U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-USA, INC.

DATE: JUNE 22, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a supplier of sanitary articles, cosmetics, and medical devices, seeks to permanently employ the Beneficiary as its chief operating officer under the first preference immigrant classification of a multinational executive or manager. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish, as required, that: (1) the Beneficiary would be employed in the United States in a managerial or executive capacity, and (2) she would be employed on a full-time basis.

On appeal, the Petitioner submits additional evidence and asserts that the Director mischaracterized the nature of the Beneficiary's responsibilities, her position within the corporate hierarchy, and her responsibility for directing a major component or function of the broader multinational organization.

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

I. LEGAL FRAMEWORK

Section 203(b)(1)(C) of the Act makes an immigrant visa available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate.

A United States employer may file Form I-140, Immigrant Petition for Alien Worker, to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The petition must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

II. DISCUSSION

The Director found that the evidence did not establish that the Beneficiary would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act; 8 U.S.C. § 1101(a)(44), or that her employment for the Petitioner would be full-time.

In denying the petition, the Director emphasized the Petitioner's staffing levels, noting that its staff of four subordinate employees did not appear to be comprised of managers, professionals, or supervisors and did not appear sufficiently relieve the Beneficiary from involvement in a wide range of daily functions associated with running the Petitioner's business. Further, the Director found that the Beneficiary's employment could not be considered full-time because the Petitioner indicated that 20 percent of her time would be spent "making management decisions concerning the affiliate in Poland."

Upon review of the petition and evidence, including the evidence submitted on appeal, we find that the Petitioner has overcome the grounds for denial articulated by the Director.

The Petitioner is a U.S. subsidiary within a group of companies headquartered in Poland. The group has combined sales of $700 million and manufacturing facilities in four countries. The petitioning company was established for the purpose of introducing the company's products to the U.S. market, and the record substantiates that the Beneficiary's role as chief operating officer of the U.S. subsidiary involves oversight of foreign employees who are charged with supporting these efforts. We may consider employees of the wider multinational organization when assessing a petitioner's staffing needs and determining whether a beneficiary will be sufficiently relieved from performing operational and administrative duties. *See Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

It appears that the Director misunderstood the Beneficiary's ongoing responsibility to oversee the foreign entity which led to the incorrect conclusion that the Beneficiary would not be providing services to the U.S. entity on a full-time basis. However, the Petitioner explained and documented that the foreign employees have been charged with supporting the design, development, manufacture, marketing, and export of new product lines custom-made for the U.S. market and would do so under the Beneficiary's supervision. The roles filled by the 18 foreign staff members include legal, regulatory, corporate governance, product research and development, administrative, sales, patent and trademark, and logistics.

In addition, the Petitioner employs full-time sales and administrative staff and a number of independent contractors who are able to relieve the Beneficiary from performing most of the non-qualifying functions required for the U.S. subsidiary's day-to-day operation, given its current stage of development.

Taking into account the contributions of the foreign staff, U.S. staff, and contractors, we find that the record establishes that the Beneficiary would primarily perform executive duties and will direct a

major component or function of the organization, with limited supervision from the parent company's chief executive officer.

III. CONCLUSION

The Petitioner has established that the Beneficiary will be employed full-time in the United States in an executive capacity.

ORDER: The appeal is sustained.

Cite as *Matter of T-USA, Inc.*, ID# 429951 (AAO June 22, 2017)