U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-T-H-V-T-L-S-

DATE: MAY 1, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner,[1] a company engaged in enterprise software development, sales, and implementation, seeks to temporarily employ the Beneficiary as technical product manager of its U.S. affiliate's new office[2] under the L-1B nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).[3] The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.[4]

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary possesses specialized knowledge, and that he will be employed in a specialized knowledge capacity in the United States. The Director further found that the Beneficiary's placement at unaffiliated employers' worksites would be an arrangement to provide labor for hire rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the organization is necessary.

On appeal, the Petitioner submits additional evidence and asserts that the Director's decision fails to address the Petitioner's primary claims regarding the Beneficiary's specialized knowledge. Further, the Petitioner emphasizes that the Beneficiary will not be working primarily at the worksites of unaffiliated employers.

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.

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[1] The Petitioner in this matter is the Beneficiary's foreign employer and an affiliate of the proposed U.S. employer, , a company established in 2017.

[2] 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).

[3] The Petitioner requested that the Beneficiary be granted a five-year period of temporary employment. However, if a beneficiary is coming to the United States to be employed in a new office, the petition may be approved for a period not to exceed one year. 8 C.F.R. § 214.2(l)(7)(i)(A)(*3*).

I. LEGAL FRAMEWORK

To establish eligibility for the L-1B 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 specialized knowledge capacity. *Id.* 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).

If a beneficiary is coming in a specialized knowledge capacity to open a new office, the petitioner must submit evidence that it secured sufficient physical premises to house its operation, evidence that the new business entity is or will be a qualifying organization, and evidence that it has the financial ability to remunerate the beneficiary and to commence doing business in the United States. *See generally*, 8 C.F.R. § 214.2(l)(3)(vi).

Under the statute, a beneficiary is considered to have specialized knowledge if he or she has: (1) a "special" knowledge of the company product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the company. Section 214(c)(2)(B) of the Act. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition of specialized knowledge.

II. SPECIALIZED KNOWLEDGE

The Director determined that the Petitioner did not establish that the Beneficiary possesses specialized knowledge or that he would be employed in the United States in a specialized knowledge capacity. The Director's conclusion was based on a finding that the Petitioner did not establish that the Beneficiary has knowledge in the field of software development that is significantly different from that possessed by others in the industry.

We disagree with this conclusion. The record shows that the Beneficiary, as the Petitioner's founder and primary software architect for the last 12 years, was responsible for the development of its proprietary flagship product , and will be responsible for launching the product in the United States through the new affiliate. The evidence in the record, which now includes substantial documentation submitted on appeal, is sufficient to establish that the Beneficiary possesses special knowledge of this product which is distinct, uncommon, and not generally found in the industry. The new evidence differentiates the company product from existing manufacturing planning technologies and establishes that the Petitioner is working in an innovative sector of the industry. The Petitioner has established by a preponderance of the evidence that the Beneficiary was employed abroad in a managerial capacity, that he possesses specialized knowledge, and that such knowledge is required for the U.S. position.

Further, the Petitioner did not state, and the record does not indicate, that the Beneficiary would be working primarily offsite at the worksites of unaffiliated employers under an approved petition. The Director's finding that he will do so and that such assignments would be "labor for hire" are withdrawn.

III. NEW OFFICE REQUIREMENTS

Although the Director's decision is withdrawn, the Petitioner has not established that it has met all requirements applicable to a new office.

Specifically, the petitioner must submit evidence that its U.S. affiliate secured sufficient physical premises to house its operation, evidence that the new business entity is or will be a qualifying organization, and evidence that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *See generally*, 8 C.F.R. § 214.2(l)(3)(vi). Doing business means the regular, systematic, and continuous provision of goods and/or services and does not include the mere presence of an agent or office of the qualifying organization. 8 C.F.R. § 214.2(l)(1)(ii)(H). As the validity of a new office petition is limited to one year, the Petitioner must show that it will be doing business as defined in the regulations within that timeframe.

The Petitioner has provided evidence that its U.S. affiliate has leased an office, but has not submitted sufficient evidence to establish that the new office would be doing business as a qualifying organization in the United States within one year, or established that its affiliate has the financial ability to commence doing business in the United States.

The record does not contain a business plan or financial projections in support of a claim that the Petitioner is prepared to commence business operations and engage in the provision of goods and/or services within one year. In fact, the Petitioner emphasizes that "it takes a long time to set up a sales pipeline" in its industry, and may take "at least a year to convert a potential client." The Petitioner indicates that it will maintain the Beneficiary on its payroll in Turkey and pay its affiliate's business related expenses, but the record lacks any further information regarding the U.S. affiliate's expected start-up costs, operating expenses, and anticipated revenue.

We are remanding this matter so that the Director can determine whether the Petitioner has met the requirements for new offices at 8 C.F.R. § 214.2(l)(3)(vi). 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 the entry of a new decision consistent with the foregoing analysis

Cite as *Matter of N-T-H-V-T-L-S-*, ID# 1213339 (AAO May 1, 2018)