U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11853053

Date: NOV. 23, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, an airline, seeks to temporarily employ the Beneficiary as the "financial manager" of its new office 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had sufficient physical premises to house the new office when the petition was filed.[1] The matter is now before us on appeal. The Petitioner bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence.[2] We review the questions in this matter de novo.[3]

I. PHYSICAL PREMISES TO HOUSE THE NEW OFFICE

One of the initial evidentiary requirements for a "new office" petition is proof of physical premises sufficient to house the new office. See 8 C.F.R. § 214.2(l)(3)(v)(A). A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. 8 C.F.R. § 103.2(b)(1).

Upon review of the record, we conclude that the Petitioner provided sufficient evidence it had available office space to accommodate the new branch office when the petition was filed. The Petitioner provided its permit to conduct operations at the airport, dated June 7, 2019, which is prior to filing the petition.[4] The permitted office space is 835 square feet and appears sufficient to accommodate the initial personnel of the new branch office.[5] We conclude that, more likely than not, the Petitioner had

[1] The petition was filed August 1, 2019, for a requested employment period beginning August 21, 2019, and continuing to August 21, 2026. However, a petition for a "new office" may be approved for a maximum of one year.
[2] See Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).
[3] See Matter of Christo's Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015).
[4] We note that the Petitioner was also negotiating for a larger office space when the petition was filed. Although the record includes references to the lease being obtained, a copy of the signed lease for the larger office space is not in the record.
[5] The Petitioner is an established company that has been doing business in the United States for over one year, however,

sufficient physical premises to conduct the new branch office operations when the petition was filed. 8 C.F.R. § 214.2(l)(3)(v)(A). Accordingly, this ground of denial will be withdrawn. However, the matter is remanded for further proceedings consistent with the opinion below and for the entry of a new decision.

II. BASIS OF THE REMAND

Although we will withdraw the Director's decision, issues remain which the Petitioner must address before the petition can be approved. Our remand order rests, in part, on our conclusion that the Director should have considered the Beneficiary's job duties in more detail. Review of the job descriptions reveal deficiencies that the Petitioner should take this opportunity to address.

A. Employment Abroad in a Managerial or Executive Capacity

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States.[6] Section 101(a)(15)(L) 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. The Petitioner's description of the job duties must clearly describe the duties the Beneficiary performed abroad and indicate whether such duties were in a managerial or executive capacity. Id.

Here the Petitioner provided a broad and ambiguous description of the Beneficiary's duties while he was employed as its "Internal Sales Office Accounting Manager" at the Petitioner's [redacted] office. For example, the Petitioner indicates that the Beneficiary spent 10 percent of his time supervising staff and that he directly supervised a number of employees;[7] however, simply stating that the Beneficiary "supervised" other positions without developing and explaining the subordinate roles is not sufficient. Additionally, the Petitioner does not elaborate on the Beneficiary's role in performing personnel actions of those supervised. Moreover, the Petitioner ascribes only 10 percent of the Beneficiary's time to the supervisory tasks. It does not appear that the Petitioner's foreign position was primarily supervisory and thus it is not clear that the foreign position was a personnel manager.

Although the Petitioner also claims that the Beneficiary managed an essential function (internal sales office finances and budget) while employed at the foreign entity, the Petitioner has not sufficiently

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the new branch office has been doing business for less than one year, thus is eligible to file a "new office" petition. 8 C.F.R. § 214.2(l)(1)(ii)(F); 8 C.F.R. § 214.2(l)(1)(ii)(J).

[6] The Petitioner asserts that the Beneficiary has been and will be employed in a managerial capacity. The Petitioner does not claim that the Beneficiary had been employed in an executive or specialized knowledge capacity.

