



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

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

In Re: 22686131

Date: OCT. 18, 2022

Appeal of California Service Center Decision

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

The Petitioner describes its enterprise as “trading, import, export, sale of convenience products” and indicates that it is a new office<sup>1</sup> that seeks to employ the Beneficiary temporarily as “executive - manager” under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. *See* Immigration and Nationality Act (the Act) section 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 a managerial or executive capacity.

The Director of the California Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity. The Director determined that the Petitioner did not offer a sufficient description of the Beneficiary’s proposed job duties and questioned whether the Petitioner’s two-person staff is sufficient to support the Beneficiary in a position that is primarily managerial or executive in nature. The Director also questioned who would oversee the Petitioner’s operations, which he found to have commenced in 2020, noting that the Beneficiary departed the United States in January 2020.

On appeal, the Petitioner asserts that, contrary to the Director’s determination that the Beneficiary departed the United States in January 2020, the Beneficiary “first arrived on January 9, 2020” and continues to remain in the United States to this date without having departed. The Petitioner also argues that it was unable to undergo “real business expansion” because of the COVID pandemic and on that basis asserts that “the company is new.”

The Petitioner filed this petition in August 2021; it responded “yes” to item 12 in section I of the L Classification Supplement when asked whether the beneficiary was coming to the United States to open a new office and later reiterated that claim in supporting documents, thereby indicating that it had been doing business in the United States for less than one year. *See* 8 C.F.R. § 214.2(l)(1)(ii)(F). In general, when a petitioner indicates that it is a new office and requests consideration as a new office on the form, we apply the criteria set forth at 8 C.F.R. § 214.2(l)(3)(v) to make a determination about

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<sup>1</sup> 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.

the petitioner's eligibility under that specific provision as it has slightly different requirements. In the matter at hand, however, the Director did not acknowledge the Petitioner's new office claim or apply the new office regulations in concluding that the Petitioner is not eligible for the benefit sought herein.

When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence did not satisfy its burden of proof pursuant to section 291 of the Act. 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). In this matter, the Director denied the petition without applying the new office regulations even though the Petitioner marked the "new office" box in the L Classification Supplement and claimed that the Beneficiary was coming to the United States to open a new office. Because the Director did not explain why this petition was not adjudicated pursuant to the regulatory criteria that pertains in the filing of a new office petition, we will remand for the Director to consider the Petitioner's eligibility under this criteria.

Notwithstanding the Director's error, the record as currently constituted appears to lack sufficient evidence that the Petitioner fits the definition of a "new office" and thus warrants an eligibility determination on remand pursuant to the provisions of 8 C.F.R. § 214.2(l)(3)(v), which apply to new office petitioners.

The record shows that this petition was filed in August 2021. Therefore, in order to meet the definition of a new office, the record must show that the Petitioner's business activity did not commence prior to August 2020, which is one year prior to this petition's filing. However, the evidence shows that the Petitioner was issued a federal employer identification number and opened a bank account in March 2020 and in April, May, and June 2020 the Petitioner initiated and received wire fund transactions, several of which list "import of goods" as the "payment detail." In addition, the Petitioner provided notices dated May 1 and 6, 2020, respectively, showing that it was granted licenses for food service and nicotine delivery and shipping invoices from May 2020 containing lists of retail goods (one of which was 19 pages long) itemizing inventory that the Petitioner received at its business address. The Petitioner also requested that the Beneficiary be granted a two-year period of stay, which is not consistent with the standard one-year period that applies to petitioners filing as a new office. See 8 C.F.R. § 214.2(l)(7)(i)(A)(3) (stating that a petition for a beneficiary coming to the United States to open or be employed in a new office may be approved for a period not to exceed one year).

In sum, we find that the record lacks sufficient evidence to show that the Beneficiary is coming to the United States to open or be employed in a new office. However, because the Petitioner claimed that the Beneficiary is coming to open or be employed in a new office and the Director adjudicated this matter without having applied the new office regulations or having provided notice to the Petitioner explaining why those regulations were not applied, we will withdraw the Director's decision and remand the matter for further proceedings.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.