U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43594731

Date: JULY 30, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner is as a restaurant, intending to expand its operation to include additional restaurants as part of its plan for a "multi-location expansion" in the State of Florida. It seeks to employ the Beneficiary temporarily as director of operations of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

USCIS denied the petition, concluding that the record did not establish that the Beneficiary was employed abroad in an executive capacity and that the Petitioner would be able to employ the Beneficiary in an executive capacity in the United States within one year of the petition's approval.[2] 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 withdraw the Director's decision and remand the matter for consideration and entry of a new decision consistent with the following analysis.

I. ANALYSIS

First, we find that USCIS offered a deficient analysis of the relevant facts and legal standards regarding the Beneficiary's foreign and U.S. employment. Although USCIS acknowledged the multi-tiered staffing shown in the organizational charts that depict the foreign entity's restaurant venues, it focused on the lack of departments or employees for the Beneficiary to manage "at an executive level" and found that the Petitioner did not "establish that the beneficiary's subordinate employees primarily work in a qualifying managerial capacity within the meaning of four criteria as defined in INA

[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.

[2] The Petitioner's claims regarding the Beneficiary's foreign and proposed employment rest solely on the definition of executive capacity. The Petitioner does not claim that the Beneficiary was or would be employed in a managerial capacity.

101(a)(44)(A) and 8 CFR 214.2(l)(1)(ii)(B)." In making this determination, USCIS incorrectly attributed the statutory definition of managerial capacity to employees within the foreign organization, even though the definition only requires a showing that the *beneficiary* of the visa petition meet the statutory criteria of managerial capacity. Whether other employees within the Beneficiary's organization primarily perform tasks that meet the statutory definition is not relevant for the purpose of determining the executive nature of the Beneficiary's own position. Here, USCIS does not appear to have correctly applied the relevant statutory definitions nor adequately considered the Beneficiary's role within the scope of the foreign organization when addressing her position abroad.

Likewise, in discussing the Beneficiary's proposed U.S. employment, USCIS found that the Petitioner did not provide sufficient evidence to establish that "any of the beneficiary's subordinate employees as shown on the organizational chart are employed in a managerial (or executive) (or supervisors) capacity." As in its discussion of the Beneficiary's employment abroad, USCIS similarly found that the record lacked sufficient evidence "that any of the beneficiary's subordinate employees as shown on the organizational chart will be employed in a managerial capacity within the meaning of four criteria as defined in INA 101(a)(44)(A) and 8 CFR 214.2(l)(1)(ii)(B)." USCIS further stated that the Petitioner listed job descriptions that are "more indicative of employees who perform the provision of services to support the operational routines of the business rather than in the management of such services." Thus, here too USCIS incorrectly attributed the statutory definition of managerial capacity to the Beneficiary's proposed subordinates, even though the Petitioner is not required to demonstrate that anyone other than the Beneficiary meets one of the statutory definitions. *See* section 101(a)(15)(L) of the Act.

Further, USCIS determined that in response to a request for evidence (RFE), the Petitioner did not provide sufficient documentation to demonstrate that it would employ the Beneficiary in an executive capacity "during the U.S. entity's first year of operation." USCIS then stated the following about evidence concerning the Beneficiary's proposed position: "The record, as it stands, does not show that you have an adequate subordinating staff in place that would support the executive position of the beneficiary at the time of filing this petition."

Although USCIS referred to "your new office" in questioning whether the Petitioner would "support an executive or managerial position in one year," it is not clear that USCIS properly analyzed the Beneficiary's proposed job duties pursuant to the new office regulations, which do not require the Petitioner to establish its ability to support the Beneficiary in a managerial or executive position at the time of filing, but rather allow the Petitioner one year from the date of the petition's approval to establish that the U.S. operation will be adequately developed to support the Beneficiary in an executive or managerial position. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). That said, the Petitioner provided a comprehensive business plan, bank records, and evidence documenting the proposed nature and scope of the new office, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

In light of the above, we find that the Petitioner has provided sufficient evidence to support its new office petition and establish that it would more likely than not be able to support the Beneficiary in a executive capacity within one year of this petition's approval. Further, because USCIS provided an analysis of the Beneficiary's foreign employment that is inconsistent with the statutory criteria, we cannot affirm the denial.

II. BASIS FOR REMAND

Notwithstanding USCIS's error, the record as presently constituted contains anomalies that preclude a favorable finding concerning the Petitioner's claim that the Beneficiary was employed abroad in an executive capacity.

The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the organization, major component, or function as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* The Petitioner must also establish that the Beneficiary *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the foreign entity's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

The record shows that the Beneficiary is a director and co-founder of [redacted], the Petitioner's foreign affiliate,[3] which operates as a hospitality management company. The Petitioner provided several supporting statements from B-H-L-, the foreign entity's chief financial officer, who stated that the Beneficiary "holds the position of Director, overseeing operations across six high-end restaurant locations and a centralized management company."[4] However, despite the Petitioner's submission of several iterations of the Beneficiary's position, including a percentage breakdown in the RFE response, we nevertheless agree with USCIS's finding that the job descriptions in the record lack sufficient detail about the job duties the Beneficiary performed in the daily course of business. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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).

B-H-L- further stated that aside from over 120 employees employed by the six restaurants, the management company where the Beneficiary held her position as director employs a 10-person staff

[3] The record shows that the Beneficiary and [redacted] respectively own 50% of the Petitioner and [redacted] *See* 8 C.F.R. § 214.2(l)(1)(ii)(L).

[4] The Petitioner named four rather than six restaurant venues and provided corresponding organizational charts depicting each restaurant's staffing hierarchy. The record does not name two other restaurant venues, although a wine distribution company, which is also claimed to be part of the [redacted] group of companies, was named and may be a fifth venue. The record lacks evidence clarifying this apparent incongruity concerning the size and scope of the foreign operation. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (establishing that ambiguities must be resolved through the submission of independent, objective evidence).

of its own. Although the record contains organizational charts for four of the six claimed restaurants, it does not include an organizational chart depicting [redacted] claimed 10-person staff. This information is highly relevant as it offers context within which the Beneficiary's assigned job duties should be evaluated. Because the record contains no organizational chart depicting the staffing structure within which the Beneficiary performed her assigned duties as [redacted] director, we cannot adequately evaluate those job duties or gain a meaningful understanding of how the management company's staffing structure supported the Beneficiary's executive role within the foreign organization.

Accordingly, the record as presently constituted contains evidentiary deficiencies that preclude approval of the petition. However, because the record does not support USCIS's adverse determination, we will remand the matter for entry of a new decision. USCIS should address the previously noted deficiencies and request any additional evidence warranted, allowing the Petitioner to submit such evidence within a reasonable period.

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