U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-I-, INC.

DATE: JUNE 13, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a retailer, importer, and exporter of jewelry, seeks to temporarily employ the Beneficiary as president of its new office[1] 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 California Service Center denied the petition concluding that the Petitioner did not establish, as required, that: (1) it had secured sufficient physical premises to house its new office; (2) the Beneficiary was employed abroad in an executive capacity; and (3) it would employ the Beneficiary in an executive capacity within one year of the petition's approval.

On appeal, the Petitioner claims that the Beneficiary has worked and will work in an executive capacity. The Petitioner disputes the denial decision, arguing that the Director did not consistently apply the new office regulations in her analysis of the Beneficiary's proposed employment. The Petitioner also asserts that the Director overlooked previously submitted evidence regarding the Beneficiary's foreign position and contends that it provided sufficient evidence to show that it had secured sufficient physical premises that would adequately accommodate its needs during the initial phase of its operation.

For the reasons discussed below, we will remand the matter.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, 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

[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.

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 submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, 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).

II. BASIS FOR REMAND

We find that the Director's decision did not adequately explain the deficiencies in the evidence. *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). First, the Director determined that the Petitioner did not provide evidence of the foreign entity's staffing and further found that the Beneficiary did not have executive control over the independent contractors the foreign entity used. These findings led the Director to conclude that the record lacks sufficient evidence to establish that the foreign entity's organizational structure was sufficient to relieve the Beneficiary from having to primarily perform non-executive functions. However, the Petitioner points out on appeal that it previously submitted the foreign entity's payroll documents, which contained each employee's name, position title, and monthly compensation. We also find that the Director incorrectly determined that the Beneficiary must have control over a contractor and the contractor's employees in order to establish that he was employed in an executive capacity.

Nevertheless, the Petitioner has not provided a detailed job description that accounts for the Beneficiary's daily tasks within the scope of a jewelry business. The definition of executive capacity has two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See, e.g.*, *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533. The record as presently constituted lacks the necessary information about the Beneficiary's daily tasks. Therefore, the Petitioner does not meet the criteria discussed herein.

Next, we turn to the Director's discussion of the Beneficiary's proposed employment. Despite the fact that the Petitioner filed the petition as a new office, the Director did not consistently apply the new office regulations and made two conflicting findings as to the Petitioner's claim that it is a new office. On the one hand, the Director questioned the Petitioner's new office status, while on the other hand the Director referred to the Petitioner as a "start-up company" and concluded that the Petitioner did not establish that its "new U.S. business" would support the Beneficiary in a managerial or executive position within one year of the petition's approval. Notwithstanding the errors noted above, more evidence is required to determine whether the Petitioner is a new office, as claimed. Namely, we point to a supporting cover letter in which the Petitioner stated that it had "originally rented a retail space totaling 242 square feet" prior to commencing a lease on its current rental space in March 2017.

Further, as pointed out in the Director's decision, the Petitioner provided its 2016 tax return indicating that it generated revenue during that filing period. Without evidence establishing the precise dates of the prior lease and the business transactions that resulted in the generation of revenue in 2016, we cannot conclude that the Petitioner was doing business for less than one year as of the date it filed this petition so that it would merit treatment as a new office. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

III. CONCLUSION

Although the Petitioner did not submit sufficient evidence to meet its burden regarding the Beneficiary's foreign and proposed employment, the Director's decision did not adequately analyze the facts of the matter and correctly apply the law. As the Director did not satisfy this condition, we will remand the matter for entry of 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 N-I-, Inc.*, ID# 2017853 (AAO June 13, 2019)