U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-, LLC

DATE: OCT. 16, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a restaurant owner and operator, seeks to continue the Beneficiary's temporary employment as its general manager 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 initially approved the petition. After a site visit carried out under U.S. Citizenship and Immigration Services' (USCIS) Administrative Site Visit and Verification Program (ASVVP), the Director issued a notice of intent to revoke (NOIR) and ultimately revoked the approval of the petition. The Director concluded that the Petitioner did not establish, as required, that it will employ the Beneficiary in a managerial or executive capacity and found that she was no longer eligible for the benefit sought.

On appeal, the Petitioner contends that the Director did not consider the totality of the evidence submitted and did not have sufficient cause to revoke the approval of the petition. The Petitioner maintains that it submitted adequate evidence to establish that the Beneficiary will be employed in a managerial or executive capacity.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification for a new office, 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

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period August 2014 through August 2015. 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.

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.*

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).

Under USCIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B). Here, the Director notified the Petitioner that the results of the ASVVP site visit revealed that the Beneficiary is no longer eligible under section 101(a)(15)(L) of the Act. *See* 8 C.F.R. § 214.2(l)(9)(iii)(A)(*2*).

II. DISCUSSION

The Director found that the evidence did not establish that the Beneficiary would be employed in an in a managerial or executive capacity as defined at section 101(a)(44) of the Act.

In the NOIR, the Director advised the Petitioner that the site visit, conducted in November 2015, revealed the following information:

> The beneficiary is not receiving any pay for her employment in the petitioning organization. The beneficiary appears to have not worked full-time and the responsibilities are shared between the beneficiary and her husband, the CEO, who is also listed as the L-2 dependent applicant.

As a result of these observations, the Director questioned whether the Beneficiary was primarily performing managerial or executive duties for the restaurant, rather than participating in its day-to-day operations. The Director requested additional evidence, including a detailed organizational chart, evidence of wages paid to employees in 2016 (quarterly tax returns and IRS Form W-2s), and a more detailed description of the Beneficiary's duties.

After reviewing the Petitioner's response to the NOIR, the Director determined that the Petitioner did not provide a sufficient position description for the Beneficiary or provide evidence that its organizational structure could support a managerial or executive position.

The Petitioner's appeal includes a more detailed description of the Beneficiary's duties, evidence demonstrating the Petitioner's use of outsourced professionals, an updated organizational chart and employee list, additional evidence of the Petitioner's staffing levels at the time of the site visit, and

evidence showing its operation of two full-service restaurants and imminent opening of a third restaurant, among other evidence.

Upon *de novo* review of the record, including the new evidence submitted on appeal, we find that the Petitioner has established that the Beneficiary would be employed in a managerial capacity, and has overcome the sole grounds for revocation of the decision.

In issuing the notice of intent to revoke, the Director did not find that the approval of the petition involved gross error or that the facts contained in the petition were not true and correct. *See generally* 8 C.F.R. § 214.2(l)(9)(iii). Rather, the Director found that the Beneficiary was "no longer eligible" based on the observations made by the USCIS officer who conducted the site visit.

The Petitioner has satisfactorily rebutted those observations by providing evidence that the Beneficiary was working for the Petitioner and receiving a salary in 2015 and by further explaining her spouse's role in the company as majority owner of its foreign parent company, noting that any activities he undertakes do not detract from the Beneficiary's role as general manager for the U.S. subsidiary's chain of restaurants. Further, while the Petitioner did not have a large staff in place at the time of the site visit, the Petitioner points out that its first restaurant had been open for only a short time and its staffing levels were consistent with what the Petitioner had claimed on the petition. That staff included at least two subordinate supervisors who relieved the Beneficiary from the day-to-day operations and freed her to focus on higher-level duties related to the company's expansion activities. In addition, the evidence shows that the company carried out its stated plans to open additional restaurants and to increase both the size of its staff and the complexity of its management structure during the validity of the extended petition (August 2015 to August 2017).[2]

Further, we find that the Petitioner has sufficiently addressed the specific deficiencies discussed in the Director's decision. The Petitioner established that the company grew sufficiently to support the Beneficiary in a managerial capacity, and that she would more likely than not have adequate support from subordinate managers, supervisors and lower-level staff, to allow her to allocate most of her time to qualifying managerial duties, rather than to performing operational duties alongside the restaurants' other employees. Whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (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 managerial capacity.

[2] The Petitioner filed a new petition in August 2017 (, which USCIS approved for a two-year period.

ORDER: The appeal is sustained.

Cite as *Matter of H-, LLC*, ID# 684678 (AAO Oct. 16, 2017)