U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24059350

Date: AUG. 9, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a research and technology institute in smart grid development, seeks to extend the Beneficiary's temporary employment as its chief information officer under the L-1A nonimmigrant classification for intracompany transferees. *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.

Although the petition was approved, upon further review and subsequent to a post adjudicative site visit, the Director of the California Service Center revoked the approval of the petition, concluding that the Petitioner did not establish that it is doing business in the United States as defined in the regulations. 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

A. The L-1A Classification

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 their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id*. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

In order to meet the definition of "qualifying organization" there must be a United States employer doing business in the United States and a related parent, branch, affiliate, or subsidiary doing business in at least one other country. 8 C.F.R. § 214.2(l)(1)(ii)(G). "Doing business" means 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 in the United States and abroad. 8 C.F.R. § 214.2(l)(1)(ii)(H).

B. Revocation Authority

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke (NOIR) that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B). If the intended revocation is based in whole or in part on derogatory information that is discovered outside the record of proceedings, USCIS is obligated to provide notice of such information, and to make that derogatory information part of the record along with any rebuttal provided by the petitioner. 8 C.F.R. § 103.2(b)(16)(i).

II. ANALYSIS

The record reflects that the Petitioner is a research and technology institute in smart grid development. It claimed at the time of filing in March 2020 that it ran four "technical projects" under a total budget of approximately $6.6 million. The Petitioner provided evidence that it was established in 2013 and operated from a 99,550 square foot facility in California that includes offices and laboratory spaces. The Petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it had over $13 million in gross annual income and 38 employees. The Petitioner's stated location, business activities, and financial status were corroborated by supporting evidence submitted with the petition. As noted, the Director initially approved the petition in March 2020.

On July 16, 2021, the Director issued a NOIR which informed the Petitioner that "the only issue to be evaluated is whether your U.S. organization is doing business in accordance with the regulations" and cited to the definition of "doing business" at 8 C.F.R. § 214.2(l)(1)(ii)(H). The NOIR describes a USCIS site visit that occurred at the Petitioner's facility in January 2021. The NOIR states that the officer making the visit spoke with the Beneficiary, who told the officer that the business was closing due to the ongoing COVID-19 pandemic. Based on that information, the Director notified the Petitioner of the intention to revoke the petition's approval based on the fact that one or more entities were no longer qualifying organizations. The Petitioner was afforded 30 days to submit additional information, evidence, or arguments to demonstrate that it was doing business in accordance with the regulatory definition.

The response to the NOIR included a letter from the Petitioner, which stated as follows:

> Currently, US company has just survived the impact from the Covid 19 recession. Company is planning to expand its business to its previous level. Company has obtained its parent company's financial aid. Now petitioner has more than **$1.7 Million** in its bank account and all these funds will be used for purpose of business revamping.

The Petitioner further stated that it will restart its four technical projects in the areas of Graph Computing & Grid Modernization, Smart Chip and IoT, PMU & System Analytics, and AI and its Applications. The Petitioner provided an overview of its hiring plan, indicating that it would increase its employee count to 25 by 2022. As supporting evidence, the Petitioner submitted copies of bank statements, employee pay records, utility bills, invoices, and contracts.

The Director revoked the approval of the petition, concluding that "one or more entities are no longer qualifying organizations." The revocation decision acknowledged the Petitioner's NOIR response and the supporting documents, but noted that they were insufficient to establish that the Petitioner had been doing business as required. Specifically, the Director noted that the bank statements demonstrated the Petitioner's ability to pay bills and personnel but did not demonstrate that the company was doing business. The Director further noted that invoices and contracts submitted demonstrated only the Petitioner's business relationship with its accounting firm, [redacted] and were not evidence of doing business by the regular, systematic, and continuous provisions of goods and/or services. Finally, the Director noted that while not a basis for denial, subsequent to the issuance of the NOIR and its response, USCIS confirmed that the Petitioner's premises was up for sale.

On appeal, the Petitioner argues that the Director did not articulate why its submission of invoices and contracts with its accounting firm was insufficient evidence of the Petitioner doing business. It further contends that the Director did not acknowledge evidence submitted in response to a February 22, 2022 email request for additional documentation subsequent to a second site visit conducted at its premises. Finally, the Petitioner objects to the Director's observations regarding the sale of the Petitioner's premises.

