Subsequent to the approval of the initial new office petition, the Petitioner filed an extension petition (with receipt number [redacted], which was denied in June 2017. The Beneficiary returned to China pending a final decision on the current petition, which the Petitioner filed in December 2017, well after the new office petition expired. Therefore, although the Petitioner indicated that it was seeking to continue the Beneficiary's previously approved employment, the record does not indicate that the Beneficiary currently has U.S. employment that can be extended.

applied elements of the definition of managerial capacity to the Beneficiary's proposed position, despite the claim that the Beneficiary would be employed in an executive capacity.

Upon *de novo* review, we find that the Petitioner submitted sufficient evidence to establish that it would more likely than not employ the Beneficiary in an executive capacity as defined at section 101(a)(44)(B) of the Act. We agree with the Petitioner's assertion that the Director overlooked relevant evidence of the Petitioner's current staffing levels, and that such evidence supports the Petitioner's claim that it employs a tier of managerial staff and has the ability to support the Beneficiary's executive position and relieve him from involvement in the day-to-day operations of the company. In addition, we find that the Director erred by applying the statutory definition of "managerial capacity" to the Beneficiary's subordinates; there is no requirement that the Beneficiary's subordinates themselves must meet the statutory definitions applicable to L-1A nonimmigrants.

Notwithstanding our withdrawal of the Director's decision, we find that the record as presently constituted contains anomalies in the evidence that was submitted to establish the claimed parent-subsidiary relationship between the Petitioner and the Beneficiary's foreign employer. As a result of such anomalies we find that the Petitioner has not established that it has a qualifying relationship with the Beneficiary's employer abroad, as claimed. As such, we will remand the matter for further consideration.

## I. LEGAL FRAMEWORK

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

## II. BASIS FOR REMAND

As previously noted, we find that the Petitioner has not provided sufficient evidence to establish that it has a qualifying relationship with the Beneficiary's foreign employer.

To establish a "qualifying relationship" under the Act and the regulations, a petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner claims that it is a subsidiary of the foreign entity. In order to establish that the foreign entity is the parent in the claimed parent-subsidiary relationship, the Petitioner would have to provide evidence to show that the foreign entity is the majority shareholder. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). However, as noted in the Director's request for evidence (RFE), Schedule G of the Petitioner's 2016 tax return identified the Beneficiary as the owner of 100% of the Petitioner's stock.

Although the Petitioner attempted to resolve this inconsistency in response to the RFE, some of the new evidence contained additional anomalies. Namely, the Petitioner submitted a shareholders resolution, which contained factually inconsistent information. The translation of the resolution indicates that during a general shareholders meeting, which was held on March 8, 2015, the foreign entity "in August 2018 decided to set up and invest in a U.S. subsidiary." This statement is problematic because it refers to a future date – August 2018 – to establish when the foreign entity made the decision to set up the U.S. subsidiary. If the decision was already made as of March 2015, it cannot be made more than three years in the future in August 2018. We further note that the dates in the translation do not match those cited in the copy of the foreign language original document, which appears to cite August 2015, not August 2018, as the month and year during which the resolution was made to open a U.S. subsidiary. This too is problematic because August 2015 was six months in the future as of the date the purported resolution was made in March 2015.

The resolution further states, "The shareholders made the decision that [*sic*] first invest fifty thousand USD ($500,000) . . . ." This sentence shows an inconsistency between the spelled out dollar amount and the numeric dollar amount inside the parentheses. The same anomaly appears in the photocopied foreign language document, thereby indicating that the inconsistency originated in the foreign language document and now precludes us from being able to determine the total amount of the intended shareholder investment. The Petitioner must resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, we acknowledge the Petitioner's submission of other evidence, including an amended Schedule G that accompanied the accountant's statement of explanation, a 2016 balance sheet, an "Equity Transaction Report," and bank statements. However, these documents do not resolve the inconsistencies in the shareholder resolution; the Petitioner's internally generated documents, including the amended tax return and list of "equity transactions," cannot be deemed independent objective evidence and therefore are not sufficient to resolve the above-noted inconsistencies. The Petitioner has not provided consistent evidence that shows the value of its stock and establishes that the foreign entity paid for its ownership of that stock when the Petitioner issued its stock certificate.

Accordingly, we are remanding this matter for further consideration and entry of a new decision. The Director should request any additional evidence deemed necessary to determine the Petitioner's eligibility and allow the Petitioner to submit such evidence within a reasonable period of time.

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

Cite as *Matter of H-L-A- Inc.*, ID# 1581474 (AAO Aug. 15, 2018)