U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37049503

Date: MAR. 10, 2025

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a describing itself as a "quality control institute," seeks to employ the Beneficiary as a global quality control manager 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 the record did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. The Petitioner later filed a combined motion to reopen and reconsider that the Director dismissed. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

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.*

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

A. Facts and procedural history

The Petitioner stated it was a "fast-growing Quality Assurance and Certification company" with offices in nineteen countries providing testing, inspection, and certification of supply chains services in the global textile market. The Petitioner indicated that the Beneficiary acted as the director of its quality assurance (QA) and inspection services abroad since 2016 and that he was being transferred to its headquarters in the United States to be its global managing director, QA and inspection services.[1] In response to the Director's request for evidence (RFE), the Petitioner explained the Beneficiary would act in an "executive position" in the United States overseeing the company's inspection business units worldwide. The Petitioner provided an organizational chart reflecting that the Beneficiary would oversee five employees in the United States including two inspection analysts, an inspection auditor, an inspection analyst– accountant, and a senior inspection analyst. The chart further showed that the Beneficiary would supervise two inspection analysts and a senior inspection analyst in Europe as well as seven other inspection locations based throughout Asia.

The Director later denied the petition in September 2024 concluding the Petitioner did not demonstrate that the Beneficiary would be employed in an executive capacity in the United States. The Director reasoned that the Petitioner did not sufficiently articulate the day-to-day tasks the Beneficiary would perform in his U.S. position. Further, the Director determined the Petitioner did not sufficiently demonstrate that the Beneficiary would oversee subordinate managers, but only subordinates performing day-to-day operational duties.

The Petitioner later filed a combined motion to reopen and motion to reconsider emphasizing changes it made to its operations and the Beneficiary's role. The Petitioner asserted that consistent with a new office petition[2] the Beneficiary's duties and his subordinates became clearer and expanded since the petition was filed. The Petitioner proposed the petition be treated as a new office petition or "an interim one-year grant, during which time the duties of the position will be fully clarified in real-time for [U.S. Citizenship and Immigration Services (USCIS)] to evaluate." The Petitioner indicated that by May 2024 the Petitioner "brought online" four new country offices under the Beneficiary's supervision. The Petitioner further stated that in August 2024 it promoted two experienced staff members to manage quality inspection in its United States and Switzerland offices, causing the Beneficiary to be engaged in "higher level executive coordination" while spending 100% of his time "on the global executive position." The Petitioner submitted a new organizational chart reflecting that he was supervising twelve international offices handling its global inspections, including subordinate managers and subordinates within each office.

In denying the motion, the Director reasoned the Petitioner must demonstrate the Beneficiary's eligibility as of the date the petition was filed; and therefore, the expansion of its operations and his

[1] The petition was filed in January 2024.

[2] 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 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).

proposed executive role was not relevant to demonstrate his eligibility for the benefit sought. The Director also concluded that the Petitioner's request that the petition be modified to a new office petition represented a material change to the petition more appropriately set forth in a new petition. The Director determined that the Petitioner did not provide sufficient new facts relevant to the time the petition was filed to support a motion to reopen and concluded that it did not cite to applicable law or policy to demonstrate that the previous decision was incorrect, as necessary to support a motion to reconsider.

On appeal, the Petitioner again emphasizes evidence submitted following the initial decision by the Director highlighting its business plans and the "genuine need for the new position." The Petitioner contends it did not propose that the petition be modified to a new office petition, but reasoned that it emphasized evidence postdating the petition "to show the bona fides of the position" and to clarify changes to the position since the filing of the petition in January 2024, including the opening of "numerous new overseas offices, subsequent to filing the petition" documenting the critical need for the executive position. The Petitioner again asserts that given these "unusual facts," the petition should not be adjudicated as a "normal L-1A," stating that it would be "willing" to have the petition treated like a new office petition with an "interim one-year grant." The Petitioner reasons that this would allow USCIS to "see the duties of the position…fully justified in real-time, to evaluate the actual implementation of the Petitioner's response to quickly changing conditions, with a subsequent petition to extend L-1A status beyond that year."

