U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-L- CORP.

DATE: FEB. 6, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a supplier of smart home appliances and technological solutions for commercial and residential use, seeks to temporarily employ the Beneficiary as vice president 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 California 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 contends that the Director did not consider the totality of the evidence and did not apply the preponderance of the evidence standard to the facts presented. 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 qualify 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 Petitioner is the U.S. subsidiary of a Chinese entity that holds a number of patents for smart switches and other smart home appliances. The foreign entity has a North American department dedicated to designing products for the United States market and seeks to transfer the Beneficiary to the United States to oversee the development of the market.

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's description of the Beneficiary's duties was not sufficiently detailed to establish the nature of his proposed day-to-day duties. Further, the Director determined that the Petitioner did not demonstrate that the Beneficiary would have a subordinate level of managerial employees.

On appeal, the Petitioner asserts that, based on the evidence previously submitted, which included evidence of its recruitment efforts, it has established by a preponderance of the evidence that the Beneficiary's subordinates would include a manager and professionals. The Petitioner also maintains that the Director primarily limited his review of the petition to the proposed organizational chart and did not consider the totality of the evidence, including evidence of a $1 million investment from the Petitioner's parent company.

Upon *de novo* review of the record, 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. The Petitioner has submitted a sufficiently detailed and credible description of the Beneficiary's proposed duties and the record that, within one year, he would primarily manage the organization, oversee a subordinate staff of managerial and professional 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"). Although the Director questioned whether the Petitioner would hire bona fide managers and professionals, the Petitioner provided evidence corroborating its claims regarding the nature of the proposed subordinate positions.

Further, the record shows that the foreign entity's well-staffed North American department will support the Petitioner's activities, leaving the Beneficiary free to primarily manage, rather than

become significantly involved in, the day-to-day activities of the business by the end of its initial year of operations.

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 T-L- Corp.*, ID# 696854 (AAO Feb. 6, 2018)