U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30150071

Date: FEB. 21, 2024

Appeal of California Service Center Decision

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

The Petitioner, an importer and distributor of coffee products, seeks to temporarily employ the Beneficiary as the sales and business development manager of its new office[1] in the United States under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and National 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 the Beneficiary has been employed abroad in a managerial or executive capacity, and that he would be employed in the United States in a managerial or executive capacity within one year if granted approval of the new office petition. 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 l&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. THE LAW

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving 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(1)(3)(v)(B). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

[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)(l)(ii)(F). The regulation at 8 C.F.R. § 214.2(1)(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.

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(1)(3)(v).

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The primary issue to be addressed is whether the Petitioner established that its new office would employ the Beneficiary in a managerial or executive capacity within one year.

"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 10l(a)(44)(A) of the Act.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

To determine whether a new office would support a managerial or executive position within one year, we review a beneficiary's proposed job duties, along with the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The totality of the evidence must be considered in analyzing whether the proposed managerial or executive position is plausible, considering a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(1)(3)(v)(C).

According to its business plan, the Petitioner will market and distribute coffee beans and related products through multiple channels, including an e-commerce platform on the company website, through local restaurants and bakeries, and through wholesale distributors that can position the products in supermarket chains and other larger retail stores. The Petitioner indicated that it anticipates hiring five employees during its first year of operations, including the Beneficiary, a secretary and three sales representatives.

The Petitioner stated the Beneficiary will perform the following duties as its sales and business development manager:

- Develop and implement sales strategies to achieve company sales targets. . .
- Analyze market trends, customer preferences, and competitor activities to identify business opportunities and formulate effective sales plans.

- Lead and manage a high-performing sales team, providing guidance, coaching and motivation to achieve sales goals.
- Set performance targets, monitor individual and team performance, and conduct regular performance evaluations.
- Identify potential customers, negotiate contracts, and establish strong relationships with key accounts.
- Explore new business opportunities, markets, and partnerships to expand the company's presence and revenue streams.
- Develop and maintain sales processes, policies, and procedures to ensure smooth operations and efficient sales activities.
- Monitor sales performance, track sales metrics, and prepare regular sales reports and forecasts for management review.
- Build and maintain long-term relationships with customers, addressing their needs and providing exceptional customer service.
- Collaborate with marketing team to develop promotional activities, campaigns, and customer loyalty programs.
- Stay updated on industry trends, market conditions, and competitor activities to identify business opportunities and maintain a competitive edge.
- Conduct market research, analyze customer feedback and make recommendations for product improvements or new product development.

In a request for evidence (RFE), the Director provided the statutory definitions of managerial and executive capacity and emphasized the Petitioner's burden to show that the Beneficiary will primarily perform the enumerated managerial or executive duties within one year. The Director emphasized that for the Beneficiary to qualify as a manager under the statutory definition at section 101(a)(44)(A) of the Act, the Petitioner must establish that he would supervise managerial, supervisory, or professional employees. The RFE advised that, based on the company's projected staffing, the Beneficiary would be acting as a first-line supervisor of non-professional employees. The Director requested, in part, additional evidence to show that the new office would have a structure in place, within one year, to support a managerial or executive position. This request included, among other items, a proposed organizational chart showing the company's anticipated management hierarchy and staffing levels.

The Petitioner's response to the RFE included a bank statement intended to demonstrate that the new office had sufficient funds to commence operations, as well as evidence of its liability insurance policy. However, it did not submit any additional evidence to address the Director's concerns regarding the new office's proposed staffing and organizational structure.

In the decision denying the petition, the Director concluded that, without the requested evidence, "USCIS cannot determine whether the beneficiary will work in a position that is higher than a first-line supervisor of non-professional . . . employees." In addition, the Director determined that the Beneficiary's proposed job description includes operational tasks required for the company to market and sell its products, rather than primarily executive or managerial duties.

On appeal, the Petitioner asserts "it is our belief that the decision rendered by USCIS overlooked significant pieces of evidence presented in the [RFE] that are essential to the evaluation of [the

Beneficiary's] eligibility for the L1A classification." Specifically, the Petitioner contends "[t]he evidence provided clearly outlined how [the Beneficiary's] presence in the United States would contribute to the creation of new job opportunities and the overall advancement of the U.S. economy," noting "this aspect of the petition appears to have been overlooked." However, the Director was not required to consider job creation or economic impacts as factors in determining whether the U.S. company would support a managerial or executive position within one year under 8 C.F.R. § 214.2(l)(3)(v). The Petitioner's assertion that the Director erred in this regard is not persuasive.

