U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33725741

Date: OCT. 2, 2024

Appeal of California Service Center Decision

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

The Petitioner, a company engaged in farm products trading and educational consulting services, seeks to extend the temporary employment of the Beneficiary as its CEO under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 the Petitioner had been doing business for the previous year or that the Beneficiary would be employed in the United States in a managerial or executive capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge, 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)(1). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii).

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period December 26, 2022 until December 25, 2023. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. ANALYSIS

The Petitioner claims to be engaged in farm products trading and educational consulting services. On the Form I-129, Petitioner for a Nonimmigrant Worker, the Petitioner indicated that it was established in 2022 and had one employee. It did not report any gross or net annual income. The Petitioner stated that it sought to extend the Beneficiary's employment as its CEO for a period of two years.

Finding the initial evidence insufficient to warrant approval, the Director issued a request for evidence (RFE). The Director noted that the record as constituted did not establish that the Petitioner had been doing business for the previous year, or that the Beneficiary would be employed in a managerial or executive capacity. The Director also observed that the Petitioner had not submitted evidence of its current financial status. In response, the Petitioner addressed the Director's concerns and submitted nine exhibits which included documentation pertaining to the Petitioner's business operations, the duties of the Beneficiary and the staffing of the U.S. office, and the Petitioner's financial status.

After considering the Petitioner's response and supporting documentation, the Director denied the petition, concluding that the Petitioner did not establish that it had been doing business for the previous year or that the Beneficiary's U.S. employment was in a managerial or executive capacity. On appeal, the Petitioner submits a one-page statement asserting that the Director erred as a matter of law and fact with regard to both adverse determinations. The Petitioner further asserts that documentation provided prior to adjudication demonstrates that the Petitioner has met its evidentiary burden.

To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, for the reasons discussed below, we conclude that the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence. We therefore adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The Director explained in detail why the record was insufficient to establish that the Petitioner had been doing business for the previous year.[2] The Director acknowledged the evidence submitted by

[2] The regulations define doing business as "the regular, systematic, and continuous provision of goods and/or services by

the Petitioner, which included its articles of incorporation, its registration certificate, its commercial lease, copies of bank statements and wire transfers, an investment table, copies of financial statements, and its 2023 federal tax return. The Director, however, determined that such documentation was insufficient to demonstrate that the Petitioner had been and continued to be engaged in the regular, systematic and continuous provision of goods and services. The Directed noted that while the bank statements, wire transfers, and financial statements indicated the transfer of funds to and from the Petitioner, such documentation was not supported by evidence demonstrating that these transfers were the result of legitimate business transactions and did not reflect that its receipt of such funds was payment for invoices. The Director further noted that the Petitioner's federal tax return for fiscal year 2023 reported no gross receipts or sales.

On appeal, the Petitioner asserts that the documentation previously submitted demonstrates it was doing business for the year prior to the petition's filing. The Petitioner claimed that it has been pursuing joint educational projects with various companies and is in the planning stages of opening learning centers and online language courses. It further claimed that it is conducting research regarding agricultural markets and industries in the United States and will work in cooperation with other companies to facilitate the import and export of various agricultural products. While we note the Petitioner's appellate assertions, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). After one year, U.S. Citizenship and immigration Services (USCIS) will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B). Here, the record does not contain any evidence related to these claimed business pursuits or evidence of the Petitioner's business transactions or activities for the previous year, such as contracts or invoices. We therefore agree with the Director's determination that the record does not demonstrate that the Petitioner was doing business for the year prior to the petition's filing.

Similarly, the Director thoroughly reviewed and analyzed the Petitioner's claim that the Beneficiary's U.S. employment would be in a qualifying managerial or executive capacity as defined at sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A)-(B). The Director evaluated the Beneficiary's position descriptions, evidence of the nature and scope of the Petitioner's business, and documentation relating to the company's staffing and organizational structure, noting that the Petitioner did not describe the Beneficiary's duties with specificity or show that it had sufficient staff to relieve the Beneficiary from involvement in the day-to-day operational, administrative, and other non-qualifying tasks associated with operating the business. The Director further noted that at the time of filing, the Beneficiary was the Petitioner's sole employee.

On appeal, the Petitioner asserts that its description of the Beneficiary's duties was sufficiently detailed and asserts that the Beneficiary has been managing and directing a support team of six individuals based abroad. It further asserts that the Director erroneously discounted evidence that it had hired a local employee to work under the Beneficiary's supervision in March 2024.

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a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad. 8 C.F.R. § 214.2(l)(1)(ii)(H).

Regarding the Beneficiary's duties, the Director reviewed the description of duties provided by the Petitioner, which included establishing its organizational structure, making decisions on hiring, promoting and discharging its employees, and directing its daily operations, and determined that the job description was vague and did not convey a meaningful understanding of the Beneficiary's proposed job duties in the daily or weekly course of the Petitioner's business. The Petitioner does not challenge the Director's findings on appeal and merely states that the duty description provided prior to adjudication was sufficient. Here, the Director noted that duties such as "formulating business strategies and plans," and "identifying areas of process enhancement" did not sufficiently convey the exact nature of the Beneficiary's day-to-day responsibilities, and we agree with that determination. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The Petitioner further claimed that the Beneficiary's work is supported by six employees within the foreign parent company. In response to the RFE, the Petitioner submitted an organizational chart for the foreign entity and provide brief job descriptions for these individuals, which included duties such as "propose improvement plans on the coordination of businesses in Chinese and American companies according to the specific situation" and "coordinate the relevant agricultural industry resources in China and the United States." The Petitioner, however, did not provide sufficient details regarding how these individuals would support the Beneficiary in a primarily managerial or executive position. Nor did it provide evidence of their interactions with the petitioning company or evidence of any payments made to the foreign entity or its employees in exchange for these claimed services. We agree with the Director's determination that the Petitioner has not submitted sufficient evidence to establish that the foreign staff assist the Petitioner with its day-to-day operations or remove the Beneficiary from involvement in non-managerial or non-executive duties required to provide the services of the company.

We further agree with the Director's determination that the Petitioner's hiring of a business manager in March 2024, approximately three months after the filing of the extension petition, is not sufficient to demonstrate that the Beneficiary has subordinate staff to relieve him of non-qualifying duties. In addition to noting that the employment contract contains name, date, and position title discrepancies when compared to the Petitioner's organizational chart, the Director properly noted that the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Finally, we note that the previously approved petition was filed when the Petitioner was deemed a "new office." The new office designation is reserved for entities that have been doing business in the United States for less than one year at the time of filing and are therefore subject to regulations that are separate from those that apply to a petitioner filing to extend a petition stemming from an approved new office petition. *See* 8 C.F.R. § 214.2(l)(1)(ii)(F) (defining "new office). Because there is a material change in eligibility requirements from those that were applicable to the filing of the initial new office petition, USCIS will not defer to the prior approval. *See* 2 *USCIS Policy Manual* A.4(B)(1), https://www.uscis.gov/policymanual.

III. CONCLUSION

Although the Petitioner generally challenges the denial by contending that the Director erred as a matter of law and fact, it does not articulate with any specificity such errors in the Director's decision. The Petitioner's general objections in support of the appeal do not otherwise contest the Director's reasoning or conclusions regarding the insufficiency of the evidence in the record. The evidence that the Petitioner submitted with the extension petition and in response to the RFE is not sufficient to demonstrate that, at the time of filing, the Petitioner was regularly, systematically, and continuously providing goods or services and had developed to the point where it could support the Beneficiary in a managerial or executive position. For the reasons discussed, the Petitioner has not met its burden under the preponderance standard.

ORDER: The appeal is dismissed.