U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21103705

Date: JUL. 26, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an event planning and management services business, seeks to continue the Beneficiary's temporary employment as its chief executive officer (CEO) under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 that the Petitioner was doing business, as defined in the regulations, during the previous year. 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. *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 managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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] The Beneficiary initially transferred to the Petitioner's U.S. operations based on an approved L-1A "new office" petition that was valid from December 2, 2019, until December 1, 2020. 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 regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. DOING BUSINESS

The sole issue addressed by the Director is whether the Petitioner established that it was doing business for the previous year, as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). For the purposes of this classification, "doing business" means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization. 8 C.F.R. § 214.2(l)(1)(ii)(H).

The Petitioner, which was established as an events management and planning business, explained that the Beneficiary had to adjust some of the company's projects and goals upon his arrival to the United States in early March 2020,[2] due to restrictions necessitated by the COVID-19 pandemic. Specifically, the Petitioner stated that the Beneficiary developed two platforms to offer the company's clients with virtual event solutions [redacted]) and hybrid event solutions ([redacted]), in addition to the in-person event planning services it initially intended to offer. The Petitioner indicated that it had nevertheless "progressed to be in a position to serve a clientele of U.S. and multinational companies in providing consultation, event planning, and management services for corporate events and marketing."

The Petitioner initially submitted copies of its bank statements for the period January through September 2020 and an "account activity" history printed in late October 2020. It did not provide any additional evidence related to its business transactions or activities for the previous year, such as contracts or invoices. The company's August 2020 statement showed that the Petitioner received a wire transfer in the amount of $21,325 as "payment for invoice[redacted]"[3] None of the other bank statements reflected the receipt of credits as payment for invoices or otherwise demonstrated that the company was engaged in the provision of services. The Petitioner also provided a copy of its original business plan from 2019, which indicated that the company had projected gross revenue of $560,000 in 2020.

In a request for evidence (RFE), the Director noted the Petitioner's submission of bank statements, and acknowledged its statements that it had developed hybrid and virtual event solutions as new service offerings due to the pandemic. However, the Director determined that the evidence did not identify the Petitioner's clients or provide sufficient supporting evidence corroborating its business activities in the United States. The Director provided a list of additional evidence the Petitioner could submit, including, but not limited to, its tax returns, audited financial statements, major sales invoices, and contracts.

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[2] As noted, the Petitioner's new office petition was approved for a one-year period beginning in December 2019. The record reflects that the Beneficiary obtained his L-1 visa at a U.S. Consulate in January 2020, but he did not make his initial entry in L-1A status until March 2020.

[3] The record contains a corresponding invoice for this amount, indicating that the Petitioner billed its affiliate in [redacted] for "services for virtual event solutions, consulting & model development for clients in [redacted] and [Asian] region."

The Petitioner's response included a copy of its 2019 IRS Form 1120, U.S. Corporation Income Tax Return, showing no assets or income for the company's fiscal year ended on March 31, 2020. The Petitioner also submitted a profit and loss statement for the period April 1, 2020 through January 21, 2021, which showed sales of $142,453. However, based on the accompanying evidence, and as discussed in the Director's decision, nearly all this income was generated subsequent to the filing of the petition and after the expiration of the new office petition. 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). After one year, USCIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B).

Here, the Director concluded that the record, when viewed in its totality, did not establish the Petitioner was engaged in the regular, systematic, and continuous provision of goods and/or services for the previous year when it sought to extend its new office petition.

On appeal, the Petitioner asserts that "it is admitted that Petitioner was not able to strictly comply with what the regulation provides" but emphasizes that the COVID-19 pandemic caused widespread disruption of commercial activity and such non-compliance was unintentional and the result of "an act of God or force majeure or natural disaster." The Petitioner maintains that, in light of the disruption caused by the pandemic, and the nature of its business, "it was not possible to strictly comply with the regulations." It argues that "substantial compliance should be sufficient to satisfy the requirement of doing business under 8 C.F.R. § 214.2(l)(ii)(H)."

