U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-USA CORP.

DATE: APR. 9, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a communications and information technology company, seeks to temporarily employ the Beneficiary as the chief executive of its new office[1] 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 Vermont Service Center denied the petition, concluding that the Petitioner did not establish, as required, that it: (1) has a qualifying relationship with the Beneficiary's foreign employer; (2) the foreign employer continues to do business abroad; (3) the Beneficiary was employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition; and (4) the U.S. entity would employ the Beneficiary in a managerial or executive capacity within one year. The matter is now before us on appeal.

While reviewing the record of proceeding and conducting verification of the information contained therein, we found that the Virginia State Corporation Commission had terminated the Petitioner's corporate status. We sent the Petitioner a notice of intent to dismiss and request for evidence (NOID/RFE), and allowed it opportunity to respond to this potentially derogatory information under the terms set forth in the regulations at 8 C.F.R. § 103.2(b)(16). We have not received a response to the NOID/RFE.

If a petitioner does not respond to a request for evidence or a notice of intent to deny by the required date, we may deny the petition as abandoned, deny based on the record, or deny for both reasons. 8 C.F.R. § 103.2(b)(13)(i). Our NOID specifically informed the Petitioner that "we may dismiss your case if we do not receive your response to this NOID **within 33 days of the date on the cover letter**. This time period includes three days added for service by mail." (Emphasis in original). To date, more than 33 days have elapsed, and we have yet to receive a response from the Petitioner; therefore, we will dismiss the appeal as abandoned.

[1] The term "new office" refers to an organization which has been doing business in the United States 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 no more than one year within the date of approval of the petition to support an executive or managerial position.

Moreover, even if the Petitioner had responded to our NOID/RFE with evidence of its active corporate status, we note that the appeal addresses only one of the Director's four independent and alternative grounds for denial, and therefore could not meet the Petitioner's burden to overcome all findings of ineligibility discussed in the Director's decision.[2] Specifically, the Petitioner addresses the Director's finding regarding its qualifying relationship with the foreign entity, but does not contest the Director's determination that it did not establish that the foreign employer continues to do business, that the Beneficiary had at least one year of managerial or executive employment abroad in the three years preceding the filing of the petition, or that the new office would support a managerial or executive position within one year. The Petitioner is required to specifically identify an erroneous conclusion of law or statement of fact in the decision being appealed. 8 C.F.R. § 103.3(a)(1)(iii)(A). This requirement applies to each basis for denial in the Director's decision.

Therefore, we would consider these three of the four issues on appeal to be abandoned if we were to adjudicate the appeal on its merits. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *see also*, *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). If we were not dismissing the appeal as abandoned, we would have grounds for its summary dismissal pursuant to 8 C.F.R. § 103.3(a)(1)(iii)(A).

ORDER: The appeal is dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

Cite as *Matter of R-USA Corp.*, ID# 2421951 (AAO Apr. 9, 2019)

[2] The Petitioner stated on the Form I-290B, Notice of Appeal or Motion, that it would submit a brief and/or evidence to our office within 30 days, and indicated in an attached statement that it would more fully brief the issues at that time. The record reflects that we did not receive a brief or additional evidence.