U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 1624048

Date: FEB. 6, 2020

Appeal of California Service Center Decision

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

The Petitioner, a provider of data management and analytics services, seeks to temporarily employ the Beneficiary in the United States as its executive vice president (EVP) and head of solutions and innovation under the L-1A nonimmigrant classification for intracompany transferees. 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 record did not establish, as required, that it seeks to employ the Beneficiary in the United States in a managerial or executive capacity.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with our discussion below.

## I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

## II. ANALYSIS

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or

manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

Based on the statutory definition of managerial 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 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.

The denial did not rest directly on the description of the Beneficiary's intended duties. Instead, the Director found that the Petitioner had not sufficiently documented its employment of subordinates, and had not established that those subordinates sufficiently relieve the Beneficiary from performing primarily non-qualifying tasks. The Director also cited apparent discrepancies regarding the Beneficiary's work location. The petition indicated that he would work in [redacted] Washington, but some pay records showed an address in [redacted] Arkansas. At the time of filing, the Petitioner claimed its headquarters was in [redacted] California; more recent filings show a New York address.

The Petitioner's organizational chart included the following positions directly or indirectly subordinate to the Beneficiary's authority:

- Vice President (who subsequently departed the United States)
- 5 Engagement Managers
- 12 Senior Analysts
- 18 Consultants

Pay receipts showed that the subordinates live throughout the United States, at addresses in Washington, California, Illinois, Georgia, and other states. It appears that the subordinates are scattered because they work for different end clients. The payroll records are consistent with full-time employment at annual salaries of $70,000 or more.

The addresses shown on the Beneficiary's payroll documents do not show internal inconsistencies. Older pay receipts (up until mid-July 2017) showed the [redacted] address, but that the address changed to [redacted] before the petition's filing date in October 2017. This change of address before the time of filing is not a disqualifying discrepancy in the Petitioner's claims or documentation.

Taking the evidence of record into account, the above factors, as set forth in the denial notice, do not appear to warrant denial of the petition, and we therefore withdraw the Director's decision. The petition, however, cannot be approved until and unless the Petitioner addresses significant issues relating to repeated attempts to verify the nature and extent of the Petitioner's business activity.

The Petitioner does not claim that it seeks the Beneficiary's services in relation to a new office, defined at 8 C.F.R. § 214.2(l)(1)(ii)(F). Therefore, the Petitioner must show that it is currently doing business

in the United States. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*). "Doing business" means the regular, systematic, and continuous provision of goods, services, or both, and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad. 8 C.F.R. § 214.2(l)(1)(ii)(H). Payroll records and leases for office space do not document the provision of goods or services, and therefore are not evidence of doing business.

The petition form asks the Petitioner to specify the location where the Beneficiary will work, and by signing the petition form, the Petitioner attests that the information on that form is correct. Providing an address where the Beneficiary will not actually work, therefore, raises very significant questions of credibility.

Over the past several years, the Petitioner has claimed several different business addresses. U.S. Citizenship and Immigration Services (USCIS) officers have visited these addresses as part of routine verification efforts. The officers found offices belonging to [redacted] which rents office space and provides related services to a variety of clients. The use of providers such as [redacted] is not inherently disqualifying, but the Petitioner must actually conduct business, rather than rent office space simply to create the appearance of business activity.

The USCIS site visits did not produce any evidence that the Petitioner actually uses the rented space; in several instances, [redacted] representatives acknowledged that the Petitioner holds leases, but stated that they have never seen the Petitioner's employees on the premises. Similarly, telephone numbers claimed by the Petitioner on other petitions have proven to be numbers belonging either to [redacted] or to the Petitioner's attorney of record.

This information is of particular concern because the "Contact Us" page of the Petitioner's website currently lists six different U.S. locations.[1] All of them are [redacted] locations. One of those six locations is the address the Petitioner claims in the present appeal. The "Contact Us" page does not list a telephone number for any of the six claimed U.S. locations.[2]

The Petitioner appears to be engaged in some degree of actual business activity, but it is of significant concern that USCIS has not been able to locate any actual workplace. The Petitioner's documented reliance on third party telephone numbers and (apparently) vacant office space raise serious questions that must be addressed before the petition can be approved.

When considering the above issues, we note that the Petitioner had filed an earlier nonimmigrant petition on the Beneficiary's behalf. The approval of that petition (with receipt number [redacted] was revoked in August 2017, owing to discrepancies in the company's claimed personnel and management structure. Rather than appeal or otherwise contest that decision, the Petitioner filed the present petition on the Beneficiary's behalf. (The Petitioner later filed yet another petition, with receipt number [redacted], in August 2018.)

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[1] Source: https://www[redacted]/contact-us/ (last visited Feb. 5, 2020).

[2] At the time of filing, the present petition indicated the Petitioner's address as [redacted] California. USCIS found that address occupied by a tax filing firm, which indicated that the Petitioner was one of its clients, but that the Petitioner did not rent any office space there. The Petitioner's use of this address as its own raises serious questions that the Petitioner has not yet had the opportunity to address.

Before this petition can be approved, the Petitioner must demonstrate that it is engaged in regular, systematic, and continuous business activity at one or more identifiable locations that are amenable to USCIS verification.

If other issues arise that directly bear on the Petitioner's credibility or the verifiability of the Petitioner's claims, the Director may incorporate those issues into a new decision after giving the Petitioner an opportunity to address and rebut them as required by 8 C.F.R. § 103.2(b)(16)(i).

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.