[7] The foreign entity's organizational chart submitted for the record shows the Beneficiary had two direct reports who in turn supervised a number of sales offices and accountants.

articulated the specific function the Beneficiary managed. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization.[8] See section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary managed an essential function, it must clearly describe the duties performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function was a clearly defined activity; (2) the function was 'essential,' i.e., core to the organization; (3) the beneficiary primarily managed, as opposed to performed, the function; (4) the beneficiary acted at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary exercised discretion over the function's day-to-day operations." Matter of G- Inc., Adopted Decision 2017-05 (AAO Nov. 8, 2017). In this matter, the Petitioner has not described or provided probative evidence that the Beneficiary managed an essential function at the foreign entity.

The Petitioner has not described the essential function with specificity and the duties associated with managing the essential function (internal sales office finances and budget) are vaguely described. There is no clear delineation between duties that were operational and administrative tasks and those that were managerial tasks. For example, the Petitioner indicates that the Beneficiary signed payment checks and bank transfers to satisfy accounts payable and produced financial reports under deadlines. The Petitioner does not further develop the Beneficiary's role in performing these tasks and such tasks, without context, appear to have been administrative and operational. The Petitioner also indicates that the Beneficiary developed and recommended solutions for problems or situations, liaised with auditors to ensure annual monitoring is carried out, and oversaw payment of taxes. These duties are also described without sufficient context to understand the Beneficiary's role and level of responsibility in carrying out these tasks within the Petitioner's foreign office's operations.

Although the Petitioner also states the Beneficiary managed financial accounting, monitoring, and reporting systems, and managed the financial aspects of all contracts with customers and vendors, without more information regarding the foreign entity's operations within its [redacted] office, these statements offer little insight into the Beneficiary's actual activities in the course of his daily routine. We also note that the Petitioner indicates that the Beneficiary made decisions on daily operations including managing the daily cash and payment of invoices, managing the daily vendor invoice payments, managing budget and expenses, and managing all financial issues with its headquarters administration. Again, however, neither these duties nor the foreign entity's business operation is sufficiently detailed to identify the function the Beneficiary managed. The Petitioner neither explains how the internal sales office finances and budget was an essential function nor establishes that the Beneficiary managed this function, rather than performing the duties associated with the finance and budget function itself.

B. U.S. Employment in a Managerial or Executive Capacity within One Year

When a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. In order to qualify for L-1

[8] We note that a function manager may also directly oversee personnel; incidental personnel management duties do not disqualify a beneficiary from consideration as a function manager.

nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment, and establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. See 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed 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.

Upon review of the record, we find that the Petitioner does not describe the proposed duties with sufficient specificity and does not provide a timeline for hiring additional staff to relieve the Beneficiary from performing operational duties at the end of the first year of operations. The Petitioner does not indicate whether the Beneficiary will serve primarily as a personnel manager or as a function manager at the new office. We note that the Petitioner indicates that the Beneficiary will have one subordinate employee (an assistant accountant) in the Beneficiary's appointment letter, but also indicates on a proposed organizational chart, that the Beneficiary will oversee an assistant manager, accountants, and a cashier. As the record does not include a timeline for hiring any of these employees it is not possible to determine whether the Petitioner will initially hire one assistant accountant or has established a plan to hire additional employees subordinate to the Beneficiary's position.

The Petitioner also describes the Beneficiary's proposed position in the same general terms, as the foreign position. That is, the Beneficiary will manage the company's financial accounting, monitoring, and reporting systems, liaise with auditors, develop external relationship with auditors, bankers, and vendors, produce financial reports, manage budgets, and supervise the financial staff. Again, these broadly described responsibilities offer little insight into what the Beneficiary will actually do within the context of the petitioning business on a day-to-day basis during the first year of operations and beyond. The Petitioner has not delineated how the Beneficiary will move beyond daily involvement in nonqualifying tasks to primarily performing managerial duties within the one-year timeframe. Without additional evidence the record is insufficient to ascertain the nature of the Beneficiary's proposed role within the Petitioner's new office operations.

III. CONCLUSION

As the Director did not address these issues and the evidentiary deficiencies noted, the matter will be remanded for further review and entry of a new decision. The Director may also notify the Petitioner of additional, potential grounds of denial if supported by the record.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.