U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37382041

Date: MAR. 31, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a restaurant, seeks to temporarily employ the Beneficiary as the chief financial officer 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 Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary would be employed in a managerial or executive position within one year of the petition's approval. The matter is now before us on appeal. 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 conclude that a remand is warranted in this case because the Director's decision is insufficient for review. The decision contains factual errors, lacks sufficient analysis and discussion of the evidence in the record, and reaches conclusory findings with respect to the Beneficiary's eligibility for the requested classification. Accordingly, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id*. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify them 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.

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving 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).

In denying the petition, the Director determined that the Petitioner did not demonstrate that the Beneficiary would be employed in the United States in a managerial or executive capacity within one year of the petition's approval. On appeal, the Petitioner asserts that the Director's decision was erroneous, noting that the Director did not consider the totality of the evidence in determining whether the Beneficiary would be employed in a managerial or executive capacity within one year. For the reasons outlined below, we agree with the Petitioner's assertion.

The Petitioner's evidence included letters describing the Beneficiary's proposed duties, a proposed organizational chart depicting its current employees and proposed staff to be hired within one year, a feasibility study and business plan which included staffing and financial projections, evidence of the financial investment made by its foreign parent company, and evidence that the Petitioner had leased a premises for its new office. The Director's decision, however, simply restated the definitions of managerial and executive capacity and concluded that the Beneficiary would not be employed in a qualifying capacity without acknowledging the submitted evidence or explaining why the evidence was insufficient.

Moreover, the Director's analysis references facts that do not appear in the record. For example, the Director stated that "none of the beneficiary's direct report [*sic*] in Australia can be considered supervisory, professional, or managerial employees based on the regulation." The Petitioner, however, is the subsidiary of a Chinese company and has made no claim that the Beneficiary will have direct reports based abroad, particularly in Australia.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment, and establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

Here, the Director did not apply the "new office" regulations to the submitted evidence, and there is no discussion of the Petitioner's organizational chart, staffing levels, business plan, or size of its U.S. investment. Moreover, the Beneficiary's duties were not analyzed in any meaningful way to support the conclusions reached. The decision does not reflect that the Director considered the evidence in its totality, nor does the decision adequately explain how that evidence led the Director to conclude that

the Beneficiary would not be performing managerial or executive duties. In addition, the denial decision's reference to staff in Australia when the parent company is based in China raises questions as to whether the Director properly reviewed the record in its entirety. 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 to 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). For the reasons outlined above, we conclude that the Director's decision did not adequately explain the deficiencies in the evidence.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.