U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-TL, LLC

DATE: JUNE 11, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a landscaping and lawn care business, seeks to temporarily employ the Beneficiary as its president under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 Petitioner did not establish, as required, that: (1) it has a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary was employed in a managerial or executive capacity abroad; and (3) the Beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner disputes the Director's decision, arguing that the decision contains factual errors and did not take into account all of the evidence submitted or explain why such evidence was submitted.

Upon *de novo* review, we find that the Director's decision misstated facts and did not adequately discuss the evidence submitted so that the Petitioner was afforded a fair opportunity to contest the decision and to allow a meaningful appellate review. Therefore, we will remand the matter for further proceedings 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 managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). In addition, the beneficiary must seek to enter the United States temporarily to

[1] The Petitioner's claimed U.S. parent company, [redacted], previously filed a "new office" L-1A petition on the Beneficiary's behalf, which was approved for the period December 4, 2017, until December 3, 2018. The Petitioner noted on the Form I-129, Petition for a Nonimmigrant Worker, that it was filing for a "change of employer," and requested an amendment and extension of the Beneficiary's L-1A status.

continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

II. BASIS FOR REMAND

As noted, the Director's decision contained factual errors and lacked a discussion of certain material evidence provided for the record, leaving the Petitioner with reason to question whether the Director had fully considered the totality of the evidence before issuing the decision. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Accordingly, for the reasons discussed below, we will remand the matter to the Director for entry of a new decision.

A. Qualifying Relationship

The Director found that the Petitioner did not establish a qualifying relationship with the Beneficiary's foreign employer based, in part, on a finding that it did not provide corroborating documentation to support its assertion that it is majority-owned by [redacted] a Texas company which is claimed to be a direct wholly-owned subsidiary of the foreign employer. Specifically, the Director stated:

> You have provided the Form 1120 and the W-2 forms to indicate this ownership, however the tax documentation you have provided are of a different company. You have provided the 1120S for a company named [redacted] as opposed to [the Petitioner]. These compan[ies] have different employer identification numbers.

However, the Petitioner did not provide the 2017 IRS Forms 1120S or W-2 for [redacted] Inc. as evidence of its ownership, nor did it claim that the 2017 tax return submitted was its own tax return. Rather, the Petitioner has consistently claimed that it purchased the assets of [redacted] in January 2018; the most recent tax return for the business' prior owner was intended to demonstrate that the business was active and viable with $1.8 million in sales in 2017. Based on the Director's analysis, it is unclear whether the submitted asset purchase agreement was reviewed.

Further, the Petitioner did in fact submit supporting documentation intended to demonstrate that it is majority owned by [redacted] This evidence, which is not mentioned in the denial decision, included the following documentation: the Petitioner's articles of organization; operating agreement; amended operating agreement; a "Unanimous Consent Resolution" issuing 51 membership units to [redacted]; membership certificate ledger; membership certificates; and the minutes of a member meeting held by the Petitioner. The Director did not explain why this evidence was insufficient to establish the relationship between the Petitioner and [redacted]

The Director also found that the Petitioner had not established the ownership of its parent company, [redacted] because the Director had doubts regarding the credibility of the submitted company bylaws. The copy of the bylaws provided at the time of filing was signed but not dated, and contained blanks where the name of the state of incorporation was to be filled in. In response to a request for evidence (RFE), the Petitioner submitted a new copy of the bylaws, with the state of incorporation

completed and the date completed as September 28, 2017. The Director, referencing the "altered documents," questioned the veracity of the Petitioner's claim that [redacted] is a subsidiary of the Beneficiary's foreign employer.

The bylaws in question, however, do not address [redacted]' ownership and are not directly material to the Petitioner's claim that this entity is wholly owned by the foreign employer. Although the Director refers to "altered documents," in the plural, it is unclear to which other documents, if any, the decision may be referring. The Petitioner explains on appeal that it did not consider the bylaws document to be "backdated" or "altered" because the signature date is after the date [redacted] was established.

The record contains additional evidence relevant to this company relationship between [redacted] and the foreign employer which was not addressed in the Director's decision, which includes [redacted] certificate of filing and formation filed September 27, 2017; Resolution Relating to a Series of Shares filed on October 2, 2017; Incorporation Initial Resolutions; Meeting Minutes dated October 3, 2017; and a copy of [redacted]s stock certificate and stock ledger.

As the Director's decision does not include a discussion of the relevant primary evidence of ownership submitted for the entities in question (the Petitioner and [redacted]), the Director's decision on this issue will be withdrawn.

However, we note that the record as presently constituted does not contain sufficient evidence that [redacted] contributed monies in exchange for its claimed 51 percent ownership interest in the Petitioner. The Petitioner states that [redacted] was issued 51 membership units in exchange for $350,000 (which included a $100,000 capital contribution and $250,000 loan). As evidence of this transaction, the Petitioner submitted a [redacted] Bank cashier's check in the amount of $349,980.28 remitted by [redacted] and paid to the order of the Petitioner on October 1, 2018. The record does not include corroborating evidence of this transaction, such as a bank statement showing a debit in this amount from [redacted] account, nor a statement showing the deposit into the Petitioner's account.

