U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15212628

Date: FEB. 3, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a tortilla manufacturer, sought to continue its temporary employment of the Beneficiary as its manager of production and distribution[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 Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary's proposed U.S. employment would be in a managerial capacity.[2] In the analysis, the Director stated that in order to demonstrate that the Beneficiary's proposed position meets the statutory definition of "managerial capacity," the Petitioner must show that the Beneficiary's subordinates, if managerial or supervisory, "primarily focus on the broad goals and policies of the organization rather than perform day-to-day operations of the enterprise." The Director determined that the Petitioner provided deficient job descriptions that precluded the determination that the Beneficiary oversees managerial or supervisory subordinates who "primarily perform managerial tasks" or that he oversees professional subordinates whose job duties require a bachelor's degree or higher.

On appeal, the Petitioner disputes the denial and asserts that the Director did not consider the totality of the record or contemplate the Petitioner's reasonable needs. The Petitioner further states that the Beneficiary "will be assuming the same duties and responsibilities which his father held as Chief Executive Officer" and the Petitioner no longer seeks to employ the Beneficiary as its manager of production and distribution, the position that the petition specified as the proposed U.S. position.

Upon *de novo* review, we conclude that the Director incorrectly assigned elements of the definitions of managerial and executive capacity to the Beneficiary's subordinates.[3] Because the Director did not

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[1] As explained below, the Petitioner informs us on appeal that as a result of a change in company circumstances the Beneficiary will assume the position of Chief Executive Officer and the Petitioner will not pursue the position that was specified in the petition.

[2] The Petitioner did not claim that the Beneficiary would be employed in an executive capacity.

[3] *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.

properly review the evidence and provided an analysis that was inconsistent with the statutory and regulatory criteria, we cannot affirm the denial.

Notwithstanding the Director's error, the regulations require a petitioner to file an amended petition "to reflect changes . . . any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act." 8 C.F.R. § 214.2(l)(7)(C). Because the Petitioner now seeks to employ the Beneficiary in a different position, it appears that an amended petition is warranted. The Director may wish to conduct a thorough exploration of this additional issue on remand.

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.