U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23402981

Date: NOV. 17, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a trading business, seeks to continue the Beneficiary's temporary employment as its general manager under the L-1A nonimmigrant classification for intracompany transferees. 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 Texas Service Center denied the petition, concluding that the record did not establish, as required, that (1) the Petitioner has been doing business as defined in the regulations and (2) the Beneficiary would be employed in the United States in a managerial or executive capacity. The matter is now before us on appeal.[1]

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See 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

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

[1] We previously issued a decision summarily dismissing the Petitioner's appeal on May 25, 2022, as the record before us at the time did not include a statement specifically identifying an erroneous conclusion of law or statement of fact in the Director's unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v). On June 22, 2022, we advised the Petitioner that we had reopened the appeal on Service motion under 8 C.F.R. § 103.5(a)(5). The record now reflects the Petitioner's timely submission of a supplemental brief and evidence.

II. DOING BUSINESS IN THE UNITED STATES

The Director denied the petition, in part, based on a determination that the Petitioner did not establish that it has been doing business, as defined in the regulations, in the United States.

The regulations define a qualifying organization as a firm, corporation or legal entity that is doing business as an employer in the United States and in at least one other country. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*). The term "doing business" is defined as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii)(H).

A. Facts and Procedural History

The Petitioner filed the petition in March 2020 and stated that it is engaged in the trade of U.S.-manufactured non-destructive testing (NDT) equipment to customers in Asia and African markets. The Petitioner did not complete the requested information regarding its gross and net annual income on the Form I-129, Petition for a Nonimmigrant Worker. According to the information provided on the Form I-129, the Petitioner's business address, and the Beneficiary's work site, is at 845 [redacted] in [redacted] New York. The Petitioner indicated that it also shares a portion of the warehouse space occupied by one of its suppliers [redacted] in [redacted] New Jersey.

In a supporting letter, the Petitioner stated that its U.S. operations generated $540,100 in sales in 2019. The Petitioner explained that for accounting purposes "all profits are located to the foreign entity," referring to its Chinese parent company. The Petitioner further indicated that "because of strict foreign currency control, some customers in China signed the contracts with the Petitioner but had to pay to Foreign Entity in local currency." According to the Petitioner's statement, the foreign entity provides "equivalent funds" to the U.S. subsidiary as compensation for such sales.

The Petitioner's 2019 corporate federal tax return reflected $0 in income and approximately $115,000 in deductions, which included the Beneficiary's $75,000 salary. According to the submitted IRS Form 5472, the Petitioner received $120,000 in payments from its parent company in 2019. This same amount is reflected on the tax return as additional paid-in capital at Form 1120, Schedule K, line 23.

The Petitioner's initial evidence also included a "2020-2022 Corporate Proposal," which mentions that the Petitioner signed two purchase orders with a U.S. supplier in December 2019 for a total of $139,300 in products to be delivered to customers in 2020. The 2020-2022 Corporate Proposal, at page 15, includes a "Performance Table" for 2019 indicating that the Petitioner signed six contracts in 2019 (in February, March, April, July and December) with a total value of $540,100. The proposal also includes an "Income and Expenditure Account" table for 2019, but the information is inconsistent with financial information reported on the Petitioner's 2019 tax return. For example, the table reports that the Petitioner paid $120,000 in staff salary alone, but this amount is greater than the total deductions of $115,000 reported on the federal tax return.

The Petitioner submitted copies of its monthly bank statements for a [redacted] business checking account opened in July 2019, but this evidence did not document any purchase or sales transactions related to

the company's trading activities. The most recent bank statement submitted, for February 2020, showed an ending balance of $18.35. The record also includes two bank statements for a different [redacted] business checking account owned by the Petitioner. These statements, for the months of May and June 2018, show a total of four wire transfer deposits from a Chinese company which appear to reflect sales transactions.

As additional evidence of its business activities, the Petitioner submitted documentation of several purchase, sales, and shipping transactions, all of which were dated in February, March, and April 2017 and in May and June 2018. The Petitioner provided one recent invoice indicating that "Trademark Engine" billed the company $69.00 for "trademark registration" in March 2020.

