



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

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

MATTER OF I-S.A.S., LLC

DATE: JAN. 6, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a Florida limited liability company, seeks to classify the Beneficiary as an L-1A nonimmigrant intracompany transferee. *See* of the 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 nonimmigrant visa petition. The matter is now before us on appeal. The Director's decision will be withdrawn and the petition will be remanded to the Director for further review and entry of a new decision.

In denying the petition, the Director concluded that the Petitioner did not establish that the Beneficiary would be employed in a qualifying managerial or executive capacity in the United States within one year of the approval of the petition. On appeal, the Petitioner submits additional explanation regarding its first year business plans and contends that the Beneficiary will act as a qualifying executive within one year.

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(l)(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 (l)(1)(ii)(G) of this section.

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- (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. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Petitioner indicated that it is an affiliate of [REDACTED] the Beneficiary's foreign employer located in Brazil. The Petitioner sought to employ the Beneficiary as its executive director for a period of three years.

The Petitioner indicated in the L Classification Supplement to Form I-129, Section 1, Item 12 that it was filing the petition as a "new office" pursuant to 8 C.F.R. § 214.2(l)(3)(v). The Petitioner stated that it was established in January 2013 and the petition was filed on December 8, 2014. The Petitioner stated that it was established "merely to provide foreign travelers a sense of security by booking their travel plans with an American based company," acting as the "face" of the foreign employer and not having office space or employees. The Petitioner explained that it had hired its first employee, a travel agent, in July 2014.

The Petitioner submitted a copy of its 2013 IRS Form 1065 U.S. Return of Partnership Income reflecting that it had earned \$1,185,938 during that year. In addition, the Petitioner provided an "income and expenses" spreadsheet reflecting its finances during 2014 indicating that it had garnered \$605,069.47 in income through October 2013. The Petitioner's income and expense reports indicate that it generated regular "income for services" of at least \$21,000 in each month beginning in January 2013.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) defines a "new office" as follows:

- (F) *New office* means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

The evidence submitted by the Petitioner indicates that it has been doing business regularly and continuously since its establishment in January 2013 until the filing of the petition in December

2014. As reflected in the Petitioner's tax documentation and its submitted financials, it has earned over \$1.7 million in revenue during this period. While the Petitioner emphasizes that it did not hire its first employee or sign an office lease until July 2014, the Petitioner did pay modest rent expenses, taxes and licenses in 2013. The evidence demonstrates that the Petitioner was been doing business in the United States for more than one year prior to filing the petition. As such, the Petitioner did not establish that it should be treated as a "new office" as defined at 8 C.F.R. § 214.2(l)(1)(ii)(F). Therefore, the Director acted in error by applying the regulations intended for new offices, as set forth at 8 C.F.R. § 214.2(l)(3)(v).

For this reason, the Director's decision will be withdrawn and the matter will be remanded such that the Director may apply the regulations applicable to petitioners seeking to transfer an L-1A manager or executive to an existing office. Such petitioners are required to establish as of the date of filing that they will employ the beneficiary in a qualifying managerial or executive capacity and are not given a one-year period to develop to the point where they can support a qualifying position.

At this time, we take no position on whether the Beneficiary qualifies for the classification sought. We will remand this matter to the Director for a new decision. The Director should apply those regulations applicable to an existing office in the United States, request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

III. ADDITIONAL BASIS FOR REMAND

Beyond the decision of the Director, the record as presently constituted does not establish that the Beneficiary has been employed in a qualifying managerial or executive capacity abroad. Accordingly, we will instruct the Director to review this issue on remand and request any additional evidence deemed necessary.¹

In a support letter, the Petitioner indicated that the foreign employer was initially established in 1998, focusing since 2004 on "tour operations and destination management specializing in group corporate and leisure travel for individuals in South America" pursuant to which it has established relationships with "some of the world's leading international travel agencies."

The Petitioner submitted a duty description for the Beneficiary indicating that his duties include: overseeing a team of 21 employees, independent contractors, and subcontractors; establishing executive plans; conferring with the operations manager on policies, travel packages and costs; conferring with information technology staff; implementing tourism strategies; developing a

¹ We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see also* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

strategic plan; establishing management, operations, sales and marketing policies and objectives; and making decisions regarding major financial decisions of the company. Further, the Petitioner referred to a number of international trips the Beneficiary had made during his employment with the foreign employer to network with clients, negotiate pricing and contracts, and attend trade shows.

The Petitioner has submitted a vague duty description and thus has not substantiated the types of tasks the Beneficiary primarily performs on a day-to-day basis. For instance, the Petitioner has not provided details or supporting evidence to reflect executive plans he has established, policies he has implemented when conferring with staff, tourism strategies he has set into place, policies and objectives he has established, or major financial decisions he has made. It is reasonable to expect that the Petitioner would have provided more detail regarding the Beneficiary's duties and accomplishments abroad, particularly since he is stated to have worked for the foreign employer since 2004. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Likewise, the Petitioner has not submitted sufficient supporting documentation to corroborate his performance of his asserted executive tasks. For instance, the Petitioner submits an internally generated document reflecting that the Beneficiary traveled to approximately fifty locations abroad to attend travel conferences and to confer with potential clients and vendors. However, this internally generated document is not sufficient to demonstrate that the Beneficiary spends a majority of his time on executive level tasks. The Petitioner provides no other supporting documentation reflecting the Beneficiary's performance of qualifying tasks. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Indeed, to the extent the Petitioner provides specificity regarding the Beneficiary's duties for the foreign employer, these duties suggest that he has likely been engaged in non-qualifying operational duties such as attending trade conferences and directly selling tour and travel packages to clients, duties that are not executive or managerial in nature.

Furthermore, the Petitioner asserts that the Beneficiary oversees both 21 and 24 employees and contractors abroad. However, the Petitioner has provided little evidence to substantiate the existence of these employees and the Beneficiary's asserted managerial subordinates. In fact, the Petitioner submits copies of the foreign entity's 2012 and 2013 "Statement of Economic and Tax Information" from Brazil, which reflect that the company had only two employees at the conclusion of the fiscal year. Likewise, the Petitioner submitted an internally generated document indicating that it paid eight tour guides a total of \$23,685.75 during 2013, an amount suggesting that these contractors are not significantly engaged to represent subordinates within the foreign entity's organization. Further, a most recent "Report of Administrative Expenses" relevant to the foreign entity from October 2014 indicated that the company paid only six employees, far short of the more than twenty employees

and contractors that the Petitioner claims. In sum, these discrepancies leave question as to the foreign employer's actual organizational structure and whether it employs sufficient employees to allow the Beneficiary to act primarily in a qualifying managerial or executive capacity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As such, the record as presently constituted does not contain sufficient evidence to establish that the Beneficiary has been employed in a qualifying managerial or executive capacity abroad. At this time, we take no position on whether the Beneficiary meets this regulatory requirement. We will remand this matter to the Director for a new decision. The Director should request any additional evidence deemed warranted to address the deficiencies noted with respect to the Beneficiary's employment capacity abroad and allow the Petitioner to submit such evidence within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

IV. CONCLUSION

Based on the foregoing discussion, although the Director's decision will be withdrawn, the evidence of record as presently constituted does not establish the Beneficiary's eligibility for the benefit sought. Accordingly, we will remand this matter to the Director for further action and entry of a new decision.

ORDER: The decision of the Director, Vermont Service Center, is withdrawn. The petition 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 I-S.A.S., LLC*, ID# 15000 (AAO Jan. 6, 2016)