U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-B- LLC

DATE: NOV. 28, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a distributor of liquid transportation and storage systems, seeks to temporarily employ the Beneficiary as its chief executive officer (CEO) 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, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner submits additional evidence and contends that the Director did not consider the intermittent nature of the offered position, the duties performed by contractors and staff of the Petitioner's parent company, and the Petitioner's reasonable needs. The Petitioner maintains that it submitted sufficient evidence to establish that the Beneficiary will be employed in an executive capacity.

Upon *de novo* review, we will sustain the appeal.

I. LEGAL FRAMEWORK

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. Section 101(a)(15)(L) of the Act. 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 also establish that the beneficiary's prior education, training, and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

The statute defines an "executive capacity" as 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. If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services takes into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

II. ANALYSIS

In the denial decision, the Director found that the Beneficiary's sole U.S. subordinate is neither a manager nor a professional employee and that the Petitioner therefore had not established that the U.S. business has an organizational structure sufficient to elevate the Beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. The Director acknowledged the Petitioner's claim that the Beneficiary, who is also the CEO of its Finnish parent company and Thai affiliate, would continue to oversee managerial employees of those entities, but determined that these responsibilities do not establish that he would be employed in a qualifying capacity in the United States.

The Petitioner was established in 2015 to sell, distribute, and support its parent company's proprietary flexible bulk shipping containers. It achieved sales in excess of $2.9 million in 2016 and employs a director of sales and marketing. The Petitioner states that personnel at the group's Finnish headquarters perform many of the company's routine day-to-day operational tasks remotely, while the company outsources other tasks, such as accounting, logistics, and product delivery, to third-party service providers.

The Petitioner has consistently stated that the Beneficiary, who currently oversees the U.S. company from abroad while serving as CEO of two other group companies and supervising 13 managers, will maintain his residence in Finland, remain on the parent company's payroll, and enter the United States only intermittently, when there is a need for him to perform executive level duties "on the ground." Specifically, the Petitioner states that it requires him to be physically present in the United States occasionally to meet with executives of high-profile customers, to form strategic business partnerships with third parties, to ensure implementation of company policies and procedures developed within the Finnish headquarters, and to select and hire key personnel as the U.S. office grows. The Petitioner acknowledges that it does not currently have a reasonable need for a full-time, year-round CEO in the United States based on its current stage of development and emphasizes that the regulations allow for L-1A beneficiaries to work in the United States intermittently.

We find the Petitioner's assertions persuasive and the record sufficient to establish that the Beneficiary would serve in an executive capacity. The Director erred by not considering the Petitioner's claim that the position requires only the Beneficiary's intermittent physical presence in the United States. The Director also overemphasized the small size of the U.S. company. The

Petitioner achieved nearly $3 million in sales in its first year with a limited domestic staff in place and has established that its sole employee, outsourced companies, and foreign staff, provide sufficient support for its day-to-day operations without requiring the Beneficiary's direct involvement in routine operational matters. Therefore, despite the limited staffing, the record does not support the Director's finding that the Beneficiary would be required to perform non-executive duties during his intermittent stays in the United States. Finally, the Director did not find fault with the Beneficiary's proposed U.S. job duties, which are primarily, if not entirely, executive in nature.

Whether the Beneficiary is an employee turns on whether the Petitioner has sustained its burden of proving that his duties would be "primarily" executive. *See* section 101(a)(44)(B) of the Act. Here, the Petitioner has met that burden.

III. CONCLUSION

The Petitioner has established that it will employ the Beneficiary in an executive capacity.

ORDER: The appeal is sustained.

Cite as *Matter of F-B-LLC*, ID# 840400 (AAO Nov. 28, 2017)