U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27292141

Date: JUNE 29, 2023

Appeal of California Service Center Decision

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

The Petitioner, a Taiwanese entity, intends to open and operate a U.S. business that will engage in the "production of machinery for industrial and vehicular heat exchangers." It seeks to transfer the Beneficiary to be employed temporarily as project manager at the new office[1] in the United States 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 that the U.S. entity would be able to support the Beneficiary in a managerial or executive capacity within one year of the petition's approval. Namely, the Director determined that the Petitioner did not provide sufficient evidence showing that the new office in the United States would be adequately funded and would be able to commence operations. The Director noted that although the Petitioner calculated over $51,500 in operating expenses for the new office's first year, it provided no evidence showing that it made monetary contributions to cover those expenses at the time this petition was filed. 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 dismiss the appeal.

On appeal, the Petitioner asserts that it has incurred expenses totaling approximately $65,000, which include "local expenses for the housing and office" since January 2022 in addition to the cost of purchasing a car and car insurance, "machinery and materials," and warehouse space.[2] The Petitioner states that separate from these expenses, the Beneficiary also covered expenses totaling $116,000 to "continue developing" the company where he seeks to assume his proposed position. The Petitioner attributes the list of expenses to the start-up of operations in the United States and formation of the

[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] The cost of the car and auto insurance were said to be $22,000, while the remaining costs were estimated at $43,000.

intended U.S. employer. The Petitioner explains that because the U.S. company did not have an employment identification number (EIN), funds were being transferred directly to the Beneficiary pending the U.S. entity's acquisition of an EIN at which time the Petitioner intended to "officially make the capital transfers" to the U.S. entity.

The Petitioner also provides new evidence, which includes an Articles of Organization showing that [redacted] the intended U.S. employer, was formed in [redacted] 2023 at which time the newly formed entity listed the Beneficiary's residential address as its "Principal Address." Other evidence includes vehicle registration and an auto insurance policy naming the Beneficiary as the insured, as well as a letter from an organization titled "Contractor Campus" recommending that the U.S. entity obtain an air conditioning contractor license.

The record, including the statements and evidence submitted on appeal, shows that [redacted] was formed in [redacted] 2023 and thus it did not yet exist in October 2022, when the instant petition was filed. As such, there is no meaningful way to determine whether the intended U.S. operation was adequately funded at the time of filing, nor can we gauge whether U.S. employer would likely be able to support a managerial or executive position within one year of the petition's approval. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

Accordingly, 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).

We further note that the record shows several additional deficiencies that were not discussed in the Director's decision. First, because the intended U.S. employer did not yet exist when this petition was filed, the Petitioner could not have been a qualifying organization that was party to the requisite qualifying relationship with the intended U.S. employer at the time of filing. *See* 8 C.F.R. § 103.1(b) (requiring that eligibility for the requested benefit be established at the time of filing); *see also* (8 C.F.R. § 214.2(l)(1)(G) (for definition of the term "qualifying organization"), and 8 C.F.R. § 214.2(l)(3)(iii) (requiring that the foreign employer be a "qualifying organization").

The record also lacks evidence that sufficient physical premises had been secured to house the intended U.S. operation, as required. 8 C.F.R. § 214.2(l)(3)(v)(A). Despite the Petitioner's claim on appeal that a "housing lease contract" was submitted originally in support of the petition and further assertions that payments had been made for "local expenses for the housing and office," the only evidence of "housing" includes a residential lease that lists the Beneficiary as the lessee and shows that the only permissible use of the leased premises was "for . . . private residence only." Although the Petitioner also provided a lease for office and warehouse space in [redacted] Florida, the lease listed [redacted] as the tenant. The Petitioner did not explain what relevance, if any, this individual had with respect to the U.S. employer or to the Beneficiary; nor did the Petitioner explain the relevance of this lease given that it was executed in June 2022 and thus predates the filing of this petition and formation of the intended U.S. employer by [redacted] months and [redacted] months, respectively.

Finally, on the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner listed the Beneficiary's proffered wage as $1500 per month, which is equivalent to $8.65 per hour and is below Florida's 2022 minimum wage of $11 per hour. *See* https://www.dol.gov/agencies/whd/minimum-wage/state#fl. We note that an employment-based visa petition cannot be approved where the record indicates that a beneficiary will not be compensated the minimum wage required by applicable labor law. *Matter of I- Corp.*, Adopted Decision (AAO Apr. 12, 2017). The Petitioner's offer to compensate the Beneficiary at a rate that is below the minimum wage in Florida, where the intended employer is located, indicates that the offered position would not be in compliance with applicable labor law thus further indicating that this petition may not warrant approval.

While the additional deficiencies discussed above are not grounds for our dismissal of this appeal, the Petitioner will be required to address such deficiencies in any future filings, whether in further pursuit of the instant petition or with regard to any other employment-based petition where the above-listed issues are relevant to eligibility.

ORDER: The appeal is dismissed.