U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E- INC.

DATE: NOV. 15, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which intends to operate as a web design and IT development business, seeks to temporarily employ the Beneficiary as "President/CEO" of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. 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 Petitioner did not establish, as required, that the new office would support the Beneficiary in a managerial or executive position within one year after approval of the petition.

On appeal, the Petitioner disputes the Director's decision and cites to *Matter of Z-A-*, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016), in support of its contention that the Director should have considered the Beneficiary's proposed position with respect to the wider qualifying international organization. The Petitioner points to previously provided evidence, including job descriptions for a list of 13 subordinate employees who work for the Petitioner's foreign affiliate and would support the Beneficiary in his proposed position. The Petitioner asserts that in addition to the positions it seeks to fill during its first year of operation, the foreign entity's support staff will perform operational, client-driven tasks which will relieve the Beneficiary from having to primarily carry out non-qualifying job duties. The Petitioner also cites to its hiring plan and corresponding timeline, which describes the positions it seeks to fill during the one-year new office phase of its operation.

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. However, we find that the record as presently constituted does not establish that the Petitioner secured sufficient physical premises for its business operation as of the date this petition was filed. As the Petitioner has overcome the sole issue upon which the

[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.

petition was denied, we will remand the matter to the Director for further consideration of the physical premises issue.

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 had secured sufficient physical premises to house its business operation, as required by regulation.

In the present matter, the Petitioner's initial supporting evidence included a photograph of the exterior façade of an office building along with photographs of a conference room, a shared open space, an elevator lobby area, and a work station with the Petitioner's name affixed to the desk surface. In response to a request for evidence (RFE), the Petitioner provided a letter claiming that it had secured office space in [redacted] which it described as "one of [redacted] [s] top co-working start-up accelerator places." The Petitioner claimed that RocketSpace will provide "more work space and additional opportunities" to accommodate the Petitioner's growth in the future. The Petitioner resubmitted the above-described photographs and also offered an undated letter from [redacted] in which the company was described as "a global ecosystem of people and ideas that provides the necessary velocity – both speed and direction – to help the world's top innovators bring the future to market." Although the letter mentioned the Petitioner, noting that the Petitioner's team "is working with other [redacted] companies," it did not state that [redacted] was leasing office space to the Petitioner, nor did it provide specific terms that are common to an office lease, including the duration of the lease term, the price, or the square footage of the leased premises. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Neither the Petitioner's claims nor claims made in an undated letter from the Petitioner's alleged lessor constitute sufficient evidence of a lease agreement. Without such an agreement, we cannot determine whether the Petitioner secured sufficient space for its U.S. business as of the date the instant petition was filed.

III. CONCLUSION

For the reasons discussed above, 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 E- Inc.*, ID# 1592250 (AAO Nov. 15, 2018)