With respect to its physical premises, the Petitioner provided account statements from [redacted] dated between March 2019 and August 2019. The statements indicate that the Petitioner was billed for a "co-working" office at the 845 [redacted] location during these months. The Petitioner also submitted a January 2020 statement from [redacted] but it reflects charges incurred in August 2019, as well as an October 2019 charge for "restoration services" described as fees collected at the end of a contract. In support of its claim that it also shares a warehouse space with its supplier, [redacted] the Petitioner provided two photographs and a March 2018 letter from [redacted] president indicating that it had allocated warehouse space where the Beneficiary could bring prospective clients for trainings and demonstrations on its digital x-ray imaging systems.

The Director issued a request for evidence advising the Petitioner that its initial evidence did not meet its burden to establish that it had been doing business throughout the past year. The Director acknowledged the Petitioner's statement that the company had recently placed two orders with suppliers, but noted that the supporting evidence, including the Petitioner's bank statements, did not confirm these activities. The Director emphasized that the Petitioner must demonstrate that it has been engaged in the regular, systematic, and continuous provision of goods and services to meet the eligibility requirements for the requested extension.

The Director also advised the Petitioner that the business address provided on the petition had not been confirmed as an active business location. The Director noted the submission of the [redacted] invoices for a co-working space but noted that invoices were only provided for the period March to August 2019. The Director also acknowledged the Petitioner's statement that it was sharing warehouse space with a supplier but observed that there was a lack of corroborating evidence that it currently operates from the supplier's location. Finally, the Director advised that a USCIS site visit conducted on December 20, 2018, had revealed that the Petitioner was not doing business at the address stated on the previous Form I-129 petition, and that the Beneficiary could not establish the current location of the business at that time.

The Director provided a list of suggested evidence the Petitioner could provide to establish that it had been doing business during the validity of the Beneficiary's previously approved L-1A petition.

In response to the RFE the Petitioner resubmitted copies of its 2018 and 2019 state and federal tax returns which show no gross receipts or sales; resubmitted copies of sales transaction documentation dated between February and April 2017; and provided an undated [redacted] Bank account summary

indicating that the Petitioner had a balance of approximately $90,000 in its business checking account, and loan balance of $14,707.09 with the next payment due on December 1, 2020. With respect to its physical premises, the Petitioner re-submitted the same evidence it had provided at the time of filing, along with additional [redacted] invoices indicating that the Petitioner was billed for virtual office and mailbox services at [redacted] 750 [redacted] New York location between June and August 2018.

The Petitioner stated that its federal tax returns "showed the pass through of profits to the parent company" but did not further elaborate. The Petitioner also maintained that the previously submitted evidence was sufficient to show that the company was doing business and noted that "the parent company has been supporting and is committed to support the petitioner." In this regard, the Petitioner noted that the foreign entity "has to transfer money from the parent company's shareholder's account to the Petitioner and the beneficiary who then transfers to the petitioner." The Petitioner provided a [redacted] Transaction Details List" for customer [redacted] (one of the parent company's shareholders) indicating a total of nine transfers to the petitioning company, totaling $46,050, between December 2016 and June 2017, in support of its claim that the foreign entity has transferred funds to the Petitioner.

Regarding its physical premises, the Petitioner asked the Director to review the re-submitted photographs and invoices relating to the [redacted] location. The Petitioner explained that it initially signed a rental agreement with a [redacted] location at 750 [redacted] in New York and moved to a location at 845 [redacted] at the end of 2018. The Petitioner indicated that at the time of filing, employees were working at home "from time to time" to comply with restrictions resulting from the COVID-19 pandemic. The Petitioner also resubmitted the 2018 letter from [redacted] and photographs of the [redacted] warehouse location.

