U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19396243

Date: AUG. 27, 2021

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, which machines die and mold components, seeks to temporarily employ the Beneficiary as vice president of operations of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. 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 Beneficiary has been employed abroad, and will be employed at the new office within one year, in a managerial or executive capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for a new decision.

I. LAW

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

[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.

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. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director determined that the Petitioner did not establish that the Beneficiary was employed abroad, and would be employed in the new office within one year, in a qualifying managerial or executive capacity.

"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.

To show that a beneficiary is eligible for L-1A nonimmigrant visa classification as a manager, a petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether the beneficiary's duties will be primarily managerial, we consider the description of the job duties, the company's organizational structure, the duties of the 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 the beneficiary's actual duties and role in the business.

Since 1999, the Beneficiary has served as the manager of production, assembly, and quality control at the Petitioner's foreign parent company (a manufacturer of photographic equipment). An organizational chart shows the following positions under the Beneficiary's authority:

Waste and Hazard Management
Conventional Lathe Operator
CNC Operator
Mechanical Design and Quality Control Manager
Tool and Die Assembly and Maintenance Manager
Assembly and Quality Control Manager
└2 Assemblers
Surface Grinder Operator
Press Shop Manager
└2 Press Operators

The projected organizational chart for the Petitioner's new office shows the following hierarchical structure:

President
└Vice President of Operations (the Beneficiary)
└Machining Supervisor
├Machine Operators (two in the first year, three thereafter)
└Waste and Hazard Manager[2]

The Director based the denial decision on the conclusion that the Petitioner did not show that the Beneficiary's past or intended future subordinates are managers or professionals. A given position may also qualify as managerial, however, if the individual in that position primarily supervises and controls the work of supervisors. The Director did not make any determinations regarding this issue, and therefore the Director's initial determination is incomplete. The Director only considered the claimed supervisory positions in the context of managerial positions, stating: "The descriptions for the claimed supervisory or managerial positions do not indicate any tasks that are primarily managerial in nature."

The Director must render a new decision which takes into account the Petitioner's claims that the Beneficiary did, and will, have authority over supervisors in his positions abroad and at the new office.

At the same time, we note that the Petitioner must establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. 8 C.F.R. § 214.2(l)(3)(v)(C). In this instance, the Petitioner claims that, at the end of the first year, it would have a president, a vice president, and a supervisor, overseeing two machine operators and a waste and hazard manager. The Petitioner has not adequately explained how three front-line employees warrant or require three layers of supervisory or managerial authority. The top-heavy management structure raises questions as to whether the Petitioner seeks to bring the Beneficiary to the United States out of business necessity, or rather to obtain immigration benefits for a major shareholder.

We further note that job descriptions for both the Beneficiary and some of his intended subordinates appear to have been copied, in large part, from generic job descriptions on O*NET, a Department of Labor database of job information. These descriptions show the range of duties that a given occupation typically entails, but because of their general nature, they do not explain the specific duties inherent in any particular position.

These generic descriptions include inapplicable or overlapping duties. For example, the Petitioner states that the machining supervisor would "[d]etermine . . . budgets," but the Beneficiary's own job description as vice president of operations indicates that he, the Beneficiary, would "develop budgets," seemingly giving both individuals the same task.

The Beneficiary's job description also refers to "warehousing" and negotiating with federal agencies, although the Petitioner does not appear to own or lease a warehouse and the Petitioner has not

[2] Despite the word "manager" in the title, the proposed duties of the waste and hazard manager are entirely operational, involving the collection, sorting, and disposal of waste materials.

explained how the Beneficiary's work would involve discussions with unnamed federal agencies. The Petitioner's reliance on generic language of uncertain applicability raises questions regarding the extent to which it has planned the business and the roles of its prospective employees. Likewise, the business plan in the record, while detailed in some ways, does not indicate who would handle administrative tasks, finances, sales, and other functions.

For the reasons discussed, the Director has not sufficiently considered the Petitioner's assertion that the Beneficiary managed the work of supervisory employees abroad, and will do so at the new office. But additional information and evidence will be necessary to establish eligibility.

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