U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31306944

Date: JUN. 05, 2024

Appeal of California Service Center Decision

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

The Petitioner, a "new office,"[1] seeks to establish a restaurant chain in the United States and to employ the Beneficiary as its chief executive officer (CEO). The company requests his classification under the L-1A nonimmigrant visa category as an intracompany transferee who would temporarily work in an executive capacity. *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. The Director concluded that, contrary to L-1A regulations for new offices, the Petitioner did not demonstrate that: it secured sufficient physical premises for its business; the Beneficiary worked abroad in the claimed executive capacity; or, within one year of the petition's approval, it would support the proposed executive position. On appeal, the company contends that the Director misunderstood and disregarded evidence.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the company has not established that it would support the proposed executive position. We will therefore dismiss the appeal.

I. LAW

An intracompany transferee is a noncitizen who – for one continuous year in the three years before their U.S. admission – worked abroad and seeks to enter the country to temporarily work for a branch, parent, affiliate, or subsidiary of their foreign employer in a capacity that is managerial, executive, or involves "specialized knowledge." Section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(A). A beneficiary of a new office petition must have worked abroad in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(v)(B). A new office petitioner must also intend to employ them in the United States in one of those capacities. *Id.*

[1] The term "new office" means an organization that has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).

Because the Petitioner seeks to employ the Beneficiary as an executive in a new office, the company must demonstrate that:

- It has secured sufficient physical premises to house the new office;
- The Beneficiary worked abroad for one continuous year within the three years preceding the petition's filing in an executive or managerial capacity;
- The proposed employment involves executive authority over the new operation; and
- Within one year of the petition's approval, the U.S. operation would support an executive position.

See 8 C.F.R. § 214.2(l)(3)(v)(A-C).

II. ANALYSIS

The record shows that the Beneficiary, a Chinese native and citizen, founded the Petitioner's parent company in China in 2014. Since then, the parent – a provider of freight, construction engineering, and other services – has employed the Beneficiary as its general manager.

The Beneficiary entered the United States as a nonimmigrant visitor in August 2022. He established the petitioning corporation in April 2023. The company filed this petition to change his nonimmigrant visa status to L-1A in August 2023. *See* section 248 of the Act, 8 U.S.C. § 1258 (allowing noncitizens to change their nonimmigrant visa statuses under certain conditions).

The Petitioner states that it eventually plans to operate multiple restaurants, import and export clothing and other goods, and provide restaurant consulting services. The company's business plan, however, indicates that, during the one-year period immediately after the petition's approval, the company would operate only one restaurant.

A. Ability to Support an Executive Position

The Petitioner must demonstrate that, within one year of the petition's approval, the U.S. business would support the claimed executive position. 8 C.F.R. § 214.2(l)(3)(v)(C). Evidence must include information regarding:

- The Petitioner's scope, its organizational structure, and its financial goals;
- The size of the U.S. investment and the parent company's financial ability to pay the Beneficiary and commence business in the United States; and
- The parent's organizational structure.

See 8 C.F.R. § 214.2(l)(3)(v)(C)(*1-3*).

The Petitioner submitted evidence that its parent company has invested $400,000 in its business. Copies of audited financial statements for 2022 sufficiently show the parent's ability to pay the Beneficiary's offered annual wage of $60,000 and commence U.S. business. The income statement shows that, in 2022, the foreign company generated revenues of nearly $2 million and about $355,000 in net profits. *See* XE Currency Converter, www.xe.com/currencyconverter. The Petitioner's business

plan projects that, during its first three operating years, its annual revenues would rise from $960,000 to $3 million and its annual net profits would increase from -$22,939 to about $1 million.

The Petitioner stated its intent to hire 10 employees within about six months of the petition's approval. But the company has not provided job duties for all of the initial proposed positions, and inconsistencies between its organizational chart and business plan cast doubt on its true staffing plans.

The Petitioner's organizational chart shows the company's intent to hire seven employees for its restaurant business: a "general operations director;" "store manager;" assistant manager; two servers; and two kitchen staff. The Petitioner described the job duties of the general operations director but not those of the other proposed restaurant positions. The organizational chart also indicates the company's intent to hire seven additional employees for its administrative operations and proposed consulting business. The additional employees consist of: a "COO [Chief Operations Officer];" "administration and HR [human resources] manager;" "finance manager;" "consulting manager;" administration and HR specialist; finance specialist; and consulting specialist.

The first version of the Petitioner's business plan – in its "milestones" section – identifies the company's first ten proposed employees as: the general operations director; restaurant manager; two servers and two kitchen staff; a "marketing and sales director;" consulting manager; "administration director;" and "restaurant assistant manager." The "milestones" section differs from the organizational chart, as the chart omits a "marketing and sales director," while the "milestones" section excludes a "COO."

