U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17828237

Date: NOV. 18, 2021

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A)

The Petitioner seeks to temporarily employ the Beneficiary as chief executive officer 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 California Service Center denied the petition, concluding that the record did not establish that: (1) the Beneficiary had one continuous year of qualifying employment abroad during the three years preceding the filing of the petition; (2) the Beneficiary had been employed abroad in a managerial or executive capacity; (3) the Petitioner had sufficient physical premises to house the new office; and (4) the new office would be able to support a managerial or executive position within one year of approval of the petition.[2]

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.[3] We review the questions in this matter *de novo*.[4] Upon *de novo* review, we will dismiss the appeal.

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*.

---

[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.

[2] The Director also concluded that an authorized individual did not sign the petition; however, the record is sufficient to establish that the Beneficiary is one of the Petitioner's authorized individuals. Thus, the Petitioner has overcome the Director's conclusion on this issue.

[3] *See* Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

[4] *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

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. EMPLOYMENT ABROAD

The foreign entity in this matter, [redacted] is a company that trades in marble and other stone and is located in Saudi Arabia.

A. One Year of Continuous Employment Abroad

The Director found that the Beneficiary did not have the required minimum length of qualifying employment abroad. The regulations define the term "intracompany transferee" as:

> An alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

8 C.F.R. § 214.2(l)(1)(ii)(A).

The Petitioner filed the petition on December 26, 2019. The Petitioner must establish that the Beneficiary had one year of full-time continuous employment with a qualifying entity abroad during the three-year period that preceded the filing of the petition.[5]

On the petition, the Petitioner indicated that the claimed foreign parent, [redacted] employed the Beneficiary from January 1, 2013 with no interruptions. In the letter in support of the petition, the Petitioner stated that from January 2013 to February 2015 the Beneficiary was employed as a salesman; from March 2015 to September 2017 the Beneficiary was employed as the local sales/marketing manager; and from October 2017 to present he was employed as the head sales and marketing manager.[6] The Petitioner provides a payroll record showing payments made to

[5] The petitioner and the beneficiary must meet all requirements, including the one year of foreign employment, from the time the petitioner files the initial L-1 petition and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

[6] The record also includes the Beneficiary's résumé which provides slightly different employment times and positions. For example, the Beneficiary claims employment from June 2012 to July 2014 as salesman and operations, from August 2014 to October 2016 as sales and marketing manager, and from November 2016 as the head sales and marketing manager. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the

the Beneficiary by the foreign entity in 2018 and 2019. The Director noted the different spelling of the individual's name listed in the foreign entity's payroll record and questioned whether the payee and the Beneficiary were the same person.[7] The Director also noted that the Beneficiary had been living in the United States as a nonimmigrant B2 visitor since December 28, 2017 and concluded that the record did not contain evidence showing how the Beneficiary was employed as the foreign entity's head sales and marketing manager while residing in the United States.

On appeal, the Petitioner repeats that the Beneficiary undertook the foreign entity's head sales and marketing manager from October 2017 and continued in this role while teleworking from abroad. The Petitioner also submits wire transfers to the Beneficiary with the annotation that the transfers were for the Beneficiary's salary. The wire transfers are mostly illegible and although they appear to reflect payment for several months in 2020 and for one month in 2021, the actual dates are not readily discernable.

The Petitioner must establish that the Beneficiary had one continuous year of qualifying employment abroad during the three years preceding the filing of the petition on December 26, 2019; thus, between December 26, 2016 and December 26, 2019.[8] The Petitioner relies on the Beneficiary's employment in the position of head sales and marketing manager to establish the "qualifying" foreign employment. The Petitioner claims that the Beneficiary first entered into the head sales and marketing manager position in October 2017. As the Director noted, the Beneficiary entered the United States as a B2 visitor on December 28, 2017, two to three months after receiving the claimed promotion.

Although the Petitioner submitted evidence that the Beneficiary received monies from the foreign entity while he was in the United States, he cannot meet the one-year foreign employment requirement based on the receipt of these funds. By regulation, the time a beneficiary spends working in the United States does not count towards the one-year foreign employment requirement as foreign employment is time spent "employed abroad." Moreover, the Beneficiary in this matter was admitted as a B-2 nonimmigrant, not in a classification to work for a qualifying organization.

