U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22623345

Date: NOV. 8, 2022

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner intends to operate a business that will offer "VIP security and related services." It seeks to employ the Beneficiary temporarily as the "Chief Executive Officer" of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition concluding that the Petitioner did not establish, as required, that (1) sufficient physical premises had been secured to house the Petitioner's business; and (2) the Beneficiary would be employed in a managerial or executive capacity within one year of the petition's approval. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of the petition's approval. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate regarding the issue of its physical premises. *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, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge 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)(1). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same

[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.

employer or a subsidiary or affiliate thereof in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii).

Further, regarding a new office petition, 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. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The primary issue to be addressed is whether the Petitioner provided sufficient evidence to establish that its operation would support the Beneficiary in an executive capacity within one year of the petition's approval.[2]

The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the organization, major component, or function as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

A. New Office Requirements

In the case of a new office petition, we review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in determining whether the proposed position is plausible based on a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

At the time of filing the Petitioner claimed one employee and a projected income of over $1.7 million in its first year of operation. However, it is unclear whether the Petitioner will be adequately staffed and funded to reach this objective. In support of the petition, the Petitioner provided a business plan claiming that [redacted] paid $50,267.97 in exchange for 98% ownership interest in the petitioning entity. *See Business Plan*, p. 28 (Nov. 2021). This information, however, is inconsistent with other submissions, including section 3.1 of the Petitioner's

[2] The Petitioner does not claim that the Beneficiary's position in the United States would be in a managerial capacity.

operating agreement and Schedule A of the shareholder agreement. Specifically, the operating agreement states that [redacted] was to pay $57,267.97 "+14,770.00USD$" in exchange 9800 units which is equivalent to 98% ownership interest; Schedule A of the shareholder agreement lists the same cash amounts and same percentage of ownership. Although the Petitioner provided bank records showing that it received an international wire transfer in the amount of $55,698.50 in October 2021, it offered no corresponding documents verifying that [redacted] was the source of these funds. Furthermore, the fund transfer amount is inconsistent with the stock purchase price specified in the Petitioner's business plan, operating agreement, and Schedule A of the shareholder agreement.

The Petitioner also provided inconsistent evidence regarding capital contributions pledged and submitted by its owners. According to section 3.1 of the operating agreement [redacted] agreed to contribute $10,000 in addition to the above specified [redacted] investment, thus bringing the total owner contribution to $82,037.97. However, the Petitioner's business plan lists several owner investment figures that are not only inconsistent with the operating and shareholder agreements but are also internally inconsistent within the business plan itself. Namely, the balance sheet at section 10.5 of the business plan shows a "paid-in-capital" amount of $104,770, which is inconsistent with the investment breakdown the Petitioner provided in a corresponding "Funds Invested" chart, which shows that [redacted] and [redacted] committed to invest $84,770 and $10,000, respectively, towards the Petitioner's operation. This total amount is reiterated in section 11 of the business plan, where it is claimed that the Petitioner's owners "have invested a total of $94,770."

The matter of capital contributions was also addressed in a letter from the Petitioner's account, which was included in the Petitioner response to a request for evidence (RFE); the letter states that [redacted] "made an investment/start-up capital . . . in the amount of $66,990.23," a sum that is inconsistent with the documents discussed above. Moreover, the Petitioner did not provide evidence confirming that a capital investment was made either owner in any of the amounts discussed herein. Although the record includes bank statements showing incoming wire transfers – two bank statements from June and July 2021, each showing an incoming transfer $2924.22, and the international wire transfer discussed above – the record contains no corresponding documents disclosing the source(s) of these transfers, which neither individually nor in the aggregate total the various amounts claimed as owner investment.

The Petitioner also provided a number of foreign financial documents as proof of the foreign entity's financial ability to support the U.S. operation. However, the documents submitted are not in compliance with the regulatory requirements at 8 C.F.R. § 103.2(b)(3), which states that any document in a foreign language must be accompanied by a full English language translation along with a translator's certification certifying that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. In this case, the Petitioner provided multiple documents titled "Documento de Cálculo de la Liquidación," which appear to pertain to the foreign entity's finances but were not accompanied by certified translations into English. The Petitioner also provided what appear to be [redacted] translated bank statements. Although several were accompanied by a certificate of translation signed by the translator, the record does not contain the corresponding original documents, while other documents showing fund transfers originating from [redacted] include the original and translated document but are missing the translator's certification. These noted deficiencies preclude a determination as to whether the foreign documents support the Petitioner's claims regarding owner contribution, particularly given that the claims

themselves are inconsistent. The Petitioner has not provided independent, objective evidence resolving these various discrepancies regarding owner investment. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In light of these significant discrepancies, the Petitioner has not established the amount of startup capital it expected to receive from its owners, nor has it provided evidence showing that it received any owner contributions at all. As noted above, the submitted bank statements showing incoming wire transfers do not identify the source of the wired funds, thereby precluding us from being able to conclude that the funds originated from either of the Petitioner's claimed owners.

