U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24549235

Date: JAN. 30, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a supplier of custom-manufactured automotive systems and switches, seeks to permanently employ the Beneficiary as its deputy general manager under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(l)(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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had been doing business for at least one year at the time it filed the petition in June 2021. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

Consistent with the statute, the regulations at 8 C.F.R. § 204.5(j)(3) require the petitioner to demonstrate 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 as a manager or executive 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. The term "doing business" means the regular, systematic, and continuous provision of goods and/or services for a firm, corporation, or other entity and does not include the mere presence of an agent or office. 8 C.F.R. § 204.5(j)(2).

The record reflects that the Petitioner, which was incorporated in [redacted] 2018, is the wholly owned subsidiary of a Chinese company that manufactures and supplies electronic systems, active driving systems, and electronic switches to major automotive companies as an original equipment manufacturer (OEM).

In denying the petition, the Director acknowledged that the Petitioner provided evidence such as bank statements, evidence of wages paid to employees, utility bills, and copies of purchase contracts executed by U.S. customers and the Petitioner's parent company. However, the Director emphasized that the Petitioner's IRS Forms 1120, U.S. Corporation Income Tax Return, for the years 2019, 2020 and 2021 did not show any gross receipts or sales, and that the submitted supporting evidence did not name the U.S. petitioner as a party to any contracts. Accordingly, the Director determined that the Petitioner did not meet its burden to establish that it had been doing business, as defined in the regulations, for at least one year prior to filing the petition in June 2021, and that it continues to do business.

On appeal, the Petitioner asserts that the Director placed undue emphasis on its tax returns and failed to acknowledge and address its claim that it has been doing business by providing services to its Chinese parent company, which acts as global supplier for its multinational group of companies and is therefore named on all contracts with U.S. customers. Specifically, the Petitioner emphasizes that the evidence of record, in addition to supplemental evidence provided in support of the appeal, demonstrates that it liaises with major U.S. customers during the introduction, bidding and technical review process for new contracts, actively participates in the research and development of products that must be customized to meet the specific needs of those customers, and supports the overall sales process from pre-sales through delivery. The Petitioner asserts that, as such, its U.S. operations do not constitute the "mere presence of an agent or office." Further, the Petitioner maintains that the facts in this matter are similar to those described in *Matter of Leacheng*, 26 I&N Dec. 532 (AAO 2015), and that the Director erred by not applying binding precedent in adjudicating this petition.

The record reflects that the Petitioner specifically explained the nature of its U.S. business activities and articulated a claim that its activities are comparable to those provided by the petitioning company in *Leacheng*. However, a review of the denial letter indicates that the Director did not acknowledge the Petitioner's claim or the potential applicability of this precedent decision. As such, the decision does not fully address the claims and evidence submitted in support of the petition. An officer must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 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). Accordingly, we will withdraw the Director's decision.

As noted by the Petitioner, the definition of "doing business" at 8 C.F.R. § 204.5(j)(2) contains no requirement that a petitioner must provide goods and or services to an unaffiliated third party. A petitioner may establish that it is "doing business" by demonstrating that it is providing goods and/or services in a regular, systematic, and continuous manner to related companies within its multinational organization. *Leacheng*, 26 I&N Dec. 532 (AAO 2015). As the Petitioner maintains that *Leacheng* is applicable here, a determination of whether it has been doing business must take into consideration all submitted evidence related to its activities. Relevant factors include whether the Petitioner has

adequately defined the specific services it provides to its parent company and the terms under which it provides those services, and whether it provided sufficient supporting documentation to corroborate its provision of goods and/or services that fall within the regulatory definition of "doing business."

As the Director has not yet addressed the Petitioner's claim that it provides services to its foreign parent company consistent with *Leacheng* and has not had the opportunity to review the additional evidence submitted in support of the appeal, we will remand this matter so that the Director may consider the Petitioner's claim and supporting evidence in the first instance. After further consideration of the issues addressed in this decision, the Director may request additional evidence in accordance with the applicable provisions or may issue a new decision based on the claims and the evidence in the record.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.