The Director denied the petition, concluding that the evidence submitted at the time of filing and in response to the RFE did not demonstrate that the Petitioner has been doing business as defined in the regulations, as it did not establish company's regular, systematic and continuous provision of goods or services in the United States. The Director emphasized that most of the evidence of business transactions was from 2017 or 2018, while the instant petition was filed in 2020 and was not accompanied by recent evidence of continuous business. The Director further noted that the submitted bank statements were insufficient to corroborate the Petitioner's business activities and that the [redacted] invoices did not demonstrate the Petitioner's continuous operation at the business location stated on the petition.

On appeal, the Petitioner provides an overview of the parent company's business activities and performance and indicates that "Petitioner and its Foreign Entity have transformed to a more diversified business enterprise by procuring a wide variety of consumer products ranging from auto parts to furniture and closing and shoes in China and exports them to the United States." The Petitioner maintains that it "has a systematic and continuous business operation in the United States even though it has suffered significant financial damages as a result of Covid-19 pandemic in the past two years." It states that the company "has leased new office and warehouse in New York and New Jersey to provide commercial logistic services for merchants in Amazon" and that it expects its revenue to reach 1.5 million by 2022. The evidence submitted on appeal includes a copy of a lease agreement signed on January 1, 2022, and photographs of the leased premises.

The Petitioner also contends that the Director did not follow USCIS policy guidance which requires officers to defer to a prior approval when adjudicating a request for extension involving the same petitioner, beneficiary and underlying facts.[2] The Petitioner does not directly address the Director's determinations that the record did not contain recent evidence of the company's regular, systematic, and continuous business activities or evidence that it has consistently maintained physical premises from which to conduct its business.

B. Analysis

Upon *de novo* review of the record, we agree with the Director's conclusion that the Petitioner has not established that it has been engaged in the regular, systematic, and continuous provision of goods and/or services in the United States.

While the Petitioner points to USCIS' deference policy applicable to adjudication of petitions requesting an extension of nonimmigrant status, the circumstances presented here do not show any error on the part of the Director in applying that deference policy. Current USCIS policy provides that officers should not defer to prior approvals in cases where: there was a material error involved with previous approval(s); there has been a material change in circumstances or eligibility requirements; or there is new material information that adversely impacts the petitioner's or beneficiary's eligibility.[3]

To meet the definition of a "qualifying organization" at 8 C.F.R. § 214.2(l)(1)(ii)(G), a petitioner must show that it is doing business in a regular, continuous and consistent manner in the United States and that it will continue to do so for the duration of the beneficiary's requested stay in L-1 status. Therefore, for L-1 petitioners, doing business as a qualifying organization is an ongoing eligibility requirement, such that the evidence submitted in support of the Petitioner's prior petition (filed in March 2018) would not establish that the company continued to do business during the validity of the previously approved petition or that it was doing business when it filed this petition to request an extension in March 2020. The Petitioner has the burden to establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Here, the evidence submitted at the time of filing did not sufficiently corroborate the Petitioner's ongoing business activities and as such presented a potential material change in circumstances that could impact the Petitioner's eligibility for the requested extension of status. Thus, the Director's issuance of an RFE was warranted. The RFE reflects that the Director acknowledged the prior approval but advised the Petitioner that its claimed ongoing and recent business transactions were not supported by sufficient evidence. The Director informed the Petitioner that the submitted evidence from 2017 and 2018 could not meet its burden to establish eligibility at the time of filing and provided the Petitioner the opportunity to supplement the record.

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[2] The Petitioner's brief contains references to a 2004 USCIS policy memorandum. Current policy guidance concerning deference to prior approvals is located at 2 *USCIS Policy Manual* A.4(B), https://www.uscis.gov/policy-manual; *see also* USCIS Policy Alert, PA-2021-05, *Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity* (Apr. 27, 2021), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf.

[3] 2 *USCIS Policy Manual*, *supra*, at A.4(B)(1).

Further, the RFE notified the Petitioner that there was new material information regarding the company's maintenance of physical premises that may adversely impact its eligibility. Specifically, the Director provided information obtained during from a December 2018 USCIS site visit conducted subsequent to the approval of the prior petition. The record reflects that the Director therefore complied with 8 C.F.R. § 103.2(b)(16)(i), which requires that the Petitioner be notified of any potentially derogatory information from outside the record and be given an opportunity to rebut such information.