Further, the record supports the Director's determination that record is insufficient to establish that the Beneficiary would, more likely than not, perform primarily managerial or executive duties within one year. To establish a beneficiary's eligibility for L-1A nonimmigrant visa classification as a manager or executive executive, a petitioner must show that the beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) or 101(a)(44)(B)(i)-(iv) of the Act. If a petitioner establishes that the offered position meets all elements set forth in the statutory definition, it must prove that the beneficiary will be *primarily* engaged in managerial or duties, as opposed to ordinary operational activities alongside its other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

Here, the Petitioner indicated that the Beneficiary would have the authority to develop and implement sales strategies, policies, and goals. These statements support its claim that his proposed employment involves executive or managerial authority over the new operation as required by 8 C.F.R. § 214.2(l)(3)(v)(B). However, the Director explained why the evidence was insufficient to establish (1) that the Beneficiary's position would meet all elements of the statutory definition of managerial capacity or executive capacity and (2) that he would primarily perform managerial or executive duties within one year. The Petitioner has not acknowledged or contested these findings on appeal.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The Petitioner did not articulate a claim that the Beneficiary would manage a function of the new office; rather it indicated he would be "overseeing the sales team" and "managing the overall business operations."

Personnel managers are required to primarily supervise and control the work of supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional."[2] Section 101(a)(44)(A) of the Act. If a beneficiary directly supervises

[2] To determine whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." Therefore, we focus on the level of education required by the position, rather than the degree held by a subordinate employee.

other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Section 101(a)(44)(A)(iii) of the Act.

Although the Petitioner indicates that the Beneficiary will have the authority to hire and fire employees and make other personnel decisions, it has not established that he would supervise and control the work of subordinate supervisors, managers, or professionals within one year. As noted by the Director, the Petitioner indicates that the Beneficiary would supervise a secretary and three sales representatives with no subordinates of their own. The record does not establish that any of those employees would be employed in managerial, supervisory, or professional positions, and, as noted, the Petitioner has not contested the Director's determination.

Similarly, to qualify as an L-1A executive employee as defined at section 101(a)(44)(B) of the Act, the record must show that the Beneficiary "directs the management of the organization or a major component or function of the organization." An executive directs the management of the organization, major component, or essential function of a given organization by controlling the work of managerial or lower-level executive employees. This control could either take the form of direct supervision of those managers or executives or could be more indirect under some circumstances. *See generally*, 2 *USCIS Policy Manual*, L.6(D), https://www.uscis.gov/policy-manual/volume-2-part-l-chapter-6 (discussing the application of the statutory definition of "executive capacity" in L-1A adjudications). Here, for the reasons already discussed, the record does not show that the Beneficiary would directly or indirectly supervise managers or lower-level managers.

The record also supports the Director's determination that the previously submitted evidence was insufficient to establish that the Beneficiary's duties would be primarily managerial or executive in nature within one year. First, as noted by the Director, the record reflects the Beneficiary would be performing non-managerial duties that overlap with those of the sales representatives, such as sales monitoring and reporting, maintaining customer relationships, and performing market research and analysis.

Further, we observe that the Petitioner stated the Beneficiary would be "managing the overall business operations," which implies that his duties would not be limited to the company's sales, marketing, and business development functions, as outlined in his job description. The Petitioner states it will import, package and distribute coffee products through various channels, but indicates it intends to hire only sales staff and a secretary during the first year of operations.[3] The Petitioner has not explained, for example, who will be responsible for handling the purchasing, logistics, inventory, and distribution of its products, who will implement the marketing and advertising campaigns described in its business plan, who will maintain the company website and process e-commerce orders, and who will perform financial and bookkeeping functions.

Therefore, based on the hiring projections described, the Petitioner would reasonably require the Beneficiary to perform a variety of operational and administrative functions that are not included in the submitted job description. Although the Petitioner indicated he will be "managing the overall

[3] The job description included in the Petitioner's business plan indicates that the Beneficiary would be collaborating with "other departments, such as marketing, promotion and finance." However, these proposed departments are not mentioned elsewhere in the business plan or the record.

business operations," the record does not support a conclusion that he would be relieved from significant involvement in the routine day-to-day functions of the company within one year. Accordingly, the record does not demonstrate that the Beneficiary would, more likely than not, perform primarily managerial or executive duties within that timeframe.

Based on the foregoing discussion, the Petitioner has not established that the Beneficiary would be employed in the United States in a managerial or executive capacity within one year of an approval of the new office petition. Accordingly, the appeal will be dismissed.

Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Director's separate determination that the record did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n. 7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

For the reasons discussed, the Petitioner has not established that the new office would employ the Beneficiary in a managerial or executive capacity within one year. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.