U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-S-G-, LLC

DATE: FEB. 2, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a sports gym and fitness center, seeks to temporarily employ the Beneficiary as chief executive officer 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 Vermont Service Center denied the petition, concluding that the Petitioner did not establish, as required, that it would employ the Beneficiary in a managerial or executive capacity within one year of the approval of the petition.

On appeal, the Petitioner submits additional evidence and contends that the Director did not consider the totality of the evidence and erred by basing the decision, in part, on the Petitioner's current staffing levels. The Petitioner maintains that it submitted sufficient evidence to establish that the new office would support a managerial or executive position within one year.

Upon *de novo* review, we will sustain the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification for 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. Section 101(a)(15)(L) of the Act. The petitioner must also establish that the beneficiary's prior education, training, 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.

employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

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. DISCUSSION

The Director found that the evidence did not establish that the Beneficiary would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act.

In the denial decision, the Director determined that the Petitioner provided only a general description of the Beneficiary's proposed duties and those of his proposed subordinates and determined that the intended duties would be inconsistent with the "reasonable operational needs of [the Petitioner's] fitness facility." The Director acknowledged that the Petitioner "may entertain possibilities for expansion," but found that the record did not show a realistic possibility that the Petitioner would expand beyond a single location during the first year.

On appeal, the Petitioner submits additional evidence, including an updated business plan and a detailed, multi-page description of the Beneficiary's proposed duties. The Petitioner also submits an expert opinion letter in support of its claim that it will employ the Beneficiary in a qualifying capacity. In addition, the Petitioner provides a copy of a Buyer Broker Agreement as evidence that, prior to the denial of the petition, it had already retained the services of a real estate broker to locate a second commercial property for a possible second location.

Upon *de novo* review of the record, including the additional evidence submitted in support of the appeal and in response to a request for evidence issued by our office, we find that the Petitioner has sufficiently addressed the specific deficiencies discussed in the Director's decision. Further, we find that the Petitioner has established that the company would more likely than not grow sufficiently during its initial year of operations to support the Beneficiary in a managerial capacity.

At the time of filing, the Petitioner had purchased an existing fitness business and was already operating a 20,000 square foot bodybuilding gym and fitness facility with at a growing staff of employees and contracted personal trainers in place. The Petitioner has submitted a detailed and credible description of the Beneficiary's proposed duties and the record now establishes that, within one year, he would primarily manage the organization, oversee a subordinate staff of managerial or supervisory employees with authority to make personnel decisions, and exercise discretion over the day-to-day operations of the business. *See* section 101(a)(44)(A) of the Act (defining "managerial capacity").

While the Director expressed concerns regarding the Petitioner's intended business plans, the Petitioner's intent to expand to a second facility is now documented in the record. Further, given the size of the first facility and the number and types of staff projected, it appears that the Petitioner could support a managerial position even if it does not open a second facility within its initial year.

Whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that their duties would be "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner has met that burden.

III. CONCLUSION

The Petitioner has established that it would employ the Beneficiary in a managerial capacity within one year of the approval of the petition.

ORDER: The appeal is sustained.

Cite as *Matter of N-S-G-, LLC*, ID# 622865 (AAO Feb. 2, 2018)