U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-A-A-D-S-J-, LLC

DATE: APR. 11, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a food manufacturing company, seeks to continue the Beneficiary's temporary employment as its director and chief executive officer under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 Vermont Service Center denied the petition, concluding that the record did not establish that the Beneficiary would be employed in a managerial or executive capacity under the extended petition. The Director also determined that the Petitioner did not demonstrate that it is doing business as defined by the regulations.

On appeal, the Petitioner states that its planned operations have been delayed due to unforeseen electrical capacity problems in Puerto Rico. The Petitioner contends that the record includes "ample evidence" that the Beneficiary will act in an executive capacity under the extended petition.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification for a new office, 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

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period January 30, 2015, until January 29, 2016. 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.

or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

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 primary issue we will address is whether the Petitioner has established that it has been doing business for the previous year as required by the regulations. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulations define a qualifying organization as one doing business as an employer in the United States and at least one other country. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G). "Doing business," is defined as the regular, systematic, and continuous provision of goods or services. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H). The mere presence of an agent or office of the qualifying organization will not suffice. *Id.*

The Petitioner stated that it is "engaged in the business of food manufacturing, sales, and distribution," specifically Italian specialty products. The Petitioner indicated that it was in the process of establishing a manufacturing plant in Puerto Rico when it filed this petition in February 2016. In response to the Director's request for evidence (RFE) in March 2017, the Petitioner acknowledged that it was not yet doing business in the United States. The Petitioner explained that its leased manufacturing plant "did not have the sufficient electrical power to engage and maintain the Company's operations." The Petitioner stated that it is working with the Puerto Rican government officials to resolve this issue and projected that the required electrical work would be completed by "mid-April of 2017, which will immediately allow [the Petitioner] to begin production of pasta sauces." The Petitioner did not provide evidence that it was regularly selling goods, providing services, or earning revenue in Puerto Rico.

In denying the petition, the Director emphasized that the electrical issues faced by the Petitioner were foreseeable. On appeal, the Petitioner disputes the Director's conclusion, stating that the electrical issues were unanticipated and "completely beyond the Petitioner's control." However, the foreseeability of business problems, however unfortunate, is not relevant to assessing whether the Petitioner is doing business following its initial year as a new office. The Petitioner may not be granted a second "new office" L-1A visa approval. A nonimmigrant intracompany transferee visa is not an entrepreneurial visa classification allowing a beneficiary a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business. The regulations allow for a one-year period for the U.S. entity to commence doing business and develop to the point that it will support a beneficiary in a qualifying managerial or executive position. The only provision that

allows for the extension of a "new office" visa petition requires a petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii).

As we have discussed, the Petitioner directly acknowledges that it was not doing business as of the date of the petition. It provides no assertions or evidence on appeal that it was doing business at the time of filing, or even at the time of this appeal in August 2017, approximately 18 months later. Regardless of the reasons, the Petitioner has not demonstrated that it was regularly, systematically, and continuously providing goods and services. 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). For this reason, the appeal will be dismissed.

III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

As noted, the Director also denied the petition finding the Petitioner did not support its claim that the Beneficiary would be employed in an executive capacity under the extended petition.

In denying the petition, the Director pointed to the Petitioner's lack of operations as of the date of the petition. As noted, the Petitioner does not dispute this lack of operations on appeal. Indeed, in response to the RFE, the Petitioner stated that the Beneficiary has no subordinates, noting that it will only rehire employees once the electrical issues faced by the company are resolved and it begins operations.

In its appeal, the Petitioner does not fully address this basis for denial or provide any additional evidence related to the Beneficiary's employment in a managerial or executive capacity. Following a review of the evidence, we concur with the Director's decision that the Petitioner has not established that the Beneficiary would be employed in a managerial or executive capacity.

Since the other ground for dismissal discussed above is dispositive of the Petitioner's appeal, we will not address this issue further. Nevertheless, we note that if the Petitioner seeks to employ the Beneficiary in this classification in the future, it will need to submit sufficient evidence to establish that the Beneficiary would be employed in the United States in a managerial or executive capacity as defined at section 101(a)(44) of the Act.

IV. CONCLUSION

The appeal must be dismissed as the Petitioner did not establish that it was doing business as of the date of the petition or that it would employ the Beneficiary in a managerial or executive capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of I-A-A-D-S-J-, LLC*, ID# 1036512 (AAO Apr. 11, 2018)