U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-A- LLC

DATE: JAN. 27, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a California limited liability company that endeavors to open a preschool and daycare facility, seeks to temporarily employ the Beneficiary as general manager of its new office 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, California Service Center, denied the petition. The Director concluded that the Petitioner did not submit sufficient evidence to establish that it secured sufficient physical premises to house its business operation.

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief statement and evidence addressing the basis for denial.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, for 1 continuous year within 3 years preceding the Beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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, executive, or specialized knowledge capacity. *Id.*

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

II. PHYSICAL PREMISES

The sole issue discussed in the denial was the Petitioner's ability to meet the physical premises requirement. Therefore, we will evaluate the Director's determination that the Petitioner did not establish that it obtained sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

In support of the petition the Petitioner provided a copy of a commercial lease for a property located at CA. The lease names the Petitioner as the tenant and indicates that the lease term was for 5 years to commence on February 4, 2016. Clause 4 of the lease indicates that the premises would be used as a daycare, preschool, tutoring, and for Chinese language immersion and clause 9 states that the base rent to lease the premises would be $1500 per month. The lease did not provide information specifying the square footage of the space to indicate the number of people it could accommodate. The Petitioner also provided photographs showing the interior and exterior of what the Petitioner claimed was the leased premises at the above address. We note that the photographs indicate that the leased premises was a residence, which is inconsistent with the title of the lease document which states that it is a "Commercial Lease Agreement."

The Director subsequently issued a request for evidence (RFE) incorrectly finding that the previously submitted lease did not indicate the amount of monthly rent the Petitioner would pay. The Director further noted that the Petitioner did not provide evidence to show that it met the California licensing requirements.

In response, the Petitioner provided a statement explaining that as a result of the lengthy process for obtaining a state license for a child care facility and due to the 14-student limit of the leased property, a decision was made to purchase an existing child care center and to sign an additional new lease for a second property. The Petitioner provided a purchase agreement, dated April 22, 2016, for and a commercial lease, signed on May 12, 2016, for a 1173-square foot premises at a multi-tenant shopping center and that it would be used "as a children's tutoring academy and related learning services." By its own admission, the Petitioner deemed the original leased premises to be insufficient to meet its business goals and claimed that the purchased day care facility had sufficient space to accommodate a child day care and infant center.

In denying the petition, the Director observed that the Petitioner secured two different locations – one of which the Petitioner purchased approximately 6 weeks after filing and the other of which it leased 2 months after filing. Because the Petitioner secured two new business locations after the date of filing, the Director concluded that the Petitioner did not secure sufficient physical premises as of the date the petition was filed. A petitioner must establish eligibility at the time of filing and continue to be eligible for the benefit sought through adjudication. 8 C.F.R. § 103.2(b)(1).

On appeal, the Petitioner contends that it provided evidence in the form of a lease to show that it met the physical premises requirement. The Petitioner provides an additional copy of the originally

submitted lease, explaining that it was "forced" to relocate because the business premises it originally leased precluded the Petitioner from being able to acquire the licensing it needed in order to accommodate the number of students that its business plan projected. Thus, while the Petitioner claims that it has since acquired multiple business locations that will accommodate its sizing requirements, by its own admission, the business premises the Petitioner had secured as of the date the petition was filed was not sufficient to meet the Petitioner's projected business needs.

In light of the above, we find that the Petitioner did not establish eligibility at the time of filing.

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

While not previously discussed in the Director's decision, we further find that the Petitioner did not establish that it would support the Beneficiary in a managerial or executive capacity within 1 year of the approval of the petition. 8 C.F.R. § 214.2(l)(3)(v)(C).

It is important to note that when a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for or assisting with the set-up of operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial or executive responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within 1 year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

At section 1.3 of its Business Plan, the Petitioner provided a vague statement about the Beneficiary's proposed position, stating that the Beneficiary has over 30 years of business experience and that he would "hire school managers, experienced teachers and workers in the first year of operations." The Petitioner did not provide any details as to the Beneficiary's projected daily tasks. Also critical to an analysis of the Beneficiary's proposed position are the Petitioner's business plan and supporting documents. In the present matter, we find that the Petitioner's business plan is deficient and therefore precludes a favorable determination.

First, while we acknowledge the sales forecast the Petitioner provided at section 1.4 of its Business Plan, we find that the Petitioner provided no evidence or information to establish how it arrived at the financial projections for the first 3 years of its operation. The Petitioner did not provide a forecast of the number of students it anticipates having during its first year of operation or explain what type of tuition structure it would implement for the different age groups its organization would accommodate and the after-school services it would provide, including tutoring, homework lab, and drop-off care. The Petitioner also did not state how many students it anticipates within each service

category during the first year of operation, despite providing the student-teacher ratio for its preschool and after-school services. It is therefore unclear how the Petitioner arrived at the forecasted sales projection of $416,460 for its first year of operation.

We further note that the Petitioner's discussion of required funds in the table provided at section 2.2 of the Business Plan is not consistent with the profit and loss statement table provided at section 6.5 of the plan. Namely, while the table at section 2.2 of the Business Plan states that the Petitioner would allocate $9000 for initial lease payments and deposits, $2500 for insurance, and $7500 for marketing expenses, the table at section 6.5 states that the total rent and utilities would total $20,000; the total cost of insurance would be $1987; and total marketing expenses would amount to $2082. The Petitioner's discussion of these expenses does not explain or reconcile the disparities between the expense projections in the three categories discussed herein.

Lastly, the Petitioner provided an organizational chart and yearly personnel plan, which indicate that in addition to the current staff – comprised of an administrator and a finance department employee – the Petitioner plans to hire a school administrator and three teachers during its first year of operation. However, the Business Plan does not have a specific timeline establishing precisely when the Petitioner plans to execute its hiring plan.

In light of the above analysis of the Petitioner's business plan, we find that the Petitioner did not provide sufficient evidence to substantiate that it would advance to a stage of development wherein it would have the capability of relieving the Beneficiary from having to devote considerable portions of his time to nonmanagerial or nonexecutive tasks within 1 year of the petition's approval, and the Beneficiary would therefore be unable to allocate his time primarily to job duties that are primarily in a managerial or executive capacity.

For the additional reason discussed above the instant petition cannot be approved.

IV. CONCLUSION

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of P-A- LLC*, ID# 139379 (AAO Jan. 27, 2017)