We also note that the Beneficiary previously applied for several nonimmigrant visas. The Beneficiary's nonimmigrant visa application, submitted June 3, 2014, shows the Beneficiary was unemployed and identifies him as a student. A subsequent visa application, submitted October 23, 2016, also shows that the Beneficiary is not employed and is a student. On each application, the

---

truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). As the Petitioner and foreign entity repeatedly state that the Beneficiary's last position with the foreign entity started in October 2017, this appears to be the more reliable date.

[7] To further complicate matters, the record includes two different passports with different information. A passport issued February 17, 2013 which expires February 16, 2019 contains the October 24, 2016 U.S. visa used as a basis for the Beneficiary to enter the United States. This passport is a Syrian passport which indicates the Beneficiary is a Syrian national. The second passport is a Turkish passport which was issued October 25, 2017. This passport identifies the person named therein as a Turkish national.

[8] This conclusion is consistent with the recent policy memorandum which clarified the agency's policy that USCIS will use the date of filing of the L-1 petition as the reference point for determining the one-year foreign employment requirement. USCIS Policy Memorandum PM-602-0167, *Satisfying the L-1 1-Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM)* 4 (Nov. 15, 2018), https://www.uscis.gov/legal-resources/policy-memoranda ("*L-1 1-in-3 Policy Memo*"). USCIS will adjust that reference point only in those instances where the beneficiary entered the United States to work for a qualifying entity as a nonimmigrant in a work-authorized status (for example, H-1B or E-2 status).

Beneficiary indicates he had never been previously employed. This information conflicts with the information provided by the Petitioner and the foreign entity in the instant petition. Again, the Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* In this matter, we question whether the Beneficiary had ever worked for or been employed by the foreign entity.

The Petitioner has not credibly established the Beneficiary worked for the foreign entity and has not established that any such work met the requirement of being employed abroad for one continuous year in the three years before filing the petition.

B. Employment Abroad in an Executive or Managerial Capacity

The Petitioner asserts on appeal that its detailed position descriptions for the Beneficiary and his subordinates is sufficient and it is unclear what else the Petitioner could submit to establish the Beneficiary's executive capacity for the foreign entity.[9]

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

We have reviewed the lengthy description of the Beneficiary's claimed duties for the foreign entity, the foreign entity's organizational chart, and the duties of the Beneficiary's claimed subordinates. Again, the descriptions are overly broad and the record does not include evidence corroborating the Beneficiary's executive actions. For example, the Petitioner emphasizes on appeal that the Beneficiary directed the management of the accounting, engineering, and sales and marketing departments and established goals and policies for each department. Notably the record does not include documentary evidence of the goals and policies he established nor does the record contain documentary evidence demonstrating how he directed the management of the company. Although the Petitioner claims that the Beneficiary's subordinate managers received directives from him to implement and that the

[9] On appeal, the Petitioner contends that if the Beneficiary does not qualify as an executive for the foreign entity, in the alternative he qualifies as a manager pursuant to the statutory definition.

managers reported back to him, there is no documentary evidence of these actions or the result of such actions.

We have reviewed the few purchase orders issued intermittently between August 2018 and June 2020, submitted as evidence to demonstrate the Beneficiary's qualifying capacity. Some of the purchase orders include the logos of both the Petitioner and the foreign entity and others just the foreign entity.[10] Although the purchase orders are signed by the Beneficiary as the head of sales and marketing, the Petitioner does not explain how signing a few purchase orders constitutes executive or managerial actions. Further, the purchase orders are intermittent, and the record does not include sufficient information to demonstrate that executing such orders would require a significant amount of time. Similarly, the record includes a quote to a third party provided by the foreign entity that is signed by the Beneficiary as the head of sales and marketing as well as a document to fill the order. However, signing purchase orders and providing quotes for potential sales and instructions to fulfill orders are tasks that appear more operational in nature than executive or managerial. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). Again, the record does not include documentary evidence corroborating the Beneficiary's actions over the course of the three years preceding the filing of the petition. Accordingly, the record does not establish that the Beneficiary directed the management of the foreign entity.

