U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26585360

Date: APR. 25, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, a retail and wholesale trade business, seeks to permanently employ the Beneficiary as a store manager under the first preference immigrant classification for multinational executives or managers. *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 a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that: (1) the Petitioner had been doing business in the United States for at least one year; (2) the Beneficiary was employed by the Petitioner's claimed foreign affiliate in a managerial capacity for at least one year in the three years preceding the filing of the petition; and (3) the Beneficiary would be employed in a managerial capacity in the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An immigrant visa is 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. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, 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. DOING BUSINESS

The first issue we will address is whether the Petitioner established that it was doing business in the United States. A petition for a multinational manager or executive must be accompanied by evidence to establish the prospective United States employer has been doing business for at least one year at the time of filing. 8 C.F.R. § 204.5(j)(3)(i)(D). Doing business means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation or other entity and does not include the mere presence of an agent or an office. 8 C.F.R. § 204.5(j)(2).

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on February 25, 2021, and therefore must establish that it has been doing business since on or before February 25, 2020. The Petitioner stated on the Form I-140 that it was established in August 2019 and operated a "retail & wholesale trade" business with four employees. The Petitioner stated on the petition that the Beneficiary was offered the position of "store manager" and would be acting as a "general manager" responsible for overseeing the day-to-day operations of a convenience store with a worksite address in [redacted], Alabama. The record also contains an employment offer letter dated February 2021 indicating that the Petitioner offered the Beneficiary a position as "General Manager at [redacted] at the same address indicated on the petition.

The Petitioner stated in a cover letter accompanying the petition that it was attaching its articles of incorporation, its license to operate a "beauty shop," and copies of its business insurance policy, utility bills, and bank statements. However, the record reflects that these materials were not included with the initial evidence. In a request for evidence (RFE) issued in April 2022, the Director advised the Petitioner that it must establish that it was doing business for at least one year at the time of filing and observed that it submitted "no evidence" of its business activities during the relevant period. The RFE included a list of documentation the Petitioner could provide, such as copies of its federal tax returns, a lease for its business premises, payroll records, invoices, sales contracts, business licenses and any other evidence that could show the company was doing business as defined in the regulations.

In response to the RFE, the Petitioner submitted: (1) copies of its 2021 federal and state corporate tax returns; (2) food safety permits issued in July 2021 and October 2021, indicating that it is authorized by the state to operate a restaurant located in [redacted] Alabama; (3) invoices issued to the Petitioner between December 2021 and June 2022, showing that it purchased food and restaurant supplies for delivery at the [redacted] Alabama address; (4) monthly correspondence from the Petitioner's accountant advising of its monthly sales tax return obligations (dated November 2021 through May 2022); and copies of the Petitioner's monthly bank statements for the period May 2021 through May 2022. The 2021 tax returns indicate the Petitioner operates a "beauty salon" but reflect $27,765 in "other income" as "net from restaurant." Although requested in the RFE, the Petitioner did not provide a copy of its 2020 federal income tax return.

The Director denied the petition, concluding that the Petitioner did not provide evidence to establish that it was doing business in the United States at the time of filing and for at least one year prior to the date of filing, as required by 8 C.F.R. § 204.5(j)(3)(i)(D). The Director emphasized that all the evidence provided in response to the RFE post-dated the filing of the petition and therefore could not establish that the Petitioner had been doing business since February 2020. The Director also observed that there were inconsistencies in the record regarding the nature of the business.

On appeal, the Petitioner explains that it initially operated a convenience store, later "considered establishing a beauty salon," and "finally decided it would be in our best interest to establish a food service." The Petitioner re-submits a copy of its 2021 federal tax return and asserts that it "reflects the earnings for the year 2020," however there is no indication that the tax year covered by the tax return is any period other than the 2021 calendar year. The Petitioner also submits copies of additional food permits issued for the [redacted] Alabama restaurant, issued in October 2019 and October 2020. However, the Petitioner states that it established the restaurant business on [redacted] 2020, less than one year before it filed this petition. Regardless, the 2019 food permit alone cannot establish that the Petitioner had been doing business as defined in the regulations since on or before February 2020. The record lacks evidence of the Petitioner's business activities during any part of 2020.

The Petitioner has not met its burden to demonstrate that it was engaged in the regular, systematic, and continuous provision of goods or services in the United States for at least one year when it filed the petition. Accordingly, the appeal will be dismissed.

III. EMPLOYMENT ABROAD

As noted, the Director also determined that the Petitioner did not establish that the Beneficiary's foreign employment was in a managerial capacity as defined at section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). In reaching this determination, the Director observed that the submitted description of her job duties as the foreign entity's "logistics manager" did not sufficiently identify the specific tasks she performed, such that they could be classified as primarily managerial in nature. The Director also observed that the foreign entity's organizational chart did not indicate that there were subordinates who relieved the Beneficiary from performing non-managerial duties and removed her from involvement in the day-to-day administrative and operational aspects of the business.

In addition, the Director's RFE advised the Petitioner that it must establish that the Beneficiary was employed abroad for at least one year in the three-year period preceding the filing of the petition in February 2021. In response, the Petitioner submitted the foreign entity's wage register for the month of April 2020. This document indicated that the foreign entity employed the Beneficiary as its logistics manager, and that she had been hired in April 2017. The Director acknowledged this evidence but emphasized that the Petitioner indicated on the Form I-140 that the Beneficiary had been in the United States since January 2019 and it is therefore unclear how she would remain a paid employee of the foreign entity after that date.

