U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-I-(USA) INC.

DATE: MAR. 5, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a real estate investment business, seeks to temporarily employ the Beneficiary as deputy general 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 it would be able to support an executive or managerial position within one year of the approval of the petition.

On appeal, the Petitioner asserts that the Director erred by basing the decision on the company's staffing levels at the time of filing and failed to consider the totality of the evidence submitted, including the Petitioner's business and hiring plans for its first year of operations.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further proceedings consistent with our discussion below.

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.*

[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.

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. ANALYSIS

The Petitioner contends that the Director did not consider the totality of the evidence in determining whether the Beneficiary would be employed in a managerial or executive capacity within one year. We agree with the Petitioner's assertion, as the Director's analysis of this issue was limited to a discussion of the Petitioner's staffing levels at the time of filing.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment, and establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

Here, the Petitioner's evidence included: letters describing the Beneficiary's proposed duties; a proposed organizational chart depicting its current employees and proposed staff to be hired within one year; an employee list that included job duties for each current and proposed employee; a feasibility study and business plan which included staffing and financial projections; evidence of the financial investment made by its foreign parent company; evidence of its parent company's organizational structure, staffing, and finances; and evidence that it had leased two premises and purchased a parcel of land prior to filing the petition.

The Director did not acknowledge most of evidence submitted to satisfy the new office requirements, and the denial decision's narrow focus on the Petitioner's current staffing levels raises questions as to whether the Director properly reviewed the record in its entirety. 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); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

As the Director's decision was based solely on the Petitioner's staffing levels at the time of filing, without consideration to its business plans and supporting evidence, it did not adequately inform the Petitioner of the deficiencies in the record. 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 managerial or executive capacity within one year. Although the Petitioner has submitted a business and hiring plan, there are ambiguities in the record with respect to the anticipated nature and scope of the business.

The Petitioner is self-described as a real estate investment business that will explore investment opportunities for its parent company's Chinese clients. The Petitioner filed the petition in June 2018 and had five employees at that time. It also provided a personnel plan indicating that it expected to employ 12 staff by the end of 2018, including a general manager, deputy general manager, administrative manager, administrative assistant, property management manager, three property leasing/managing coordinators, a bookkeeper, a property investment manager, and two property investment coordinators. According to its business plan, the Petitioner anticipates $300,000 in income from "real property investment and management services" in 2018, and income of over $1 million for its first full year of operations in 2019.

The Petitioner submitted two lease agreements at the time of filing. One lease is for an office suite that the Petitioner refers to as its "marketing office." The Petitioner also submitted its business tax certificate for this location which describes the nature of the business as "Misc. Educational Services." In addition, the Petitioner submitted a copy of its five-year "shopping center lease" indicating that the agreed use for the premises is "the operation of a [redacted] full service restaurant, including an on-site full liquor license." The Petitioner's business plan makes no reference to "educational services" and does not indicate that the Petitioner intends to staff, operate, or manage a restaurant.

The Petitioner also submitted evidence that it purchased a plot of vacant land for $360,000 and stated that it would develop residential properties on the land, but did not provide any documentation related to its construction or development plans. Further, the company's business plan and financial projections do not clearly account for expenses related to the development of this land.

Based on this evidence, it is unclear how the company intends to support the proposed staff of property and investment managers and leasing coordinators within one year, as it is unclear what specific properties the Petitioner would actually be leasing and managing in that timeframe or how it would generate revenue from provision of property investment and management services during its initial year of operations. For example, the Petitioner indicates that the property management manager, who was already on its payroll at the time of filing is "responsible for maintaining the company properties," and the property leasing/managing coordinator, who was to be hired within three months of filing, would be advertising and filling vacancies, processing applications, promoting and showing properties, negotiating leases, and enforcing rental agreements. These proposed duties are not credible absent evidence supporting the Petitioner's claim that it is positioned to immediately commence operations as a property management and leasing company.

Further, the Petitioner has not explained the "educational services" it is licensed to provide, or its plans for the restaurant that it leases, other than noting that it is currently renovating the leased retail property. Due to the uncertainties regarding the type of business it intends to operate and its actual staffing needs, the Petitioner did not meet its burden to establishing the intended nature and scope of the business, its anticipated organizational structure, or its financial goals. As such, additional information would be needed to establish that the Petitioner will employ the Beneficiary in a managerial capacity within one year as claimed.

III. CONCLUSION

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 a managerial or executive capacity after a thorough review and analysis of all of the Petitioner's evidence under the regulatory requirements at 8 C.F.R. § 214.2(l)(3)(v). The Director should request any additional evidence deemed warranted in light of our discussion 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 the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of H-I-(USA) Inc.*, ID# 2433584 (AAO Mar. 5, 2019)