U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7958609

Date: APR. 20, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, describing itself as a distributor and seller of wood flooring, seeks to temporarily employ the Beneficiary as its president 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 Director of the Vermont Service Center revoked the approval of the instant petition, concluding that the Beneficiary's foreign employer was not a qualifying organization doing business as defined by the regulations.

On appeal, the Petitioner contends that the foreign employer's office location in China was locked and unavailable during a Department of State (DOS) site visit because its employees were offsite "visiting customers" and that office hours were available only through appointment. The Petitioner submits additional evidence on appeal meant to demonstrate that the foreign employer was, and is, doing business, including tax documentation and bank statements.

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

I. LEGAL FRAMEWORK

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 his or her 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 him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

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 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).[1]

II. FOREIGN EMPLOYER DOING BUSINESS

The sole issue we will analyze is whether the Petitioner established that the Beneficiary's former foreign employer was, and is, doing business as necessary to establish that it was, and remains, a qualifying organization.

The regulations indicate that the Petitioner must submit evidence to demonstrate that it maintains a qualifying relationship with the beneficiary's foreign employer; further, the regulations define qualifying organizations as those doing business "as an employer in the United States and in at least one other country." *See* 8 C.F.R. § 214.2(l)(1)(ii)(G) and 8 C.F.R. § 214.2(l)(14)(ii). "Doing business," is defined as the regular, systematic, and continuous provision of goods or services. 8 C.F.R. § 214.2(l)(14)(ii)(A) and 8 C.F.R. § 214.2(l)(1)(ii)(H).

A. Background

The Petitioner stated in support of the petition that the Beneficiary's former foreign employer from April 2014 to November 2016 was a company based in China called [redacted]. The Petitioner stated that it is a "transportation and trading company specializ[ing] in wooden flooring products" and noted its "expertise in transport logistics, international trade, and enduring relationships with manufacturers." The Petitioner indicated that it and the Beneficiary would coordinate with the foreign employer to "continuously develop new product lines that meet market and regulatory demands." The Petitioner provided a letter from a manager at another foreign entity [redacted] stating that it "has been the long-time product manufacturer to [redacted]" and that it coordinated with the Beneficiary on the development of new products including determining "that a new supplier in Ukraine best suited our needs." The Petitioner also submitted a few bills of lading from 2018 reflecting [redacted] receipt of materials from a Ukrainian company.

Following the approval of the petition in January 2018 the Director of the Vermont Service Center issued an Intent to Revoke (ITR) notice in March 2019. The Director stated that following an interview in April 2018 the Beneficiary stated that the foreign employer was located at an address in [redacted] China. However, the Director further indicated that the Beneficiary later informed DOS that the foreign employer had changed to a business location in [redacted] China and that a later DOS verification visit to this claimed location reflected that there appeared to be no business activity. Based on this information, the Director requested documentation from the Petitioner to substantiate that there was "wood floor manufacturing" taking place at the foreign employer's claimed [redacted] location as well as "a minimum of invoices and bank statements for at least six months."

[1] A Form I-129 intracompany transferee petition filed on behalf of the Beneficiary was approved by the Director of the Vermont Service Center on January 28, 2018. The Director later revoked this approved petition on June 19, 2019, following the issuance of an intent to revoke (ITR) notice on March 15, 2019.

In response, the Petitioner asserted that the "Chinese affiliate is in fact in normal operation till this day" and submitted one taxpayer receipt applicable to the foreign employer from February 2019 and a handful of [redacted] VAT Special Invoice[s]" dating from June 2018 through January 2019. The aforementioned VAT special invoices appeared to reflect shipments; specifically, of "fine iron powder." In addition, the Petitioner provided one translated page from the foreign employer's bank statements from December 2018 reflecting several unexplained credits to itself and from other Chinese companies.

In revoking the petition, the Director pointed to the submitted VAT invoices and indicated that these were not reflected as debits or credits in the foreign employer's provided bank statements. The Director also emphasized that when DOS visited the foreign employer's claimed business location it was found locked and appeared to not be operating. The Director concluded that the record did not establish that the foreign employer was doing business at its asserted location in China.

On appeal, the Petitioner contends that the foreign employer's office location in China was locked and unavailable during the DOS site visit because its employees were offsite "visiting customers" and that office hours were only available through appointment. The Petitioner also provided a company "certificate" specific to the foreign employer indicating that it "specialized in iron ore powder transportation" and that it had been operating since April 2014. The Petitioner further submitted a foreign employer "roster" and a salary list from July 2019 showing 23 employees, including six devoted to managerial and administrative responsibilities (as well as the Beneficiary as general manager) and the remaining employees focused on "motorcade," specifically, team leaders, dispatchers, and drivers. It further provided two pages of foreign employer bank statements from May and June 2019 and another VAT shipment invoice from June 2019.

B. Analysis

Upon review, the Petitioner has not submitted sufficient evidence to overcome the discrepancies observed during a DOS site visit and in the Director's ITR as necessary to demonstrate that the foreign employer was, and is, doing business in a regular, systematic, and continuous fashion.

First, in the ITR, the Director requested that the Petitioner submit at least six months of bank statements to demonstrate its regular provision of goods and services. However, the Petitioner has only provided a few pages of bank statements from a few months and these have little probative value in establishing that it is regularly providing goods and services. In addition, the Petitioner provides several VAT tax invoices reflecting the shipment of what appears to iron ore powder and a foreign company certificate indicating that it specializes in "iron ore powder transportation." However, this evidence is in direct contradiction to the Petitioner's statements elsewhere on the record indicating that the foreign employer was a "transportation and trading company that specializes in wooden flooring products" and working with the Petitioner on developing and distributing "its own brand of wood flooring in the United States." The Petitioner does not explain this discrepancy, nor does it provide other supporting evidence that the foreign employer is involved in the logistics or transportation of wood flooring in China, or elsewhere, as originally claimed. These discrepancies and insufficiencies leave substantial uncertainty as to the Petitioner's assertions regarding the foreign employer's claimed business operations, in addition to the DOS site visit reflecting a locked premises and apparent non-operating business location.

The Petitioner contends that the foreign employer's office location in China was locked and unavailable during the DOS site visit because its employees were offsite "visiting customers." However, on appeal, the Petitioner provides a foreign staffing roster and salary statement with 23 employees, including several who do not appear devoted to "visiting customers" such as an asserted clerk, accountant, and a cashier and numerous other employees devoted to dispatching and driving its claimed vehicles. The Petitioner provides no supporting evidence to substantiate its claim that all of its asserted employees were absent because they were visiting customers at the time of the DOS site visit or other documentation to substantiate that it was conducting regular business at this asserted location. In fact, the DOS consular officer conducting the site visit noted that the foreign employer's claimed business location was an approximately 800-1400 square foot commercial space with no signage. This leaves further question as to how the foreign employer was conducting a shipping business with several drivers and vehicles to support these employees and its operations. The Petitioner must resolve these inconsistencies and discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In sum, the Petitioner has not overcome the uncertainties related to the foreign employer's operations noted by the Director in the ITR and her revocation decision. The Petitioner did not provide sufficient credible evidence that the foreign employer 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.