U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34100342

Date: SEPT. 24, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a telecommunications/electrical installation company, seeks to employ the Beneficiary as "general project manager" at its "new office" in the United States.[1] The company requests his classification under the L-1A nonimmigrant visa category. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). This category allows qualified employees of multinational businesses to transfer to the United States to temporarily work in managerial or executive capacities.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate that it would employ the Beneficiary in a managerial or executive capacity or that he worked abroad in one of those capacities. Affirming the Director's decision as to the Beneficiary's foreign work, we dismissed the Petitioner's appeal. *See In Re: 31090915* (AAO May 2, 2024). We reserved opinion on the nature of the proposed U.S. work. *Id.*

The matter returns to us on the Petitioner's motion to reconsider. The company asserts that, as sole owner of his foreign employer, the Beneficiary inherently worked abroad in both managerial and executive capacities.

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). Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our prior decision misapplied law or policy based on the evidence at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, the scope of our review may not go beyond our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

[1] The term "new office" means an organization that, at the time of a petition's filing, had been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).

II. ANALYSIS

Our prior decision states that an L-1A beneficiary must have primarily worked abroad in a managerial or executive capacity, as opposed to having performed primarily operational duties. *See* section 101(a)(44)(A), (B) of the Act (defining the terms "managerial capacity" and "executive capacity"); 8 C.F.R. § 214.2(l)(3)(v)(B) (requiring a beneficiary of a new office petition to have previously worked in an executive or managerial capacity); *see also Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604) ("An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity.")

On motion, however, the Petitioner contends that those rules:

> do not apply to this particular case because the beneficiary, as beneficial owner of the parent company, has inherently both capacities: executive and managerial.
>
> It would be unreasonable to think that an individual with an ownership interest such as the one held by the beneficiary . . ., who additionally has an absolute duty to preserve the good standing and success of a company and its employees and other related members [should] not be considered as a person with those duties and obligations of a manager or executive. Moreover, there is an inherent power over the labor aspect of the company, to decide who is suitable to be hired as an employee, manager or vendor and who is terminated or dismissed of duties if necessary. There is an implied duty to always seek the best interest of the company as it is the duty of a manager, more importantly when the one manager is also the owner of the company. Furthermore, in the evidence presented in [response to the Director's request for evidence], several agreements whereby the beneficiary created contractual obligations on behalf of the parent company showed that the beneficiary not only acted as a project manager but also as one with full capacity to contractually obligate the company.

The Petitioner's argument does not persuade us. The company cites no legal authority allowing such special treatment of L-1A beneficiaries who solely own their foreign employers, nor are we aware of any. Rather, the Act requires that a beneficiary have "primarily" worked abroad in a managerial or executive capacity consistent with the definitional elements of each term. *See* section 101(a)(44)(A), (B) of the Act.

Our decision on the Petitioner's argument regarding the nature of the Beneficiary's foreign work resolves this motion. We therefore need not consider and hereby continue to reserve opinion on whether he would work in the United States in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

III. CONCLUSION

The Petitioner's motion to reconsider does not demonstrate the Beneficiary's eligibility for the requested benefit or our prior decision's misapplication of law or policy.

ORDER: The motion to reconsider is dismissed.