U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-, LLC

DATE: MAR. 13, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an investment company, seeks to temporarily employ the Beneficiary as the board chairman and general manager 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 that it would employ the Beneficiary in a managerial or executive capacity.

On appeal, the Petitioner asserts that the Director erred by failing to apply the regulations applicable to a new office to this 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 employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

[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.

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, emphasizing that the Petitioner did not establish that it qualified as a "new office," found that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity as of the date of filing.

The Petitioner is a North Carolina limited liability company established in March 2017. It established a subsidiary company, in June 2017, and immediately purchased the assets of a restaurant business from an unrelated company, with the intent of assuming operation of an existing restaurant. The Petitioner then filed this petition on August 1, 2017, in which it indicated that the Beneficiary is coming to open or be employed in a "new office," and requested a one-year period of approval.

In both a request for evidence (RFE) and the denial decision, the Director rejected the Petitioner's claim that it qualifies as a new office, noting that its subsidiary, "purchased the organization and its restaurant The Director acknowledged that the Petitioner itself had been established for less than one year at the time of filing.

On appeal, the Petitioner asserts that the Director erred in concluding that it does not qualify as a new office and appears to have incorrectly determined that the Petitioner has an ownership interest in The Petitioner emphasizes that it did not acquire any stock or ownership interests in this entity, which previously operated the restaurant, but merely purchased the restaurant assets. Therefore, since the Petitioner and have no shared ownership, the Petitioner maintains that the record does not support the Director's finding that the Petitioner had been doing business in the United States through a parent, branch, affiliate, or subsidiary for at least one year at the time of filing.

We agree with the Petitioner that it was eligible for treatment as a new office pursuant to 8 C.F.R. § 214.2(l)(3)(v). The purchase of the assets of an existing business did not disqualify the Petitioner under the regulatory definition of "new office." As the Director did not adjudicate this matter in accordance with the regulatory requirements applicable to new offices, her decision is withdrawn.

However, there is insufficient evidence in the record to meet all requirements for a new office petition and the Petitioner has not sufficiently shown how the new office will support the Beneficiary in a managerial or executive capacity within one year.

First, the Petitioner indicates that the Beneficiary's work location will be at [redacted] in [redacted] North Carolina, which appears to be a residential single family home. Therefore, although the Petitioner provided a lease of the [redacted] restaurant, it did not fully satisfy the physical premises requirement at 8 C.F.R. § 214.2(l)(3)(v)(A). The Petitioner will need to provide additional evidence to show how the Beneficiary's intended worksite is sufficient for the operation of the company's business.

In addition, the Petitioner indicates that it will not pay the Beneficiary any wages, but instead notes that he will take "profits of company as compensation." The Petitioner submitted a brief business plan, but the business plan does not include an estimate of the company's expected profits or address the company's financial objectives. To prevent a potential conflict with the Fair Labor Standards Act (FLSA), U.S. Citizenship and Immigration Services must ensure that a beneficiary will not be paid a wage that is less than the minimum required wage under state or Federal law, whichever is higher, before approving an employment-based visa petition. *Matter of I- Corp.*, Adopted Decision 2017-02 (AAO Apr. 12, 2017). Although the record contains evidence of the Beneficiary's considerable personal finances, the Petitioner is not exempt from meeting this requirement. Therefore, the Petitioner will need to provide additional evidence to demonstrate that the Beneficiary has been offered and will earn at least minimum wage under state or federal law.

Finally, the Petitioner submitted only a general description of the Beneficiary's proposed duties and a very skeletal business plan in support of the petition. Additional evidence is necessary to show how the Beneficiary perform primarily to managerial or executive duties within one year, and to establish the proposed nature of the office, the scope of the entity, its intended organizational structure within one year, and its financial goals. *See* 8 C.F.R. § 214.2(l)(3)(v).

Accordingly, we will remand the matter to the Director, who should review this petition under the new office requirements, allow the Petitioner an opportunity to address the deficiencies addressed above, and issue a new decision.

III. 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.

Cite as *Matter of A-*, LLC, ID# 1029719 (AAO Mar. 13, 2018)