



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

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

MATTER OF X- LLC

DATE: NOV. 5, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a new office planning to operate as a provider of digital marketing analytics services, seeks to classify the Beneficiary 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, California Service Center, denied the petition. The matter is now before us on appeal. The matter will be remanded for further consideration.

The Director denied the new office petition, concluding that the Petitioner did not provide sufficient evidence to establish that it has a qualifying relationship with the Beneficiary's employer abroad.

On appeal, the Petitioner asserts that the Director's denial of the petition on this basis was erroneous, and claims that it has demonstrated the existence of the requisite qualifying relationship by a preponderance of the evidence. The Petitioner submits a brief and additional evidence in support of this contention.

I. GROUND FOR DENIAL

The record shows that the Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, on November 20, 2014. After reviewing the Petitioner's supporting evidence, the Director determined that the petition did not warrant approval and therefore issued a request for evidence (RFE), dated December 1, 2014. The Director addressed a number of eligibility issues, including the Beneficiary's managerial or executive capacity during his employment abroad, the Beneficiary's proposed employment in the United States in terms of the Petitioner's ability to support the Beneficiary in a qualifying managerial or executive capacity within one year, and the Petitioner's qualifying relationship with the Beneficiary's employer abroad. The Petitioner complied with the Director's request, providing documents addressing these issues.

Subsequent to a review of the Petitioner's submitted evidence, the Director determined that the Petitioner did not provide sufficient evidence to establish that it has a qualifying relationship with the Beneficiary's employer abroad. The Director acknowledged the Petitioner's submission of two membership certificates, which indicate that the Petitioner originally issued its membership units to the Beneficiary, and the Beneficiary's subsequent transfer of ownership to his employer abroad. The Petitioner also submitted an agreement for sale of membership interests, which documented the

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transfer of ownership interest in the Petitioner from the Beneficiary to his foreign employer. Nevertheless, the Director focused on the record's lack of evidence showing that the foreign entity paid the Beneficiary the contract price of 100 rupees in exchange for the Beneficiary's sale of his ownership interest in concluding that the Petitioner had not established the existence of a qualifying relationship between the Beneficiary's U.S. and foreign employers. Further, the Director focused on a bank deposit of \$87,000 by [REDACTED] into the Petitioner's bank account, which the Director found to be inconsistent with the Petitioner's claim of being owned by the Beneficiary's employer abroad.

On appeal, the Petitioner contests the Director's finding, asserting that the Director misinterpreted the submitted evidence and that [REDACTED] deposit into the Petitioner's bank account is irrelevant to the issue of the Petitioner's ownership. The Petitioner further refers to a Statement of Work and corresponding invoice to establish that the \$87,000 bank deposit was evidence of services provided by the Petitioner for the benefit of [REDACTED]

As noted by the Petitioner on appeal, the "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the Director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Applying the preponderance of the evidence standard to the facts as presented in the instant record of proceeding, we find that the Petitioner has overcome the sole basis for denial as cited in the Director's decision. The Director's decision denying the petition is therefore hereby withdrawn.

II. BASIS FOR REMAND

Notwithstanding our decision to withdraw the Director's decision, we are unable to sustain the appeal as a result of evidentiary deficiencies that preclude an affirmative finding of eligibility. Namely, we find that the record lacks sufficient evidence to show that the Petitioner would support a qualifying managerial or executive position within one year of approval of the petition.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby 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). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

While the Petitioner has submitted a general business plan in support of the petition, the submitted evidence does not sufficiently describe the scope of the entity, its proposed organizational structure and its financial goals. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(I). The business plan lacks a clear timeline for hiring personnel and does not include descriptions of the prospective employees' job duties or educational credentials to establish whether the Beneficiary would oversee the work of subordinates who are managerial, supervisory, or professional employees. *See* section 101(a)(44)(A)(ii) of the Act. Further the Petitioner has not provided detailed information about its projected payroll and other business expenses or included revenue projections for the first year of operations and beyond to support its claim that the company will grow to the point where it could support the Beneficiary in a qualifying managerial or executive capacity within one year of commencing operations.

Finally, we note that after conducting an online search of California State corporate records, it was revealed that the Petitioner's corporate status in California has been suspended. Specifically, the Petitioner was suspended by the Franchise Tax Board for failure to meet tax requirements (e.g., failure to file a return, pay taxes, penalties, interest), and thus raises the additional issue of the company's continued existence as a legal entity in the State of California and in the United States.

III. CONCLUSION

In order to determine whether the Petitioner is eligible for the nonimmigrant classification sought herein, additional evidence is required. Accordingly, the instant matter must be remanded to the Director for the purpose of allowing the Petitioner the opportunity to supplement the record with evidence that may address the deficiencies described above.

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

Cite as *Matter of X- LLC*, ID# 14261 (AAO Nov. 5, 2015)