U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-, LLC

DATE: SEPT. 20, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an import, export, transportation, and logistics company, seeks to continue the Beneficiary's temporary 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner contends that the Director did not consider the totality of the evidence submitted or the Petitioner's reasonable staffing needs at the end of its initial year of operations. The Petitioner maintains that it submitted sufficient evidence to establish that the Beneficiary will be employed in an executive capacity under the extended petition.

Upon *de novo* review, we will 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 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 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.

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period February 1, 2016, to January 31, 2017. 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. DISCUSSION

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

The statute defines an "executive capacity" as 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 a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) takes 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 Petitioner was established in September 2015 and employed eight full-time employees at the time of filing in December 2016, including the Beneficiary, a vice president of operations, a logistics director, an import and export coordinator, a director of finance, two logistics employees, and an executive assistant. The Petitioner provided ample evidence of its provision of import, export, and logistics services, its use of third-party carriers and accounting services, and evidence of its financial status.

In the denial decision, the Director referenced the position descriptions submitted for the Beneficiary – one which accompanied the initial filing and one submitted in response to a request for evidence – and noted that the time allocations assigned to individual duties were different. The Director further found that neither description was sufficiently detailed, and noted that the inconsistencies in time allocations cast doubt on whether the Beneficiary would primarily perform executive duties.

On appeal, the Petitioner emphasizes that the Director had requested a more detailed description of the Beneficiary's duties; therefore, it submitted a longer list of duties in response to the RFE, which resulted in changes to the assigned percentages of time. Upon review, we agree with the Petitioner that there are no material inconsistencies in the two descriptions provided in support of the petition, when viewed in context of the Director's request for additional details.

The Director also noted a concern regarding the Petitioner's staffing. Specifically, the Director observed, although the Petitioner stated that although the Beneficiary has "the full authority to set

the U.S. company's marketing, budgeting, sales, and operational goals and policies . . . it is not apparent who performs the marketing, budgeting, or sales functions of the company; as the petitioner does not employ staff that performs marketing or sales functions." The Director further determined that the Petitioner did not provide sufficiently detailed position descriptions for the Beneficiary's subordinates. As such, the Director found that the Petitioner did not establish that it has sufficient staff to relieve the Beneficiary from involvement in the non-executive functions of the company.

On appeal, the Petitioner further explains its business model, noting that it does not have dedicated sales and marketing positions because it primarily markets and sells its services by participating in procurement initiatives and by completing transportation orders and purchase requests initiated by its foreign affiliate. The Petitioner also points to the job descriptions for the Beneficiary's subordinates, highlighting duties that are directly related to the sales, marketing, and budgeting functions.

We find that the Petitioner has sufficiently addressed the specific deficiencies discussed in the Director's decision. Further, after reviewing the totality of the evidence, we find that the Petitioner has established that the company grew sufficiently during its initial year of operations to support the Beneficiary in an executive capacity, and that he more likely than not has adequate support from seven full-time subordinates, including at least one subordinate manager, to allow him to allocate most of his time to executive duties, rather than to performing operational duties alongside the company's 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 executive capacity.

ORDER: The appeal is sustained.

Cite as *Matter of A- LLC*, ID# 593181 (AAO Sept. 20, 2017)