U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K- INC.

DATE: JUNE 27, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an importer and distributor of heating appliances, seeks to continue the Beneficiary's temporary employment as its chief executive officer (CEO) under the L-1A nonimmigrant classification for intracompany transferees.[1] *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, determining that the Petitioner did not establish that its "new office in the United States would be able to support an executive or managerial position in one year."

On appeal, the Petitioner contends that the Director erred by citing to regulations governing L-1 new office petitions, failed to review the entire record and, as a result, erroneously denied the petition. The Petitioner submits additional evidence and maintains that it will employ the Beneficiary in an executive capacity under the extended petition.

Upon *de novo* review, 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, 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.*

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period September 9, 2016, until September 8, 2017. A "new office" is 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). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. ANALYSIS

The record shows that the Petitioner properly indicated on the Form I-129, Petition for Nonimmigrant Worker, that it was seeking to continue the Beneficiary's employment in his current L-1A position, and that its prior petition on behalf of the Beneficiary was a new office petition approved for a one year period. The Petitioner also provided evidence showing that it had commenced business operations and hired up to 12 employees during the previous year. As such, the initial evidence showed that the Petitioner was seeking an extension of a petition involving a new office.

Therefore, we agree with the Petitioner that the Director's decision improperly cited to the regulations applicable to an initial new office petition, rather than those applicable to a new office extension. Moreover, the decision repeatedly discusses whether the Petitioner established that it would be able to support a managerial or executive position "within one year," and notes that the Petitioner's "explanation of the proposed business lacks sufficient detail." These statements suggest that the Director adjudicated this petition as a new office and did not merely inadvertently cite to the incorrect regulations.

When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence did not to satisfy its burden of proof pursuant to section 291 of the Act. 8 C.F.R. § 103.3(a)(1)(i). The numerous errors in the decision raise questions as to whether the Director properly reviewed the record in its entirety. Accordingly, we will withdraw the Director's decision.

However, we find that the record as presently constituted contains insufficient evidence to show that the Petitioner would employ the Beneficiary in an executive capacity, as claimed. The job description the Petitioner provided, while quite lengthy, is repetitive, too broad, and does not sufficiently describe the Beneficiary's actual day-to-day tasks within the context of the Petitioner's business. For example, the submitted description lists nearly 120 job duties but mentions the Beneficiary's responsibility for reviewing daily reports from the Petitioner's CFO and department managers at least 50 times, and does not present a clear picture of what he would be doing on a daily basis.

The record also lacks documentation of the Petitioner's staffing levels and structure as of the date of filing on September 8, 2017. The Petitioner stated on the Form I-129 that it had 14 employees on that date, but it submitted an organizational chart that depicted 10 U.S. employees, and provided a state quarterly wage report that reported 9 employees in August 2017 and 12 employees as of

September 2017. In response to a request for evidence, the Petitioner indicated that there were some staffing changes during the first week of September 2017. As a result, the organizational chart provided with the petition was likely not an accurate representation of the Petitioner's staffing levels on the date of filing.

The Petitioner must establish eligibility as of the date of filing, therefore, additional evidence is needed to establish exactly whom the company employed on September 8, 2017. In addition, the record lacks evidence of payments made to independent contractors who the Petitioner claims to pay by commission. Since the Petitioner claims that the commissioned sales representatives perform most of the company's sales functions, this evidence is critical. As this matter will be remanded, the Petitioner should be instructed to clarify its staffing levels and organizational structure, and document all claimed employees and contractors, and their employment dates, from the date of filing and beyond.

We are remanding this matter so that the Director can properly make the initial determination on the issue of the Beneficiary's proposed employment in an executive capacity after a thorough review and analysis of the Petitioner's evidence under the appropriate regulatory requirements at 8 C.F.R. § 214.2(l)(14)(ii). 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 matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of K- Inc.*, ID# 1335109 (AAO June 27, 2018)