U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A&LH-S-, INC.

DATE: DEC. 12, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a provider of hospice health services, seeks to temporarily employ the Beneficiary as its "CEO" 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 it has a qualifying relationship with the Beneficiary's employer abroad or that the Beneficiary was employed abroad in a managerial or executive capacity.

The matter is now before us on appeal. The Petitioner disputes the denial and submits a brief addressing the Director's findings. Regarding the issue of a qualifying relationship, the record contains evidence to show that the Beneficiary owns 100% of the foreign employer and that he owns 50% of the Petitioner. The Petitioner contends that this ownership scheme demonstrates that the Beneficiary has common ownership and control of both entities. We agree and find that the Director's determination to the contrary was incorrect.

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 that they are 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 term "affiliate" is defined in relevant part, as (1) one of two subsidiaries both of which are owned and controlled by the same parent or individual, or (2) one of two legal entities owned by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(1)(ii)(K). While the Petitioner acknowledges that the Beneficiary does not own the majority of its stock, his 50% ownership coupled with his negative control of the entity are sufficient to establish that the Beneficiary owns and controls that entity and that this ownership scheme is sufficiently similar to that of the foreign entity such that an affiliate relationship exists between the two entities.

Next, regarding the Beneficiary's employment abroad, the record contains the Beneficiary's job description and the foreign entity's organizational chart depicting the Beneficiary in the top-most position of the organizational hierarchy. The Petitioner also clarifies an ambiguity regarding the number of employees claimed by the foreign entity, noting that the foreign entity's organizational chart depicts the contract labor it used along with a 14-person in-house staff. The Petitioner also points to previously submitted evidence of salaries and wages paid by the foreign entity in 2016.

Upon *de novo* review, we find that the Petitioner has provided sufficient evidence to overcome the grounds for denial and we will therefore withdraw the Director's decision.

Notwithstanding our favorable determination with regard to the two cited grounds for denial, we find that this petition is not approvable because the Petitioner has not provided sufficient evidence to establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity.

When examining the managerial or executive capacity of the Beneficiary, we first look to the Petitioner's description of the job duties. The Petitioner's description of the job duties must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

Further, U.S. Citizenship and Immigration Services reviews the totality of the record when examining a beneficiary's claimed managerial or executive capacity, including the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

In the present matter, the Petitioner provided a vague job description that focused primarily on the Beneficiary's elevated position within its organizational hierarchy and his discretionary authority to make business decisions. Further, while the Petitioner provided an organizational chart which consistently depicted the Beneficiary at the top-most position within the organization, the Internal Revenue Service Form W-2s that were issued to the employees who were named in the chart showed that most of the employees did not earn wages that were commensurate with those of full-time employees. As the Director's request for evidence focused exclusively on the issues of qualifying relationship and the Beneficiary's employment abroad, the Petitioner did not provide any further evidence regarding the Beneficiary's proposed employment in the United States.

Based on the statutory definitions of managerial and executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive 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); *Champion World*, 940 F.2d 1533.

We find that the record as presently constituted lacks sufficient evidence to establish that the Petitioner was able to relieve the Beneficiary from having to allocate his time primarily to the operational and otherwise non-qualifying tasks of its organization at the time the petition was filed. Therefore, we cannot conclude that the Beneficiary would primarily perform managerial or executive tasks in his proposed position as CEO of the U.S. entity.

In light of the above, we hereby withdraw the Director's decision and remand 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 further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of A&LH-S-, Inc.*, ID# 845334 (AAO Dec. 12, 2017)