U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5135278

Date: JUL. 02, 2021

Appeal of California Service Center Decision

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

The Petitioner, an owner and operator of a retail grocery store, seeks to temporarily employ the Beneficiary as the general manager and chief executive officer (CEO) of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. 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, U.S. Citizenship and Immigration Services (USCIS), denied the petition, concluding there were inconsistencies in the record regarding the Petitioner's operations. Specifically, the Director questioned whether the Petitioner was a "New Establishment" eligible for classification as a new office since the petitioning entity, although newly incorporated, was the same grocery store that previously employed the Beneficiary under another L-1A new office petition. The Director also concluded that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity within one year of an approval of the petition.

On appeal, the Petitioner asserts that the Beneficiary is eligible to again enter under a new office petition to establish the same new operation in the United States previously launched by an affiliated petitioner under a new office petition. The Petitioner contends it has provided sufficient evidence to establish that the Beneficiary would act in a managerial or executive capacity within one year.

Upon *de novo* review, we will dismiss the appeal.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Petitioner is a wholly owned U.S. subsidiary of the Beneficiary's former foreign employer established in August 2018. In the L Classification Supplement to the Form I-129[2], Petition for a Nonimmigrant Worker, the Petitioner indicated in Section 1, Item 12 that the Beneficiary would enter the United States to open a new office. In Part 5 of the Form I-129, the Petitioner reported that it had no employees and entered "New Establishment" when asked to list its gross annual and net annual

[1] The term "new office" refers to an organization which has been doing business in the United States 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 no more than one year within the date of approval of the petition to support an executive or managerial position.

[2] The petition was filed on October 11, 2018.

income. In Part 9 of the Form I-129, the Petitioner indicated that the Beneficiary had previously been "given the L-1A status from 11/16/2016 to 10/31/2017" and that he was denied an extension of status pursuant to a new office extension petition on January 1, 2018.[3] The Petitioner indicated, and USCIS records confirm, that the petitioner filing each of the previous petitions and the later appeal, [redacted], was a wholly owned subsidiary of the foreign parent in this matter.[4] The Petitioner in the current matter is a legal entity with a slightly modified name from the affiliated petitioner granted a new office petition in 2016 and denied extension on behalf of the Beneficiary in 2018.

In a business plan provided in support of the petition, the Petitioner stated it intended to "continue to expand the Company's operation [in the U.S.]" and "expand on its already existing model." The business plan included photographs of an operating grocery business and the Petitioner explained that it was "an [redacted] grocery store and take-out diner . . . offering a variety of fruits vegetables, cheeses, along with seafood, poultry, meat, and electronics including kitchen appliances." The Petitioner also stated in the business plan that the grocery had "over a dozen employees," indicated that "it is a multifaceted operation and a staple in the [redacted] community," and that it "is well established having served this area for nearly a decade." The Petitioner submitted a multilayered organizational chart reflecting 18 positions all of which were identified as "to be hired."

The Director later issued a request for evidence (RFE) in October 2018 stating that "while the instant I-129 petition appears to be for a "New-Office," submitted documentation and public records indicate the grocery retail business may have been in operation at the petitioner's current address." The Director requested that the Petitioner submit evidence to determine whether it was doing business, such as tax documentation, audited financial statements, invoices, bank statements, contracts, or other such similar evidence.

In a response letter dated in January 2019, the Petitioner indicated that its foreign parent company had "established its former U.S. subsidiary…in May 2016…[and]…transferred its General Manager, [the Beneficiary] to serve as General Manager." The Petitioner further stated it had been "denied the L-1A extension petition on behalf of [the Beneficiary]" and that the foreign parent "decided to start over its business in the United States by establishing a new U.S. entity [the current Petitioner]." The Petitioner explained that it "currently operates with three departments and 10 full-time employees and 3 part-time employees, including employees hired from [the] former subsidiary and employees newly recruited" and stated that it "is currently doing business." The Petitioner submitted supporting documentation reflecting that it was doing business, including a profit and loss statement showing that it had earned $381,638 in income during October and November 2018, invoices, two vendor agreements executed in November 2018, and paystubs indicating that it paid 14 employees during November 2018.

[3] USCIS records also reflect that we dismissed a later appeal filed by the Petitioner on March 1, 2018. In our decision issued on August 9, 2018, we concluded that this petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity under an extended petition.

[4] Public records of the California Secretary of State reflect that this subsidiary of the foreign parent company and affiliate of the current Petitioner was dissolved on December 21, 2018. This information was acquired from a search conducted at https://businesssearch.sos.ca.gov on July 1, 2021.