Rather, the Petitioner submitted a letter dated October 3, 2018, from [redacted] Bank stating that the Beneficiary has a checking account with this bank, under the Petitioner's name, which was opened with a $349,000 deposit on October 1, 2018. Given that the Petitioner was established in January 2018[2] and claims that it has been operating the acquired landscaping business since that time, it presumably had a business bank account prior to October 2018. It is unclear why the Beneficiary would open this new account and the record does not sufficiently establish that the $349,000 deposited to the account reflected the investment from [redacted] In sum, we find the cashier's check and the letter from [redacted] Bank inadequate to demonstrate that [redacted] paid $350,000 for its ownership interest as claimed.

[2] We note that the Petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it was established in 1985. The record reflects that [redacted] was incorporated in 1985; the Petitioner was established as a limited liability company in January 2018 and acquired the assets of [redacted] at that time.

Therefore, the Director should request additional evidence that clearly shows that [redacted] paid for its ownership interest, along with evidence corroborating the claimed parent-subsidiary relationship, which was newly formed at the time of filing. Such evidence may include a complete copy of the Petitioner's 2018 tax return with all schedules, statements, and proof of filing with the IRS, as well as any additional documents which relate to the company's ownership and control.

Based on the foregoing, the matter will be remanded for further analysis and entry of a new decision with respect to the Petitioner's qualifying relationship with the Beneficiary's foreign employer.

B. Employment in a Managerial Capacity Abroad

The Director further determined that the Petitioner did not establish that the Beneficiary was employed abroad in a managerial or executive capacity. The Director acknowledged that the Petitioner's description of his duties "indicates the beneficiary performed managerial and executive duties," but found that "the evidence is insufficient to explain how the beneficiary's position will satisfy the four criteria of both 'managerial capacity' and 'executive capacity.'" However, the Petitioner did not claim that the Beneficiary meets the requirements of both managerial and executive capacity and need only establish that he was employed in one qualifying capacity or the other in order to establish eligibility. The Petitioner has consistently stated that the Beneficiary was employed abroad in a managerial capacity.

The Director also determined the Petitioner did not establish that the Beneficiary supervised subordinate managers, supervisors, or professionals, concluding that the Beneficiary's direct reports "are mainly responsible for training and creating, consolidating and generating reports." It is unclear how the Director reached this conclusion as the record contains position descriptions for all foreign entity employees that include a breakdown of each employee's tasks and the amount of time devoted to each task. The Director's decision does not reflect that this information was considered.

As the matter will be remanded, the Director is instructed to issue a new decision which takes into account the Petitioner's claim that the Beneficiary was employed abroad in a managerial capacity and considers all of the submitted evidence, including the descriptions of duties provided for subordinate staff employed by the foreign entity.

Further, although not addressed in the Director's decision, the Petitioner must also establish that the Beneficiary was employed abroad in a managerial capacity for at least one full year in the three years preceding the filing of the initial L-1A petition in October 2017. *See* 8 C.F.R. § 214.2(l)(3)(iii)-(iv). The Petitioner states that the Beneficiary was employed by [redacted] from 2009 until July 2017.

However, we note that when the Beneficiary applied for a B1/B2 nonimmigrant visa at the U.S. consulate in [redacted] in April 2017, he stated that he was employed by [redacted], rather than [redacted] As this potentially derogatory information was obtained from outside the record of proceeding, the Director should issue a notice pursuant to 8 C.F.R. § 103.2(16)(i) and afford the Petitioner the opportunity to provide additional information prior to issuing a new decision.

C. U.S. Employment in a Managerial Capacity

Finally, the Director determined that the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial capacity. The decision reflects that this determination was based, in significant part, on a finding that the Petitioner did not establish that it actually employs the workers depicted on its organizational chart, and on a finding that the Petitioner did not provide sufficient information regarding the duties performed by subordinate U.S. staff.

First, we note that the Director's determination that there was insufficient evidence that the Petitioner employs the claimed staff was based on its submission of 2017 IRS Forms W-2 for [redacted], which the Director noted is not the petitioning company. However, the Director does not acknowledge the Petitioner's submission of its own IRS Forms 941 and Texas state quarterly wage reports for the first two quarters of 2018, and copies of employee pay statements dated in September 2018. The Director's finding that the Petitioner did not provide evidence of payments made to its employees was incorrect.

In addition, the Petitioner submitted a six-page letter dated October 1, 2018, which includes position descriptions with a breakdown of the amount of time spent on tasks for the Beneficiary's direct subordinates and the Petitioner's other staff. Because the Director did not acknowledge or analyze these descriptions in the decision, it is unclear whether this information was considered or why it was deemed to be insufficient.

Therefore, the Director is instructed to review this issue on remand and issue a new determination that is based on all of the submitted evidence.

III. CONCLUSION

The matter will be remanded to the Director for further proceedings and entry of a new decision pursuant to the foregoing discussion. At this time, we take no position on whether the Beneficiary qualifies for the classification sought. The Director must make the initial determination on that issue after consideration of the Petitioner's evidence in its entirety, including any additional evidence requested on remand. As always in these proceedings, the burden of proof rests solely with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361

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 S-TL-*, ID# 3661861 (AAO June 11, 2019)