The Petitioner asserts that its submission of invoices and contracts with its accounting firm was sufficient evidence to rebut the NOIR and the revocation notice's finding that it was not doing business. The statement of work (SOW) between the Petitioner and [redacted] dated March 22, 2021, outlines the accounting services [redacted] will provide to the Petitioner, and details the fees that the Petitioner will pay for such services. For example, the SOW states as follows:

> [redacted] will provide the following services to you (the "Services"):
>
> [redacted] will assist Client in determining their research credit under section 41 of the Internal Revenue Code of 1986, as amended ("IRC") for the taxable year(s) ended December 31, 2020 ("FY20" or "Credit Year(s)") for the following entities (referred to hereinafter collectively as Client): [Petitioner].

As previously noted, "doing business" means 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 in the United States and abroad. 8 C.F.R. § 214.2(l)(1)(ii)(H) (emphasis added). Here, [redacted] is providing accounting services to the Petitioner; therefore, this agreement and related invoices are not evidence of the *Petitioner's* regular, systematic, and continuous provision of goods and/or services.

On appeal, the Petitioner refers to our non-precedent decision concerning the lack of restriction on the meaning of doing business, except when there is the mere presence of an agent in the United States.

The Petitioner asserts that this decision provides that doing business requires activity, not just registration of the business or office or presence of an agent, and that it has sufficiently shown by its submission of the [redacted] invoices and contracts that it is not merely an agent. *See* 8 CFR 214.2(l)(1)(ii)(H). This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

Nevertheless, as stated at 8 C.F.R. § 214.2(l)(1)(ii)(G), a qualifying organization must be doing business "as an employer in the United States and in at least one other country." Both the U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an intracompany transferee. *See* 8 CFR 214.2(l)(1)(ii)(G); *see also Matter of Chartier*, 16 I&N Dec. 284 (BIA 1977). Here, as noted above, the Petitioner's submission of its agreement with [redacted] and the related invoices are not evidence that the Petitioner is regularly, systematically, and continuously providing goods and/or services; rather, these documents show the Petitioner's payment for services to ensure its financial dealings are in compliance with IRS requirements and regulations.

With regard to the four technical projects it claims it will restart, the Petitioner has provided insufficient evidence to support the existence of these projects or demonstrate that such projects were ongoing or have been resumed. The record contains copies of agreements between the Petitioner and the University of [redacted] and [redacted] Institute of Technology Office of Sponsored Programs. Although each agreement indicates that the Petitioner will sponsor these entities to perform research on its behalf, none of the agreements specifically mention the four technical projects (i.e., Graph Computing & Grid Modernization, Smart Chip and IoT, PMU & System Analytics, and AI and its Applications) that the Petitioner asserts it has resumed. Moreover, the agreements with the University of [redacted] expired on December 31, 2020 and September 30, 2019, respectively, and the record contains no evidence demonstrating that such agreements were renewed or extended. Moreover, although the agreement with [redacted] Institute of Technology Office of Sponsored Programs states that its period of performance was from January 1, 2020 through December 31, 2021, the Petitioner provided no evidence demonstrating that it had an active or ongoing relationship with this entity and was regularly, systematically, and continuously providing goods and/or services to or through this entity at the time of the site visit or at the time it submitted its response to the NOIR.

We further note that at the time of the site visit, the Beneficiary stated that the only other employee of the Petitioner was its Finance Director [redacted] In order to make a determination that an organization is conducting sufficient business to require the services of a managerial capacity, executive capacity, or specialized knowledge employee, the organization's personnel structure and the beneficiary's stated duties must be placed in the context of the level of business that is being conducted by the organization. *See generally* 6 *USCIS Policy Manual* (B)(2), https://www.uscis.gov/policy-manual. When responding to the NOIR, the Petitioner did not supplement the record with evidence such as payroll records or other documentation demonstrating it had sufficient subordinate staff to support the Beneficiary's employment in a primarily managerial capacity. In fact, the Petitioner stated its intent to "resume operations" and hire up to 25 employees by 2022. Based on these evidentiary deficiencies, it does not appear that the Petitioner was conducting business in a manner that would require the

services of a person primarily engaged in a managerial, executive, or specialized knowledge capacity at the time of revocation.