In addition, the Petitioner stated that the foreign parent had first discovered demand for [redacted] grocery in "late 2015 and early 2016" and "decided to take over a whole business from the former [redacted] grocery store." The Petitioner explained that the foreign parent had formed its now dissolved affiliate in May 2016 to manage this business, but that the "first attempt was not that successful." A letter from the foreign entity's general manager explained that the previous petitioner lacked an effective accountant and it underpaid some employees and "USCIS discovered this issue while adjudicating [the] subsequent L-1A extension petition [filed] on behalf of [the Beneficiary] and decided to deny our request solely for this reason." The general manager also stated that the foreign parent invested $300,000 in the newly incorporated entity and that the Petitioner "would take over the whole business from [the] former subsidiary and [that it] would be located at the same address." The Petitioner submitted a bank account statement from September 2018 reflecting that it had received a wire transfer deposit in the amount of $300,000. Further, it provided a list of proposed actions it would take during its claimed first year of operation from November 2018 to October 2019, including "secure store and office space," "sign [a] lease agreement," and "check out store stock and order product [and] prepare to reopen the store in November 2018."

The Petitioner also submitted an organizational chart listing 13 employees by name, beyond the Beneficiary. This organizational chart indicated that the Beneficiary supervised operation and inventory department managers, as well as two cashiers. Meanwhile, the operation department manager was shown to oversee a hot food clerk, three meat clerks, a vegetable clerk, a seafood clerk, and two grocery clerks, while further reflecting that the inventory department manager supervised an inventory specialist.

In the denial decision, the Director determined that the evidence submitted by the Petitioner did not establish that it would be sufficiently operational within one year to support the Beneficiary in a managerial or executive capacity. The Director also pointed to discrepancies, emphasizing that the Petitioner stated in the Form I-129 that it was a "new establishment," but later stated in response to the RFE that it had 13 employees.

On appeal, the Petitioner again reiterates that it and its former affiliate "operated out of the same location and [are] owned by the same foreign parent company." The Petitioner again emphasizes that the foreign parent "decided to start over its business in the United States by establishing a new U.S. entity [the Petitioner]." The Petitioner states that it "took over the whole business from the former subsidiary and [it] is located at the same address" and that "the company already ha[s]10 full-time employees and 3 part-time employees because most of them were transferred directly from the prior U.S. subsidiary." The Petitioner indicates that these employees "were basically doing the same job at the same location."

II. LEGAL FRAMEWORK

Section 101(a)(15)(L) of the Act states:

> Subject to section 1184(c)(2) of this title, an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to

continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him[...]

The applicable regulation at 8 C.F.R. § 214.2(l)(3) states in pertinent part:

> (v) 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:
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> (A) Sufficient physical premises to house the new office have been secured;
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> (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
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> (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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states:

> (ii) New offices. A visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:
>
> (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
>
> (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
>
> (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

III. ANALYSIS

As previously discussed, the Director analyzed the evidence in the context of the Petitioner being a new office petitioner as defined by the regulations; specifically, determining whether the evidence demonstrated that it would develop sufficiently within the first year of an approved petition to support the Beneficiary in a managerial or executive capacity. However, as a threshold matter, we must first analyze whether the Petitioner is eligible to file a new office petition in this matter.

A new office petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

A petitioner seeking to extend an L-1A petition involving 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).

When read together, the regulations reflect that there is no provision for providing another full year of L-1A eligibility under the terms of a new office petition. The regulations expressly limit a beneficiary to one year of L-1A status relating to a new office. After that one year, the beneficiary may remain in L-1A status only through extension of status:

> If the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year, after which the petitioner shall demonstrate as required by paragraph (l)(14)(ii) of this section that it is doing business as defined in paragraph (l)(1)(ii)(H) of this section to extend the validity of the petition.

8 C.F.R. § 214.2(l)(7)(i)(A)(*3*).

New office status is contingent on progress towards more fully establishing the business. If, at the end of that year, the new office has not made that progress, then this deficiency is grounds for ending the immigration benefit, not extending it.

However, under the Petitioner's reasoning in this matter, a particular beneficiary would be able to routinely qualify for limitless "new office" periods of stay, where the applicable new office or operation could continually create new legal entities until it was sufficiently operational to support the beneficiary in a managerial or executive capacity. The regulations do not contemplate such circumstances, as they indicate that a beneficiary may come "to the United States to open or to be employed in a new office." This wording plainly indicates a new office is one that is not yet open or one that is newly opened. It is also noteworthy that 8 C.F.R. § 214.2(l)(3)(v) related to new office petitions refers to a "new office" and a "new operation," rather than a new petitioner or legal entity.

