U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 2861662

Date: AUG. 06, 2020

Appeal of Texas Service Center Decision

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

The Petitioner seeks to extend the Beneficiary's temporary employment as its managing director 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 Texas Service Center denied the petition, concluding that the record did not establish that (a) the Beneficiary's foreign employer is doing business in accordance with the regulations; (b) the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition; (c) the Beneficiary was employed abroad in a primarily managerial or executive capacity; (d) the Beneficiary is qualified to perform the intended services in the United States; (e) the Beneficiary will be employed in the United States in a primarily managerial or executive capacity; (f) the Beneficiary's services are to be used for a temporary period and the Beneficiary will be transferred to an assignment abroad on completion of the temporary assignment in the United States; and (g) the Petitioner and the Beneficiary's foreign employer have the required qualifying relationship.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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.*

II. DOING BUSINESS-FOREIGN ENTITY

The Director concluded that the Beneficiary's foreign employer is not doing business in accordance with the regulations. Here, the Petitioner asserts a qualifying relationship[1] with the Beneficiary's foreign employer, [redacted] in [redacted] Turkey [redacted]. Therefore, the petition must be accompanied by evidence that the Petitioner and [redacted] are qualifying organizations. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G), 8 C.F.R. § 214.2(l)(3)(i). A qualifying organization must be doing business for the duration of the Beneficiary's stay in L-1 status the United States. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). "Doing business," is defined as the regular, systematic, and continuous provision of goods or services. 8 C.F.R. § 214.2(l)(1)(ii)(H). Here, the Director concluded that the record did not establish that [redacted] is actively engaged in the regular, systematic, and continuous provision of goods or services. He noted that the Petitioner submitted the foreign entity's tax returns in response to the RFE,[2] but the returns show that the entity had minimal gross sales and operated at a loss.

On appeal, the Petitioner, through counsel, states that the foreign entity provides services "including logistics, customs, and storage categories" overseas. However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated with independent evidence. The Petitioner submits no evidence on appeal to support its counsel's claims. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Petitioner has not established by a preponderance of the evidence that the Beneficiary's foreign employer is doing business as required by the regulations. The appeal will be dismissed for this reason.

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

The Director also concluded that the record did not establish that the Beneficiary would be employed in a primarily managerial or executive position in the United States. The Petitioner does not contest this determination on appeal. Therefore, we deem this issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). The appeal will be dismissed for this additional reason.

IV. RESERVED ISSUES

The Director also concluded that the record did not establish that (a) the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition; (b) the Beneficiary was employed abroad in a primarily managerial or executive capacity; (c) the Beneficiary is qualified to perform the intended services in the United States; (d) the Beneficiary's services are to be used for a temporary period and the Beneficiary will be

[1] To establish a qualifying relationship, the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices) or related as a "parent and subsidiary" or as "affiliates." *See* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

[2] In the RFE, the Director requested the following evidence to show that the foreign entity is doing business: annual report; tax documents; audited financial statements; purchase orders; invoices; bills of lading; third party license agreements; U.S. customs documentation; and vendor, supplier, or customer contracts.

transferred to an assignment abroad on completion of the temporary assignment in the United States; and (e) the Petitioner and the Beneficiary's foreign employer have the required qualifying relationship. However, because the issues discussed in Parts II and III above are dispositive in this case, we need not reach the five remaining issues and therefore reserve them.

ORDER: The appeal is dismissed.