U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-U-H-, LLC

DATE: OCT. 19, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an exporter of chemical and industrial products, seeks to continue the Beneficiary's employment as its president 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 Petitioner did not establish, as required, that it would employ the Beneficiary in a managerial or executive capacity under an extended petition.

On appeal, the Petitioner disputes the Director's decision, arguing that the decision was not based on the relevant facts and evidence in the record.

Upon *de novo* review, we find that the Director did not offer an adequate analysis of the evidence submitted so that the Petitioner was afforded a fair opportunity to contest the decision and to allow a meaningful appellate review. Therefore, we will remand the matter for further proceedings consistent with our discussion below.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity 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)(3)(v)(B). In addition, the beneficiary must seek to enter the United States temporarily to

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period March 1, 2017, until February 28, 2018. 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.

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).

II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

As noted earlier, we find that the Director's decision did not adequately explain the deficiencies in the evidence. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). As the Petitioner points out on appeal, the Director did not analyze the job description that corresponds to the Beneficiary's newly offered position, which the Petitioner states would be in an executive capacity; instead, the Director incorrectly conflated that job description with the description of job duties that pertained to the Beneficiary's prior year of employment – when the Petitioner was operating as a new office. More specifically, the Petitioner notes that the Director quoted portions of the prior year's job description and incorrectly stated that the Beneficiary would "continue" to perform those duties, which have not been incorporated in the Beneficiary's proposed position.

The Director also misinterpreted the Petitioner's organizational chart by incorrectly referring to the Beneficiary as "branch manager" rather than to her proposed position title of "president & CEO" and by excluding a portion of the support staff that the Beneficiary hired during the company's new office phase of operation. Furthermore, despite the Petitioner's repeated references to "the larger international subordinate staff" who work at the Petitioner's foreign affiliate office, the Director did not address this claim or indicate that all relevant factors, such as the size and staffing of the entire organization, were considered prior to arriving at the final determination.

Notwithstanding the Director's lack of a complete analysis, the record is currently insufficient to establish that the Beneficiary would be employed in an executive or managerial capacity, as claimed. Namely, the record includes a broad job description that lacks sufficient detail about the specific tasks the Beneficiary would perform within the context of the Petitioner's retail operation. The actual duties themselves 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). Further, although the Petitioner claims that the Beneficiary would be supported by an overseas staff in addition to the newly hired U.S.-based employees, it has not explained the logistics of relying on overseas employees to carry out necessary operational duties that are associated with shipping, receiving, and warehousing the goods it plans to purchase and sell. Accordingly, the record does not include sufficient evidence to show that the Petitioner's organizational hierarchy, at the time of filing, was

adequately complex and could support the Beneficiary in a position where she would devote her time primarily either to directing the management of the organization and focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise, or, alternatively, that she would allocate her time primarily to managing an essential function. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). That includes evidence to demonstrate that the Petitioner is sufficiently staffed and able to relieve the Beneficiary from having to allocate her time primarily to non-executive or non-managerial tasks.

The definitions of executive and managerial capacity have two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See, e.g., Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533. The record as presently constituted does not meet these criteria.

III. CONCLUSION

Although the Petitioner did not submit sufficient evidence to meet its burden of establishing that the Beneficiary will be employed in a managerial or executive capacity, the Director's decision did not adequately analyze the facts of the matter and apply the law. As the Director did not satisfy this condition, we will remand the matter for entry of a new decision. The Director should request any additional evidence deemed warranted 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 M-U-H-, LLC*, ID# 1690658 (AAO Oct. 19, 2018)