A beneficiary is not subsequently eligible for L-1A intracompany transferee status pursuant to a new office petition when they did not successfully establish a previous new operation within one year and were later denied a new office extension petition. Likewise, a beneficiary is not eligible for L-1A intracompany transferee status under a new office petition when, as the Petitioner asserts in this case, the new operation made changes to its already existing organizational structure, ceased operations and restarted, or reconstituted through a new legal entity. To allow a foreign company to continue to establish new or different legal entities in the United States in order to attempt to sufficiently establish the same new office or operation on behalf of a beneficiary after it was not granted a new office extension would frustrate L-1A intracompany transferee regulations. When read in their totality, the intent of the applicable regulations communicates that a foreign company may file only one new office petition through a qualifying U.S. petitioner on behalf of a beneficiary related to each new office or operation; at which point thereafter, they must establish that this new office or operation sufficiently developed within one year to support that particular beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(14)(ii).

In the current matter, the evidence clearly reflects that the Petitioner's intent was not to launch a new operation in the United States. The evidence demonstrates that the foreign parent already exhausted its attempt to launch the proffered new operation to support Beneficiary within one year. Despite stating that it was a "New Establishment," the Petitioner, in contradiction, submitted a business plan stating it intended to "continue to expand the Company's operation" and "expand on its already existing model." The Petitioner further submitted photographs of an already existing grocery business and indicated in the business plan that it had "over a dozen employees." In addition, the Petitioner explained that the claimed new operation was a "multifaceted operation and a staple in the [redacted] community" and that it was "well established having served this area for nearly a decade." Therefore, the Petitioner acknowledges that the claimed "new operation" was an already existing business that had been operating for a significant amount of time.

The Petitioner also openly recognizes its foreign parent's previous attempt to launch the new operation on behalf of the Beneficiary and that this subsidiary was "denied the L-1A extension petition on behalf of [the Beneficiary] by [its U.S. based subsidiary]." It also indicated that the foreign parent "decided to start over its business in the United States by establishing a new U.S. entity [the current Petitioner]." Likewise, it is notable the current petition was filed in October 2018, but the Petitioner stated the foreign parent had first discovered demand for the grocery in "late 2015 and early 2016" and "decided to take over a whole business from the former [redacted] grocery store." A letter from the foreign employer's general manager further stated that the Petitioner "would take over the whole business from [the] former subsidiary and would be located at the same address." Therefore, the evidence clearly establishes that the Petitioner did not intend to launch a new office or operation but was merely

circumventing the new office regulations by continuing its previous attempt to establish the business using a different, newly established, legal entity.

On appeal, the Petitioner only further establishes that it does not qualify to file a new office petition on behalf of the Beneficiary in this matter. The Petitioner again reiterates that it and its former affiliate "operated out of the same location and [are] owned by the same foreign parent company." The Petitioner emphasizes that the foreign parent "decided to start over its business in the United States by establishing a new U.S. entity [the Petitioner]." In addition, it states that it "took over the whole business from the former subsidiary and is located at the same address" and that "the company already ha[s] 10 full-time employees and 3 part-time employees because most of them were transferred directly from the prior U.S. subsidiary." The Petitioner also indicates that these employees "were basically doing the same job at the same location."

As such, the submitted evidence and statements of the Petitioner are evident, the foreign parent already attempted to launch the proffered "new operation" on behalf of the Beneficiary, but that affiliated petitioner did not demonstrate this new operation had developed sufficiently within the first year to support him in a managerial or executive capacity. As discussed, the Petitioner's former affiliate in the United States, now dissolved, was not granted a new office extension on behalf of the Beneficiary with respect to this new operation. The regulations do not afford the foreign company another opportunity to seek a new office petition on behalf of the Beneficiary with respect to this "new operation," regardless of the petitioner.

The qualifying foreign parent company in this matter has already exhausted its attempt to launch this specific new operation on behalf of the Beneficiary; as such, the qualifying Petitioner is not eligible to file a new office petition. For this reason, the appeal must be dismissed.[5]

ORDER: The appeal is dismissed.

[5] Given our dismissal on this threshold matter, we need not address whether the Petitioner's "new office" would sufficiently develop within one year to support the Beneficiary in a managerial or executive capacity.