U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25857036

Date: MAY 11, 2023

Appeal of California Service Center Decision

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

The Petitioner, a logistics and freight forwarding company, seeks to temporarily employ the Beneficiary as its chief executive officer 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: (1) the Beneficiary will be employed in the United States in a managerial or executive capacity; and (2) the Beneficiary has been employed abroad in a capacity that is managerial, executive, or involves specialized knowledge.[1] 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, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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 also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

[1] The Director also concluded that the Beneficiary is not eligible to change nonimmigrant status, because his prior B-1 nonimmigrant status had expired. The regulations do not provide an appeal process for the denial of a change of status, which is administratively separate from the nonimmigrant visa petition. Therefore, we have no jurisdiction over this issue.

The Petitioner asserts that the Beneficiary has been employed abroad, and will be employed in the United States, in an executive capacity. We therefore need not consider the separate requirements relating to specialized knowledge and managerial capacity. The Director determined that the Petitioner did not establish that the Beneficiary's employment abroad and his proposed employment in the United States met the requirements of an executive capacity.

"Executive capacity" means a position 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.

If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary has been or will be *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether the beneficiary's duties were or will be primarily executive, we consider the description of the job duties, the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding the beneficiary's actual duties and role in the business.

The Petitioner submitted a three-page job description for the proposed U.S. position, identifying nine responsibilities, each with an explanatory paragraph. In the denial notice, the Director listed the nine responsibilities and determined that the Petitioner did not "specifically explain or discuss how the beneficiary will direct the management of the U.S. company on a day-to-day basis," and "did not explain how the beneficiary will direct the activities to be performed."

On appeal, the Petitioner observes that, while each of the listed responsibilities included an explanatory paragraph, the Director's "[d]enial takes the titles of each of the duties . . . and puts them in a single block quote and then states that this description is insufficient." We agree with the Petitioner that the Director did not fully develop the discussion of the Beneficiary's intended duties. We make no finding that the job description was adequate; several of the listed items are short-term, one-time projects rather than ongoing duties, and some of the others relate to tasks such as quarterly meetings that would occupy minimal time overall. But 8 C.F.R. § 103.3(a)(1)(i) requires the Director to explain the specific reasons for denial, and the denial notice in this case is not sufficiently detailed to allow the Petitioner the opportunity to fully understand the basis of denial and to prepare an appeal.

With regard to the Petitioner's staffing, the Director questioned the company's payroll documentation for several reasons. The Director noted: "Of the 131 names that are listed, the report shows that 97 of the employee names [are] listed [in] 'TERMINATED' status. . . . [I]t appears that more than half of the U.S. company's employees are no longer employed at the U.S. company." This analysis is missing crucial context from the record. At the time of filing, the Petitioner indicated that the company had approximately 34 employees, which is the difference that remains after subtracting the 97 terminated employees from the larger total of 131. There is no indication that the Petitioner attempted to inflate its staff size by counting terminated employees among its current staff. We agree with the

Petitioner that the payroll records are cumulative, showing past as well as present employees. IRS Form W-2 Wage and Tax Statements issued to terminated employees do not necessarily raise credibility issues either, in the absence of further information, because wages previously paid to a terminated employee would still be reported on Form W-2 at the end of the year.

The Director also observed that many of the employees "do not reside near the U.S. company address," which the Director concluded was in [redacted] Florida. The Florida address on the Forms W-2 belongs to a contracted payroll company; the record shows that the Petitioner is located in California. The Petitioner, on appeal, explains that most of the employees reside in California near the Petitioner's location, while the remaining few work remotely on sales and administrative tasks that do not require the employees' presence on-site.

As shown above, the Director's determination about the Beneficiary's intended U.S. employment appears to rest, in part, on erroneous assumptions and interpretations of the record. Therefore, we will withdraw that determination.

The Director's conclusions about the Beneficiary's employment abroad are based on the Beneficiary's employment as general manager of the foreign parent company from February 2020 to May 2021. Government records, however, show that the Beneficiary was in the United States for much of that time, from October 9, 2020 to March 24, 2021, and therefore he did not have the statutory minimum of one continuous year of employment abroad in that position. Therefore, the Director must consider the Beneficiary's earlier position as risk and compliance manager from December 2018 to February 2020. In doing so, the Director must take into account evidence newly submitted on appeal. The Petitioner submitted this additional evidence regarding this earlier employment after we notified the Petitioner that the Beneficiary did not accumulate enough continuous experience as general manager in 2020-2021. The Director, rather than the Administrative Appeals Office, should make the first determination as to whether or not the Beneficiary's 2018-2020 experience abroad as risk and compliance manager was in a qualifying capacity.

For the reasons listed above, we will remand this matter for the Director to consider whether the Beneficiary's employment abroad from December 2018 to February 2020, and his intended position in the United States, meet the requirements of an executive capacity.

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