U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33360573

Date: AUG. 29, 2024

Appeal of California Service Center Decision

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

The Petitioner is a fast-food restaurant that seeks to employ the Beneficiary temporarily as the general manager of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition concluding that the Petitioner did not establish that it would support the Beneficiary in a managerial or executive capacity within one year of the petition's approval. The matter is now before us on appeal pursuant to 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 dismiss the appeal.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge 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)(1). 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. 8 C.F.R. § 214.2(l)(3)(ii).

Further, regarding a new office petition, 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

[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.

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. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The primary issue to be addressed is whether the Petitioner provided sufficient evidence to establish that its operation would support the Beneficiary in a managerial or executive capacity within one year of the petition's approval.[2]

In the case of a new office petition, we review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in determining whether the proposed position is plausible based on 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).

The record in this instance shows that the Petitioner purchased a restaurant in 2023 and was operating as such at the time of filing; it claimed two employees and a gross income of $400,000. Supporting evidence includes a cover letter in which the Petitioner stated that it plans to expand its operation to multiple locations and create a franchise. The Petitioner also provided a business plan listing its income and personnel projections over a five-year period. The plan, however, offers no timeline or list of anticipated financial costs associated with the proposed expansion and instead focuses on the Petitioner's existing restaurant, which is projected to have five employees – a general manager, an assistant manager, a kitchen manager/chef, and two "general staff" employees – during its first two years of operation, adding a sales and marketing manager and a third "general staff" employee by the third year, and a fourth "general staff" employee by the fifth year for a total of eight employees. The business plan also lists employee job duties; the listed job duties for the sales and marketing manager include creating a marketing strategy and building a website, maintaining a social media presence, and preparing "special promotions" to attract more customers and promote the Petitioner's brand.

Other supporting evidence includes a consulting agreement executed in October 2023 by the Petitioner and a third party that was contract to assist the Petitioner in creating a "plan of action" that includes addressing the Petitioner's marketing needs for a contract term that was "limited to a period of [two] months from the date of signing." An extension of the contract term, while permitted, would have to be agreed upon by the contracting parties. That said, however, there is no evidence that the parties agreed to an extension. As such, it is reasonable to assume that, pending the hiring of a designated

[2] The Petitioner initially stated that the Beneficiary's proposed position would be in an executive capacity but claimed managerial capacity on appeal. Despite the inconsistency, the distinction between the terms managerial and executive capacity is not critical to our analysis and we therefore need not discuss it further. In general, however, the burden is on the Petitioner to demonstrate that the Beneficiary's responsibilities will meet the requirements of one capacity or the other. *See* sections 101(a)(44)(A) and (B) of the Act (for definitions of managerial and executive capacity, respectively). As such, the Petitioner will need to resolve the noted ambiguity and clearly state whether it intends to employ the Beneficiary in a managerial or executive capacity should it choose to pursue this petition or file a new petition seeking to temporarily employ the Beneficiary as an L1A intracompany transferee.

sales and marketing employee, the organization's marketing needs would be the responsibility of the Beneficiary as the individual responsible for the Petitioner's startup and continued operation.

In a request for evidence (RFE), the Director acknowledged the Petitioner's submission of a business plan that included staffing projections, but questioned how the proposed subordinate staff would elevate the Beneficiary to a primarily managerial or executive position. The Petitioner was asked to provide additional evidence to demonstrate that it's organization would support a primarily managerial or executive position within one year of the petition's approval.

Although the Petitioner provided its own bank documents and business documents pertaining to its foreign affiliate to demonstrate adequate financial support for the U.S. operation, the RFE response did not address the Director's concerns about the Petitioner's projected staffing or explain how the proposed staffing structure would support the Beneficiary in a managerial or executive position within one year of the petition's approval.

