U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF LWI-, INC.

DATE: JUNE 14, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a real estate developer, seeks to temporarily employ the Beneficiary as its president under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality 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 submit sufficient evidence to establish that it would employ the Beneficiary in the United States in a managerial or executive capacity within one year of commencing its U.S. operation as a new office. The Director relied on the regulatory provisions at 8 C.F.R. § 214.2(l)(3)(v), which pertain to a beneficiary who is coming to the United States to open or to be employed in a new office.[1] However, the record shows that when filing the petition, the Petitioner responded "No" when asked whether the beneficiary would be coming to the United States to open a new office.[2] Therefore, the Petitioner did not file the Form I-129 seeking treatment as a new office. The record also contains evidence showing that the Petitioner was established in August 2015 and therefore was not a new office in October 2016 when the petition was filed.

As the Director applied an incorrect regulatory provision when making the determination regarding the Beneficiary's proposed position with the Petitioner, we will withdraw the Director's decision and remand the matter for a new decision.

In addition, we find that additional evidence is necessary to overcome inconsistencies regarding the Beneficiary's employment with the foreign entity. Namely, in the course of verifying the Petitioner's claims, we reviewed U.S. Department of State records which show that, in the Beneficiary's application for a B1/B2 nonimmigrant visa, filed in May 2015, the Beneficiary stated that her position with the foreign employer was that of an administrative department manager. This information is inconsistent with the Beneficiary's résumé and the foreign entity's organizational

[1] The term "new office" is defined as an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).
[2] *See* Section 1, No. 12, Form I-129, L Classification Supplement.

chart, both of which the Petitioner offered as supporting evidence. According to the Beneficiary's résumé, the Beneficiary has been employed as the foreign entity's "Deputy General Manager" since 2013. The foreign entity's organizational chart also depicts the Beneficiary in the position of "Deputy General Manager" further showing that the Beneficiary oversees three employees, including a "Director of Administration," who in turn oversees the manager of administration, the same position the Beneficiary claimed in her 2015 nonimmigrant visa application. In light of this information, we cannot conclude that the Petitioner's claims regarding the Beneficiary's employment with the foreign entity are credible.

Accordingly, we hereby withdraw the Director's decision and remand this matter for further consideration and entry of a new decision. The Director should request any additional evidence deemed necessary to determine the Petitioner's eligibility 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 LWI-, Inc.*, ID# 432777 (AAO June 14, 2017)