



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

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

MATTER OF IPC- LLC

DATE: DEC. 30, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a company engaged in construction and remodeling, seeks to temporarily employ the Beneficiary as its operations manager and to classify her as an L-1A nonimmigrant intracompany transferee. See Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The Director's decision will be withdrawn and the matter will be remanded to the Director for further proceedings and for the entry of a new decision.

The Director concluded that the evidence of record did not establish: (1) that the Beneficiary was employed abroad in a managerial or executive capacity for one year within the three years preceding the time of this application; and, (2) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. 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, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

II. ISSUES ON APPEAL

A. New Office Requirements

As a preliminary matter, we will address whether the Petitioner qualifies as a “new office” in the United States.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(F) defines “new office” as an organization which has been doing business in the United States through a parent, branch, affiliate or subsidiary for less than one year. Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H), “doing business” means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office in the United States and abroad.

If a petitioner indicates that a beneficiary is coming to the United States to open a “new office,” it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a “new office,” a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

The “new office” regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. By contrast, a petitioner that has been doing business in the United States for more than one year is required to meet all eligibility requirements as of the date of filing.

The Petitioner filed the Form I-129 on January 20, 2015. On the Form I-129, the Petitioner marked “no” where asked if the Beneficiary is coming to the United States to open a new office.

(b)(6)

Matter of IIPC- LLC

The Petitioner provided evidence that it was incorporated in the [REDACTED] on January 31, 2012. In a letter of support dated January 12, 2015, the Petitioner stated the following regarding its business operations:

[The Petitioner] was established in January 2012. [REDACTED] was the single member of [the Petitioner]. It conducted business from its sole member's house and had no employees.

On October 31, 2014, [the foreign company] purchased 51% of Membership Units in [the Petitioner] and contributed additional funds to it. Since that ti[m]e, in November 2014, [the Petitioner] purchased a new van to be used in its business. In December 2014, [the Petitioner] signed a lease and moved its place of business to a commercial business building.

The Petitioner also submitted its IRS Form 1120, U.S. Corporation Income Tax Return, for 2013 that indicated gross receipts of \$299,548. The Form 1120 also indicated compensation of officers in the amount of \$102,415, and \$85,713 paid in salaries and wages. The tax return described the company's business activity as "construction" and the product or service as "remodeling." The Petitioner also provided six IRS Forms 1099, Miscellaneous Income, for 2012, as evidence of payments to six individuals as non-employee compensation.

The Petitioner submitted evidence that it sold 51% of membership units to the Beneficiary's foreign employer on October 31, 2014. In addition, the Petitioner submitted a new operating agreement signed on October 31, 2014. However, the Petitioner did not submit any documentation to indicate that the purchase of membership units by the foreign entity led to the formation of a new legal entity.

The Director issued a request for evidence (RFE) on January 30, 2015. The Director acknowledged that the Petitioner filed the petition as an existing company, rather than as a "new office," but observed that the record did not include evidence to show that the U.S. entity had been doing business for at least one year at the time of filing. Therefore, the Director requested evidence to satisfy the regulatory requirements for a "new office" rather than addressing the requirements applicable to a petitioner filing as an existing business.

In response to the RFE, the Petitioner explained that it "started activity in 2012," that the foreign company purchased 51% of the Petitioner's membership units, and that the "goal is to elevate [the Petitioner] to the next level and to increase its revenues." The Director nevertheless applied the regulations applicable to a "new office" and denied the Petition based on a finding that the Petitioner did not establish that it could support a qualifying managerial or executive position within one year.

Upon review, the Petitioner does not qualify as a "new office" as defined at 8 C.F.R. § 214.2(l)(1)(ii)(F) since the Petitioner has been doing business as defined in the regulations since 2012. As evidenced by documentation submitted with the petition such as tax returns, IRS Forms

1099 for 2012, and evidence of business activities since 2012, the Petitioner is not eligible to file as a "new office."

As the Director failed to consider the evidence in light of the applicable regulations for an established business, the RFE was deficient and the decision was erroneously based on the Petitioner's lack of evidence to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. Accordingly, the Director's decision dated April 28, 2015 will be withdrawn, and the matter will be remanded to the Director for further proceedings and entry of a new decision.

B. Employment Abroad

In denying the petition, the Director noted that the Petitioner did not provide sufficient evidence that the foreign company employed the beneficiary in a qualifying managerial or executive capacity for one year within the three years preceding the filing of the petition. Specifically, the Director observed that the submitted pay summaries were not sufficient evidence to indicate payment for services rendered.

Upon review of the documentation, including additional evidence and explanation submitted on appeal, the Petitioner provided sufficient evidence to establish that the Beneficiary was employed with the foreign company for one year within the three years preceding the filing of the petition. The Director's conclusion to the contrary will be withdrawn.

III. CONCLUSION

At this time, we take no position on whether the Beneficiary qualifies for the classification sought. The Director must make the initial determination on that issue after issuance of a new request for evidence based on the evidentiary requirements for an existing business and review of the Petitioner's response.

Accordingly, we will withdraw the Director's decision and remand the petition to the Director for further review, issuance of a new request for evidence and entry of a new decision. As always in these proceedings, the burden of proof rests solely with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the Director, Vermont Service Center is withdrawn. The matter is remanded to the Director, Vermont Service Center for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of IIPC- LLC*, ID# 15138 (AAO Dec. 30, 2015)