U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-E-C-, LLC

DATE: JUNE 27, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner intends to operate as a furniture wholesaler. It seeks to temporarily employ the Beneficiary as "owner/manager" of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. 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 as of the date this petition was filed; (2) the Beneficiary was employed abroad in a managerial or executive capacity; and (3) the new office would support the Beneficiary in a managerial or executive position within one year of this petition's approval.

On appeal, the Petitioner disputes the denial asserting that it met the eligibility criteria that is applicable in this matter.

Upon *de novo* review, we find that the Petitioner has not established that it had secured physical premises to house the new office. Therefore, we will dismiss the appeal. Because of the dispositive effect of this finding, we will reserve the remaining issues regarding the Beneficiary's foreign and proposed employment.

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. SUFFICIENT PHYSICAL PREMISES

The primary issue we will address in this decision is whether the Petitioner submitted sufficient evidence to show that it had secured sufficient physical premises to house its new office as of the date it filed this petition. 8 C.F.R. § 214.2(l)(3)(v)(A).

The petition was filed in August 2018. The accompanying evidence included a commercial sublease which identified the Petitioner as the sublessee and [redacted] as the sublessor. The sublease indicated that it would commence in April 2018 and would be valid for one year. Although both parties to the sublease signed and initialed the document where necessary, the validity of the sublease is in question based on the contents of clause no. 17, which included the following additional provisions with respect to sublessor's right to assign the lease:

> A. Unless the provisions of the master lease permit Sublessor to sublease the subleased premises, Sublessor will, before this sublease beings, deliver to Sublessee evidence of Landlord's consent to this sublease. If the evidence is not delivered by the time required, this sublease will be void and unenforceable.

The Director issued a request for evidence (RFE) instructing the Petitioner to document the validity of the sublease by providing a copy of the contract between the owner and lessee and a letter from the property owner or management company confirming permission to sublet the property in question.

The Petitioner's response did not include the requested evidence. Instead, the Petitioner provided a new lease for a different property showing a different lessor, [redacted] The new lease listed a new lease term, indicating that it would be valid for one year beginning on December 1, 2018.

In the denial decision, the Director found that the Petitioner did not provide sufficient evidence to address the concerns described in the RFE with regards to obtaining sufficient physical premises to house the new office. On appeal, the Petitioner offers a statement indicating that the leasing agreement it previously provided in response to the RFE was "contingent" upon an approval of this visa petition. The Petitioner also provides a supplemental statement from [redacted] the newer prospective lessee, indicating that it had "entered into an agreement with [the Beneficiary] for the lease of a commercial space . . . once his L-1 Visa is approved and the business is operating." The statement listed March 15, 2019 as the estimated date upon which the lease would commence, provided that the Beneficiary's visa is approved.

The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Given that this petition was filed in August 2018, a lease commencing in December 2018 is not be relevant for the purpose of establishing the Petitioner's eligibility at the time this petition was filed. We agree with the Director that the Petitioner did not demonstrate that it had a valid lease at the time of filing. As such, the Petitioner has not established that it had sufficient physical premises to house its new office at the time this petition was filed.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of T-E-C-, LLC*, ID# 4220657 (AAO June 27, 2019)