U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22652176

Date: SEP. 13, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a clothing importer and distributor, seeks to continue the Beneficiary's temporary employment in the position of vice president and manager under the L-1A nonimmigrant classification for intracompany transferees.[1] *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, as required, that the Petitioner would employ the Beneficiary in a managerial or executive capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc*., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will summarily dismiss the appeal.

As noted, the Director determined that the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity, as defined at section 101(a)(44)(A) or (B) of the Act. In reaching this conclusion, the Director considered the Beneficiary's proposed job duties, the nature of the Petitioner's clothing import and distribution business, and the staffing of the entity at the end of its first year of operations. The Director emphasized that the record did not show that the company had employed anyone other than the Beneficiary to date or that the operations had developed to the point where it would have a reasonable need for the Beneficiary to perform primarily managerial or executive duties, rather than the day-to-day operational activities of the company. The Director acknowledged the Petitioner's statement, made in response to a request

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period May 24, 2019, until May 23, 2020. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

for evidence (RFE), that it had deferred hiring staff until 2021-2022 because of the impact of COVID-19. However, the Director emphasized that the record must establish the Petitioner's and Beneficiary's eligibility at the time of filing.

The Petitioner timely filed the appeal on November 17, 2021. The Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that it would submit a brief and/or evidence to the Administrative Appeals Office (AAO) within 30 days of filing the appeal. As of this date, the record reflects that the Petitioner did not submit a brief. On the Form I-290B, the Petitioner included the following statement as the basis for its appeal:

> Substantial evidence was submitted (and overlooked in the decision) showing that, due to both consular delays in initial L-1A visa issuance as well as the unprecedented difficulties in shipping and distribution resulting from the COVID pandemic, it was impossible for the beneficiary to implement the company's first year business plan.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On appeal, the Petitioner does not specifically an erroneous conclusion of law or statement of fact regarding the Director's conclusion that the record did not establish, as of the date of filing, that the Beneficiary would be employed in a managerial or executive capacity. In fact, the Petitioner concedes that it did not carry out the business plan that formed the basis of the prior "new office" petition approval. While it appears that the Petitioner intended to further articulate the basis for the appeal by submitting a brief to this office, we have not received a brief. Accordingly, we will summarily dismiss the appeal.

We will nevertheless briefly address the Petitioner's statement on the Form I-290B. The Petitioner appears to suggest that it should be exempt from meeting the requirements for extending its new office petition due to external factors that delayed the implementation of its business plan. Specifically, the Petitioner asserts that it documented the impact of consular delays and COVID-19 on its operations.

As noted above, the Director did in fact acknowledge the Petitioner's contention that its operations had been impacted by the COVID-19 pandemic and explained why the claim was not persuasive. Further, the Petitioner made no previous contention that a delay in the processing of the Beneficiary's L-1 visa substantially disrupted its plans for its first year of operations. Therefore, the record does not support the Petitioner's assertion that the Director overlooked or ignored such claims.

The Petitioner's new office petition was approved for a one-year period beginning at the end of May 2019. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. Therefore, the Petitioner was expected to implement its first-year business plan during this 2019 to 2020 period and to demonstrate at the time of filing its request for an extension that it had made sufficient progress to support the Beneficiary in a role that satisfies the statutory definition of managerial or executive

capacity. The record reflects that the Beneficiary received his L-1 visa approximately two months after the new office petition was approved and was admitted to the United States in August 2019. The Petitioner's business plan indicated that the company intended to fill approximately 10 positions during its initial year of operations. The Petitioner indicated on the Form I-129 that it had two employees as of April 2020 but did not document that it had paid anyone other than the Beneficiary in 2019 or 2020 or document its efforts to carry out its hiring plan during its first year of operations, most of which pre-dated the pandemic-related restrictions.

We acknowledge that the COVID-19 pandemic posed challenges for both new and established businesses and that it reasonably could have impacted the company's growth in the last three quarters of 2020; however, it does not explain why the Petitioner could not implement its business or hiring plan as intended in 2019 or the first quarter of 2020. Further the Petitioner cites no USCIS policies or announcements that would suspend, prolong, or renew the one-year new office period mandated by the regulations, or remove the requirements applicable to new office extensions pursuant to 8 C.F.R. § 214.2(l)(14)(ii).

We will summarily dismiss the appeal because the Petitioner did not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision as a basis for the appeal.

ORDER: The appeal is summarily dismissed under 8 C.F.R. § 103.3(a)(1)(v).