



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

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

MATTER OF Y-I-, INC.

DATE: MAY 23, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a technology startup business, seeks to temporarily employ the Beneficiary as the president and chief executive officer of its new office under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 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 an executive or managerial capacity.

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by not considering the Petitioner's explanations regarding the consideration paid by the foreign entity in exchange for the petitioning company's stock.

Upon *de novo* review, we will withdraw the Director's decision and remand this matter to the Director for further proceedings and entry of a new decision.

I. LEGAL FRAMEWORK

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, Petition for a Nonimmigrant Worker, 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.
- (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.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

II. QUALIFYING RELATIONSHIP

The Director denied the petition based on a finding that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

In denying the petition, the Director acknowledged that the Petitioner submitted stock certificates, a stock purchase agreement, and other documentation in support of its claim that it is a wholly-owned subsidiary of the Beneficiary's foreign employer. The Director denied the petition after determining that the Petitioner "did not provide sufficient evidence to demonstrate the foreign company has deposited or transferred any capital contribution into the U.S. bank account to support the U.S. company and to show ownership and control."

On appeal, the Petitioner maintains that it is wholly-owned by the foreign entity. The Petitioner emphasizes that under the California Corporation Code, "the consideration for shares of stock is not limited to cash or bank wire transfer deposits," but rather the consideration provided can be in many forms including "debt cancellation" as long as the stock issuing corporation's Board of Directors approves the issuance of shares. The Petitioner states that it provided evidence that the foreign entity has paid all startup expenses for the new office and that such debts owed by the Petitioner to the foreign entity have been canceled as a form of consideration in exchange for issuance of the Petitioner's 100 shares of stock. The Petitioner further asserts that it provided evidence that its Board of Directors has approved and memorialized this stock purchase transaction.

We have reviewed the California Corporation Code and the evidence submitted on appeal. We conclude that the record includes sufficient evidence to establish that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer. Thus, the basis for the Director's decision is overcome.

Although the Director's decision will be withdrawn, the petition is not approvable based on the record before us. Accordingly, the matter will be remanded to the Director for further proceedings consistent with our discussion below.

III. NEW OFFICE REQUIREMENTS

A. U.S. Employment in a Managerial or Executive Capacity

Upon review, we find insufficient 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 as defined at sections 101(a)(44)(A) and (B) of the Act.

In order to support a new office petition, the Petitioner must submit sufficient evidence to 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). 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.*

In this matter, the Petitioner has not provided consistent information regarding its proposed staffing and organizational structure or sufficiently detailed information regarding its financial goals for its initial year of operations.

The Petitioner filed the Form I-129 on May 1, 2015. The Petitioner initially submitted a business plan stating that it would, *inter alia*, hire (1) “1-2 business developers to help get partners” in quarters two, three, and four of 2015; (2) “2-5 account managers to manage new clients and to increase sales” in quarters three and four of 2015; and (3) “1-3 business developers” and expand the “sales team up to 10 people in total in 2016.” The Petitioner’s business plan provided projected gross income figures for the years 2015, 2016, and 2017, but did not include a breakdown of startup costs or anticipated operating expenses, such as rent and salary expenses, for the first year of operations. Further, the business plan did not include position descriptions for proposed employees or their anticipated salaries.

In response to the Director’s request for evidence (RFE), the Petitioner stated that it would initially hire a vice president of sales, followed by a vice president of business, and then a vice president of marketing, in the first year of operations. The Petitioner also indicated that it would hire three “junior employees” during the first year of operations. The Petitioner’s proposed organizational chart shows the Beneficiary supervising a vice president of sales, a vice president of business development, and a vice president of marketing. The chart depicts two account manager positions that would report to the vice president of sales, and a content creator who would report to the vice president of marketing. The Petitioner did not provide an updated business plan or include information regarding the anticipated duties and salaries of the vice presidents and other staff.

The record also included the foreign entity’s meeting minutes from December 2014, indicating that it intends to reroute current U.S. sales of \$15,000 per month to the Petitioner, and noting that “this will give the new company an initial first year investment of [approximately] \$180,000.”

In sum, the Petitioner did not provide a consistent explanation regarding its hiring plans and organizational structure for the first year of operations, nor did it include information regarding salaries for its potential employees and its other anticipated operating expenses. The record also does not include sufficient evidence of the anticipated U.S. contracted sales. 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) (quoting *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

Without this evidence, we are unable to assess whether the Petitioner would be in a position to support a managerial or executive position within one year of the approval of the petition. Upon review of the totality of the record, the record as presently constituted does not include sufficient probative evidence demonstrating that the Petitioner would move to a stage that it would need a managerial or executive who will primarily perform qualifying duties within one year of the approval of the petition.

B. Sufficient Physical Premises

The Petitioner submitted a six-month lease, ending August 14, 2015, for space located in a startup facility. The lease is for one desk with use of common rooms for meetings. The Petitioner indicated, in response to the Director's RFE, that it "intends to operate this office as the business development center" and that the "workstation will be used as the 'hotelling' office for sales representatives to use when they are not out soliciting new clients." The Petitioner also stated that its leased space can expand to include 100 people. The photographs of the leased space, while identifying other companies, do not identify the Petitioner as a tenant.

The Petitioner has not submitted evidence that the lease has been extended or that it has secured sufficient physical premises in another location. The Petitioner also does not provide a plan identifying when it will expand its offices to accommodate its senior, non-sales employees. It is not clear from the record that the leased office space will be sufficient for the number of senior employees the Petitioner states it intends to hire during the first year of operations. Moreover, the record does not include information, such as anticipated rent expenses for the first year of operations, indicating that it intends to expand beyond the current leased premises. The record as presently constituted is not sufficient to establish that the Petitioner has secured sufficient physical premises to support its planned operations.

IV. CONCLUSION

The Petitioner has not submitted sufficient evidence establishing that it will support a managerial or executive position within one year from the date of approval of the petition and that it has sufficient physical premises to house the employees it intends to hire in the first year of operations. Consequently, the matter will be remanded to the Director. On remand, the Director should afford the Petitioner an opportunity to submit additional evidence addressing these two issues.

ORDER: The decision of the Director, California Service Center, is withdrawn. 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.