U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6396745

Date: FEB. 24, 2020

Appeal of California Service Center Decision

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

The Petitioner, intending to operate as a home décor and lighting design company, seeks to temporarily employ the Beneficiary as the business development manager of its new office[1] 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, finding that the Petitioner leased office space that would not accommodate its future staff and that the Beneficiary's subordinates "are primarily doing tasks to produce a product or service." He therefore concluded that the Petitioner did not establish, as required, that: (1) the Petitioner secured sufficient physical premises to house its business operation; and (2) the Beneficiary was employed abroad in a managerial or executive capacity. The Director also concluded that the Petitioner did not establish that the Beneficiary's employment in the United States would be in a managerial or executive position.

The matter is now before us on appeal. The Petitioner emphasizes its status as a new office, indicating that the Director did not consider its nascent phase of operation and incorrectly determined that the Petitioner's current physical premises must accommodate a projected staff that had not been hired at the time of filing. The Petitioner argues that the Director overlooked previously submitted evidence, enumerating and describing earlier submissions that addressed the Petitioner's business plans, the Beneficiary's prospective executive role within the new business, and the Beneficiary's executive role and job duties in his position abroad as well as the respective job duty breakdowns and roles of the Beneficiary's subordinates who manage departments and the staff who carry out the operational tasks of those departments.

Upon *de novo* review, we find that the Petitioner has correctly pointed to errors in the Director's analysis, which did not consider the Petitioner's new office status or reference the applicable regulations to the submitted evidence. The Director also overlooked supporting evidence, which

[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.

includes job duty breakdowns for the Beneficiary and his subordinates in his position with the foreign entity, the Beneficiary's prospective role and job duties within the U.S. operation, and the office space that the Petitioner obtained to accommodate its current new operation. Although the Director discussed the Beneficiary's proposed employment in the United States, there is no indication that he applied the new office regulations, which allow the new business one year to support an executive position.. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). Lastly, the Director incorrectly applied the statutory definition of managerial capacity to subordinate employees who are not subject to that statutory definition.

In sum, we find that the Petitioner has met the preponderance of the evidence standard of proof and demonstrated that a denial was not warranted in the present matter. Therefore, we will sustain the appeal.

ORDER: The appeal is sustained.