U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-I-, INC.

DATE: AUG. 22, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a retailer and wholesaler of Mediterranean-style baked goods, seeks to temporarily employ the Beneficiary as "President/CEO" 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 Beneficiary would not be employed in the United States in an executive capacity. The Director determined that the Petitioner submitted a revised business plan showing a modified salary structure, which constituted a "material change" to its business and financial structure, thereby precluding approval of the petition.

On appeal, the Petitioner claims that the Beneficiary will perform primarily executive job duties within one year of the petition's approval. The Petitioner disputes the denial decision, arguing that the Director misinterpreted previously submitted evidence and did not apply the new office regulations in the analysis of the Beneficiary's proposed employment. The Petitioner also asserts that it provided an updated business plan that clarified certain factors and was not materially inconsistent with the originally submitted business plan.

Upon *de novo* review, we will remand the matter for further consideration.

I. LEGAL FRAMEWORK

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

[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.

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).

II. BASIS FOR REMAND

We find that the Director's decision did not adequately explain the deficiencies in the evidence. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Despite the Petitioner having filed the instant petition as a "new office," the Director did not cite the "new office" regulations or apply those regulations to the submitted evidence. Although the Director discussed the Beneficiary's job description, there is no indication that the conclusion was based on the determination that the Beneficiary would not perform primarily executive job duties *within the first year of the petition's approval.* Rather, the Director sought to determine whether the Beneficiary "will be employed in a primarily managerial or executive capacity" and made no mention of the fact that the new office regulations allow the Petitioner up to one year within the date of approval of the petition to support an executive or managerial position. 8. C.F.R. § 214.2(l)(3)(v)(C).

Further, we disagree with the Director's finding that the Petitioner's revised business plan made material changes to its business and financial structure. Although the Petitioner did not adequately address an inconsistency pertaining to the Beneficiary's proffered wage, this inconsistency should be considered in tandem with other relevant evidence within the context of a totality of the evidence analysis. As discussed above, the Director must also conduct such an analysis based on applicable regulations. As the petition in this case indicates that the Petitioner filed this petition seeking status as a new office and because the evidence indicates that the Petitioner has been operating for less than one year, a determination of the Petitioner's eligibility must be made based on these considerations and within the scope of regulations that pertain to new office petitioners. As discussed above, the Director did not adequately consider the evidence within applicable regulatory provisions and appears to have made the conclusion based on a salary inconsistency.

Notwithstanding the Director's decision, the Petitioner has not provided a detailed job description that accounts for the Beneficiary's daily tasks within the scope of a bakery seeking to function as a retail and wholesale operation. The definition of executive capacity has two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Second, the Petitioner must demonstrate that the Beneficiary will be *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See, e.g.*, *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533. Here, the Beneficiary's job duties are described in broad terms that only allow us to understand his level of discretionary authority

and preclude a meaningful understanding of the actions the Beneficiary will regularly carry out in the course of meeting the responsibilities of his position. Thus, the record as presently constituted lacks the necessary information about the Beneficiary's proposed daily tasks during the Petitioner's first year of operation. Without this critical information, we are unable to gain a meaningful understanding of how the Beneficiary will ensure that the Petitioner progresses to its next operational phase in which it would have to demonstrate its ability to relieve the Beneficiary from having to primarily perform operational functions and assume an executive position that focuses primarily on the broad goals and policies of the organization rather than its day-to-day operational functions.

III. CONCLUSION

The Director's decision did not adequately analyze the facts of the matter and applied the law incorrectly. As the Director did not satisfy this condition, we will remand the matter for entry of a new decision. 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 decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of G-I-, Inc.*, ID# 5037829 (AAO Aug. 22, 2019)