U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28918571

Date: JAN. 3, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, which develops business analytics software, seeks to permanently employ the Beneficiary as a project 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner has been doing business for at least one year prior to the petition's filing date. 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.

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).

A petitioning employer must establish that it has been doing business for at least one year prior to the date of filing the petition. *See* 8 C.F.R. § 204.5(j)(3)(i)(D). *Doing business* means an entity's regular, systematic, and continuous provision of goods, services, or both, and does not include the mere

presence of an agent or office. 8 C.F.R. § 204.5(j)(2). The Director determined that the Petitioner had not submitted enough evidence to meet this requirement.

The Petitioner described itself as part of a "family of companies [that] provides a range of business analytics services to retailers around the globe." The Petitioner claimed that it "maintains several United States-based clients with a national or multinational retail presence."

The Petitioner's initial submission did not directly address the specific requirement that the Petitioner must have been doing business in the United States for at least a year prior to the filing date. Instead, the Petitioner submitted copies of press releases and its 2020 federal income tax return. The Petitioner stated that these materials show that the company is "unquestionably viable and bona fide."

The initially submitted documents, however, do not show that the petitioning U.S. entity was regularly, continuously, and systematically providing goods or services in the United States during the year preceding the filing date. The press releases concern activities outside the United States and the tax return, for the tax year from April 1, 2020 to March 31, 2021, covers only about four months of the year leading up to the filing date in early December 2021.

The Director issued a request for evidence (RFE), asking the Petitioner to submit copies of "[s]ales contracts" and "[i]nvoices, which include the details of the exact goods and/or services provided." The Director did not specify a particular quantity of documents or a particular time period that the documents should cover.

In response, the Petitioner submitted "[a] sampling of recent invoices" issued to one customer between June and October 2022 and printouts of related email messages. A May 2020 consulting agreement with a different customer established an "initial term of . . . three (3) years." The Petitioner also submitted a copy of its 2021 income tax return, covering the tax year from April 2021 to March 2022.

The Director denied the petition, stating that the submitted "invoices provide very few details of [the Petitioner's] billed work," and that "the accompanying emails hold little evidentiary value without supporting independent objective documentary evidence." The Director acknowledged the consulting agreement from 2020, but stated that the Petitioner had not submitted invoices or other evidence to establish that the Petitioner actually performed any consulting work for the customer.

On appeal, the Petitioner submits copies of prior income tax returns, master service agreements, statements of work, and other materials relating to the Petitioner's business activity before and after the filing date. Because some of these documents are material to the question of whether the Petitioner was doing business in 2020-2021, but they were not in the record at the time of the Director's decision, we will remand the matter so that the Director may be the first to consider the documents' impact on eligibility for the benefit sought in this proceeding.

We agree with the Director that activities that incur expenses, such as renting office space, do not by themselves establish that an entity is doing business. But the 2020 and 2021 tax returns, both in the record before the Director denied the petition and both relating to the year immediately prior to the filing date, indicate that the Petitioner took in more than $3 million per year in gross receipts or sales.

The Director did not discuss these returns or explain why that level of income did not appear to be consistent with regular, continuous, and systematic business activity.

Furthermore, the Director did not sufficiently demonstrate or explain why the previously submitted materials lack evidentiary value. Some of the submitted invoices include details about work performed during "Additional Hours." Although the invoices themselves refer only to "Onsite Consulting Engagement," this information is consistent with the provision of services, even if it lacks details about those services.

We will withdraw the Director's decision because that decision does not reflect full consideration of the evidence submitted, and does not fully explain why that evidence does not meet the Petitioner's burden of proof. The Director must also consider the relevant documentation submitted on appeal.

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