U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-I-, INC.

DATE: MAY 9, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, which operates a restaurant and an educational consulting business, seeks to continue the Beneficiary's employment as its president 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 Vermont Service Center revoked the approval of the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary would be employed in an executive capacity under the extended petition. On appeal, the Petitioner disputes the Director's findings, claiming that the Beneficiary will be employed in an executive capacity.

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

I. LEGAL FRAMEWORK

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 his or her 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 him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

Under U.S. Citizenship and Immigration Services regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The Director initially approved the petition and granted the Beneficiary a two-year extension of L-1A status from December 18, 2017, until December 17, 2019. Following approval of the extension petition, administrative site visits were conducted at the address listed on the petition and at the Petitioner's restaurant location in February and March 2018. According to the Director, the evidence obtained during the site visits failed to show that the Petitioner has been and will continue to do business, and that the Beneficiary is employed in a qualifying managerial or executive capacity in the United States. The Director issued a notice of intent to revoke (NOIR) to the Petitioner requesting evidence of the Petitioner's operations and the Beneficiary's employment.

Following receipt of the Petitioner's response to the NOIR, the Director issued a notice of revocation and determined that the record does not establish that the Beneficiary is employed in a qualifying executive capacity in the United States as claimed. Under the regulation at 8 C.F.R. § 214.2(l)(9)(iii)(A), the approval was revoked because the Beneficiary is no longer eligible under section 101(a)(15)(L) of the Act.

In the revocation decision, the Director noted that the Petitioner did not establish that the Beneficiary's two direct reports - a restaurant manager and an educational consulting manager – "have bachelor's degrees in fields that are related to their positions." As a result the Director concluded that the Beneficiary is not supported by supervisory, professional or managerial employees and does not "have a subordinate level of managerial employees" to direct. The Director did not further address the Petitioner's structure or staffing levels other than noting that the Petitioner had not demonstrated that, in an office of its "size and nature," that the beneficiary would be engaged in primarily executive duties, and stating that "it is presumed that she is engaged primarily in the non-executive operations and tasks required in a company such as yours."

With respect to the Petitioner's two-page description of the Beneficiary's duties, the Director noted without further discussion that the duties are "vague and generalized." In addition, the Director found that one of the beneficiary's duties "demonstrates the beneficiary is involved in day-to-day operations." Specifically, the Director noted that she is expected to "decide which marketing activities to engage in and the appropriate time and way to do so." The Director determined that, since the petitioning company does not have any "marketing" employees on its organizational chart, the Beneficiary must be directly performing the marketing duties. The Director cited to *Matter of Ho*, 19 I&N Dec 582 (BIA 1988), noting that "[d]oubt cast upon any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." Finally, the director referred to "email correspondence" submitted in response to the NOIR and concluded that "the emails demonstrate the beneficiary is performing routine tasks that are necessary to the daily operation of the business." The Director revoked the approval of the petition concluding that the Beneficiary "does not satisfy all four parts of the definition of executive" because the Petitioner did not establish that she supervises "a subordinate level of managerial employees," a requirement that is not stated in the definition of executive capacity.

While we agree with that the job description submitted for the Beneficiary may be lacking in detail, 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 does not primarily perform executive duties. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 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). Here, the Director characterized the Beneficiary's job description as "vague" in a conclusory manner, pointed to one potentially non-qualifying task involving marketing activities, and found that the lack of a dedicated marketing employee cast doubt on the credibility of the Beneficiary's job description and the evidence as a whole.

Beyond the required description of the job duties, the Director is required to review the company's organizational structure, the duties of the Beneficiary's subordinate employees, the presence of other employees to relieve her from performing operational duties, the nature of the business, and any other evidence submitted to support the Petitioner's claims. The Director correctly concluded that the record does not establish that the Beneficiary supervises professionals, but the supervision of professionals is not an element of the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. The Director did not provide any support for her conclusion that the Beneficiary's direct reports are not managers. Further, the Director based the determination, in part, on the "nature and size" of the business without including an analysis of the Petitioner's reasonable needs. The Director must articulate some rational basis for finding a petitioner's staff or structure to be unreasonable. *See* section 101(a)(44)(C) of the Act. The fact that a petitioner is a small business or engaged in a particular industry will not preclude the Beneficiary from qualifying.

While the revocation decision states that the Director reviewed "the totality of evidence," there is insufficient discussion of the organizational chart, staffing levels, employee job descriptions and resumes, and other evidence the Petitioner submitted to establish that it employs sufficient staff to relieve the Beneficiary from involvement in its day-to-day operations.

However, we find that the record as presently constituted does not establish eligibility for the benefit sought. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). At the time of filing in September 2017, the Petitioner had at least 18 employees, including a staff of 13 employees working in its restaurant. When it submitted its response to the NOIR in June 2018, the Petitioner had only seven employees working in its restaurant, including a restaurant manager, kitchen manager, cashier manager, two chefs, and two cashiers. Based on the Petitioner's payroll earnings report for May 2018, one of the chefs and both cashiers were working limited part-time hours. Given that there is evidence in the record showing that the restaurant is open for breakfast, lunch, and dinner six days per week, the Petitioner has not established how the Beneficiary, who is claimed to work at the restaurant location as well as at an office suite, would be relieved from involvement in its day-to-day operations.

Accordingly, we will withdraw the Director's decision and remand the matter for issuance of a new decision on this issue, which should take into account and fully discuss the totality of the evidence

submitted in support of the Petitioner's claim that the Beneficiary will be employed in an executive capacity.

III. CONCLUSION

The Director's decision will be withdrawn for the foregoing reasons, and the matter will be remanded. The Director should review the totality of the evidence and the issues addressed above, and, if warranted, issue a new NOIR prior to entering a new decision.

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 T-I-, Inc.*, ID# 3361994 (AAO May 9, 2019)