U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-S- INC.

DATE: JULY 27, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a clothing and apparel manufacturer and distributor, seeks to temporarily employ the Beneficiary as its operation and distribution manager 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, a qualifying relationship between the petitioning U.S. entity and the Beneficiary's claimed foreign employer.

In its appeal, the Petitioner submits evidence that two shareholders of the foreign entity have a long-standing voting agreement that requires them vote in concert as a single unit. The voting agreement establishes that these two shareholders own and control a majority interest in the Beneficiary's foreign employer's parent company. As these same two shareholders also own and control the Petitioner, the evidence now establishes a qualifying relationship between these two entities.

Upon *de novo* review of the record, however, we find that the Petitioner has not submitted sufficient evidence to establish that the Beneficiary was employed abroad, or would be employed in the United States, in a managerial or executive capacity.

Accordingly, we will withdraw the Director's decision and remand the matter to the Vermont Service Center for entry of a new decision.

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 one continuous year within three years preceding the Beneficiary's application for admission into the United States. 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. Section 101(a)(15)(L) of the Act.

The Act defines the term "executive capacity" as an assignment within an organization in which the employee primarily: directs the management of the organization or a major component or function thereof; 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 Act defines the term "managerial capacity" as an assignment within an organization in which the employee primarily: manages the organization or a department, subdivision, function, or component; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function; if the employee directly supervises other employees, has the authority to take personnel actions, or if no other employee is directly supervised, functions at a senior-level within the organization or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The record as presently constituted does not establish that the Beneficiary has been employed abroad in a managerial or executive capacity, or that the Petitioner will employ him in a managerial or executive capacity. As the Director did not address these issues in her decision, we will remand the matter for further proceedings and entry of a new decision.

A. Employment Abroad

In a letter submitted in support of the petition, the Petitioner noted that the Beneficiary had started his own company, [redacted] in 2009, which focused solely on B2B/Reseller accounts and on serving the Petitioner's sublimation product line. The Petitioner asserted that the Beneficiary was appointed as the international operations and distribution manager of its foreign affiliate, [redacted] in July 2016, after [redacted] acquired the Beneficiary's company, [redacted] The record does not include probative evidence that the Beneficiary worked for [redacted] for one full year in the three years preceding the filing of this petition on September 19, 2016, so the Petitioner must establish that his prior position with [redacted] was also in a managerial or executive capacity.

Additionally, the Petitioner provided a vague description of the Beneficiary's duties as "Operations Manager of the Foreign company." This description is ambiguous and does not clearly indicate

[1] The record includes documentation showing that [redacted] acquired an approximate 66 percent interest in [redacted] the Beneficiary's employer from 2009 to July 2016.

whether the Beneficiary's duties were primarily managerial or primarily executive in nature. Further, the descriptions provided are broadly-stated so that it is not possible to ascertain what proportion of the Beneficiary's duties was managerial, what proportion was executive, and what proportion was non-qualifying. The Petitioner does not explain how the Beneficiary's position at meets the four-prong definition of executive capacity or the four-prong definition of managerial capacity. As the record does not include a consistent and detailed position description and the duties described do not fall directly under managerial or executive duties as defined in the statute, the Petitioner has not established that the Beneficiary has been primarily performing the duties of a manager or an executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The record also includes an initial and revised organizational chart for the foreign entity. The Petitioner, however, does not explain the addition of positions and tiers to the revised organizational chart or the expansion of the number of employees at Further, although the Petitioner submitted numerous pages of payroll documentation for the record does not include payroll evidence of any of the employees at except the Beneficiary.

The record does not include consistent, probative evidence of the number of employees and positions at Additionally, neither the foreign entity nor the Petitioner provided detailed or consistent information regarding the nature of business and the roles of the Beneficiary and his direct subordinates. The record does not include the necessary evidence to demonstrate that the Beneficiary's position at was either executive or managerial in nature. For this reason, the petition cannot be approved.

B. U.S. Employment

The Petitioner, a Florida company established in 2006, stated that it is a ten-employee "clothing and apparel distributor focusing on team uniforms and apparel" and that it "is interested in developing manufacturing in Florida and further expanding its business."

In the letter in support of the petition, the Petitioner stated that the Beneficiary will be employed as its "Operations and Development Manager" and provided a brief description of the Beneficiary's proposed duties. The Director asked for a more detailed duty description in a request for evidence (RFE). Although the Petitioner referenced an additional job description for the Beneficiary in its letter in response to the RFE, the record only includes job descriptions for the Beneficiary's claimed U.S. subordinates, and no further description of the Beneficiary's proposed tasks.

Without additional detailed information regarding the Beneficiary's proposed position, we cannot ascertain the Beneficiary's actual role within the U.S. company. For example, the initial description includes references to the Beneficiary's involvement in the U.S. company's "store." However, the Petitioner claims that it is a clothing and apparel distributor with plans to explore manufacturing. It is not clear that the generic description provided is applicable to the Petitioner's distribution operations and planned manufacturing business. Additionally, reciting the Beneficiary's vague job

responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. The Petitioner has not provided any detail or explanation of the Beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The Petitioner's organizational charts also indicate that several positions are vacant, temporary, or interim positions. Although the Petitioner indicated that the positions "will be filled and regularized" when the Beneficiary is hired, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). The record did not include recent employer's quarterly tax returns or other evidence identifying the number of employees working when the petition was filed in September 2016. Without evidence substantiating its employees, such as pay stubs, payroll records, or relevant employer's quarterly reports, the record does not establish that the Petitioner employs subordinate staff who would relieve the Beneficiary from performing non-qualifying duties. Thus, the record as presently constituted is insufficient to establish that the Petitioner would employ the Beneficiary in a managerial or executive capacity.

III. CONCLUSION

For the reasons discussed above, we will remand this matter to the Director for a new decision. The Director should request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period of time.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of A-S- Inc.*, ID# 462641 (AAO July 27, 2017)