U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H- USA, LLC

DATE: NOV. 30, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a distributor of cloth, plush, and fur toys, seeks to temporarily employ the Beneficiary as 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 submit sufficient evidence to establish, as required, that the Beneficiary was employed abroad in a managerial or executive capacity and that it would, within one year of approval, be able to employ the Beneficiary in the United States in a managerial or executive capacity.

The matter is now before us on appeal. The Petitioner submits a brief and additional evidence addressing the Director's findings. Regarding the Beneficiary's employment abroad, the Petitioner provides a comprehensive letter from the foreign entity's chief executive officer (CEO) explaining the chain of command within the exporting department that the Beneficiary heads. The Petitioner also provides employee job descriptions, which, together with the support letter, help to provide a better understanding of duties carried out by the Beneficiary's direct and indirect subordinates, thereby clarifying that the organizational structure within the exporting department of the foreign employer is sufficient to relieve the Beneficiary from having to allocate her time primarily to the operational tasks of the exporting function.

With regard to the Beneficiary's proposed employment, the Petitioner points to evidence in the record which shows that the entity, despite its early stage of development, generates sufficient revenue to support the Beneficiary's position and hire additional employees as necessary. The Petitioner also points to business relationships it has with existing U.S. customers, as supported by its 2016 tax return, and points to its business plan, which describes the steps the Petitioner plans to

[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.

take to expand its business and allow it to employ the Beneficiary in an executive capacity within one year of the petition's approval.

Upon *de novo* review, we find that the Petitioner has provided sufficient evidence to overcome the grounds for denial and we will therefore withdraw the Director's decision.

Notwithstanding our favorable determination, we find that this petition is not approvable because the Petitioner has not provided sufficient evidence to establish, as required, 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 that they are 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).

In the present matter, the Petitioner claims to be an affiliate of the foreign entity. 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). Although the Petitioner has provided sufficient evidence to show that its ownership is evenly split between the Beneficiary and one other person, the record lacks sufficient evidence showing that the Beneficiary owns 50% of the foreign entity, as claimed. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In response to the Director's request for evidence, which instructed the Petitioner to provide evidence of a qualifying relationship with the Beneficiary's foreign employer, the Petitioner provided a letter claiming that the Beneficiary owns 50% of the foreign entity, but that there is no available documentation to support this claim because "there is no requirement with the Chinese government to record ownership interest in a company." The Petitioner also provided a letter from the foreign entity's accounting firm, which referred to a statement from [redacted] the claimed CEO and 20% owner of the foreign entity, who addressed the issue of the foreign entity's ownership. The accounting firm's letter stated that the foreign entity is privately owned in China and therefore it is not required "to register the percentage of ownership . . . with any governmental agencies in China." The letter also stated that shareholders are not required to report their stock ownership "on any tax filings in China." The accounting firm based its knowledge of the foreign entity's ownership on [redacted] statement. However, the referenced statement is incomplete, as indicated by the fact that it stops mid-sentence and is missing the signature page. No other evidence was provided to support the claims made by [redacted] or by the foreign entity's accounting firm regarding the ownership of the foreign entity.

In light of the above, we hereby withdraw the Director's decision and remand 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 H- USA, LLC*, ID# 827390 (AAO Nov. 30, 2017)