U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29426242

Date: JAN. 17, 2024

Appeal of California Service Center Decision

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

The Petitioner, a company producing and selling clothing and fashion accessories, seeks to temporarily employ the Beneficiary as the president and chief executive officer 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 Director of the California Service Center denied the petition on multiple grounds, concluding the record did not establish that: 1) it had a qualifying relationship with the Beneficiary's foreign employer, 2) the Beneficiary was employed abroad for one continuous year in the three preceding the date the petition was filed, 3) the Petitioner had sufficient physical premises to house the new office, and 4) the Beneficiary would be employed in a managerial or executive capacity within one year of an approval of the petition. The Petitioner later filed a motion to reopen and reconsider with the Director. In response to the motion, the Director concluded the Petitioner established that it had a qualifying relationship with the Beneficiary's foreign employer and that he had been employed abroad for one continuous year in the three preceding the date the petition was filed. However, the Director dismissed the motions, determining the Petitioner had not overcome the other stated grounds for ineligibility. The matter is now before us on appeal. 8 C.F.R. § 103.3.

Upon *de novo* review, we will dismiss the appeal as the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of an approval of the petition. 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. Since this issue is dispositive, we decline to reach and hereby reserve its arguments with respect to the Director's other ground for denial. *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).

[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.

I. LEGAL FRAMEWORK

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(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. *Id.*

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 A MANGERIAL OR EXECUTIVE CAPACITY WITHIN ONE YEAR

The sole issue we will analyze is whether the Petitioner established that it would employ the Beneficiary in a managerial executive capacity within one year of the petition's approval.

"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 101(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 the Petitioner established that its new office would support a managerial executive position within one year, we review the 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(l)(3)(v)(C).

In the first decision, the Director emphasized that the Petitioner submitted both claimed executive-

level and managerial duties for the Beneficiary but did not indicate which he would primarily perform. The Director further determined that the Beneficiary's duties were overly broad and did not provide sufficient insight into her actual proposed tasks. The Director also pointed to the Petitioner's asserted investment in the new venture, noting that it claimed that the Beneficiary had invested the sum of $44,162.39. However, the Director stated that the Petitioner had assigned $38,827.39 to the vague category of "other expenses," which did not sufficiently demonstrate how the funds would be used to successfully launch the business within one year. In addition, the Director indicated that half of the submitted wire transfers from the Beneficiary to the Petitioner were made after the date the petition was filed, amounting to only $15,967.62, not over $44,000 as claimed. As such, the Director concluded that the Petitioner did not substantiate sufficient investment at the time the petition was filed to launch the new office within the first year.

On motion, the Petitioner asserted that the Beneficiary duties in the United States included both executive and managerial duties, sometimes overlapping "as is expected of a new company." The Petitioner submitted documentation specific to a new business venture in South Carolina involving the provision of seamstress services, as opposed to its initially proposed venture, a clothing store in Florida. The Director determined that this evidence was not new evidence as required to support a motion to reopen and that it did not overcome the insufficiencies in the Beneficiary's provided duties.

Further, the Petitioner also addressed its proposed investment in the new venture on motion, asserting that there was not a required amount for investment in a new office, only that it be a "substantial amount" based on the size of the company. The Director stated that this reasoning was not persuasive, pointing to the fact that the Petitioner provided a [redacted] consumer account application on motion, without explaining its relevancy. Ultimately, the Director again concluded that the Petitioner did not sufficiently establish that had adequately invested in the new venture when the petition was filed as necessary to demonstrate it would develop within the first year to support the Beneficiary in a managerial or executive capacity.

In dismissing the motion to reconsider, the Director emphasized that the Petitioner asserted it invested over $44,000 in the new office but that wire transfers from the Beneficiary only reflected she had transferred almost $16,000 prior to the date the petition was filed. The Director further acknowledged that although the Petitioner claimed they had improperly cited *Matter of* Ho, 19 I&N Dec. 582, 591-92 (BIA 1988), the Petitioner did not sufficiently articulate how the prior decision was based on an incorrect application of law or policy.

In support of the current appeal, the Petitioner only states only that U.S. Citizenship and Immigration Services (USCIS) "made an error by not considering the subsequent new evidence before denying the Petitioner's motion." However, the Petitioner does not specifically articulate what evidence the Director did not consider prior to dismissing the motion to reopen and does not discuss the Director's dismissal of the motion to reconsider. The Director has provided two well-reasoned decisions discussing the insufficiency of the Beneficiary's asserted duties and the inadequacy of its proposed investment in the new office when the petition was filed. On appeal, the Petitioner does not indicate why these conclusions were in error nor what evidence was not considered by the Director. In fact, the Director listed the evidence submitted on motion and discussed it in the subsequent decision, where relevant, so we do not find the Petitioner's reasoning on appeal that the Director did not sufficiently consider the evidence convincing. We note that the regulations provide that we must summarily

dismiss any appeal when a petitioner does not specifically identify an erroneous conclusion of law or statement of fact on the part of the Director. 8 C.F.R. § 103.3(a)(1)(v). Therefore, we adopt and affirm the Director's decisions. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); Chen v. INS, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

To illustrate, the Director reasoned the Petitioner provided a generic duty description for the Beneficiary that did not sufficiently articulate whether she would primarily perform managerial or executive duties. The Petitioner does not address this valid conclusion, but only ambiguously contended that the Beneficiary performed both managerial and executive-level tasks, and that these would overlap. The Petitioner did not identify which duties were managerial or executive-level tasks, nor which tasks she would primarily perform.[2] As noted, the Petitioner does not address this material issue on appeal.

Likewise, the Petitioner does not address on appeal the Director's conclusion that the Petitioner did not sufficiently establish the size of its U.S. investment, as necessary to demonstrate that the proposed new office would support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*). For instance, the Petitioner did not address the lack of evidence to support its claimed $44,000 investment in the new office when the petition was filed in September 2021. In fact, the Petitioner provided bank account statements from this time reflecting low balances, including only $118.91 in September, and $484.70 in November and December 2021, suggesting that it did not have sufficient funds to successfully launch the new office. The Petitioner also provided a 2022 IRS 1120S U.S. Income Tax Return for an S Corporation reflecting that it had only $1,000 in assets, in the form of cash, in late December 2021 just after the date the petition was filed. The Beneficiary further emphasized on motion that she had "tremendous difficulties in getting the company set up," noting that "there is no credit history of myself or the company," and that they had to pay high interest rates. The Beneficiary's statements indicate that the Petitioner did not have sufficient funds to invest in the new office during the first year as necessary to support her in a managerial or executive capacity. The Petitioner must resolve discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also* Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.").

[2] A petitioner claiming that a beneficiary will perform as a "hybrid" manager/executive 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 criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary would have acted in a managerial or executive capacity within one year of an approval of the petition. Therefore, the Director correctly dismissed the prior motion to reopen and motion to reconsider.

ORDER: The appeal is dismissed.