Furthermore, the Petitioner did not provide a reliable breakdown of its startup expenses. As such, it is unclear how much owner contribution would be sufficient to ensure the Petitioner's ability to commence doing business. According to the "Break-even Analysis Table" in section 10 of the business plan, the Petitioner projected an "estimated monthly fixed cost" of $20,661.19 and an "estimated annual fixed cost" of $247,934.33. The business plan does not include a detailed breakdown explaining how the Petitioner arrived at these figures or the expenses these costs will cover. Although the "Profit and Loss Table," also in section 10 of the business plan, provides a more detailed breakdown of the items comprising the Petitioner's operating costs over a five-year period, the year-one total was projected to be $278,126; this figure is over $30,000 higher than the estimated annual fixed cost, and it averages over $3000 higher monthly in comparison to the estimated monthly cost shown in the "Break-even Analysis Table." The business plan does not explain either the practical difference between the two tables or the significance of the different projections these tables put forth.

In addition, the Petitioner provided a service agreement it executed on November 1, 2021, with [redacted] the contracting party for whom the Petitioner agreed to provide security services for the contract price of $8.75 million, payable "at the time of execution of this Agreement." The Petitioner provided no corroborating evidence, such as invoices or bank records, showing that it collected all or any portion of the contract price; nor does the record contain evidence showing that the Petitioner had the means to provide "[a] team composed of a minimum of fifty independent security guards," as specified in the first clause of the contract. These incongruities call into question the validity of the multimillion-dollar contract, which the Petitioner offers as evidence that it its venture will likely succeed and be able to support the Beneficiary in an executive capacity. Although the record contains an invoice and corresponding fund transfer showing that [redacted] paid the Petitioner approximately $4200 for providing services to [redacted] during a [redacted] film festival in 2021, the invoice does not provide the specific date of the service or list the service(s) that were purportedly provided, thereby detracting from its evidentiary weight.

Next, we turn to the Petitioner's sales forecast and personnel plan. In the RFE, the Director noted that although the Petitioner's sales forecast includes revenues for transportation services, "VIP Services," personal chauffer and shopper services, and luxury armored vehicles, the personnel who would perform the underlying tasks associated with those services were not projected to be hired during the Petitioner's first year of operation.[3] Although the Petitioner provided additional revenue projections and hiring timetables in its RFE response, the new information is inconsistent with the revenue and personnel projections in the original business plan. Specifically, we note that the business plan does not include a "VIP Security Team," chauffeurs, "VIP housekeepers," or a recruiting and training

[3] The Petitioner stated that the Beneficiary would be responsible for providing travel planning services during the first year of operation, thus accounting for revenues that the Petitioner expected to generate from travel planning.

development manager as part of the Petitioner's first-year personnel plan. The projections submitted in the RFE response, however, show that the Petitioner plans to hire part-time staff to fill the first three positions and a full-time employee with an annual salary of $33,000 to fill the recruiting and training position. The new plan also alters the Petitioner's revenue forecast to only include revenue from travel planning and luxury armored vehicles. As noted earlier, the original business plan included these services in addition to transportation services, "VIP Services," and personal chauffer and shopper services. The Petitioner does not address these inconsistencies on appeal, thus leaving us to question the Petitioner's plan for hiring and generating revenue during its first year of operation. *See Ho*, 19 I&N Dec. at 591-92 (stating that inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies).

We also note that the original personnel plan shows that the chief marketing and operations officer, who is also named as the Petitioner's minority owner, will have an annual starting salary of $58,000, which will progressively increase to $70,499 in the Petitioner's fifth year of operation. The projections submitted in response to the RFE, however, exclude the term "marketing" from the position title and show a significantly higher annual salary, which starts at $80,000 in the first year and increases to $97,241 in the fifth year of operation. The Petitioner neither acknowledges nor explains the basis for the altered revenue and personnel projections. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Further, as noted by the Director, eligibility must be established at the time of filing the petition. 8 C.F.R. § 103.2(b)(1).

As stated earlier, the Petitioner must demonstrate that the proposed position is plausible based on its anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). In the matter at hand, the Petitioner has provided a deficient business plan and evidence that offers inconsistent information regarding the company's funding, personnel plan, and means for generating revenue in its first year of operation. Despite the arguments made on appeal, the anomalies catalogued above lead us to question whether the Petitioner established at the time of filing that it had the means to subsidize its operation and commence doing business as claimed.

In sum, the new office regulations are premised on the understanding that a new company will progress to a stage of development where it will be able to support a beneficiary in a managerial or executive capacity. Here, the Petitioner provided a deficient business plan that lacks adequate information about how its projected staff and funding during its first year of operation will enable the Petitioner to meet its financial burdens and revenue projections so that it could support the Beneficiary in an executive capacity within one year of the petition's approval.

