U.S. Citizenship and Immigration Services

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

MATTER OF X-C-USAT- CORP

DATE: MAR. 20, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an importer and seller of large format printers, seeks to continue the Beneficiary's temporary employment as its general manager under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 it would employ the Beneficiary in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner submits additional evidence and asserts that the Director's decision to deny the petition was based on a number of factual errors and should be overturned for that reason.

Upon *de novo* review of the record, 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, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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 Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period August 3, 2016, until August 2, 2017. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii). This evidence must demonstrate that the beneficiary will be employed in a managerial or executive capacity, as defined at sections 101(a)(44)(A) and (B) of the Act, under the extended petition.

## II. ANALYSIS

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 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).

We agree with the Petitioner that the Director's decision contains a number of factual errors and indicates that the Director overlooked evidence that was material to the Beneficiary's eligibility. As a result, the record does not support the Director's specific reasons for the denial, and the Petitioner was not provided with a meaningful analysis of its evidence to serve as a basis for its appeal.

The Director noted that the Petitioner did not submit a position description for the Beneficiary at the time of filing, but overlooked a lengthy description of the Beneficiary's duties submitted as exhibit 22 with the initial supporting evidence. The job description that the Director ultimately analyzed in the denial decision, provided in response to a request for evidence (RFE), is not the Beneficiary's job description but one belonging to a subordinate employee. Therefore, the Director's decision is not based in any part on an analysis of the Beneficiary's stated job duties.

Further, the Director partially described the Petitioner's organizational chart in the decision, and concluded that the Beneficiary would supervise only one employee. However, the Petitioner's organizational chart and supporting evidence submitted at the time of filing and in response to the RFE showed that the company has four employees subordinate to the Beneficiary, and the decision does not appear to be based on a complete review of this relevant evidence. Accordingly, the Director's decision is withdrawn.

However, the record as presently constituted contains insufficient evidence to show that the Beneficiary is eligible for the benefit sought. The job description that the Petitioner submitted at the time of filing, while lengthy, was very broad and did not describe the Beneficiary's actual day-to-day duties within the context of the Petitioner's business. Although the Petitioner submits additional information regarding the Beneficiary's duties on appeal, this description bears little resemblance to the one provided at the time of filing, and the record does not include a consistent and detailed account of the Beneficiary's specific duties at the end of the first year of operations.

We have also compared the company's first-year staffing plan (described in the Petitioner's business plan) to its actual organizational structure at the end of the first year of operations. The staffing plan indicates that the Petitioner intended to hire a vice manager, an import-export manager, a sales manager, a technician, and an accountant during its initial year of operations. The Petitioner indicates that it has staffed the positions of sales-marketing manager, e-commerce manager, sales representative, and senior technician, but has not explained who is performing import-export or accounting functions.

The Petitioner indicated that it was in the process of filling additional positions and submitted copies of job postings from Indeed.com. The job postings - for a technical support specialist, a senior sales representative, and an e-commerce specialist - were quite detailed, but the job duties listed for these proposed positions were not consistent with the stated nature of the Petitioner's business. This evidence raises questions as to whether has provided a complete description of the nature and scope of its business. For example, the Petitioner states that it imports and sells large format printers and provided evidence related to this type of business activity. However, the job posting for its senior sales representative position which states, "Join the market leader in the corporate and education markets!", makes no reference to printers or printing, and suggests that the Petitioner is engaged in a different industry. The Petitioner also indicates that it operates its e-commerce department under the fictitious name but it has not submitted evidence related to this area of the business beyond the fictitious name certificate.

We are remanding this matter so that the Director can properly make the initial determination on the issue of the Beneficiary's employment in a managerial or executive capacity after a thorough review and analysis of the Petitioner's evidence. The Director should request any additional evidence deemed warranted 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 further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of X-C-USAT- Corp.* ID# 1091365 (AAO Mar. 20, 2018)