



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 25034015

Date: APR. 06, 2023

Appeal of California Service Center Decision

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

The Petitioner, a restaurant and food services business, seeks to temporarily employ the Beneficiary as the chief executive officer (CEO) of its new office 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 California Service Center denied the petition, concluding that the record did not establish that the Petitioner would employ the Beneficiary in a managerial or executive capacity within one year. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 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). A petitioner seeking approval of an L-1A new office petition 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).

The record reflects that the petitioning company was established in Hawaii in [] 2020 and became a subsidiary of the Beneficiary's foreign employer in China in [] 2021, when the foreign entity made a \$350,000 capital contribution to acquire 55% of its shares. The Petitioner filed this petition in September 2021 requesting that the Beneficiary, its proposed CEO, be granted one year in L-1A classification commencing from the date of approval. The Petitioner indicated that it would be operating a new Chinese hot pot restaurant in [] Hawaii under the trade name [] []. It provided evidence that its minority owner is the registered owner of this trade name and was already operating several successful restaurants in Hawaii under the same business model.

The Director denied the petition concluding that the Petitioner's evidence did not establish that the intended U.S. operation, within one year of the approval of the petition, would support a managerial or executive position. In reaching this determination, the Director observed that: (1) the submitted duty descriptions for the Beneficiary and his direct subordinate were not sufficiently detailed and appeared to involve some similar or overlapping responsibilities; and (2) there were unexplained inconsistencies in projected staffing levels when comparing the Petitioner's business plan submitted at the time of filing to the foreign entity's project investment plan for the new office, which was submitted in response to the Director's request for evidence (RFE).

On appeal, the Petitioner asserts the evidence of record is sufficient to establish that the Beneficiary's proposed employment will involve executive or managerial authority over the new operation, as required by 8 C.F.R. § 214.2(l)(3)(v)(B). The Petitioner further contends that Director did not consider all relevant factors set forth at 8 C.F.R. § 214.2(l)(3)(v)(C) in reviewing whether the intended U.S. operation, within one year of approval of the petition, would support an executive or managerial position. Finally, the Petitioner addresses the Director's concerns regarding perceived inconsistencies in its proposed staffing levels and submits new evidence documenting the employees it hired leading up to the opening of its restaurant. The Petitioner emphasizes that this evidence demonstrates its business was operating within one year of filing the new office petition and that it has already exceeded its projected staffing levels for the first year of operations.

Upon review, we will withdraw the Director's decision and remand the matter to the Director for issuance of a new decision. We note that the newly submitted evidence of the company's staffing levels was not previously available to the Petitioner at the time it responded to the Director's RFE. Given the prospective nature of an L-1A new office adjudication, the evidence is relevant to an analysis of the Petitioner's eligibility for the benefit sought. Therefore, the Director is the appropriate party to review this new evidence and to consider its impact on the Petitioner's eligibility in the first instance.

We also agree that the Director's stated reasons denial were based on a limited review of the record and did not consider all relevant evidence submitted in support of the new office requirements at 8 C.F.R. § 214.2(l)(3)(v)(B) and (C). The Petitioner has consistently emphasized that the foreign entity made a significant investment in the U.S. operation and that its restaurant business will be relying on an established brand and business model that has already proven to be successful in the targeted market. While these factors alone are not determinative, evidence regarding the size of the investment and the nature of the business should be evaluated along with evidence of the Beneficiary's authority over the new operation, its financial ability to commence operations, and its proposed organizational

structure. As noted, the Director's decision was based primarily on a determination that the Beneficiary's job description lacked detail and perceived inconsistencies in the company's projected staffing levels. As the matter will be remanded for the Director to review the new evidence submitted on appeal, the Director should also consider all previously submitted evidence before issuing a new decision.

One additional issue not previously raised relates to the ongoing role of the Petitioner's minority owner and president in the new company's day-to-day business operations. The record reflects that this individual founded and registered the trade name and developed the business model that will be used by the Petitioner's restaurant, and that he already owns and operates several similar restaurants in Hawaii. It appears that he has retained full ownership of these separate businesses. Despite indicating that its president owns and operates several other businesses which would reasonably require his involvement, the Petitioner claims that it will employ him on a full-time basis and rely on him to oversee operations at its restaurant location in [REDACTED]. The Director may request additional evidence to clarify the president's expected ongoing role in the operation of the [REDACTED] restaurant, including whether he would continue in that role following the Beneficiary's transfer to the United States.

The Petitioner has also referred to its own plans to expand the existing restaurant brand to include franchised restaurants and manufacture of packaged hot pot seasoning for retail distribution. However, the only documented partnership between the Petitioner's organization and the brand's registered owner relates to their shared ownership of a single restaurant. Further, the staffing and financial projections contained in the Petitioner's three-year business plan do not account for business activities beyond the operation of the [REDACTED] restaurant location. Additional evidence would be required to support the Petitioner's claim that the Beneficiary's role would reasonably extend to the overall brand expansion activities within that timeframe. Therefore, the Director may request additional evidence to clarify the intended nature and scope of the petitioning company's operations for the first year of operations.

For the reasons discussed, we are remanding the matter for further consideration by the Director. The Director may issue a new RFE and following the Petitioner's response thereto or the expiration of the time period for response, issue a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.