On appeal, the Petitioner does not address or contest the Director's determination that the Petitioner did not meet its burden to establish that the Beneficiary was employed abroad in a managerial capacity. Accordingly, we deem this issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). In addressing the Beneficiary's foreign employment, the Petitioner's statement on appeal is limited to a claim that the foreign entity "continued to pay the beneficiary's salary until the U.S. business could afford to pay her salary."

In addition to establishing that the Beneficiary was employed in a managerial capacity abroad, the Petitioner must also establish that she had at least one year of employment abroad in the three years preceding the filing of the petition. As noted, the Petitioner filed the Form I-140 on February 25,

2021. It indicated that the date of the Beneficiary's last arrival to the United States was on January 18, 2019, more than two years prior to the date of filing.

In cases where a beneficiary entered the United States to work for a qualifying entity as a nonimmigrant (for example in H-1B or L-1 classification or another work-authorized status), USCIS will reach back three years from the date of his or her admission to determine whether he or she had the requisite one year of employment. *Matter of S-P- Inc.*, Adopted Decision 2018-01 (AAO Mar. 19, 2018); 8 C.F.R. § 204.5(j)(3)(i)(B). However, in *Matter of S-P-*, we clarified that a beneficiary who worked abroad for a qualifying multinational organization for at least one year but left the organization for a period of more than two years after being admitted to the United States as a nonimmigrant, does not satisfy the foreign employment requirement for immigrant classification as a multinational manager or executive.

Here, the record does not demonstrate that the Beneficiary entered the United States to work for a qualifying entity as a nonimmigrant. Although the Petitioner states on appeal that she "entered the United States to assist in establishing the new U.S. business," the Petitioner was not incorporated until [redacted] 2019, and the Beneficiary was never authorized to work for the Petitioner as a nonimmigrant.[1] More than two years passed before the Petitioner filed this immigrant petition on her behalf, thus creating a disqualifying interruption in employment. Therefore, even if the record did establish that she was employed by the foreign entity for more than one year in the past, she did not satisfy the statutory foreign employment requirement at the time of filing.

Further, although the Petitioner submitted a foreign payroll document intended to establish that the Beneficiary commenced employment with its claimed foreign affiliate in April 2017, the record contains no other supporting evidence of her employment abroad. In fact, on her concurrently filed Form I-485, Application to Register Permanent Residence or Adjust Status, at Part 3, the Beneficiary stated that she has resided in the United States since at least March 2015. The Petitioner did not attempt to resolve this ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is therefore unclear when the Beneficiary last resided outside the United States, and the record does not establish she resided and worked in India during any part of her claimed period of employment abroad.

For all the reasons discussed, the record does not establish that the Beneficiary was employed abroad in a managerial capacity for at least one year in the three years preceding the filing of the petition. For this additional reason, the appeal will be dismissed.

IV. ADDITIONAL ISSUES

As noted, the Director also denied the petition based on a conclusion that the Petitioner did not establish that it would employ the Beneficiary in a managerial capacity in the United States. Because the two identified bases for denial are dispositive of the appeal, we decline to reach and hereby reserve

[1] The Petitioner provided a copy of a Form I-797C Receipt Notice indicating that it filed a Form I-129, Petition for a Nonimmigrant Worker, requesting that the Beneficiary be granted a change of status to that of an L-1A nonimmigrant intracompany transferee, in January 2020. USCIS denied the petition in November 2021 [redacted] The record reflects that an unrelated U.S. employer had filed a Form I-129 on the Beneficiary's behalf in April 2018 and it was approved, granting her H-1B nonimmigrant classification for the period January 2019 until September 2021.

the Petitioner's appellate arguments regarding this remaining ground for denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Finally, although not addressed in the Director's decision, we observe that the record as presently constituted does not establish that the Petitioner has a qualifying relationship with the Beneficiary's claimed foreign employer. To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See* section 203(b)(1)(C) of the Act; *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary"). The Petitioner states that "the foreign company is a sole proprietorship business formed by [redacted]" and emphasized that this individual also serves as a director and president of the petitioning company, an Alabama corporation. Therefore, it appears that the Petitioner claims an affiliate relationship with the foreign entity based on common ownership and control by the same individual. *See* 8 C.F.R. § 204.5(j)(2).

The Petitioner submitted the foreign entity's accountant-prepared Indian Tax Audit Report and Final Accounts for the year ended on March 31, 2018, along with copies of its tax filings for the same year. This evidence identifies the owner and sole proprietor of the foreign business as [redacted] With respect to the U.S. company, the Petitioner submitted a copy of its certificate of formation, which identifies [redacted] as the incorporator, and as one of four company directors. The Petitioner also submitted a copy of its company bylaws, which are executed by [redacted] as president. The signature line on the final page of the bylaws indicates this individual has "100% interest" in the company, but the company bylaws do not expressly address stock ownership and Petitioner did not provide objective evidence of its ownership, such as copies of its stock certificates and stock transfer ledger. The evidence submitted is insufficient to support the Petitioner's claim that the U.S. and foreign entities are owned and controlled by the same individual or that the two entities otherwise have a qualifying relationship as required for this immigrant classification. The Petitioner will need to address this issue in any future proceeding.

V. CONCLUSION

The Petitioner did not establish that it had been doing business for at least one year when the petition was filed and that the Beneficiary was employed abroad in a managerial capacity for at least one year in the three-year period preceding the filing of the petition. The appeal will be dismissed for these reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.