U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF JCH-S-, INC.

DATE: MAR. 27, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a home improvement and remodeling company, seeks to continue the Beneficiary's temporary employment as its chief executive officer under the L-1A nonimmigrant classification for intracompany transferees.[1] *See* Immigration and Nationality Act (the Act) § 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity.

On appeal, the Petitioner submits a statement by counsel, a letter from the Beneficiary, a brief list of the Beneficiary's job duties, remodeling proposals, independent contractor agreements, a building permit, and copies of checks. Counsel asserts that the Beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

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

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period January 15, 2017 until January 14, 2018. 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.

continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

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).

II. DEFINITIONS

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

The term "executive capacity" is defined as an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

Based on the definitions of managerial and executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

III. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity.

When examining the claimed managerial or executive capacity of a given beneficiary, we will look to the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in an executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational

duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

In a request for evidence, the Director informed the Petitioner that it had not described the Beneficiary's intended duties in the United States. The Director asked the Petitioner to explain how the Beneficiary's intended position would meet the requirements of managerial or executive capacity. The Petitioner submitted an organizational chart, tax documentation, bank statements, and invoices; however, the response did not address the Director's request for information regarding the Beneficiary's duties.

The Director denied the petition, finding that the Petitioner did not "provide any description of the beneficiary or his subordinate[s'] duties."

On appeal, the Petitioner provided a list of duties and asserted that the Beneficiary's duties "are related to planning, and supervising all the activities of our employees in our office and our on-site staff and subcontractors." The Petitioner stated that the Beneficiary as CEO will perform the following duties:

> [**Strategic Planning:**] Meeting the objectives of the company's business plan. 2. Identifying and developing business opportunities for [the Petitioner] and or any subsidiary; and 3. Authority to approve and implement marketing plans on behalf of [the Petitioner].
>
> **Pricing:** 1. Final authority of established pricing for services provided by the Company; 2. Final authority on acceptance of any negotiated fees per subcontractor.
>
> **Budget:** Review final proposed budget which was prepared by accountant.
>
> **Company Representative:** Finalizes all contract with clients and subcontractors and authority to terminate commercial relationships with subcontractors. Review all pulled local permits.
>
> **Site Inspections:** Occasional site inspection before project manager has classified the project as completed.
>
> **Personnel decision-making:** Authority to terminate any employee relationships. Approves the use of the subcontractors after being identified by project manager . . . .

As noted, the Petitioner provided a list of the Beneficiary's duties for the first time on appeal despite the Director's request for such evidence prior to the denial of the petition. We may refuse to consider evidence submitted for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). As the Petitioner did not provide any of the proposed duties to be performed by the Beneficiary, the Director did not err in denying in the petition and we will dismiss the appeal for this reason.

Although the appeal will be dismissed, we will briefly address the duties submitted by the Petitioner so it may address these deficiencies in any future filings. The Petitioner listed the Beneficiary's basic responsibilities, but it did not describe the specific tasks that he will perform in order to meet these responsibilities. For instance, the Petitioner stated that the Beneficiary will meet "the objectives of the company's business plan" and "review final proposed budget which was prepared by accountant," but does not explain what this work will entail. Specifics are an important indication of whether a beneficiary's duties are primarily managerial or executive in nature. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The Petitioner claimed that the Beneficiary "finalizes all contract with clients and subcontractors." However, the record does not support the Petitioner's use of subcontractors. The record does not contain sufficient documentation such as evidence of payments or tax forms corroborating the Petitioner's use of subcontractors.

The Petitioner submitted several invoices that were issued to various entities for home remodeling, deep cleaning, house cleaning, and painting services rendered. The Petitioner also submitted bank statements. The Petitioner did not explain how these documents support its claims that the Beneficiary will perform managerial or executive duties.

Further, some of the tasks described are not those of a manager or executive. For example, approving and implementing marketing plans, finalizing contracts, reviewing local permits, and site inspections describe a level of day-to-day involvement with routine business activities that are not consistent with managerial or executive capacity.

For these reasons, even if the Petitioner had submitted these duties prior to the appeal, the duties do not establish that the Petitioner will employ the Beneficiary in a managerial or executive capacity.

IV. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of JCH-S-, Inc.*, ID# 2579660 (AAO Mar. 27, 2019)