U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23332499

Date: DEC. 13, 2022

Appeal of California Service Center Decision

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

The Petitioner, a design and trading business, seeks to continue the Beneficiary's temporary employment as its "CEO" 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.[1] *See* 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, as required, that the Beneficiary would be employed in the United States 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. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

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. To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge 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)(1). The prospective U.S. employer must also be a qualifying organization that seeks to employ a beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(i). In addition, a petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

In the denial, the Director found that the Petitioner provided a deficient job description that did not include the amount of time the Beneficiary would dedicate to his assigned job duties, some of which

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for a one-year period from February 22, 2021, February 21, 2022. 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.

the Director found to be operational rather than managerial or executive in nature. The Director also discussed the Petitioner's current staffing and questioned the organization's ability relieve the Beneficiary from having to primarily perform non-qualifying job duties.

On appeal, the Petitioner resubmits its organizational chart and provides a job duty breakdown with a percentage of time assigned to individual job duties. Although we acknowledge the Petitioner's submission of a new iteration of the Beneficiary's job description on appeal, the Petitioner neglected to provide this evidence when it was first requested in the RFE. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the Petitioner had wanted the submitted evidence to be considered, it should have submitted such evidence in response to the Director's request for evidence. *Id.* Under the circumstances, we need not and do not consider the sufficiency of the new iteration of the job duty breakdown. We further note that the Petitioner does not explain how the Director erred in the denial analysis and instead explains why it has not undergone the level of expansion it originally expected.

The reason for filing an appeal is to provide an affected party with the means to remedy what it perceives to be an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v). Here, the Petitioner does not identify specific aspects of the denial that it considers to be incorrect; instead, the Petitioner focuses on employee job duties and explains why its organization did not adequately develop during its first year of operation. In sum, the arguments and evidence submitted on appeal, either standing alone or viewed in totality with the underlying record, are not sufficient to meet the Petitioner's burden of establishing that it would employ the Beneficiary in a managerial or executive capacity under an approved petition.

For the reasons discussed above, we have determined that the Petitioner has not demonstrated that the Beneficiary would be employed in the United States in a managerial or executive capacity. Upon consideration of the record, we adopt and affirm the Director's decision. *See, e.g., Matter of Burbano*, 20 I&N Dec. 872,874 (BIA 1994) (noting that the "independent review authority" of the Board of Immigration Appeals (Board) does not preclude adopting or affirming the decision below "in whole or in part, when [the Board is] in agreement with the reasoning and result of that decision"); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (noting that, "[a]s a general proposition, if a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by" the decision below, "then the tribunal is free to simply adopt those findings" provided the tribunal's order reflects individualized attention to the case").

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here, and the petition will remain denied.

ORDER: The appeal is dismissed.