U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-N-A- LLC

DATE: MAY 24, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an importer and wholesaler of mold tooling, seeks to temporarily employ the Beneficiary as its "CEO" 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in an executive capacity under the extended petition. The Director expressed concerns about the size of the U.S. organization and questioned whether the Petitioner employed a sufficient support staff at the time of filing to relieve the Beneficiary from having to allocate her time primarily to non-executive functions. The Director also questioned whether the positions of the Beneficiary's subordinates are managerial or supervisory in nature.

On appeal, the Petitioner asserts that the Beneficiary would be employed in an executive capacity and points to evidence of additional hires that took place prior to the filing of the petition. The Petitioner provides additional information describing how the Petitioner's business functions and the Beneficiary's relationship with her direct subordinates. The Petitioner also correctly observes that we must take into account the reasonable needs of the organization and that a company's size alone may not be the only factor in determining whether the Beneficiary is or would be employed in an executive capacity. *See* section 101(a)(44)(C) of the Act. The Petitioner clarifies that its support staff, rather than the Beneficiary, actually carry out its daily operational tasks. It also explains the role that the foreign parent entity's employees play in supporting the U.S. operation.

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period July 15, 2016, until July 14, 2017. 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.

Upon *de novo* review, we find that the Petitioner has overcome the Director's decision. Therefore we will sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of K-N-A- LLC*, ID# 1041480 (AAO May 24, 2018)