The Petitioner also provided minutes of meetings on letterhead which identified both the Petitioner and the foreign entity, dated June 1, 2018, November 4, 2018, and March 4, 2019, discussing the establishment of the Petitioner in the United States, purchasing inventory for the branches in the United States, and capitalizing the Petitioner. The minutes are signed by the Beneficiary and the principal of the foreign entity. The record also included minutes of annual meetings, dated January 1, 2018, 2019, and 2020, to discuss action plans for the sales and marketing team. The limited number of documents, executed intermittently, including the documents discussed above, all allegedly executed by the Beneficiary while in the United States on behalf of the foreign entity are insufficient to establish the nature of the Beneficiary's continuous role for the foreign entity. The documents do not sufficiently corroborate his involvement in directing the management of the foreign entity on a regular and continuous basis.

Thus, even if the Petitioner had established that the Beneficiary had been employed for one continuous year for the foreign entity, which it has not, the record does not establish that the Beneficiary actually performed the actions broadly described by the foreign entity.

III. SUFFICIENT PHYSICAL PREMISES

The Petitioner must establish it has secured sufficient physical premises to house the new office as required by 8 C.F.R. § 214.2(l)(3)(v)(A) as of the date the petition was filed. The regulations do not specify the type of premises that must be secured by a petitioner seeking to establish a new office. The phrase "sufficient physical premises" is broad and somewhat subjective, leaving USCIS great

[10] A few purchase orders do not clearly identify the Beneficiary, or his position, as involved in purchasing. The purpose and pertinence of these additional documents are unclear.

flexibility in adjudicating this legal requirement. There may be cases in which a residential premises or home office would satisfy the regulatory requirements. However, a petitioner bears the burden of establishing that its physical premises should be considered "sufficient" as required by the regulations.[11] To do so, it must clearly identify the nature of its business, the specific amount and type of space required to operate the business, and its proposed staffing levels, and document that the space can accommodate a petitioner's growth during the first year of operations.

In this matter, the Petitioner provided its business plan which identified the Petitioner as a wholesaler and retailer of marble and stone. The business plan also indicated that the Petitioner operates out of its headquarters in [redacted] Florida, a warehouse space. To confirm that it had sufficient physical premises to operate its marble and stone wholesale and retail business, the Petitioner submitted a copy of a sublease executed October 1, 2018. The sublease agreement includes three parties, the sublessor and two sublessees, one of which is the Petitioner. The sublease refers to the attached master lease but this document is not in the record. The record also included an agreement for office space in [redacted] California.

In an RFE, the Director noted that there is no document in the file that shows subleasing is permitted by the landlord or how the three parties to the sublease would share the space, among other things. The Director provided a list of evidence that could address the concerns noted in the RFE. In response, the Petitioner did not discuss the validity of the sublease by providing evidence that subleasing is permitted nor did it otherwise address the concerns raised in the RFE. Rather, the Petitioner provided evidence of a warehouse lease entered into subsequent to the filing of the petition and the Beneficiary's statement that "[d]ue to issues with the previously provided lease and location in Florida, we have decided to expand our business and secure premises located [in California]."[12] The Director questioned the validity of the sublease[13] and also determined that the Petitioner had not established that it had office space in [redacted] California.

On appeal, the Petitioner refers to the sublessor's warranty that the master lease has not been amended and that the sublessor is not now and will not be at the commencement of the lease, in default or breach of the lease. The Petitioner asserts that this clause is sufficient to establish that a sublease was permissible under the terms of the master lease. The Petitioner appears to overlook the sublease clause that specifically states that the sublease shall be of no force and effect unless consented to by the lessor, if such consent is required under the terms of the master lease. As the master lease is not in the record, we cannot determine whether the sublessor and the Petitioner have complied with the terms of the master lease. Further, the Beneficiary's statement alluding to "issues" with the Florida sublease raises further concerns with the validity of the sublease. Accordingly, we cannot conclude that the sublease was valid when the petition was filed.

