U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30064000

Date: FEB. 14, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner is a plant-based food importer and exporter that seeks to employ the Beneficiary temporarily as general manager of its new office[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 California Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary was employed abroad in a managerial or executive capacity and that he would be employed in a managerial or executive capacity within one year of the petition's approval. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for consideration and entry of a new decision consistent with the following analysis.

I. ANALYSIS

First, we conclude that contrary to the Director's determination, the Petitioner adequately described the Beneficiary's foreign job duties and provided sufficient evidence regarding the foreign entity's hierarchy and staffing to show that the Beneficiary's position abroad was more likely than not in a managerial or executive capacity.

We also find that the Director offered a deficient analysis of the relevant facts and legal standards regarding the Beneficiary's U.S. employment. Although the Director concluded that the Beneficiary would not be employed in a managerial or executive capacity, the analysis focused exclusively on whether the Beneficiary would be employed in an executive capacity despite lack of an express claim

[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.

by the Petitioner specifying the Beneficiary's proposed position as executive. Rather, the Petitioner claimed that the Beneficiary would "direct the overall management and supervise the managerial employees," thereby attributing elements of both statutory definitions to the proposed position. *See* sections 101(a)(44)(A)(ii) and 101(a)(44)(B)(i) of the Act. Although this ambiguity in the Petitioner's claim indicates a need for further clarification, the Director's analysis did not acknowledge this ambiguity and incorrectly focused on one statutory definition to the exclusion of the other.

Further, it does not appear that the Director properly analyzed the Beneficiary's proposed job duties pursuant to the new office regulations, which do not require the Petitioner to establish its ability to support the Beneficiary in a managerial or executive position at the time of filing, but rather allow the Petitioner one year from the date of the petition's approval to establish that its operation will support the Beneficiary in an executive or managerial position. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). The Director determined that the Petitioner did not adequately describe the Beneficiary's job duties and concluded that the Petitioner did not establish that the Beneficiary would be employed in an executive capacity. There is no indication that the Director properly assessed the Beneficiary's job duties under the new office provisions.

In addition, the Director incorrectly applied the statutory definitions to the Beneficiary's subordinates when he determined that the job descriptions of the Beneficiary's two subordinates "were more indicative of employees who will perform the necessary tasks to provide a service or to produce a product." However, sections 101(a)(44)(A) and (B) of the Act only require a petitioner to establish that the *beneficiary* of the visa petition meet the statutory criteria of managerial or executive capacity. Thus, whether the Beneficiary's subordinates primarily perform tasks that are necessary to provide a service or to produce a product is not relevant for the purpose of determining the managerial or executive nature of the Beneficiary's proposed position.

In light of the above, we find that the Director did not properly review the evidence and provided an analysis that is inconsistent with statutory criteria. Therefore, we cannot affirm the denial.

II. BASIS FOR REMAND

Notwithstanding the Director's error, the record as presently constituted lacks sufficient evidence establishing that the Petitioner's operation would support the Beneficiary in a managerial or executive capacity within one year of the petition's approval.

First, as noted earlier, the Petitioner has not stated with sufficient clarity whether the Beneficiary's position would be in a managerial or executive capacity. Claiming that the Beneficiary would "direct the overall management and supervise the managerial employees" attributes elements of both statutory definitions and does not clarify that the Beneficiary's position will fall within the statutory scheme of one definition or the other. The Petitioner also states that the Beneficiary will have the authority to recruit and hire, which is consistent with the definition of managerial capacity, while on the other hand claiming that the Beneficiary will assume a policy-making role, which is consistent with the definition of executive capacity. *See* sections 101(a)(44)(A) and 101(a)(44)(B) of the Act, respectively.

A petitioner claiming that the beneficiary's position will consist of a mixture of managerial and executive duties will not meet its burden of proof unless it has demonstrated that the beneficiary will

primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each set of criteria set forth in the statutory definition for either managerial or executive capacity. Thus, this petition may not be approved if Petitioner does not clarify its claim and provide evidence to show that it will support the Beneficiary in the designated capacity within one year of this petition's approval.

We also find that the Petitioner provided a deficient business plan that does not outline a hiring timeline that explains when the Petitioner expects to fill the staffing vacancies depicted in the proposed organizational chart and whether it expects to fill those vacancies within its first year of operation.

In the case of a new office petition, we review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in determining whether the proposed position is plausible based on a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

The business plan describes the Petitioner's business model, which focuses on importing the parent entity's products and engaging in the wholesale and direct customer sales of those products. Although the business plan mentions the Petitioner's intent to expand its operation "to include services that are essential to client's [sic] needs," it does not identify the "essential" services. And while the business plan also discusses its intent to develop business opportunities through trade show participation and exploration of the pet food market, it offers no specifics about the projected costs, timeline, or staff required to pursue an expansion into the pet food market. Likewise, the business plan's mention of increasing the Petitioner's online presence through online tools and technical solutions is also ambiguous, as the proposed organizational chart does not include any IT staff who would foreseeably be required in order for the Petitioner to achieve this objective.

Lastly, while the business plan offers a financial overview which includes revenue projections and a list of projected operating expenses over a three-year period, it does not explain how the revenue projections were calculated, establish that the Petitioner has sufficient funding to offset projected costs, or provide the individual salary breakdowns for anyone other than the Beneficiary and the two employees whom the Petitioner claims to have employed at the time of filing.

As stated earlier, the Petitioner must demonstrate that the proposed position is plausible based on its anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). The position description alone is insufficient to establish that a beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as a petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the proposed position. Here, the record as presently constituted does not show that the Petitioner, within one year of this petition's approval, will be adequately staffed and funded to employ the Beneficiary in a managerial or executive capacity.

III. CONCLUSION

In sum, the Petitioner did not clearly designate the Beneficiary's proposed position as managerial or executive and did not provide sufficient evidence to show that the Petitioner would more likely than not employ the Beneficiary in the designated position within one year of this petition's approval. However, because the Director offered a deficient analysis and incorrectly applied the law, we will withdraw the Director's decision and remand the matter for further proceedings.

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