U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF SVPY- INC.

DATE: JULY 18, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which distributes yachts manufactured by its parent company in Slovenia, seeks to temporarily employ the Beneficiary as its chief executive officer 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 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 record did not establish, as required, that the Beneficiary has been employed abroad in a capacity that is managerial, executive, or involved specialized knowledge.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred with regard to the nature of the Beneficiary's position abroad and the foreign entity's staffing.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with our discussion below.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three 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 or executive capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. ANALYSIS

"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.

The Petitioner asserted that its foreign parent company employed the Beneficiary in an executive capacity as its vice president. The Director found that the Petitioner had not established (1) that the Beneficiary actually performed the duties claimed, and (2) that the foreign entity employed subordinate workers to relieve the Beneficiary from performing non-executive tasks.

Upon review, we conclude that the Petitioner has established the Beneficiary's executive role with the foreign entity. While the Petitioner has not exhaustively documented the Beneficiary's activities abroad, the record suffices to establish the nature of the Beneficiary's employment by a preponderance of the evidence. The Petitioner has also documented the employment of several of the Beneficiary's subordinates, establishing that the foreign entity has a sales and marketing staff subject to the Beneficiary's executive authority.

The Petitioner has overcome the only stated ground for denial, and therefore that decision cannot stand. Nevertheless, review of the record and publicly available source materials reveal another major issue that the Petitioner must address and overcome before the petition can properly be approved.

III. THE PETITIONER'S BUSINESS ACTIVITY AND STAFFING

The Director did not dispute the Petitioner's assertion that the Beneficiary would act as a function manager in the United States, managing the essential function of promoting U.S. sales of vessels manufactured abroad by the foreign parent company. The Petitioner indicated that the Beneficiary would oversee three U.S. employees: a vice president, with initials I.M.; a service manager, with initials K.W.; and a sales and marketing worker, with initials L.M.

The Petitioner submitted "Payroll Details" purporting to show salary payments to I.M., K.W., and L.M. in the third quarter of 2018. That document indicates payments totaling $19,500; the monthly amounts are consistent with copies of purported pay stubs dated July and August of 2018, and a bank statement from early August 2018.[1] A "Tax and Wage Summary Report," however, shows total payments of only $13,000 (two months' pay) during the same three-month period. The Petitioner did not submit an actual IRS Form 941, Employer's Quarterly Federal Tax Return, or evidence that it filed that return. These payroll discrepancies require resolution beyond an unsupported explanation. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (petitioners must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies).

[1] The monthly and year-to-date totals on the July 2018 receipts are the same, indicating that the Petitioner's entire staff began working in July 2018. The Petitioner did not report paying any salaries on its 2017 income tax return.

The Petitioner indicated that the petitioning company does not sell yachts directly to the public, but supplies them through dealers. One of those dealers, identified by a dealer agreement in the record, is [redacted]

A lease agreement in the record indicates that the Petitioner and [redacted] jointly lease the same commercial property on [redacted] Florida. This shared commercial space between the Petitioner and a dealer that sells the Petitioner's products, but also products from competitors, raises questions about the nature and extent of the Petitioner's business activity in the United States. We emphasize that the Petitioner and [redacted] are separate commercial entities, and the record contains no evidence of a qualifying relationship between the two companies. (Approval of the present petition would not authorize the Beneficiary to work for [redacted].)

As of July 1, 2019, the web pages at [redacted] and [redacted] identified K.W. as [redacted]'s service manager, and L.M. as a marketing associate at [redacted] A photograph of the Petitioner's claimed work site, submitted with the initial filing of the petition, shows several individuals recognizable as [redacted] employees. (We note that the two co-founders of [redacted] have the same surnames as K.W. and L.M., respectively.) Because [redacted] publicly claims K.W. and L.M. as its own employees, it does not appear that the Petitioner currently employs those individuals. As such, the Petitioner does not appear to have a subordinate staff to relieve the Beneficiary from having to perform non-qualifying tasks. Furthermore, discrepancies in the payroll figures, discussed above, cast doubt on claims regarding their past employment with the petitioning entity.

As the matter will be remanded, the Director should request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period of time. This evidence should address the Petitioner's staffing from 2018 to the present and the nature and extent of its business activity.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of SVPY- Inc.*, ID# 4420622 (AAO July 18, 2019)