U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30908169

Date: APR. 24, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a digital marketing and website consulting firm, seeks to temporarily employ the Beneficiary as vice president of its new office 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 record did not establish that: (1) the Petitioner had secured sufficient physical premises to house the new office; (2) a qualifying employer had continuously employed the Beneficiary outside the United States for at least one year during the three years preceding the filing of the petition; (3) a qualifying employer had employed the Beneficiary outside the United States in a qualifying managerial or executive capacity; and (4) the new office would be able to support a managerial or executive position within one year after the approval of the petition. The Petitioner filed a motion to reopen the Director's decision. The Director granted that motion and denied the petition a second time, citing the same grounds. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *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 in a petition involving a new office, 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.*

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. ANALYSIS

A. Sufficient Physical Premises

The first question under consideration is whether the Petitioner had secured sufficient physical premises to house the new office as required by 8 C.F.R. § 214.2(l)(3)(v)(A). When the Petitioner filed the petition in December 2022, the Petitioner indicated that the Beneficiary would work at an address on [redacted] Texas. The Petitioner submitted a copy of a lease agreement for office space on that property, with a term from December 2022 through November 2023. A floor plan attached to the lease showed a basically rectangular space but did not specify the dimensions of the room. Elsewhere in the record, the Petitioner indicated that it expected its office to have six employees by the end of the first year of operations. The lease agreement indicated that the "[t]enant shall not permit more than five (5) persons per 1,000 square feet to occupy the premises at any time."

In a request for evidence (RFE), the Director stated that the Petitioner had "not provided a detailed description of the space . . . and evidence of how and why the space will be sufficient to house [the] new business."

In response, the Petitioner submitted photographs of an irregularly-shaped office space that included several rows of desks with at least nine workers using laptop computers.

In the July 2023 denial notice, the Director noted that the photographs show more employees than appear to be permitted under the lease agreement, and more people than the petitioning company's anticipated size. The Director also determined that the Petitioner had not specified the square footage of the rented space or established that the space is sufficient for the Petitioner's needs.

On motion from that decision, the Petitioner stated: "We recently leased an additional location to house our technology assets and establish work stations for our employees on an as needed basis." The Petitioner stated that it would dedicate half of the 1,200 square foot space to inventory storage, with "4 work stations" in the remaining 600 square feet.

A lease for the newly claimed space on [redacted] effective September 2023, includes these provisions:

> Tenant shall use the premises as a[n] automotive sales, service, detailing and related purposes and activities only. . . . Tenant will not use or permit the use of the leased premises for any other purpose without the prior written consent of the Landlord. Tenant's business will be advertised and operated as a gas station and convenience store only.

In the September 2023 denial notice, the Director stated that the newly submitted lease was not yet in effect at the time of the petition's filing as required by 8 C.F.R. § 103.2(b)(1), which requires a petitioner to meet all eligibility requirements at the time of filing. The Director also observed that the provisions of the new lease do not permit the Petitioner to use the space for the company's stated purpose of providing digital marketing and website consulting services.

On appeal, the Petitioner submits a new letter, attributed to the landlord at the newly leased property, permitting the Petitioner "to use the Premises for office purposes." This new submission does not resolve the grounds for denial. The regulations require evidence that "[s]ufficient physical premises to house the new office have been secured." 8 C.F.R. § 214.2(l)(3)(v)(A). The Petitioner had not secured the premises on [redacted] on the December 2022 filing date; the lease in the record was executed nearly a year later.

When the Petitioner filed the petition, the only lease in effect was for the [redacted] address. The Petitioner has not shown that the [redacted] property was sufficient to house the new office. Although the Petitioner has submitted photographs purporting to show the [redacted] space, the Petitioner has not established that the space in the photographs is the same space identified in the November 2022 lease agreement. The photographs do not show signage or any other identifying information to confirm that the room shown in the photograph is the same space covered by the lease agreement. The irregular shape of the room in the photograph does not appear to match the rectangular shape shown on the floor plan included in the lease agreement. Raising further questions, the number of workers shown in the submitted photographs is greater than the Petitioner's stated size.

Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The apparent discrepancy between the floor plan and the photographs of the claimed [redacted] space is not the only such inconsistency in the record. As quoted above, the [redacted] lease includes conflicting descriptions of the space as an automobile sales and service shop and as a gas station and convenience store.

The Petitioner has not met its burden of proof to establish that it had secured sufficient physical premises to house the new office when it filed the petition in December 2022.

B. One Year of Employment Abroad

A petitioner must show that it, or a qualifying related employer, employed the beneficiary outside the United States in a managerial or executive capacity for at least one continuous year during the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(B). Time the beneficiary spent in the United States does not count toward fulfillment of this requirement. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A).

The time a beneficiary spent in the United States working for an unrelated employer, or not working at all (except for brief visits in B-1 or B-2 nonimmigrant status), interrupts the one-year continuous foreign employment requirement and does not result in an adjustment of the three-year period. A break in qualifying employment longer than two years during that three-year period renders the

beneficiary unable to meet the one-year foreign employment requirement. *See generally* 2 *USCIS Policy Manual* L.6(G)(4), https://www.uscis.gov/policy-manual.

The Petitioner filed the petition on December 27, 2022. The Petitioner does not claim to have employed the Beneficiary in the United States, and the Petitioner has not established that the Beneficiary made brief trips to the United States for business or pleasure after he began working for the foreign employer. Therefore, in the absence of these factors that would have adjusted the timing of the three-year qualifying period, the Petitioner must establish that it, or a related employer, employed the Beneficiary outside the United States for at least one year after December 27, 2019.