We acknowledge that the COVID-19 pandemic posed challenges for both new and established businesses. But, on appeal, the Petitioner cites no USCIS policies or announcements that would suspend, prolong, or renew the one-year new office period mandated by the regulations, or remove the requirements applicable to new office extensions pursuant to 8 C.F.R. § 214.2(l)(14)(ii). Although the Petitioner emphasizes that the company responded to this challenging operating environment by creating alternative virtual and hybrid solutions to offer to its clients, the record does not establish that the company had been engaged in the regular and systematic provision of those alternative services at the time it sought to extend the new office petition. Accordingly, the Petitioner has not overcome the basis for denial and the appeal will be dismissed.

III. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

Because we conclude that the Petitioner did not demonstrate that it has been doing business as defined in the regulations, we need not fully address other issues evident in the record. Nevertheless, we will briefly identify an additional ground of ineligibility to inform the Petitioner that this issue should be addressed in future proceedings.

The evidence in the record does not establish that the Beneficiary would be employed in a managerial or executive capacity, as defined at section 101(a)(44)(A) or (B) of the Act, at the time it filed the petition to extend his status. To be eligible for L-1A nonimmigrant visa classification as a manager or executive, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) or section 101(a)(44)(B)(i)-(iv) of the Act.

If the Petitioner establishes that the offered position meets all elements set forth in one of the statutory definitions, it must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties will be primarily managerial or executive, we consider the petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business. Here, while, the record establishes that the Beneficiary has the requisite level of authority over the Petitioner's operations as a CEO and indirectly co-owns the company, it does not establish that he was primarily engaged in managerial or executive duties at the time of filing.

As noted, the Petitioner submitted its initial 2019 business plan for its new office, which indicated that the Beneficiary would initially be required to perform many operational and administrative tasks upon arriving to the United States that do not fall within the statutory definitions of managerial or executive capacity. However, the business plan indicated that he was expected to delegate those non-managerial tasks to three newly hired staff by the end of the first year of operations.[4] The Petitioner indicates that it hired a "general manager, marketing and operations" in March 2020, immediately after the Beneficiary's arrival to the United States. The person hired for that position is the co-owner of the Petitioner's parent company, and other organizational charts for the company show him in the position of "managing director" for the entire corporate group, with the Beneficiary (who owns the other 50% of the parent company) in a lateral or subordinate position. Therefore, the evidence does not clearly demonstrate that the general manager reports to the Beneficiary and relieves him from involvement in the non-managerial, day-to-day activities of the company. Rather, it indicates that both owners, as the company's only employees, would more likely than not be significantly involved in operational and administrative tasks necessary to develop, market, sell and provide the company's services as of the date of filing and moving forward, as the Petitioner's latest personnel plan indicated that only one additional staff member would be hired in 2021. Although the Petitioner indicates that it receives some support services from the staff of a related foreign entity, such services are not sufficiently explained or documented in the record.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the intended U.S. operation one year within the date of approval of the petition to support an executive or managerial position. If the business does not have the necessary staffing after one year to sufficiently relieve the Beneficiary from performing operational and administrative tasks, the Petitioner is ineligible for an extension. The fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act.

We must also take into account the reasonable needs of the organization and acknowledge that a company's size alone may not be the only factor in determining whether a beneficiary is or would be

[4] The Petitioner indicated that it would be hiring a "manager, marketing and operations," a "senior associate, production and logistics," and an "associate, marketing & client service" in 2020.

employed in a managerial or executive capacity. *See* section 101(a)(44)(C) of the Act. However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company or a company that does not conduct business in a regular and continuous manner. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Here, the record does not establish that the company's staffing or business operations have developed to the point where the Petitioner requires the Beneficiary to perform primarily managerial or executive duties. For this additional reason, the petition cannot be approved.

III. CONCLUSION

The Petitioner did not establish that it has been doing business as defined the regulations and therefore, the appeal must be dismissed. Further, the record as presently constituted does not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity as of the date of filing.

ORDER: The appeal is dismissed.