U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-D- INC.

DATE: MAY 29, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a distributor of general merchandise, seeks to temporarily employ the Beneficiary as the president of its new office[1] 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 denied the petition, concluding that the Petitioner did not establish, as required, that it would employ the Beneficiary in a managerial or executive capacity within one year of approval of the instant petition.

On appeal, the Petitioner asserts that the Director mischaracterized its executive capacity claim and incorrectly applied elements of the definition of managerial capacity in the course of the analysis. The Petitioner also points to its existing 8-person staff and submits a copy of its business plan, which includes employee job descriptions and hiring projections over a five-year period and shows plans to hire three additional employees during the Petitioner's second year of operation. The Petitioner correctly focuses on the reasonable needs of its organization based on its current and projected developmental stages and asks that the Director refrain from applying the statutory definition of managerial capacity to the management positions that are subordinate to the Beneficiary.

Upon *de novo* review, we find that the Petitioner submitted sufficient evidence to establish that it would more likely than not have the ability to support the Beneficiary in an executive position within one year of the petition's approval. Notwithstanding our withdrawal of the Director's decision, we find that the record as presently constituted does not establish that the Petitioner and the Beneficiary's employer abroad have a qualifying relationship, as claimed. As such, we will remand the matter to the service center.

[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.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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 submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose 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. BASIS FOR REMAND

As previously noted, we find that the Petitioner has not provided sufficient evidence to establish that it has a qualifying relationship with the Beneficiary's foreign employer.

To establish a "qualifying relationship" under the Act and the regulations, a petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner claims that it and the foreign entity are affiliates. The term "affiliate" is defined, in relevant part, as (1) one of two subsidiaries both of which are owned and controlled by the same parent or individual, or (2) one of two legal entities owned by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(1)(ii)(K).

In support of the petition, the Petitioner provided three stock certificates. Certificate no. 1 indicates that the Beneficiary owns 1,000 shares of the Petitioner's stock. Certificate nos. 2 and 3 were left blank with no explanation as to their significance with regard to the Petitioner's claimed affiliate relationship. Although the Petitioner claims that the Beneficiary is its sole owner, it has not provided corroborating corporate documents stating how many shares it was authorized to issue. Therefore, we are unable to conclude that the Beneficiary is the Petitioner's sole owner, as claimed. Likewise, the record does not include any evidence to support the Form I-129 L Classification Supplement, where the Petitioner claimed that the Beneficiary owns 51% of the foreign entity.

Accordingly, we are remanding this matter for further consideration and entry of a new decision. The Director should request any additional evidence deemed necessary to determine the Petitioner's eligibility and allow the Petitioner to submit such evidence within a reasonable period of time.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of A-D- Inc.*, ID# 1185699 (AAO May 29, 2018)