U.S. Citizenship and Immigration Services

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

In Re: 30452470

Date: MAR. 15, 2024

Appeal of California Service Center Decision

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

The Petitioner intends to operate a restaurant as well as a "flavors and fragrance" distribution business. It seeks to employ the Beneficiary temporarily as director of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary was employed abroad in a managerial capacity.[2] While this is in line with the Petitioner's repeated claims that the Beneficiary's employment abroad was in a managerial and not in an executive capacity, the Director's analysis appears to conflate these two terms.[3]

The Director also determined that the record does not show that the Beneficiary managed subordinates who were managers, supervisors, or professional employees, despite acknowledging that the Petitioner submitted the foreign entity's organizational chart which shows that the Beneficiary had two subordinates who had "three to four subordinate employees" of their own. And although the Director noted that the Petitioner did not provide evidence that the foreign entity employed the listed subordinates, the request for additional evidence did not instruct the Petitioner to provide such evidence, nor does the statute or applicable regulation require that such evidence be submitted. In essence, the Director made an adverse determination based on the absence of evidence that was never requested and which the Petitioner is not required by the relevant statute or regulation to submit. *See* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(3)(v).

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[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.

[2] The Petitioner's claim rests solely on the definition of managerial capacity. The Petitioner did not claim that the Beneficiary was or would be employed in an executive capacity.

[3] The Director referred to "a person's elevated position within a complex organizational hierarchy, and that person's authority to direct a function," and later determined that the record lacks evidence that the foreign entity had "a sufficient qualifying level of employees [for the Beneficiary] to direct." These references indicate that the Director incorporated elements of executive capacity and incorrectly applied them to the analysis of the Beneficiary's position, which the Petitioner has consistently maintained as being in a managerial capacity. *See* sections 101(a)(44)(B) (for the definition of "executive capacity").

Finally, the Director concluded that the Petitioner did not provide sufficient evidence "to show that the [B]beneficiary's subordinates managed and/or supervised other managers, supervisors, or professional employees." *See* section 101(a)(44)(A)(ii) of the Act. Essentially, the Director applied elements of the term "managerial capacity" to the Beneficiary's subordinates, even though section 101(a)(44)(A) of the Act only requires a petitioner to establish that the *beneficiary* of the visa petition meet the statutory criteria. In fact, whether the subordinates of the Beneficiary's subordinates, i.e., subordinates who are situated two tiers below the Beneficiary, were managers, supervisors, or professional employees is not relevant for the purpose of determining the managerial nature of the Beneficiary's own position abroad.

On appeal, the Petitioner disputes the denial, asserting that the Director overlooked evidence, including a detailed discussion of the Beneficiary's foreign job duties as well as the job duties of the Beneficiary's subordinates. The Petitioner also elaborated on the foreign entity's management hierarchy, focusing primarily on the management tiers of the Beneficiary and her subordinates and explaining how they interacted with one another, and which functions they each carried out within the context of the foreign entity's wholesale distribution business. The Petitioner also points to previously submitted performance evaluations that the Beneficiary completed with respect to her subordinates, pointing out that the Beneficiary did not perform operational tasks, but rather managed others who did. In sum, not only did the Petitioner further expound on the Beneficiary's former role and job duties within the context of the foreign entity's organizational hierarchy, but it also explained how, through previously submitted evidence, the Beneficiary's former position abroad satisfied the elements of the term "managerial capacity."

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, and pursuant to the above, we conclude that the Petitioner has met its burden of proof, and we will therefore sustain the appeal.

**ORDER:** The appeal is sustained.