U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33725436

Date: SEP. 20, 2024

Certification of California Service Center Decision

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

The Petitioner, a prospective provider of information technology consulting services, seeks to employ the Beneficiary as the president 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 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. The Director concluded the Petitioner did not demonstrate that the Beneficiary was employed abroad with a qualifying organization for at least one continuous year in the three years preceding the date the petition was filed. The Director also determined the Petitioner did not establish that the Beneficiary was employed in a managerial or executive capacity abroad, or that he would be employed in this capacity in the United States within one year of an approval of the petition. The Petitioner later appealed the denial stating that it did not receive notice reflecting the grounds for denial, and therefore did not have an opportunity to review and respond. We remanded the matter for the issuance of a new denial notice to the Petitioner including the grounds for denial and requested it be certified to us for review. The Director then issued a denial decision on May 23, 2024, giving the Petitioner the opportunity to submit a brief or other written statement for our review within 30 days.[2] The matter is now before on certification. *See* 8 C.F.R. § 103.4(a)(1), (2).

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will adopt and affirm the Director's decision and the petition will remain denied. More specifically, we agree with the Director that the Petitioner did not establish the Beneficiary was employed abroad in a managerial or executive capacity. Since this issue is dispositive

[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] As of the date of this decision, the Petitioner did not submit a brief or other written statement, as such, we will consider the record complete as currently constituted.

of this matter, we hereby reserve the Director's other bases for denying the petition. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, 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 continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. EMPLOYMENT WITH THE FOREIGN EMPLOYER IN A MANGERIAL OR EXECUTIVE CAPACITY

The sole issue we will analyze is whether the Petitioner established that the Beneficiary was employed in a managerial or executive capacity with his asserted foreign employer.

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

"Executive capacity" means 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.

To be eligible for L-1A nonimmigrant visa classification as a manager or executive, the Petitioner must show that the Beneficiary performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) and (B)(i)-(iv) of the Act. If the record does not establish

that the offered foreign position meets all four of these elements, we cannot conclude that it was a qualifying managerial or executive position. If the Petitioner establishes that the foreign position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial or executive duties abroad, as opposed to ordinary operational activities alongside the foreign employer's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's foreign duties were primarily managerial or executive, we consider the description of the Beneficiary's foreign job duties, the foreign employer's organizational structure, the duties of a beneficiary's subordinate employees abroad, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role with the foreign employer.

In the denial notice, the Director emphasized that they issued a request for evidence (RFE) listing the Beneficiary's duties, stating they were too general, and indicating they did not sufficiently articulate what he did on a day-to-day basis while employed by the foreign employer. The Director explained they also stated in the RFE that the Petitioner did not sufficiently describe the foreign employer's organizational structure, indicate whether the Beneficiary acted in a managerial or an executive capacity abroad, and submit evidence to substantiate any subordinates he may have had abroad. The Director concluded that the Beneficiary did not address these discrepancies in its response to the RFE, again determining that without a more detailed duty description they could not conclude the Beneficiary primarily performed managerial or executive level duties abroad. The Director further pointed to another L-1A nonimmigrant petition filed by the Petitioner on behalf of another beneficiary and emphasized that the foreign duties submitted with this petition were identical to those of the Beneficiary provided in this matter, leaving question as to his asserted duties. Lastly, the Director reasoned the Petitioner did not submit objective evidence to substantiate its asserted organizational structure abroad to corroborate it was sufficient to support the Beneficiary in a qualifying managerial or executive capacity.

Upon certifying this decision to us, the Director provided the Petitioner the opportunity to submit a brief or other written statement for our review; however, approximately five months after the certification notice, it provided nothing articulating why the Director's denial decision was in error. Therefore, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

As discussed by the Director, the Petitioner submitted a generic duty description for the Beneficiary's role abroad that could apply to any manager or executive acting in any position or type of business. The foreign duty description vaguely discussed "establishing and carrying out organizational or departmental procedures, goals and policies," "managing general activities associated with providing Services and making products," "negotiating and approving agreements and contracts," and "appointing managers and department heads." However, the Petitioner provided few specifics and no supporting documentation to substantiate his performance of qualifying managerial or executive-level duties abroad such as department procedures, goals and policies he established, products and services

he managed, contracts he negotiated, or managers and department heads he appointed. Specifics are clearly an important indication of whether a beneficiary's foreign duties involved managerial or executive-level duties, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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).

In fact, the Petitioner provided no indication as to whether the Beneficiary qualified as a manager or executive, declined to provide a more detailed explanation of his duties in response to the RFE, and submitted little information or supporting evidence to reflect and substantiate its foreign organizational structure, despite the Director requesting this evidence. In sum, the Petitioner provided little evidence to demonstrate that the Beneficiary was employed abroad in a managerial or executive capacity. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 369, 375-76. For the foregoing reasons, we adopt and affirm the Director decision, and the petition will remain denied.

ORDER: The petition is denied.