U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C- INC.

DATE: JAN. 25, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a real estate development and investment business, seeks to continue the Beneficiary's temporary employment as its president/chief executive officer (CEO) under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 Petitioner did not establish, as required, that it would employ the Beneficiary in a managerial or executive capacity under the extended petition. The matter is now before us on appeal.

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

We find that the Petitioner has established by a preponderance of the evidence that the Beneficiary would be employed in the United States in an executive capacity as defined at section 101(a)(44)(B) of the Act.

The denial decision was solely based upon perceived discrepancies between the Petitioner's organizational chart and its submitted IRS Forms W-2, Wage and Tax Statement, for 2017. On appeal, the Petitioner emphasizes that the organizational chart reflects the company's staffing levels at the time of filing in April 2018 and is supported by contemporaneous wage documentation that is already part of the record.

The Petitioner's assertions are persuasive. The record does not support the Director's finding that Petitioner failed to document the staffing levels depicted in its organizational chart. The Petitioner stated at the time of filing that it had ten employees and submitted supporting evidence to support

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period April 21, 2017, until April 20, 2018. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

that claim, as well evidence to support its extensive use of independent contractors and outsourced services. In addition, the Petitioner provided a detailed description of the Beneficiary's duties sufficient to establish that she is primarily engaged in directing the management of the company, which reported $40 million in assets and over $1 million in sales for 2017. The record also establishes that the Petitioner, after its initial year of operations, has sufficient personnel in place to supervise and perform the company's day-to-day operational functions so that the Beneficiary is free to primarily focus on the broad goals and policies of the company and make discretionary decisions regarding the company's direction. As such, the Petitioner has established that her services would be primarily executive in nature.

ORDER: The appeal is sustained.

Cite as *Matter of A-C- Inc.*, ID# 2000770 (AAO Jan. 25, 2019)