On appeal, the Petitioner asserts that its previously submitted business plan is sufficient evidence of its "plan to grow the business to support a managerial position." We disagree. Despite highlighting the importance of the sales and marketing function and referring to this function as one of "very high priority" over which the Beneficiary will assume "ultimate authority," the Petitioner has not explained who, if not the Beneficiary, will continue to fulfill its marketing needs in the absence of a designated sales and marketing employee. While the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level, the Petitioner maintains the burden of demonstrating the likelihood that it would have an actual need for a manager or executive who will primarily perform qualifying duties after its first year of operating as a new office. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See, e.g.*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

As previously noted, the Petitioner's hiring plan shows that a sales and marketing employee will not be hired until the Petitioner's third year of operation. Despite the previously referenced consulting agreement which shows that a third party was hired to assist the Petitioner with a "plan of action" that included addressing the Petitioner's marketing needs, the agreement applied to a time period that preceded this petition's January 2024 date of filing. And despite the potential for the parties to extend the contract term, the record does not show that an extension was in effect at the time of filing. *See* 8 C.F.R. § 103.2(b)(1) (stating that the affected party has the burden of proof to establish eligibility for the requested benefit *at the time of filing* the benefit request and continuing until the final adjudication). We further note that the Petitioner's proposed organizational chart does not list a consultant, nor does the record indicate that the Petitioner planned to contract the consultant for provision of marketing services beyond the initial contract term. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (stating that a petitioner must support its assertions with relevant, probative, and credible evidence). Thus, given the Petitioner's plan to function without a sales and marketing employee until its third year of operation, it is unclear who, if not the Beneficiary, would perform the sales and marketing duties pending the projected hiring. Without evidence of adequate

staffing beyond the Petitioner's new office phase of operation, we cannot conclude that the Petitioner will have the ability to support the Beneficiary in a managerial or executive position. *See id.*

In addition, we note that on appeal the Petitioner mentions that it "plans to increase its headcount to six employees" in its first five years of operation. However, as previously discussed, the personnel projections incorporated into the Petitioner's business plan list a total of eight employees within that five-year period. Thus, the headcount that the Petitioner now mentions on appeal is inconsistent with the business plan and indicates a smaller staff than originally projected. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that inconsistencies in the record must be resolved with independent, objective evidence).

Further, the Petitioner has not adequately described the Beneficiary's job duties or disclosed specific actions the Beneficiary plans to undertake during the company's first year of operation to explain how he plans to ensure that the new office will progress beyond the rudimentary phase of development. While the Petitioner provided an organizational chart depicting the Beneficiary at the top of its organizational hierarchy and listed job duties indicating that the Beneficiary has discretionary authority consistent with his top-level position, the Beneficiary's listed job duties are vague and offer no meaningful insight about his projected activities within the context of a five-person fast-food restaurant. For instance, the job duty breakdown states that the Beneficiary will be responsible for: developing and implementing "the Company's vision, mission, and overall direction," "the Company's overall strategy," and "effective growth strategies and processes"; updating plans and objectives; "maintain[ing] awareness of both the external and internal competitive landscape"; and ensuring the company's growth. However, it is unclear what actual tasks the Beneficiary would carry out to ensure the Petitioner's progression into the next phase of development.

We also question whether the Beneficiary's role with respect to the development and implementation of marketing and advertising campaigns would truly be limited to oversight, as the job duty breakdown indicates. As noted earlier, the hiring of a marketing employee is only projected to happen in the Petitioner's third year of operation. Therefore, it seems likely that the Beneficiary would continue to perform, rather than oversee, the underlying duties of the sales and marketing function as there is no one in the organization, aside from the Beneficiary, available to perform these duties. This ambiguity leads us to further question whether the Petitioner would be able to support the Beneficiary in a managerial or executive capacity within one year of the petition's approval, as the Petitioner has not established that it would have the ability to relieve the Beneficiary from having to primarily perform operational job duties. The fact that the Beneficiary will manage or direct the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act.

On appeal, the Petitioner reiterates the previously submitted job description with the same generalities, thus conveying no further information about the actual job duties the Beneficiary would perform during the Petitioner's new office phase of operation. And although the Petitioner highlights the Beneficiary's position as the "ultimate authority" with responsibility for "all company tasks," it does not explain how the general manager of a fast-food restaurant with a four-person subordinate staff could be employed in a primarily managerial or executive position within one year of the petition's

approval. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). As indicated earlier, it is the Petitioner's burden to establish that it will support a managerial or executive position within one year of the petition's approval. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). Here, the record does not show that the Petitioner has met that burden.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not provided sufficient evidence demonstrating that it would employ the Beneficiary in a managerial or executive capacity within one year of the petition's approval. Therefore this petition cannot be approved.

ORDER: The appeal is dismissed.