Also, the "personnel plan" section of the Petitioner's first business plan contains further inconsistencies. The "personnel plan" section states that, in the company's first operating year, it would employ: a "restaurant manager;" "restaurant staff;" "marketing director for chain boutique;" "administration director for chain restaurant;" and an "operations director." The "personnel plan" section differs from the organizational chart and the "milestones" section. For example, as the Director noted, the "personnel plan" section includes a "marketing director for chain boutique." The record does not indicate to what the term "chain boutique" refers or whether the company intends to operate a "chain boutique."

The Director's RFE asked the Petitioner to explain some of these inconsistencies and provide further staffing information. The company's RFE response, however, included a second version of its business plan creating further discrepancies. The "personnel plan" section of the second business plan identifies the "restaurant staff" that the company would employ in its first operating year as a "chef" and "assistants." The section, however, does not specify how many assistants would be employed. Also, the updated "personnel plan" section deletes the "marketing director for chain boutique" position as a first operating year employee and adds four new positions to the section: "administration and HR manager;" "finance manager;" "consulting manager;" and "COO."

As indicated above, the record contains several unexplained inconsistencies in the Petitioner's staffing plans. The discrepancies cast doubt on the accuracy of the information in the company's organizational chart and the two versions of its business plan. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

To work in the claimed executive capacity within one year of the petition's approval, the Beneficiary at that time would need to "primarily" perform such duties as directing management and establishing goals and policies. *See* section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B)(i-iv) (defining the term "executive capacity"). "An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a[n] . . . executive capacity." *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (BIA 1988). Because of the unresolved staffing inconsistencies and missing job duties, the Petitioner has not reliably demonstrated the number of its proposed employees, their positions, or all of their duties one year after the petition's approval. Thus, the company has not demonstrated that it would have sufficient support staff at that time to allow the Beneficiary to primarily focus on executive duties, as opposed to daily operating tasks. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 25 (D.D.C. 2003) (holding that a beneficiary's former and proposed job duties were not primarily managerial for purposes of an immigrant visa petition based, in part, on an "absence of evidence that a sufficient 'subordinate staff' will 'relieve her from performing managerial nonqualifying duties'").

Further, the Petitioner submitted a copy of a lease for its initial restaurant site, indicating that it rented only 475 square feet of space in a shopping center food court. The site's small size would appear to limit the number of restaurant employees the company would hire and the ability of a purported "chef" and "assistants" to prepare food at the site. Thus, the restaurant lease casts further doubt on the company's staffing plans. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

On appeal, the Petitioner contends that the Director erred in finding inconsistencies in the company's initial proposed positions. The company asserts that, except for changes to its proposed hiring dates because of the delay in the petition's approval, its organizational chart and the "milestone" section of its business plan "are the **SAME.**" (emphasis in original).

Contrary to the Petitioner's contention, however, its organizational chart and the "milestone" section of the company's business plan are not the "same." As mentioned above, the organizational chart, unlike the "milestones" section in the company's first business plan, omits a "marketing and sales director." Similarly, the "milestones" section, unlike the organizational chart, excludes a "COO." Also, the Petitioner disregards other staffing inconsistencies. The "personnel plan" section of the company's first business plan differs from the organizational chart and the "milestones" section. Further, the Petitioner's RFE response included a second version of the company's business plan, amending the "personal plan" section and creating additional discrepancies. The company has neither resolved the inconsistencies in its staffing plans nor provided job duties for all its initial proposed positions. Thus, it has not demonstrated that it would have sufficient staffing to allow the Beneficiary to primarily perform executive duties. The record therefore does not support the company's contention.

The Petitioner has not established that, within one year of the petition's approval, it would support the claimed executive position.[2] We will therefore affirm the petition's denial.

[2] When determining the executive nature of an offered U.S. job, USCIS may not base its decision solely on the number of employees that a beneficiary would direct. Section 101(a)(44)(C) of the Act. Here, in determining the nature of the Petitioner's offered U.S. job, we considered the company's number of employees. But we also considered other factors,

B. The Remaining Issues

Our conclusion regarding the Petitioner's ability to support the claimed executive position resolves this appeal. We therefore decline to reach and hereby reserve the company's appellate arguments regarding its purported securement of sufficient physical premises and the nature of the Beneficiary's work abroad. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise merit relief).

III. CONCLUSION

The Petitioner has not demonstrated that, within one year of the petition's approval, it would support the proposed executive position. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

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including: the nature of the Petitioner's proposed business; the existence of subordinate employees to relieve the Beneficiary from having to perform operational tasks; and the duties of subordinate employees. Thus, we have complied with the Act's requirement. *See Family, Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006) (in the context of an immigrant visa petition for a multinational manager under section 203(b)(1)(C) of the Act, holding that "USCIS may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager").