U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-M-

DATE: MAY 16, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Beneficiary seeks employment temporarily as the director of a "new office" established in the United States under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 California Service Center denied the petition. The Director concluded that the record did not establish that (1) a qualifying relationship existed between the Beneficiary's foreign employer and the U.S. company; (2) the Beneficiary had been employed in a managerial or executive capacity for the foreign entity; (3) sufficient physical premises for the new office had been secured; and (4) the new office would support a managerial or executive position within one year after approval of the petition.

On appeal, the Petitioner submits a statement asserting that oral argument is necessary to demonstrate that the Beneficiary was employed in a managerial capacity for the foreign entity and to explain that the U.S. company would lease office space after the L-1A petition had been approved.[2] The Petitioner states that a brief will be submitted to address the other reasons for denial. To date, however, no additional evidence or a brief has been submitted for the record. The record as currently constituted is considered complete.

Upon *de novo* review, we will dismiss the appeal.

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[1] The Form I-129, Petition for a Nonimmigrant Worker, states that the Petitioner's name is "N/A." The L Classification Supplement to the petition identifies the Beneficiary as the Petitioner. Although the record includes evidence of a U.S. company where the Beneficiary seeks to work under this classification, the petition does not identify a U.S. entity to employ the Beneficiary; therefore, an importing employer did not file the petition. For this reason alone, the petition is not approvable. We will, however, discuss the issues outlined in the Director's decision.

[2] We decline the request for oral argument. 8 C.F.R. § 103.3(b).

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the Beneficiary's application for admission into the United States. 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, executive, or specialized knowledge capacity. Section 101(a)(15)(L) of the Act.

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). If the Form I-129, Petition for a Nonimmigrant Worker, indicates that the Beneficiary is coming to the United States in L-1A status to open or to be employed in a new office, the Petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence includes information regarding the new office's physical premises, the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based, in part, on a finding that the record did not establish that the foreign entity employed the Beneficiary for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity. Upon our *de novo* review of the record we find sufficient evidence to conclude that the Beneficiary had been employed in a managerial capacity for the foreign entity for the pertinent time period. The record includes a copy of the foreign entity's organizational chart, and descriptions of the Beneficiary's duties and those of her subordinates who supervise and carry out the operational tasks of the sales and purchase departments. The record is sufficient to establish that more likely than not the Beneficiary was relieved of performing operational tasks and was employed in a managerial capacity for the foreign entity. Accordingly, we withdraw the Director's decision to the contrary.

III. QUALIFYING RELATIONSHIP

The Director also denied the petition finding that the record did not establish a qualifying relationship between the U.S. company and the Beneficiary's foreign employer. The petition indicates that the U.S. entity is a subsidiary of the foreign entity; however, the U.S. company's stock certificate is issued to an individual, the person that is also described as owning 100 percent of the foreign entity. The Director determined, based on the totality of the record, including the U.S. company's Internal Revenue Service Form 1120, U.S. Corporation Income Tax Return, and the U.S. company's bank statements, that no money, property, or other consideration had been paid in consideration of the U.S. entity's stock ownership. Thus, the Director concluded that the record is insufficient to establish a qualifying relationship between the U.S. company and the Beneficiary's

foreign employer. This issue is not addressed on appeal. As the record supports the Director's conclusion and no evidence or argument was submitted on appeal to overcome the Director's determination, the appeal is also dismissed on this issue.

IV. NEW OFFICE

The remaining two grounds for denial relate to the U.S. company's status as a new office. At the time of filing the petition to open a "new office," the record must demonstrate that the U.S. company has acquired sufficient physical premises to commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See* 8 C.F.R. § 214.2(l)(3)(v).

A. Sufficient Physical Premises

When a petition indicates that a beneficiary is coming to the United States to open a "new office," the record must show that the U.S. entity is ready to commence doing business immediately upon approval. Securing physical premises to house the new office is a specific evidentiary requirement to establish eligibility for approval of a "new office" petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

In this matter, the record shows that the Beneficiary made inquiries into leasing premises for a "new office," but the record does not include a copy of a signed lease demonstrating that physical premises had been secured when the petition was filed. The record on appeal includes a reference to the U.S. entity entering into a lease agreement after the petition has been granted; however, this does not comply with the requirement that the U.S. company have sufficient physical premises to house the "new office" and be ready to commence doing business upon approval of the initial new office petition. As the record does not include the required evidence of physical premises for the "new office" and no additional evidence was submitted on appeal to overcome the Director's decision on this issue, the appeal must also be dismissed on this ground.

B. Employment in a Managerial or Executive Capacity

To establish that the new office, within one year of the approval of the petition, will support a managerial or executive position, the Petitioner must submit information regarding the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals; the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and the organizational structure of the foreign entity. 8 C.F.R. § 214.2(l)(3)(v)(C).

The new office regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. However, the Petitioner's evidence in support of a new office petition should demonstrate a realistic expectation that the enterprise is prepared to

commence business operations and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

The record in this matter does not include sufficient evidence that the U.S. company will support the Beneficiary in a managerial or executive position within one year of approval as required by regulation. *See* 8 C.F.R. § 214.2(l)(3)(v). The Director noted that the record, including the U.S. entity's business plans, did not describe the U.S. company's proposed positions in detail, did not indicate whether the employees would be employed part-time or full-time, and did not explain how the Beneficiary would be relieved from performing non-qualifying tasks. The Director also found that the record did not include evidence of sufficient funds for the new office to commence doing business as set out in the U.S. entity's proposed business plans. Further, the Director determined that the record did not include evidence that the foreign entity and its employees would support the Beneficiary in her managerial capacity. The Director concluded that the record is insufficient to find that the new office would support the Beneficiary in a managerial or executive capacity within one year of approval of the petition. As the record does not include sufficient evidence on this issue and no additional evidence or argument was submitted on appeal to overcome the Director's decision on this issue, the appeal must also be dismissed on this ground.

V. CONCLUSION

The appeal is dismissed because the record does not include sufficient evidence to establish that: (1) a qualifying relationship exists between the U.S. company and the Beneficiary's foreign employer; (2) the U.S. entity has secured sufficient physical premises to house the new office; and (3) within one year of the approval of the petition, the U.S. company will support a managerial or executive position.

ORDER: The appeal is dismissed.

Cite as *Matter of T-M-*, ID# 335441 (AAO May 16, 2017)