U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12331978

Date: FEB. 17, 2021

Appeal of California Service Center Decision

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

The Petitioner, a home remodeling company, seeks to temporarily employ the Beneficiary as its Chief Executive Officer (CEO) 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 that the Beneficiary had been employed abroad in a managerial or executive capacity. In addition, she concluded that as a new office, the Petitioner did not establish that it will support the Beneficiary in a managerial or executive capacity within one year.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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 the entry of a new decision consistent with the following analysis.

I. LEGAL FRAMEWORK

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

As noted above, one of the grounds for which the Director denied this Petition was that the Petitioner did not establish that as a new office, it would support the Beneficiary in a primarily managerial or executive position within one year of approval of the petition. On appeal, the Petitioner asserts that the Director erred in concluding that it is a new office and thus subject to the requirements under 8 C.F.R. § 214.2(l)(3)(v) and limited to an initial validity period of one year.

We first note that in responding to Question 12 on the Form I-129 L Classification Supplement, the Petitioner responded "no" to the question of whether the Beneficiary was coming to the United States to open a new office. It also responded to the Director's request for evidence by stating that the Director was incorrect in classifying it as a new office, and referring to evidence that it had been doing business for more than 12 months prior to the filing of its petition on the Beneficiary's behalf. Nonetheless, the Director determined in her decision that the Petitioner had failed to meet the requirements for approval of a petition filed by a new office.

Upon review, we agree with the Petitioner that the Director erred in determining that it is a new office. The Petitioner's stock certificate, closing agreement and other related documentation show that the Beneficiary acquired 100% ownership and control of the Petitioner on October 4, 2019, just over two months prior to the filing of the petition. However, since this transaction was a stock and asset purchase, the evidence indicates that the Petitioner simply continued to exist as it had prior to this date, and this transaction did not result in the creation of a new legal entity. In addition, the record includes substantial evidence that the Petitioner had been doing business through the regular, systematic, and continuous provision of services per 8 C.F.R. § 214.2(l)(1)(ii)(H) since at least October 1, 2018. This evidence includes IRS Forms 941 and W-2 showing the payment of wages to employees during this period, bank statements showing regular business activity, and invoices showing the billing of customers for home improvement projects, as well as receipts for the purchase of materials to complete those projects. Other evidence indicates that the Petitioner had been doing business for several years prior to its acquisition by the Beneficiary. Therefore, on remand the Director should not consider the new office requirements under 8 C.F.R. § 214.2(l)(3)(v) in determining the Petitioner's eligibility for the requested benefit.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse, shall be certified to us for review.