U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-T- INC.

DATE: JAN. 30, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a distributor of wireless communication products and provider of related pre- and after-sales services, seeks to temporarily employ the Beneficiary as "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 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 within one year of approval of the instant petition. The Director found that the Petitioner's submission of two separate job descriptions resulted in confusion as to the percentage of time the Beneficiary would allocate to the described duties and expressed concern about the likelihood that the Beneficiary's subordinate managers "will be primarily managing or supervising and controlling other supervisory, professional[,] or managerial employees."

On appeal, the Petitioner asserts that the Beneficiary's proposed position fits the definitions of managerial and executive capacity. It points out that it has already hired two employees – one prior and one shortly after this petition was filed – and also provides a service contract to show that it already acquired a client and is currently doing business. The Petitioner also stresses that it is a "new office," indicating that the Director was not mindful of this fact in her assessment of the evidence. The Petitioner goes on to discuss the motivating factors that contributed to its decision to open a U.S. subsidiary and points to the size of the foreign entity's investment, the size of the overseas company itself, and the proposed staffing hierarchy it seeks to attain within its first year of operation, claiming that it will have the infrastructure to relieve the Beneficiary from having to primarily perform non-qualifying tasks after its first year as a start-up company.

[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.

Upon *de novo* review, we find that the Director incorrectly applied the statutory definition of managerial capacity to the prospective management positions that would be subordinate to the Beneficiary. Further, although the Petitioner provided two job descriptions for the Beneficiary, as the Director indicated, each job description was labeled, thereby adequately establishing that one pertained to the Beneficiary's employment abroad, while the other pertained to his proposed position with the U.S entity. In sum, we find that the Petitioner has provided sufficient evidence to establish that it will more likely than not have the ability to employ the Beneficiary in a managerial or executive position within one year of this petition's approval. As the Petitioner has overcome the Director's decision, we will sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of A-T- Inc.*, ID# 1957246 (AAO Jan. 30, 2019)