U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF S-W-T- INC.

DATE: MAR. 5, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a telecommunications company, seeks to temporarily employ the Beneficiary as the chief executive officer (CEO) 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 the Petitioner has a qualifying relationship with the Beneficiary's foreign employer.

On appeal, the Petitioner submits additional evidence and asserts that it submitted sufficient evidence to establish that it is a subsidiary of the Beneficiary's foreign employer. The Petitioner maintains that the Director erred by relying, in part, on evidence that had been submitted with a previous nonimmigrant petition.

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

## I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification for 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. Section 101(a)(15)(L) of the Act. The petitioner must also establish that the beneficiary's prior education, training, and

[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.

employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

If the Form I-129, Petition for a Nonimmigrant Worker, indicates that the beneficiary is coming to the United States in L-1A status to open or to be employed in a new office, 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. WITHDRAWAL OF DIRECTOR'S DECISION

The Director determined that the Petitioner did not establish that it has a qualifying relationship between the Petitioner and the Beneficiary's claimed foreign employer,

The Petitioner claims that it is wholly-owned by a holding company, which, in turn, is wholly owned by The Petitioner provided incorporation documents and a stock certificate establishing that owns the holding company. The Petitioner also provided its articles of incorporation, by-laws, minutes of organizational meetings, stock certificates, and stock ledger indicating that all of its shares have been issued to the company. Finally, the Petitioner provided evidence, including wire transfer receipts and bank statements, indicating that has transferred $600,000 to the Petitioner's bank account as an initial investment.

The Director concluded that the evidence was insufficient because: (1) the two wire transfers from were not contemporaneous with the issuance of the stock certificates; and (2) the Petitioner previously filed an L-1A petition on behalf of the Beneficiary in which it submitted a different version of its stock certificate #1. That certificate indicated that the Petitioner had issued its shares directly to rather than to the company.

On appeal, the Petitioner submits an affidavit from chairman, who states that the stock certificate referenced by the Director was a "draft" which was "never executed or issued." The Petitioner contends that it met its burden by a preponderance of the evidence and that the Director should have based the decision on the evidence in the record.

When a decision will rely on potentially derogatory information from outside the current record of proceeding, the petitioner must be provided with an opportunity to rebut this information prior to rendering the decision. *See* 8 C.F.R. § 103.2(b)(16)(i). As the Director did not provide the Petitioner with this opportunity, we will withdraw the decision and remand the matter to the Director for further action.

The evidence submitted with this petition tends to support the Petitioner's claim that it is ultimately owned by However, the Petitioner has not adequately explained why it submitted a different version of its stock certificate number 1 in support of a prior L-1A petition. If the certificate was "never executed or issued," as claimed by chairman, it is unclear why it would have been submitted to U.S. Citizenship and Immigration Services as supporting evidence.

On remand, the Director should request additional explanation for this anomaly, as well as corroborating evidence of the claimed relationship between the Petitioner and its claimed parent, such as the Petitioner's federal tax returns with all supporting statement, the foreign entity's annual report identifying its subsidiaries, or any other objective evidence confirming the claimed parent-subsidiary relationship.

## III. ONE YEAR OF EMPLOYMENT ABROAD

Although not addressed in the Director's decision, the record as presently constituted contains insufficient evidence to establish that the Beneficiary had at least one continuous year of full-time employment abroad with the foreign entity in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii). The Petitioner filed the Form I-129 in October 2016.

The Petitioner submitted a "salary proof" letter from stating that the Beneficiary has been employed as "General Manager of North America" since 2013 with a monthly salary of RMB 32,500. The Petitioner provided the Beneficiary's internally generated monthly "pay stubs" for 2014, 2015, and 2016, which appear to show his salary in Chinese currency. These documents are in English, are not accompanied by any Chinese language originals, and do not include a company name.

The Beneficiary, a naturalized Canadian citizen, appears to reside in Canada. While it is possible that the foreign entity deposits his salary in a Chinese bank account, we find the foreign entity's letter and internally generated "pay stubs" to be insufficient to establish the Beneficiary's full-time employment with

In addition, the Petitioner provided the Beneficiary's resume. He identifies the petitioning company as his employer for 2016, but does not list any prior employment with the foreign entity.

As the matter will be remanded, the Director should request additional evidence of the Beneficiary's foreign employment, such as his Chinese and/or Canadian tax returns, other relevant tax documentation identifying his employer during this period, the original Chinese paystubs issued by the foreign entity, and the Beneficiary's bank statements reflecting the incoming salary payments.

## IV. NEW OFFICE ELIGIBILITY

Finally, the record as presently constituted does not establish the Petitioner's eligibility as a new office as defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

The Petitioner was incorporated in January 2015, nearly two years before this petition was filed, and it has maintained office space in California since September 2015. The Petitioner states that its business activities have been "minimal" to date, but has not provided further evidence to corroborate its claim that it has not been doing business as defined in the regulations for the previous year. We note, for example, that the Petitioner's business plan indicates that it anticipates generating sales of $3 million in 2016 despite the fact that it filed the petition in October of that year.

The Director should request copies of the Petitioner's 2015 and 2016 tax returns as well as any other evidence deemed necessary to determine its eligibility as a new office.

## V. CONCLUSION

Based on the foregoing discussion, although the Director's decision will be withdrawn, the evidence of record as presently constituted does not establish the Beneficiary's eligibility for the benefit sought.

**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, which, if adverse, shall be certified to us for review.

Cite as *Matter of S-W-T- Inc.*, ID# 905350 (AAO Mar. 5, 2018)