U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35514460

Date: JAN. 30, 2025

Appeal of California Service Center Decision

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

The Petitioner, operating as a franchise restaurant business at the time of filing,[1] seeks to continue the Beneficiary's temporary employment as chief executive officer under the L-1A nonimmigrant classification for intracompany transferees.[2] *See* 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, concluding that the record did not establish that the Beneficiary would be employed in a managerial capacity under an approved petition. The Director discussed the procedural history in this matter, pointing out that a request for evidence (RFE) was issued in which the Petitioner was notified of evidentiary deficiencies, including lack of a detailed job description for the Beneficiary and lack of clarity as to whether the Beneficiary's proposed position would be in a managerial or executive capacity. The Director stated that although the RFE response clarified that the Beneficiary's proposed position would be in a managerial capacity, it did not include a more detailed description of the Beneficiary's job duties as requested.

Despite acknowledging the Petitioner's submission of affidavits from the Beneficiary's subordinates as well as meeting minutes illustrating the Beneficiary's oversight of three stated functions, the Director determined that the record contained insufficient evidence about the Beneficiary's daily job duties. The Director noted that the Petitioner did not state how much time the Beneficiary spends attending meetings and reviewing documents or provide an account of other activities the Beneficiary performs outside of those two functions. In addition, the Director questioned how much time the Beneficiary spends performing non-managerial job duties, such as conducting restaurant site visits and

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[1] Public records of the California Secretary of State show the Petitioner's corporate status as "Suspended – FTB" as of [redacted] 2024, indicating that the Franchise Tax Board suspended the Petitioner's business due to noncompliance with tax requirements. *See* https://bizfileonline.sos.ca.gov/search/business (last accessed January 30, 2025). It therefore appears that the Petitioner may not be doing business. *See* 8 C.F.R. § 214.2(l)(14)(ii)(A) (requiring evidence that the Petitioner continues to be a qualifying organization as defined in 8 C.F.R. § 214.2(l)(1)(ii)(G)). The Petitioner must address this anomaly in any future filings.

[2] The Petitioner previously filed a "new office" petition (with receipt number [redacted] on the Beneficiary's behalf. That petition was approved for the one-year period from December 18, 2018, until December 17, 2019. 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.

collecting customer feedback. In sum, the Director determined that while the Petitioner adequately demonstrated that the Beneficiary oversees and has authority over his subordinates, it did not establish that the Beneficiary would be employed in a managerial capacity as it did not provide the requested job duty breakdown with time allocations illustrating how the Beneficiary's time would be spent.

The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

On appeal, the Petitioner asks us to "consider [the] Beneficiary's job duties in totality" and points to previously submitted company emails and meeting minutes, employee performance reviews, notarized statements from the Beneficiary's subordinates, and payroll evidence. The Petitioner argues that these documents constitute "solid evidence" that the Beneficiary's position meets the four-prong definition of managerial capacity. We disagree.

Although the highlighted evidence clarifies the organization's reporting structure and underscores the Beneficiary's authority and control over the Petitioner's employees and key business functions, the record does not include a list of the Beneficiary's specific job duties, nor does it contain evidence establishing how the Beneficiary would allocate his time among his assigned duties in the regular course of business. As such, we cannot, as the Petitioner requests, "consider [the] Beneficiary's job duties in totality" since a list of the assigned job duties was not provided. The Director duly recognized and informed the Petitioner of this deficiency in an RFE, which asked the Petitioner to submit the Beneficiary's job duty breakdown with corresponding time allocations. The Petitioner did not comply with that request at the time of the response and instead submits the requested job duty breakdown on appeal. Where, as here, a petitioner has been put on notice of an evidentiary deficiency and given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the Petitioner had wanted the job duty breakdown to be considered, it should have submitted this evidence in response to the RFE. *Id.* Accordingly, under the circumstances, we need not and do not consider the sufficiency of the newly offered information.

The appeal brief also acknowledges that the Beneficiary conducted site visits to the Petitioner's restaurants. However, the Petitioner points out that this type of direct involvement in day-to-day operations is permitted for a beneficiary employed within the context of a new office. We agree and further note that the regulations do not require a beneficiary's time to be exclusively spent in a managerial capacity, only that it be "primarily" in a managerial capacity, thus indicating that the proposed position must be comprised of primarily managerial job duties. *See* section 101(a)(44)(A). That said, determining whether the Beneficiary would primarily perform managerial job duties requires a detailed job description. *See* 8 C.F.R. § 214.2(l)(3)(ii). The Director requested such evidence in the previously issued RFE, but the Petitioner did not provide it, thereby precluding the Director from gaining a meaningful understanding of the duties that would comprise the Beneficiary's proposed position. As such, the Director correctly concluded that the record lacked sufficient evidence establishing that the Beneficiary would be employed in a managerial capacity.

We adopt and affirm the Director's decision. *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).

ORDER: The appeal is dismissed.