U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-S- INC.

DATE: SEPT. 11, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, which promotes and markets educational software developed by its foreign parent company, seeks to extend the Beneficiary's temporary employment[1] as its chief executive officer 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 record did not establish, as required, that the Petitioner will employ the Beneficiary in the United States in an executive capacity.[2]

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by imposing improper requirements and not taking the staff of the foreign parent company into account.

Upon *de novo* review, we find that the Petitioner has provided sufficient evidence to overcome the sole basis for denial. Therefore, we will withdraw the Director's decision and sustain the appeal.

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, or in a specialized knowledge capacity, for one continuous year within three years preceding the Beneficiary's application for admission into the United States. In addition, the Beneficiary must seek to enter the United States

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf. 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.

[2] The Petitioner had consistently claimed that the Beneficiary would be employed in an executive capacity, rather than in a managerial capacity.

temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. Section 101(a)(15)(L) of the Act.

There are additional requirements when a petitioner seeks to extend an L-1A visa petition that involved the opening of a new office. The new petition must include evidence to show: a qualifying relationship still exists between the employers in the United States and abroad; the U.S. entity has been doing business for the previous year; and the financial status of the U.S. operation. The Petitioner must also submit statements describing the Beneficiary's past and intended future duties in the United States, and details of the staffing of the new operation. *See* 8 C.F.R. § 214.2(l)(14)(ii).

II. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that it will employ the Beneficiary in an executive capacity.

An executive capacity is an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, U.S. Citizenship and Immigration Services must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Director's principal findings related to the Petitioner's staffing. In the denial notice, the Director found that the Petitioner had not shown that the Beneficiary is able to primarily perform executive duties. The Director acknowledged that the Beneficiary has subordinates in the United States, but found that the Petitioner had not shown their duties to be primarily managerial. On appeal, the Petitioner asserts that the Director relied too much on the company's small size, and did not give enough consideration to the Beneficiary's continued authority over the foreign parent company. The two companies perform different functions in support of one overall business; they do not perform entirely disparate activities, linked only by ownership.

Taking the activities of the foreign parent company into account, the record supports a finding that the Beneficiary's aggregate duties are primarily executive in nature.

III. CONCLUSION

The Petitioner has established that it will employ the Beneficiary in an executive capacity.

ORDER: The appeal is sustained.

Cite as *Matter of C-S- Inc.*, ID# 522342 (AAO Sept. 11, 2017)