U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22685994

Date: OCT. 04, 2022

Appeal of California Service Center Decision

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

The Petitioner, a logistics and transportation company, seeks to continue the Beneficiary's temporary employment as its president 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.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that (1) its foreign parent company continues to do business in China; and (2) the Beneficiary was employed by a qualifying entity abroad for at least one year in the relevant three-year timeframe.[1] The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. 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 review, we will withdraw the Director's decision and remand the matter for entry of a new decision.

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

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf; that petition was approved for the period April 1, 2016, until March 31, 2017. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The Petitioner subsequently filed an extension petition (with receipt number [redacted]), which was denied in June 2017. Finally, the Petitioner filed a third petition in December 2017 (with receipt number [redacted]) that was approved and valid from January 10, 2019, until January 1, 2020.

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.*

As defined at 8 C.F.R. § 214.2(l)(1)(ii)(G), a "qualifying organization" is a United States or foreign legal entity which (1) meets exactly one of the qualifying relationships specified in the regulatory definitions of parent, branch, affiliate or subsidiary; (2) is or will be doing business in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the L-1 beneficiary's stay in the United States; and (3) otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The term "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 of the qualifying organization in the United States and abroad.

II. ANALYSIS

As noted, the Director denied the petition based on a determination that the Petitioner did not establish that (1) its parent company is doing business abroad, and (2) the Beneficiary had the required one year of qualifying employment abroad with the Petitioner's parent company.

At the time of filing in December 2019, the Petitioner submitted a current business license and lease agreement for the foreign entity [redacted], a published company brochure providing an overview of the company's services, and copies of the parent company's audited financial statements for 2016, 2017 and 2018. With respect to the Beneficiary's employment abroad, the Petitioner stated on the Form I-129 that he was employed as the parent company's general manager from 2002 until 2016.

In a request for evidence (RFE), the Director stated:[2]

> You indicate that the foreign entity is systematically and continuously carrying out their business activities in China. The consulate conducted three site visits to three claimed locations for the foreign entity in 2018. It appears that the foreign entity, [redacted] is not doing business as required by the L-1 requirements.

[2] As noted by the Petitioner on appeal, the site visits referenced by the Director were conducted in connection with an L-1B classification petition [redacted] the Petitioner filed on behalf of a different beneficiary. The Director revoked the approval of that petition, in part, based on information obtained during the referenced site visits. The Petitioner appealed the decision to the AAO, and we withdrew the Director's decision and remanded the matter to the Director for further action after determining that both the notice of intent to revoke (NOIR) and revocation decision failed to provide the Petitioner with adequate notice of the details of those visits and the derogatory information derived from them. *See In Re: 7052597* (AAO Jan. 16, 2020). USCIS records reflect that, on remand, the approval of the L-1B petition was affirmed without further action to address the site visits that led to the issuance of the NOIR. We emphasize that the approval of that separate petition does not signify that the Petitioner has resolved or overcome any derogatory information raised during the site visits.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i), the Director is obligated to provide notice of any derogatory information that is discovered outside of the record of proceedings. Further, the Director must make that derogatory information part of the record along with any rebuttal provided by the Petitioner. *Id.* The Director may make such evidence part of the record by describing it in the notice, provided there is sufficient detail that the Petitioner may make an informed rebuttal.

Although the issuance of the RFE in this matter was directly correlated to derogatory information obtained during the referenced 2018 site visits, neither the RFE nor the final decision provides relevant information about those visits, such as the date(s) the visits were conducted, the specific locations visited, or the information discovered at each location. Considering these deficiencies, we conclude that the Director did not provide the Petitioner a meaningful opportunity to challenge the findings from the site visits and the other factors that led to the determination that the foreign entity was not doing business. In addition, we observe that the Director's request for additional evidence pertaining to the Beneficiary's employment abroad likely resulted from questions regarding the foreign entity's operating status. Therefore, while the Director raised valid concerns regarding the sufficiency of the Petitioner's response to the RFE, the RFE did not comply with the requirements of 8 C.F.R. § 103.2(b)(16)(i) and did not provide the Petitioner with adequate notice of derogatory information obtained by USCIS so that it could provide a rebuttal to such information. Accordingly, the Director's decision is withdrawn, and the matter will be remanded to the Director.

On remand, the Director is instructed to issue a new RFE or notice of intent to deny in accordance with 8 C.F.R. § 103.2(b)(16)(i) and to allow the Petitioner a reasonable opportunity to respond before issuing a new decision. The Director may also raise any additional issues relevant to the eligibility requirements for the requested classification.

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