The Petitioner asserted that the Beneficiary has been working for the Petitioner's claimed foreign affiliate, a construction company in India, as its digital design and marketing director since December 2016. The Petitioner claimed that the Beneficiary entered the United States in December 2021 as a B-2 nonimmigrant visitor, which would mean that the Beneficiary worked abroad for the claimed affiliate for about two years during the three years immediately preceding the petition's filing date.

The Petitioner initially submitted a letter, dated August 1, 2022, from an official of the foreign entity. The letter lists the foreign entity's claimed employees, including the Beneficiary. The official stated: "The details mentioned above for the said Parties are pertaining to the period covering Assessment Year 2021-2022." The Beneficiary was in the United States in 2022, and therefore he was not employed abroad for at least part of the "Assessment Year 2021-2022." The letter is from several months after the Beneficiary arrived in the United States. The Petitioner did not submit evidence of the Beneficiary's employment abroad that originated during that claimed employment.

In the RFE, the Director stated that the Petitioner had "not provided independent, objective, and verifiable documentary evidence" to show that the foreign entity had employed the Beneficiary outside the United States for at least one continuous year during the relevant period.

In response to the RFE, the Petitioner referred to the August 2022 letter and stated: "USCIS may use their VIBE system to verify this information." The Petitioner bears the burden of proof in this proceeding and cannot meet that burden by asserting, without further details, that required information is available from an unrelated third party. Furthermore, VIBE, the Validation Instrument for Business Enterprises, provides information about U.S. employers that file employment-based immigrant and nonimmigrant petitions, compiled by Dun & Bradstreet on behalf of USCIS.[1] The Petitioner has not shown that its claimed foreign affiliate furnished information to Dun & Bradstreet for inclusion in VIBE.

In the July 2023 denial notice, the Director determined that, without documentary corroboration, the August 2022 letter is not sufficient to establish the Beneficiary's required year of continuous employment abroad.

On motion, the Petitioner submitted what it claimed was a payroll report for calendar year 2020, "produced from copies of the original payroll records," but the Petitioner did not submit copies of those claimed records or direct evidence of payment of the Beneficiary's claimed monthly salary.

[1] *See* "Validation Instrument for Business Enterprises (VIBE) Program," https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/employer-information/validation-instrument-for-business-enterprises-vibe-program.

Denying the petition again in September 2023, the Director concluded that the payroll report is not sufficient corroboration of the Beneficiary's claimed employment abroad.

On appeal, the Petitioner states that the Director's conclusion "contradicts USCIS' Validation Instrument for Business Enterprises (VIBE) Program." The Petitioner does not elaborate or cite supporting evidence or information.

We acknowledge the Petitioner's assertion that the Beneficiary worked abroad for the Petitioner's claimed foreign affiliate from 2016 until December 2021, but the materials submitted are not sufficient to show that the Beneficiary was outside the United States and actively working for the foreign employer throughout the time claimed. The assertion that a claimed payroll report was prepared, after the fact, from payroll records does not carry the same weight as the payroll records themselves would have done. The Petitioner previously submitted a copy of the 2021-2022 "Indian Income Tax Return Acknowledgement" for the owner of the foreign business, but the Petitioner did not submit a similar document for the Beneficiary or explain its absence.

The Petitioner asserts on appeal that the company "is not large enough to consider hiring an outside source to generate our payroll," in which case the company's own banking records ought to reflect its payroll expenses, but the Petitioner has not shown this to be the case. The Petitioner had submitted bank documents showing various transactions in 2021, but the Petitioner did not show that any of these transactions reflect salary payments to the Beneficiary.

The Beneficiary was in the United States when the Petitioner filed the petition in December 2022. The date of the Beneficiary's arrival is a key issue, because if he was in the United States for two years or more between December 2019 and December 2022, then he cannot qualify for L-1 nonimmigrant status until he leaves the United States and accrues a continuous year of qualifying experience abroad.

The Petitioner has claimed that the Beneficiary entered the United States on December 28, 2021, but has not submitted any documentary evidence to support that claim. Part 3, line 5 of the Form I-129 instructed the Petitioner to provide the "I-94 Arrival-Departure Record Number" which would permit corroboration of the Beneficiary's arrival date. The Petitioner left that line blank.

The record contains evidence that the Beneficiary was in the United States before December 2021. For example, the Beneficiary's B-2 visa, issued in September 2019, was affixed to a passport that expired in March 2021. This information is especially significant when viewed in conjunction with the lack of verifiable, contemporaneous evidence of the Beneficiary's claimed employment with the foreign employer from 2019 to 2021.

The burden of proof is on the Petitioner to establish that the Beneficiary was outside the United States, and employed by a qualifying employer, for at least one continuous year between December 27, 2019, and the petition's filing date of December 27, 2022. The Petitioner has not submitted adequate evidence to meet that burden by a preponderance of the evidence.

Because the above issues determine the outcome of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the nature of the Beneficiary's claimed

employment abroad and whether the Petitioner would be able to support a managerial or executive capacity within one year after approval of the petition. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established that it had secured adequate physical premises for the new office at the time of filing the petition, and the Petitioner has not established that the Beneficiary continuously worked outside the United States for a qualifying employer for at least one year during the three years preceding the filing date. The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision.

ORDER: The appeal is dismissed.