



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

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

In Re: 19791519

Date: MAR. 01, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of specialty architectural services, seeks to temporarily employ the Beneficiary as chief executive officer (CEO) of its new office¹ 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 Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that (1) it has secured sufficient physical premises to house the new office; and (2) the Beneficiary has been employed abroad 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). The Administrative Appeals Office (AAO) reviews 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

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.*

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.

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. ANALYSIS

The issues before us on appeal are whether the Petitioner has established by a preponderance of the evidence that: (1) it has secured sufficient physical premises to house its new office in the United States; and (2) the Beneficiary had been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition in May 2020.

A. Physical Premises

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(A) requires a petitioner to submit evidence that it has secured sufficient physical premises to house its new office.

The Petitioner submitted a copy of its service agreement with [REDACTED] which reflects that it had secured an office suite in [REDACTED] as of January 2020. In response to a request for evidence (RFE), the Petitioner documented its monthly payments under the terms of the agreement and provided evidence that it amended its existing agreement to include a second office suite in June 2020. The service agreement indicates an “initial term” of one year.

In denying the petition, the Director emphasized that the Petitioner requested that the Beneficiary be granted L-1A status with a commencement date of August 1, 2020, and therefore must establish that it had secured physical premises for at least one year beyond that date. The Director observed that, since the Petitioner’s existing service agreement ends in January 2021, the Petitioner did not establish that it had secured physical premises “through the full first year of employment.”

A review of the Petitioner’s agreement with [REDACTED] indicates that its “initial term,” and the discounted monthly fee associated with that initial term, would end on January 27, 2021, after which time, the monthly rate would “revert to market rate.” The agreement explicitly states that it “does not automatically end” at the end of one year unless terminated by the client with written notice. Therefore, we conclude that the Petitioner’s agreement for physical premises does not have a firm ending or expiration date of January 2021 and would in fact continue until such time the company opts to terminate it. As the perceived January 2021 expiration of the service agreement was the sole basis for the Director’s conclusion that the Petitioner had not satisfied the regulatory requirement at 8 C.F.R. § 214.2(l)(3)(v)(A), that conclusion will be withdrawn.

B. Employment Abroad in an Executive Capacity

The remaining issue addressed in the Director’s decision is whether the Petitioner established that the Beneficiary has been employed abroad in a managerial or executive capacity as required by 8 C.F.R. § 214.2(l)(3)(v)(B).

The Petitioner provided evidence that its Greek affiliate has employed the Beneficiary as its CEO since 2011 and has consistently asserted that the position is in an executive capacity as defined at section 101(a)(44)(B) of the Act. The Petitioner provided a letter from the foreign entity describing the Beneficiary's duties as CEO, and further expanded on the initial position description in its response to the Director's RFE. The record also contains the foreign entity's organizational chart, which depicts the Beneficiary's position at the top of a multi-layered structure in which he directly supervises subordinate executive or senior management positions, who in turn supervise subordinate managers and staff engaged in commercial, design, production, procurement, logistics, finance/accounting and human resources activities. In addition, the Petitioner submitted a four-year business plan for the foreign entity and its affiliate and branch operations, which describes the history of the company and the nature and scope of the Greek entity's business and operations, as well as evidence of the foreign entity's financial status.

The Petitioner contends that the Director erroneously applied the requirements of the statutory definition of "managerial capacity" at section 101(a)(44)(A) of the Act, despite its consistent assertions that the Beneficiary has been employed in an executive capacity. A review of the denial decision supports the Petitioner's assertion that the Director's analysis was significantly focused on whether the evidence supported a determination that the Beneficiary has been employed abroad as a personnel manager or as a function manager pursuant to the definition of "managerial capacity."

Under the statutory definition of "executive capacity," 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.*

Upon review of the Beneficiary's position description, the foreign entity's organizational charts, the Petitioner's supporting letters, and the detailed information regarding the nature and scope of the foreign entity's operations, we conclude that the Petitioner has met its burden to establish that the Beneficiary, more likely than not, has been employed abroad in an executive capacity. The record establishes that his position requires him to direct the management of the organization as a whole and to establish its goals and policies, with supervision only from the company's board of directors. The record further supports the Petitioner's claim that the Beneficiary exercises wide latitude in discretionary decision-making at the highest level, and that he has subordinate managers to oversee financial, commercial, and operational staff and activities, such that he is relieved from any significant involvement in non-executive tasks. Accordingly, we will withdraw the Director's determination that the Petitioner did not establish that the Beneficiary has been employed abroad in a qualifying capacity.

III. BASIS FOR REMAND

Although we withdraw both grounds for denial addressed in the Director's decision, we cannot sustain the appeal based on the record as presently constituted. Accordingly, the matter will be remanded to the Director for further review and entry of a new decision.

To qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature and scope of the new entity, its proposed organizational structure, and its financial goals. A petitioner opening a "new office" must also document the size of the U.S. investment and 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).

The Petitioner submitted a lengthy "Business Plan Update" for 2019-2013 which provides an overview of plans and ~~financial projections~~ for its Greek affiliate and includes references to its international operations in [] [] and the United States. However, the business plan primarily focuses on the Greek affiliate and does not provide any specific information regarding the size of the investment in the U.S. subsidiary, its financial goals and objectives, its proposed staffing plan for the first year of operations, its anticipated organizational structure, and the nature and scope of its planned activities for the first year. The business plan identifies one or two upcoming projects in the United States and the Petitioner provided a copy of one signed contract, but this evidence alone is insufficient to demonstrate that the company will have the staff, structure, and operations to support an executive position within one year. In fact, the "sector analysis" section of the business plan states that the U.S. market "offers limited potential for any upcoming projects." The Petitioner has not sufficiently disclosed its plans for the new office.

Without the required information regarding the proposed nature and scope of the new U.S. entity, its proposed organizational structure, and its financial goals, we cannot determine whether there is a realistic expectation that the company will develop to the point where it will support an executive level position within one year. Further, the Petitioner has requested that it be granted a two-year approval for its new office due to concerns that its growth will be impacted by the COVID-19 pandemic, which raises questions as to whether it anticipates achieving sufficient growth during its first year to support the Beneficiary's proposed executive position. As noted, 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; a two-year "new office" validity period cannot be granted.

For these reasons, we cannot conclude that the Petitioner met its burden to establish that it would support an executive position within one year of the approval of its new office petition. Accordingly, we will remand the matter to the Director for further review. The Director should allow the Petitioner an opportunity to submit additional evidence that relates to the issues discussed above before issuing a new decision.

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