Regarding the Petitioner's assertions about disregarded evidence submitted in response to a second site visit, it appears that the request for documentation was issued by a field agent based in the San Jose, California field office, and not by the Director of the California Service Center in relation to the immediate petition or the NOIR. The record further indicates, pursuant to copies of email correspondence and a cover letter addressed to that field agent submitted on appeal, that such evidence was sent directly to the San Jose field office, and not the California Service Center. The documents were submitted to the field office after the Petitioner submitted its response to the NOIR in this case and were not in the instant record for consideration by the Director in issuing the notice of revocation. Further, as the request for documentation was related to a different petition, such documents were never included in the instant record of proceedings. Therefore, the Director did not err in denying the petition based on the record before them. Moreover, because the Petitioner did not submit such documents on appeal, we are unable to evaluate them.

The Petitioner submitted its 2020 federal tax return on appeal, which demonstrates it had approximately $4.5 million in gross receipts or sales. While we acknowledge that this document supports the assertion that the Petitioner was likely doing business in 2020 at the time the petition was filed, it does not demonstrate that the Petitioner was continuing to do business at the time the site visit was conducted in January 2021 or the NOIR was issued in July 2021. We further note that the record does not contain a copy of the Petitioner's 2021 federal tax return, so we are unable to evaluate the nature of the Petitioner's gross receipts or sales or its operations during that period.

The Petitioner also asserts on appeal that its agreements with the University [redacted] "would clearly qualify as evidence of regular, systematic, and continuous provision of goods and services." The agreement with the University [redacted] executed in June 2020, indicates that the Petitioner agreed to provide funding to the university to conduct research on the topic of electric vehicle demand estimation using machine earning techniques. The record, however, contains no evidence demonstrating that the Petitioner provided funding to the university pursuant to the agreement, nor is there any other indication that this contractual relationship was acted upon from June 2020 through the time of the revocation of the petition's approval. Moreover, it is unclear if this agreement to provide research funding equates to doing business, as it is unclear based on the evidence in the record whether this relationship involved the regular, systematic, and continuous provision of goods and/or services to the university by the Petitioner. Similarly, the agreement with [redacted] entered into in 2019, indicates that [redacted] will provide development services *to the Petitioner*, and is not indicative of the Petitioner providing goods and services to [redacted] Finally, it is unclear what relationship or involvement, if any, these entities have to the four technical projects the Petitioner claims are the primary focus of its company.

The Petitioner also challenges the Director's comments regarding to the sale of the Petitioner's premises, noting that it was not a stated basis for revocation. The Director specified in the revocation notice that this fact came into being after the NOIR was issued and the Petitioner's response was received, and was articulated as a "side note" and not as a deciding reason for the revocation. The Petitioner states that the sale of the premises is not relevant to the question of the Petitioner doing business or its maintenance of a physical premises. Nevertheless, the fact that the Petitioner's premises

is for sale only leaves further uncertainty as to whether it was, and is, doing business and operating sufficiently.[1]

Upon review of the record in its entirety, the Petitioner has neither defined the specific services it claims to provide in relation to its four technical projects, nor has it submitted documentation to corroborate that it is actually carrying out the broadly stated "research" it claims to conduct. Although the Petitioner stated in response to the NOIR that it intends to resume operations, restart its four technical projects, and hire up to 25 employees by 2022, these statements signify a reliance on circumstances that did not exist at the time of the site visit. We again note that the Beneficiary stated during the January 2021 site visit that the company was shutting down due to the ongoing COVID-19 pandemic, and there is insufficient evidence in the record to demonstrate that the Petitioner had sufficient staffing and was doing business as contemplated by the regulations at that time. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

In sum, the Petitioner has not overcome the uncertainties related to its operations noted by the Director in the NOIR and the revocation decision.

III. CONCLUSION

The Petitioner did not provide sufficient credible evidence that it was, and is, doing business in a regular, systematic, and continuous fashion. Therefore, the Director's revocation of the approved petition will not be disturbed.

ORDER: The appeal is dismissed.

[1] We further note that the ownership of the physical premises is unclear. Although the purchase agreement, dated March 29, 2016, lists the Petitioner as the buyer, the settlement sheet, dated May 9, 2016, lists a separate entity, [redacted] as the buyer. The lease agreement referred to on appeal also lists [redacted] and not the Petitioner, as the landlord and property owner. California corporate records indicate that both entities are currently active and in good standing. As the Petitioner does not appear to be the legal owner of the premises, and it has not submitted a lease agreement indicating that it has an active lease for workspace at this premises, the Petitioner's claim that it continues to do business is further undermined by this discrepancy. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*