Here, the Petitioner's response to the RFE did not adequately address the evidentiary deficiencies or derogatory information described by the Director. While we recognize that the Director should explain their departure from previous approvals, the Petitioner carries the burden of proof and must provide requested evidence. A failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The Petitioner has submitted invoices, contracts, shipping documentation and bank statements that corroborate its involvement in export trade activities, but this evidence is dated on or prior to June 2018. Although the Petitioner submitted its internally prepared 2020-2022 Corporate Proposal indicating that the company signed several contracts valued at over $540,000 in 2019, it did not provide supporting evidence of any of these transactions when requested to do so. Further, other statements made in the corporate proposal regarding the company's 2019 financial activities were not supported by the Petitioner's 2019 tax return. We acknowledge the Petitioner's claim that foreign currency controls, customer preferences, and other factors impact its accounting activities and preparation of its tax returns. However, it did not adequately explain this impact, sufficiently document payments it received as compensation for sales activities from its parent company, or provide other probative evidence of its regular, systematic, and continuous provision of goods and/or services.

The Director also raised valid concerns regarding the Petitioner's physical premises that have not been adequately addressed, either in response to the RFE or on appeal. When a petitioner seeks L-1classification based on the opening of a "new office," it is required to provide evidence that it has secured physical premises suitable for operation of its business.[4] However, a petitioner is not absolved of the requirement to maintain sufficient physical premises simply because it has been in existence for more than one year. Inherent to the requirement of doing business, the Petitioner must possess sufficient physical premises to conduct business.

The evidence submitted with this petition indicates that the Petitioner had secured a [redacted] "virtual office" for part of 2018, that it used its supplier's warehouse space for certain limited purposes as of May 2018, and that it paid for a [redacted] co-working space at a different location for six months (March through August) during 2019. Although the Petitioner indicated that the company had moved in December 2018 (around the time of the USCIS site visit referenced in the RFE), the timing of this change in location is not corroborated by the submitted evidence. Further, the record does not document that the Petitioner was leasing and occupying premises at the [redacted] location listed on the

[4] *See* 8 C.F.R. § 214.2(l)(3)(v)(A) (providing evidentiary requirements for an L-1A new office petition). A "new office" is an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. The record reflects that the Petitioner's initial petition was filed as a "new office" and approved for a one-year period, from April 5, 2017 through April 4, 2018.

instant petition at the time it was filed, or that it continued to use its supplier's location as of March 2020. While we acknowledge the Petitioner's statement that the COVID-19 pandemic forced many [redacted]-based employers to keep their workers at home, this explanation does not account for the lack of evidence demonstrating that the Petitioner consistently maintained sufficient physical premises during the validity of the previously approved petition (since April 2018) or that it had maintained a physical premises at any time after August or September of 2019.

Further, the Petitioner's appeal, like its response to the RFE, does not directly address the evidentiary deficiencies and derogatory information that resulted in the Director's determination that it has not shown that it has been doing business as defined in the regulations. Instead, the Petitioner claims that it is now pursuing additional lines of business and provides evidence that it signed a new lease as of January 2022. As noted, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

The Petitioner's other primary claim on appeal, as discussed above, is that the Director was required to defer to the prior approval of an L-1A petition filed on behalf of the Beneficiary. However, for the reasons discussed, based on new material information and a material change in circumstances that impacts eligibility for this classification, we conclude that deference to the prior approval was not required in this matter. The Petitioner has not met its burden to establish that, as of the date of filing, it had been doing business as defined in the regulations. Accordingly, we agree with the Director's decision to deny the petition on this basis.

III. RESERVED ISSUE

Because the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding whether the Beneficiary would be employed in the United States in a managerial or executive capacity. *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).

IV. CONCLUSION

The Petitioner has not met its burden to establish that it has been doing business as defined in the regulations. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.