U.S. Citizenship and Immigration Services

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

In Re: 31090786

Date: MAY 6, 2024

Appeal of Texas Service Center Decision

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

The Petitioner intends to operate a business that involves the development and licensing of technologies for the flooring industry. It seeks to employ the Beneficiary temporarily as president of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center revoked the approval of the petition, concluding that the record did not establish that it would employ the Beneficiary in an executive capacity[2] within one year of the petition's approval. Despite reciting the comprehensive breakdown of the Beneficiary's proposed job duties and acknowledging the proposed U.S. staff and their respective job duties, the Director determined that the Petitioner provided inconsistent job descriptions for Beneficiary's proposed subordinates and found that the proposed subordinates will not be managerial employees who will relieve the Beneficiary from having to primarily perform operational-level duties.

The Director further determined that the demand creation managers – two of the Beneficiary's proposed subordinates – would not qualify as function managers under section 101(a)(44)(A)(i) and (ii) of the Act. Essentially, the Director applied elements of the statutory definition of "managerial capacity" to the Beneficiary's proposed subordinates, who would not be subject to the criteria listed at section 101(a)(44)(A) of the Act, which pertains only to the *beneficiary* of a visa petition. Because the Beneficiary's proposed subordinates are not the beneficiaries of this visa petition, the Petitioner need not demonstrate that their respective roles and job duties meet the provisions of section 101(a)(44)(A) of the Act. And because the Beneficiary's proposed position is claimed to be that of an executive, the applicable provisions are those in section 101(a)(44)(B) of the Act, which apply to a beneficiary whose foreign and/or proposed employment is claimed to be in an executive capacity.

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[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.

[2] The Petitioner's claim rests solely on the definition of executive capacity. The Petitioner does not claim that the Beneficiary's employment in the United States would be in a managerial capacity.

Pursuant to 8 C.F.R. § 103.3, the matter is now before us on appeal, which includes a comprehensive appeal brief challenging the revocation and the Director's underlying adverse findings.

First, the Petitioner elaborates on the demand creation function, further explaining its role and those of the demand creation managers who would be the Beneficiary's subordinates and who would execute the duties of that function. The Petitioner also explains its own role within the [redacted] business model whose two key components include: 1) research and development of technologies and intellectual property; and 2) licensing the group's patented technologies to flooring manufacturers. Aside from reiterating the Beneficiary's job duties, the Petitioner further elaborates on his proposed position, showing that the Beneficiary will assume the most senior role with respect to the demand creation function of the licensing component and provides additional information about the roles of the Beneficiary's subordinates and broader support staff in performing the duties of that function.

The Petitioner also argues that the Director overlooked relevant evidence about its proposed support staff, pointing out that it had previously submitted an organizational chart that depicted a "robust support system" which would include employees of the Petitioner's foreign affiliates. The Petitioner explains how the employees of its affiliates would assist with its own operational-level duties to allow the Beneficiary to focus on directing the essential demand creation function in the United States.

In addition, the Petitioner identifies the previously submitted documents that included the duties and résumés of the "global shared services support staff" and challenges the finding that it offered inconsistent job descriptions for the demand creation managers. The Petitioner resubmits the job descriptions in question and points out that the job duties originally provided in support of the petition and later in response to the notice of intent to revoke "were listed, almost verbatim." Furthermore, the Petitioner points out that the Director did not specify any discrepancies between the two job descriptions.

In sum, the Petitioner has not only addressed the Director's concerns, but it has also expounded on the roles and job duties of the Beneficiary and his proposed subordinates and pointed to previously submitted evidence concerning the global support staff that would assist in the Petitioner's plans to relieve the Beneficiary from having to primarily perform non-executive functions.

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 and in light of the discussion above, we conclude that the Petitioner has demonstrated that it would more likely than not be able to employ the Beneficiary in an executive capacity within one year of this petition's approval. Therefore, the Petitioner has met its burden of proof, and we will therefore sustain the appeal.

**ORDER:** The appeal is sustained.