U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-I- CORP.

DATE: MAY 9, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a provider of day care and after-school child care services, seeks to continue the Beneficiary's temporary employment as its CEO under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 the Beneficiary would be employed in a managerial or executive capacity under the extended petition.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the denial decision does not reflect that the Director considered all evidence previously submitted.

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 now submitted sufficient evidence and information to establish, by a preponderance of the evidence, that the Beneficiary would be employed in a managerial capacity, as defined at section 101(a)(44)(A) of the Act, under the extended petition. 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, the Director appeared to express doubt that the

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period April 26, 2017, until April 25, 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.

Petitioner actually employed the staff depicted in its organizational chart despite the Petitioner's submission of detailed corroborating wage and payroll records. The Director also questioned whether the three "assistant directors" who report to the Beneficiary perform supervisory or managerial functions. The Petitioner has addressed this concern on appeal by submitting additional evidence demonstrating that the Beneficiary's subordinates, at a minimum, perform supervisory if not managerial functions. Accordingly, the Director's decision is withdrawn.

Another issue, however, requires further development. The Petitioner must establish that the Beneficiary was employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of her initial petition for L-1A status. *See* 8 C.F.R. § 214.2(l)(3)(iii)-(iv).

The Petitioner claims that the Beneficiary was employed by its foreign parent company in the positions of "Vice CEO" and "Director of Legal Counsel Department" from January 2013 until May 2016. The Petitioner noted that she joined the foreign entity as a full-time employee after completing her master's degree in international law and working as a corporate attorney for two years. However, the Petitioner submitted evidence that the Beneficiary completed her degree in law from [redacted] University in June 2014, 18 months after her claimed hire date with the foreign entity, so it is unclear how she obtained two years of experience as a corporate attorney prior to January 2013.

The Petitioner submitted an undated organizational chart for the foreign entity which depicts the Beneficiary in both of her claimed roles. The chart shows that, as director of the legal counsel department, she supervised one legal specialist. The chart also shows that, as "Vice CEO" she supervised a project department, a "marketing & PR department," an "HR & Administrative Department," an accounting department, and the managers and staff of two hotels operated by the foreign entity. The position description submitted by the foreign entity appeared to describe the Vice CEO position and suggested that the Beneficiary spent relatively little time on duties related to the legal department.

However, when the Beneficiary applied for B1/B2 and L-1 visas at the U.S. Consulate in Beijing, in 2015 and 2017, respectively, she indicated that she was employed by the foreign entity as "Director of Legal Counsel Department" without reference to the claimed Vice CEO position. If her primary role was that of a Vice CEO, it is unclear why she did not mention the position on her visa application. In addition, in response to a request for additional evidence of the Beneficiary's employment abroad, the Petitioner provided a "Quarterly Assessment Form of Legal Department Director" which shows that the Beneficiary held this position in 2015 and was evaluated based on her performance in this role. The Petitioner did not submit a comparable document corroborating her employment as "Vice CEO."

Further, the Petitioner submitted copies of the foreign entity's monthly payroll statements for 2017; these documents showed the company regularly employed 47 people and identified them by name, salary, department, and position title. However, the statements do not reflect that the foreign entity has positions for a "Vice CEO" or "Director of Legal Counsel Department." The Petitioner did not provide comparable payroll statements for the Beneficiary's period of employment with the foreign entity to corroborate the structure on the undated foreign entity organizational chart. Rather, it

submitted a compiled statement showing that the Beneficiary received ¥3470 on the fifteenth day of each month between January 2013 and May 2016; this statement did not include other staff employed during this period.

Based on these discrepancies and omissions, the submitted evidence is insufficient to support the Petitioner's claim that the Beneficiary served in the claimed executive positon of "Vice CEO" for the foreign entity.

We will remand the matter to the Director for a new decision, taking the above issues into account. If the Director's new decision, will rely, in part, on the potentially derogatory information we obtained from U.S. Department of State records, the Director must issue a new request for evidence or notice of intent to deny to advise the Petitioner of this information pursuant to 8 C.F.R. § 103.2(b)(16)(i).

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 P-I- Corp.*, ID# 3501050 (AAO May 9, 2019)