---

[11] *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

[12] On appeal, the Petitioner submits articles regarding the reasons to relocate a business and emphasizes that it relocated the business to California. However, this is not pertinent to establishing whether the Petitioner had sufficient physical premises to commence its operations when the petition was filed.

[13] In the decision, the Director also referred to an "investigation" and determined that the sublessor's signature was forged. On appeal, the Petitioner asserts that it was not provided an opportunity to review any derogatory information regarding the sublease and contends that, as such, the Director's decision should be withdrawn. We will withdraw the Director's conclusory statement that the sublessor's signature was forged for this proceeding only as the Petitioner was not given sufficient notice of the derogatory information. However, the record which contains numerous inconsistencies and deficiencies does not support a withdrawal of the decision.

The Petitioner also submitted an office license agreement for a one-person office in [redacted] California. This agreement does not include the signature of the lessor and the agreement expressly states that it is not binding on the lessor unless signed by the lessor.

The Petitioner must establish it had sufficient physical premises to commence operations of its wholesale and retail stone business when the petition was filed. In this matter, the record is insufficient to establish that more likely than not, the Petitioner has sufficient physical premises to operate the new office when the petition was filed. The Petitioner did not provide evidence that the Florida sublessor had authority to sublease the physical warehouse premises in [redacted] Florida and thus its validity has not been established. The [redacted] California office agreement is not valid by its own terms. We conclude that the record does not contain sufficient evidence to demonstrate this essential element of a new office petition.

IV. QUALIFYING RELATIONSHIP

While not previously addressed in the Director's decision, the record does not include sufficient evidence to establish that the Beneficiary has a qualifying relationship with the Beneficiary's foreign employer. To establish a "qualifying relationship," the 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* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

The Petitioner claims that the Beneficiary's foreign employer is [redacted] which owned 80 percent of the Petitioner when the petition was filed.[14] This is reflected in the Petitioner's operating agreement provided initially. However, Florida business records,[15] include the Petitioner's Articles of Organization, dated June 19, 2019 which show that the Beneficiary's name was added as a member of the limited liability company and the Beneficiary's foreign employer was removed as a manager of the Petitioner. On May 17, 2021, the Florida business records show the "reinstatement" of the Petitioner. The "reinstatement" record again identified the Beneficiary as a member and the individual who initially owned 20 percent of the Petitioner as a manager. The Beneficiary's foreign employer is no longer identified as a member of the limited liability company. Thus, the ownership of the Petitioner is not clear. When the petition was filed in December 2019, and continuing to the date of this adjudication, it appears that the Beneficiary's foreign employer had been removed from involvement and possibly ownership of the Petitioner.

Due to the discrepancies in the Petitioner's ownership detailed above, and absent documentary evidence such as voting proxies or agreements to vote in concert, the Petitioner has not established that the Beneficiary's foreign employer owns and controls the Petitioner.[16] Thus, the Petitioner has

[14] The Petitioner, in response to the Director's RFE, provided an amended operating agreement, dated September 9, 2020, showing the Beneficiary's foreign employer increased its ownership to 90 percent of the Petitioner.

[15] *See* https://search.sunbiz.org/Inquiry/CorporationSearch/ByName.

[16] Ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 595 (Comm'r 1988). A petitioning company

not established that it has a qualifying relationship with the Beneficiary's foreign employer. For this additional reason, the petition cannot be approved.

V. RESERVED ISSUES

The Director determined that the Petitioner did not establish that the new office would support a managerial or executive position within one year of approval of the petition. However, because the issues discussed above are dispositive in this case, we need not reach this issue and therefore reserve it.

ORDER: The appeal is dismissed.

---

must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the entity, and any other factor affecting control of the entity. *See Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362, 365 (Comm'r 1986). Proxy votes, if any, must be irrevocable from the time of filing the L-1 petition through adjudication to establish a qualifying relationship. USCIS Policy Memorandum PM-602-0155, L-1 Qualifying Relationships and Proxy Votes 4 (Dec. 29, 2017), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-12-29-PM-602-0155-L-1-Qualifying-Relationships-and-Proxy-Votes.pdf.