U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-A- LLC

DATE: JAN. 4, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a coffee and bakeshop franchisor, seeks to temporarily employ the Beneficiary as the chief executive officer (CEO) of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. *See* 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 Vermont Service Center denied the petition, concluding that the record did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of the approval of the new office petition.

On appeal, the Petitioner asserts that the preponderance of the evidence demonstrates that the Beneficiary would be employed in a qualifying executive capacity within one year.

Upon *de novo* review, we will sustain the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification for 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(l)(3)(v)(B). 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. Section 101(a)(15)(L) of the Act. The petitioner must also establish that the beneficiary's prior education, training, and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

[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).

If the Form I-129, Petition for a Nonimmigrant Worker, indicates that the beneficiary is coming to the United States in L-1A status to open or to be employed in a new office, 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(l)(3)(v).

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

The Director determined that the Petitioner did not establish that its new office would be able to support a managerial or executive capacity, as defined at section 101(a)(44) of the Act, within one year of approval of the petition. Specifically, the Director concluded that the Beneficiary's proposed job description did not demonstrate the Beneficiary's actual day-to-day tasks and determined that the evidence did not support that the Beneficiary would primarily perform executive level tasks within one year.

Upon review, we disagree with the Director's assessment of the Beneficiary's job description and the Petitioner's proposed staffing and structure. The Petitioner has submitted sufficient evidence to demonstrate that the Beneficiary would more likely than not be employed in an executive capacity within one year.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and they must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The Petitioner has submitted a detailed and credible duty description for the Beneficiary. Although it appears likely that the Beneficiary may perform some non-qualifying operational tasks in his role as CEO during the first year, the evidence is sufficient to indicate that the Beneficiary will more likely than not be primarily engaged in qualifying executive tasks and supervise managerial subordinates handling the operational aspects of its coffee and bakery store within the first year. The Petitioner has provided sufficient evidence related to its first year business plans and documentation indicating that it owns and franchises a substantial chain of coffee and bakery cafes in Brazil. The record indicates that the Petitioner recently launched one of these stores in the United States and that

it employs 17 individuals, including supervisors subordinate to the Beneficiary managing this operation. Further, the Petitioner has provided credible business and hiring plans indicating it will also hire a general manager during the first year to further relieve the Beneficiary from non-qualifying operational level duties.

The evidence credibly establishes that the Beneficiary will likely have a subordinate level of managerial employees to direct within the first year to allow him to focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise and that he will have wide latitude in discretionary decision making over the organization. Section 101(a)(44)(B) of the Act.

III. CONCLUSION

The Petitioner has established that the Beneficiary would be employed in an executive capacity within one year of the approval of the petition.

ORDER: The appeal is sustained.

Cite as *Matter of B-A- LLC*, ID# 930983 (AAO Jan. 4, 2018)