B. Job Duties

We also reviewed the job descriptions of the Beneficiary and his projected subordinates and find the evidence to be insufficient to establish that the Beneficiary would perform primarily executive job duties within one year of the petition's approval.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the

full range of managerial or executive responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment and to establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

Here, although the business plan states that the Beneficiary will be employed in an executive capacity within one year of this petition's approval, the Petitioner has not adequately described the Beneficiary's job duties or explained what specific actions the Beneficiary will perform during the company's first year of operation to ensure its progression beyond the new office phase of development. For instance, the job duty breakdown included in the business plan states that the Beneficiary would allocate 10% of his time to each of the following: Setting objectives and procedures, establishing business goals and targets, directing employee training, and overseeing personnel recruitment. However, the Petitioner did not identify specific policies, objectives, goals, or targets or explain why setting these would be a routine part of the Beneficiary's daily or weekly activity. The Petitioner also did not specify how the Beneficiary will direct employee training and oversee staff recruitment. The Petitioner assigned an aggregate 20% of the Beneficiary's time to four other equally vague job duties, including managing the company "to ensure all staff is following the necessary procedures," "[c]oordinating between employees . . . to ensure that everything runs smoothly," "[d]evising a strategy for being time efficient and reduce costs," and developing and implementing policies and regulations.

Although the job duties discussed above indicate that the Beneficiary will have discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, it is unclear what actual tasks he will perform within the scope of the Petitioner's business during its developmental phase. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). As indicated earlier, it is the Petitioner's burden to establish that it will support an executive position within one year of the petition's approval. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

On appeal, the Petitioner restates the statutory definition of executive capacity and argues that most of the Beneficiary's duties "are related to operational and policy management" and will not involve supervision of lower-level employees or other operational duties. However, the Petitioner has not provided a detailed account of the Beneficiary's first-year tasks and directives explaining what specific steps he would take to ensure the Petitioner's progression beyond the developmental phase. As such, we are unable to conclude that the Petitioner will have the ability to support the Beneficiary in a position that will primarily entail executive job duties within one year of the petition's approval.

III. QUALIFYING RELATIONSHIP

Finally, while not addressed in the Director's decision, our review of the record showed several anomalies concerning the Petitioner's ownership, thereby leading us to question whether the Petitioner

has a qualifying relationship with the Beneficiary's foreign employer as claimed. To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or that they are related as a "parent and subsidiary" or as "affiliates." *See* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

In the present matter, the Petitioner claims that it is a subsidiary of ADES, the Beneficiary's foreign employer. The term "subsidiary" applies to a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, and controls that entity. *See* 8 C.F.R. § 214.2(l)(1)(K).

Despite claiming to be a subsidiary of [redacted] the Petitioner provided a confusing and inconsistent ownership breakdown in section 1, no. 10 of the Form I-129, L Classification Supplement. Specifically, the Petitioner stated the following:

> [redacted]: 98% of shares issued to [the Petitioner] and 2% of shares [redacted].
> [redacted]: 98% of shares issued to [the Beneficiary] and 2% issued to [redacted]

The above breakdown appears to pertain to the ownership of the foreign entity and in the first iteration seems to indicate that the Petitioner has an ownership interest in [redacted] rather than the other way around. In contrast to the claims in the L Classification Supplement, the record contains a statement from [redacted] who signed the statement on behalf of the Petitioner in her claimed capacity as the Petitioner's "member." In the statement, [redacted] claimed that she owns 20% of the Petitioner and that [redacted] owns 80%, thus indicating that [redacted] is parent to the Petitioner. This claim is inconsistent with section 3.1 of the Petitioner's operating agreement, which states that [redacted] owns 9800 shares, or 98%, of the 10,000 issued shares, while [redacted] owns 200 shares, which comprises 2% of the Petitioner's ownership. Although this information is reiterated in Schedule A of the shareholder agreement, it is inconsistent with the purchase agreement, which contains a different ownership breakdown. Namely, while it states that [redacted] has a 98% ownership interest in the Petitioner, section 2.2 of that agreement states the following regarding [redacted] ownership interest: "two hundred (200) membership units, representing 20% of the company ownership issued to [redacted]

The Petitioner also issued two membership certificates – certificate no. 01 to [redacted] and certificate no. 02 to [redacted] – but only certificate no. 01 is consistent with the operating, shareholder, and purchase agreements. Certificate 02, however, is inconsistent both internally and with the operating, shareholder, and purchase agreements. Namely, the numerical ownership distribution depicted on the upper right-hand corner shows "2,000" as the number of shares issued to the recipient, while the written portion of the certificate states the following: "This certifies that [redacted] is the owner of nine thousand eight hundred out of ten thousand shares . . . ." It is noted that neither 2000 nor 9800 is representative of a 2% ownership of a company claiming to have issued a total of 10,000 shares. Further, if [redacted] is owner of 9800 shares, as the written portion of certificate no. 02

indicates, this information is entirely inconsistent with the above-described documents, where [redacted] was claimed as owner of 9800 shares.

IV. CONCLUSION

Although the evidentiary deficiencies regarding the Petitioner's ownership will not serve as a basis for the dismissal of this appeal, the Petitioner will need to address them in any future filing where qualifying relationship is part of the eligibility criteria.

Further, for the reasons discussed above, we conclude that the Petitioner has not established that the Beneficiary will be employed in an executive capacity within one year of the petition's approval.

ORDER: The appeal is dismissed.