U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12916002

Date: DEC. 1, 2020

Appeal of Texas Service Center Decision

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

The Petitioner states that it functions as a "chain-store operation of childcare centers." It seeks to temporarily employ the Beneficiary as its "CEO" 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 Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. With regard to the issue of the Beneficiary's employment abroad, the Director determined that the Petitioner did not demonstrate "the managerial capacity of the [Beneficiary's] subordinate employees" and did not show that the subordinates had "subordinate employees of their own that relieve them from performing the non-qualifying duties so as to sufficiently elevate the [B]eneficiary's subordinates to managerial capacities . . . ." Likewise, the Director's analysis of the Beneficiary's proposed employment, similarly focused on the Beneficiary's subordinates, finding that the Petitioner did not adequately articulate "who the subordinate employees manage or if they are managing a critical or essential function of the organization."

On appeal, the Petitioner contends that the instant petition warrants approval and reiterates its original claim, that the Beneficiary has been and would be employed in an executive capacity.

Upon *de novo* review, we conclude that the Director incorrectly assigned elements of the definition of managerial capacity to the Beneficiary's subordinates, both abroad and in the proposed position.[1] Because the Director did not properly review the evidence and provided an analysis inconsistent with regulatory criteria, we cannot affirm the denial. Instead, we will remand the matter for further proceedings where the Director shall consider the relevant facts within the scope of applicable legal standards.

ORDER: The Director's decision is withdrawn.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

[1] *See* sections 101(a)(44)(A) and (B) of the Act, which require a petitioner to establish that the *beneficiary* of the visa petition meet the statutory criteria of managerial or executive capacity.