U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-M-A-, INC.

DATE: MAY 2, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a moving and shipping company, seeks to temporarily employ the Beneficiary as president and chief executive officer under the L-1A nonimmigrant classification for intracompany transferees. 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 record did not establish, as required, that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity; and (2) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by selectively reading the Beneficiary's job descriptions and by relying on a grammatically incorrect interpretation of the statute.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for a new decision.

We find that the Petitioner has submitted sufficient evidence and information to establish, by a preponderance of the evidence, that the Beneficiary has served in a primarily executive capacity abroad, and would do so in the United States. Even if the director has some doubts, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the petitioner has satisfied the standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987)). In this instance, inconsistencies or discrepancies in the record appear to be relatively minor; the record as a whole is consistent with a finding that the Beneficiary has been an executive, and would be one in the future.

Another issue, however, requires further development. The Petitioner must establish a qualifying relationship with the Beneficiary's foreign employer. *See generally* section 101(a)(15)(L) of the Act;

8 C.F.R. § 214.2(l). The Petitioner asserts that the two companies are affiliates, because the Beneficiary owns most of the foreign entity and all of the petitioning U.S. entity.

The Petitioner does not appear to have submitted sufficient evidence that the Beneficiary owns the petitioning U.S. entity.

The Petitioner submitted what purport to be the minutes of a meeting of the Petitioner's board of directors, indicating that "100% of the shares of common stock of the corporation [have] reverted back to [the Beneficiary]." There are several problems with this document:

- The first page of the document referred to the Petitioner as a "[redacted] [redacted]" although the Petitioner is a moving company.
- The document indicates that the board meeting occurred on July 22, 2014, in [redacted] California, and the Beneficiary signed the document twice, once in his capacity as president and secretary, and once as a director of the corporation. But government records do not indicate that the Beneficiary was in the United States on July 22, 2014. He departed on May 22, 2014, and his next known entry was on August 26, 2014.
- The signatures attributed to [redacted] and [redacted] appear to be in the same handwriting. [redacted] signed the Petitioner's 1997 Articles of Incorporation, on file with the State of California. [redacted]'s signatures on that 1997 document are visibly different from his purported signature on the 2014 meeting minutes.

The 2014 meeting minutes called for the officers of the company to file "with the Commissioner of Corporations of the State of California . . . any necessary Notice of Issuance of Securities pursuant to Subdivision (f) of . . . Section 25102 of the California Corporate Code," but the record does not reflect any such filing. (The record does not reflect whether or not this transaction would, in fact, have required such a notice.)

Furthermore, the Petitioner's bylaws (Article VIII, Section 4) require the issuance of share certificates to all shareholders. The Petitioner, however, did not submit copies of the Beneficiary's share certificate or a share ledger showing the history of share ownership. Without full disclosure of all relevant documents, we are unable to determine the elements of ownership and control.

We remand the matter to the Director for a new decision, taking the above issues into account.

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 M-M-A-, Inc.*, ID# 3162712 (AAO May 2, 2019)