B. Analysis

Upon review, we will dismiss the appeal as the Petitioner has not met the requirements of an appeal and it has requested a remedy we cannot provide on appeal.

When conducting appellate review, we determine whether an unfavorable decision contains an erroneous conclusion of law, application of policy, finding of fact, or exercise of discretion. We do not treat appeals as a new adjudication of an immigration benefit request as if there had been no prior adjudication. *See, e.g., U.S. v. Raddatz*, 447 U.S. 667 (1980). Therefore, we generally limit our review to issues raised by the affected party in the appeal and evidence that was in the record when the unfavorable decision was issued.

However, on motion and now on appeal, the Petitioner's focus has been exclusively on the nature of the Beneficiary's asserted executive-level position after the date the petition was filed. The Petitioner appears to assert that we consider a materially modified version of the petition, shifting the adjudication to a new office petition and/or an "interim one-year grant" whereby we would continue to evaluate whether he qualified for the benefit sought in a latter proposed, but not yet filed, extension petition. For instance, on motion, the Petitioner emphasized the nature of the Beneficiary's asserted executive-level role in August 2024, approximately seven motions after the date the petition was filed. However, as noted by the Director in their two prior decisions, the Petitioner has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts."). The Petitioner did not submit

additional assertions or evidence as to how the Beneficiary qualified for the benefit sought as of the date the petition was filed. Likewise, the Petitioner did not articulate on motion, nor does it provide on appeal, any erroneous conclusion of law or statement of fact in either of the Director's unfavorable decisions. 8 C.F.R. § 103.3(a)(1)(v). For this reason alone, the appeal will be dismissed.

In addition, the law does not allow us to grant the remedy the Petitioner seeks on appeal. As discussed, our review is limited to whether the Director's unfavorable decisions contained erroneous conclusions of law, applications of policy, findings of fact, or exercise of discretion. Here, the Petitioner did not articulate any such erroneous conclusions made by the Director and its assertions on motion and appeal are wholly focused on changes in the Beneficiary's position following the date the petition was filed. The Petitioner proposes that the petition should be changed from a three-year to a one-year period consistent with a new office petition.[3] However, a petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998).

Further, a L-1A nonimmigrant new office petition applies to new business ventures that have been doing business for less than one year, pursuant to which, we review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity within one year of the petition's approval. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). Therefore, even if we were empowered to grant this material change to the petition on appeal, the new office regulations are not applicable to the Petitioner in this matter, since it states that it has been doing business in the United States for over 12 years and that it had approximately 55 employees when the petition was filed. The regulations and applicable law provide us with no mechanism to approve a petition on the premise that we will evaluate it later under a hypothetical extension petition.

Under the current petition, the Petitioner must demonstrate the Beneficiary's eligibility as of the date the petition was filed and its refusal to address this eligibility on motion, and now on appeal, leaves substantial uncertainty as to his asserted executive-level role at the time the petition was filed. The Petitioner must resolve ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). For instance, the Director reasoned in the original denial that the Petitioner did not sufficiently articulate the day-to-day tasks the Beneficiary would perform in his U.S. position while performing his asserted global oversight and planning responsibilities over its QA and inspection services. To date, the Petitioner has not addressed this determination by the Director and provided additional detail and evidence as to his proposed day-to-day tasks *when the petition was filed* [emphasis added], despite the Director addressing this in two separate decisions.[4]

For the foregoing reasons, the Petitioner did not meet the requirements of an appeal; therefore, the appeal must be dismissed.

ORDER: The appeal is dismissed.

[3] We note that the petition reflects that the requested dates of intended employment were from January 1, 2024, to January 1, 2027, or a request for a three-year nonimmigrant visa.

[4] We note that there is nothing preventing the Petitioner from filing a new petition with new evidence to demonstrate his current eligibility in his modified role.