U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-US INC.

DATE: JUNE 19, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a renewable energy company, seeks to temporarily employ the Beneficiary as the managing director of its new office 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 it would employ the Beneficiary in a managerial or executive capacity in the United States. The Director acknowledged that the Petitioner indicated on the petition that the Beneficiary is coming to the United States for employment in a new office, but determined that the company does not qualify as a new office.

On appeal, the Petitioner asserts that it has not been doing business as defined in the regulations for at least one year, and, as such, it meets the definition of a "new office." The Petitioner maintains that it submitted sufficient evidence to establish that it would be able to support the Beneficiary in a managerial capacity within one year of the approval of the petition.

Upon *de novo* review of the record, we will withdraw the Director's decision and remand the matter for entry of a new decision.

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 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 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). "Doing business" means the regular,

systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office. 8 C.F.R. § 214.2(l)(1)(ii)(H).

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. Therefore, a petitioner that qualifies as a new office 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. ANALYSIS

Upon review, we agree with the Petitioner's claim that it qualifies as a new office as defined in the regulations. The Director determined that the Petitioner had been doing business for more than one year because it reported a gross income figure on its 2015 and 2016 corporate income tax returns. However, the Petitioner submitted evidence demonstrating that the income reported was provided entirely by its foreign parent company to cover salaries and initial start-up expenses. The record does not show that the company has engaged in or derived income from the provision of goods and/or services to date.

The Petitioner, as a new office, must show that it will more likely than not support the Beneficiary in a managerial or executive capacity within one year. Because the Director did not apply the new office regulations to the facts presented, the Director required that the Petitioner demonstrate that the Beneficiary would immediately perform primarily managerial or executive duties, as defined at section 101(a)(44) of the Act, upon approval of the petition. After reviewing the record under the appropriate regulations, we find that the Petitioner established that it would employ the Beneficiary in a managerial capacity within one year. Although the Petitioner will maintain a small staff initially, it provided a detailed business plan explaining how the Beneficiary would perform primarily managerial duties with the support of the U.S. employees, contractors, employees of the foreign entity, and business partners working with the Petitioner to develop solar energy projects in the United States.

Accordingly, we will withdraw the Director's findings with respect to the Beneficiary's proposed employment capacity and the Petitioner's qualification as a new office.

III. DOING BUSINESS WITHIN ONE YEAR

Although we are withdrawing the Director's decision, the record as presently constituted does not establish that the new office would be doing business as a qualifying organization within one year.

When a petition indicates that a beneficiary is coming to the United States to open a new office, the petitioner must show that it is ready to commence doing business immediately upon approval. If approved, a beneficiary is granted a one-year period of stay to open or be employed at the "new

office." 8 C.F.R. § 214.2(l)(7)(i)(A)(3). At the end of the one-year period, when a petitioner seeks an extension of the "new office" petition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires a petitioner to demonstrate that it has been doing business "for the previous year" through the regular, systematic, and continuous provision of goods or services.

The Petitioner's business plan identified its involvement in two solar energy projects. The consists of 300 acres of industrial land in Washington where it proposes to install a solar farm and power plant. The Petitioner indicates that it has a service agreement with for the development of this project. The other project is the an early stage project undertaken by a smaller developer, which the Petitioner expects to acquire and develop in 2018. The Petitioner described these projects in detail, but it did not provide supporting documentation that would assist in evaluating their current stage of development, such as the service agreement with or documentation related to its acquisition of the Georgia-based project.

Further, although the Petitioner has budgeted for significant development and investment costs for these and future projects, but its forecasted project profit and loss statement shows that the company anticipates $0 in annual revenues in both 2018 and 2019. Since the petition was filed in September 2017, additional evidence would be needed to demonstrate how the Petitioner's activities in the interim would meet the definition of "doing business" within one year, and at what point it will begin to engage in the regular, systematic, and continuous provision of services. If the Petitioner will not reach that stage of development within one year, then the petition is not approvable.

As the Director did not raise this issue, we will remand the matter for the issuance of a new decision. The Director may request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period of time.

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

Cite as *Matter of N-US Inc.*, ID# 1378263 (AAO June 19, 2018)