U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19045961

Date: OCT. 7, 2021

Appeal of Texas Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as the "Executive / Manager" of its new office[1] 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 Director of the Texas Service Center denied the petition concluding the Petitioner did not establish, as required, that the Beneficiary was employed "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 and that the Beneficiary would be employed in a primarily managerial or executive capacity in the United States.

On appeal, the Petitioner asserts that contrary to the Director's conclusion that it did not submit descriptions of the Beneficiary's foreign duties and the proposed duties in the United States, it submitted letters describing the Beneficiary's duties abroad and for the U.S. entity.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence.[2] The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*[3] however, we conclude that a remand is warranted in this case for further proceedings consistent with the opinion below and for the entry of a new decision. Accordingly, the matter will be remanded to the Director for further review of the record and a new decision.

I. ANALYSIS

The regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying a petition, the Director shall explain in writing the specific reasons for denial. Moreover, when denying a petition, the Director must fully explain the reasons in order to allow the Petitioner a fair opportunity to contest the decision and provide the AAO an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec.

---

[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] 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).

786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). In this matter, the Director overlooked evidence submitted and did not analyze the Petitioner's eligibility under the "new office"[4] criteria.

A. 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 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.

The record here does not include a business plan, nor does the Petitioner reveal its hiring plan, its organizational chart (current or proposed), a marketing analysis, or other probative evidence demonstrating how it expects to support a manager or an executive within one year of filing the petition. The record does not include a timeline for hiring additional staff to relieve the Beneficiary from performing operational duties at the end of the first year of operations. Although the record includes evidence that the Petitioner employed two individuals, the Petitioner has not provided descriptions of their tasks, level of responsibility, or their positions within the Petitioner's business operations. The record lacks probative evidence of the nature of the business and its business operations, proposed or actual. The Director may wish to question the nature of the Petitioner's business and whether the business will support a position that is primarily a manager or an executive in one year from the date of filing the petition.

Additionally, the Petitioner does not clarify whether the Beneficiary will be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. The Petitioner must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are either in an executive or managerial capacity. The Petitioner must demonstrate that the Beneficiary's responsibilities will meet the requirements of one or the other capacity.

Here, the Petitioner submitted an undated one-page letter addressed to the Beneficiary and signed by the foreign entity's managing director/partner notifying the Beneficiary of his transfer to the "USA office as a Chief Executive Office [*sic*] / Manager." The letter vaguely outlined the Beneficiary's proposed duties in this position by paraphrasing the regulations. However, conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd. v.*

[4] The Petitioner was organized in January 2020, filed the petition on August 25, 2020, and indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the Beneficiary was coming to the United States to open a new office.

Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108. Without additional evidence the record is insufficient to ascertain the nature of the Beneficiary's proposed role within the Petitioner's new office operations. The Director should determine whether the Petitioner has sufficiently described the Beneficiary's proposed duties for the U.S. entity in the context of its "new office" claim.

B. 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,"[5] 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.

Regarding the Beneficiary's employment abroad, the Petitioner provided a statement on the letterhead of the foreign entity which indicated that the Beneficiary was a managing director/partner in the foreign entity and that he was an authorized signatory on several different accounts. The statement also included a generic overview of the Beneficiary's duties in the position which could be applicable to any executive or any manager acting in any business or industry. The description provided little insight into the actual nature of his role abroad. The Petitioner provided no examples and supporting documentation to demonstrate the Beneficiary's performance of qualifying duties abroad, such as financial oversight, strategic plans and company policies developed, or problematic developments managed and resolved. Reciting the 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 Petitioner has not provided any detail or explanation of the Beneficiary's activities in the course of their daily routine.

The Petitioner also does not allocate the Beneficiary's time to any of the job duties which further hinders an understanding of the focus of the position. Thus, not only is it unclear whether the duties are managerial or executive in nature, any duties that might fall into one or the other category cannot be characterized as constituting the majority of the Beneficiary's duties. The foreign entity's organizational chart shows the Beneficiary in a senior position within the foreign employer, however, even if he manages or directs the business the record does not establish eligibility for classification as an intracompany transferee in an executive or managerial capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a foreign position be "primarily" executive or primarily "managerial" in nature. *Id.* The record does not demonstrate whether the Beneficiary primarily performs managerial or executive duties or non-qualifying administrative or operational duties.

The Director may wish to further question the deficiencies in the record regarding the Beneficiary's foreign employment.

[5] The Petitioner does not claim, and the evidence does not establish, that the Beneficiary's work for the foreign employer involved "specialized knowledge."

II. CONCLUSION

As the Director did not review the descriptions of duties provided and did not discuss the eligibility requirements in conjunction with a new office claim, the Petitioner was not provided fair opportunity to challenge the decision. However, the numerous evidentiary deficiencies noted above precludes an approval of the petition. Accordingly, 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.