U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-A-T- INC.

DATE: AUG. 20, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an automotive parts manufacturing company, seeks to extend the Beneficiary's temporary employment as a development manager 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 California Service Center revoked the approval of the petition, concluding that the record did not establish, as required, that the U.S. entity is doing business in the United States in accordance with the regulations,[1] or that the Beneficiary will continue to be employed primarily in a managerial or executive capacity in the United States.[2] The revocation was based on a site visit made by U.S. Citizenship and Immigration Services (USCIS) in July 2018 to the factory in Georgia where the Beneficiary was supposed to be working. The factory was not operational and the Beneficiary was not located on the premises at the time of the site visit. On appeal, the Petitioner submits additional evidence and asserts that its plant closure was part of an annual one-week summer shutdown. It states

[1] A petitioner must establish that it is a qualifying organization. The regulations define a qualifying organization as one doing business as an employer in the United States. *See* 8 C.F.R. § 214.2(l)(1)(ii)(2). "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).

[2] An L-1A petitioner must establish that, within the three years before a beneficiary's admission into the United States, it or its parent, branch, subsidiary, or affiliate employed the beneficiary abroad full-time for at least one continuous year in a managerial, executive, or specialized knowledge capacity. 8 C.F.R. §§ 214.3(l)(3)(i), (iii), (iv). A petitioner must also demonstrate that it would employ a beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii). "Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

that it is engaged in the regular, systematic, and continuous provision of goods and services, and that the Beneficiary continues to be employed in a managerial capacity at the manufacturing plant.

Upon *de novo* review, we find that the Petitioner has submitted sufficient evidence to establish that it is more likely than not that the manufacturing plant is doing business in the United States, and that the Beneficiary will continue to be employed there in a managerial capacity. However, the record as presently constituted contains anomalies and deficiencies regarding the identity of the Petitioner and its qualifying relationship with the Beneficiary's employer abroad. We will therefore remand the matter to the Director.

I. IDENTITY OF THE PETITIONER

On the petition, the Petitioner identified itself as [redacted] Inc. It listed a mailing address in Alabama and stated that the Beneficiary will work in Georgia. However, the Beneficiary's IRS Forms W-2, Wage and Tax Statements, indicate that he was employed by a separate entity, [redacted] Georgia, LLC, from 2015 through 2018. We reviewed a website maintained by the State of Georgia to determine whether the Petitioner is in good standing and authorized to transact business in Georgia.[3] Based on Georgia state records, the Petitioner is not qualified to transact business there.[4] Ga Secretary of State, Corps. Div., https://ecorp.sos.ga.gov/BusinessSearch (last visited Aug. 1, 2019). Instead, the record shows that the Petitioner was incorporated in Delaware.[5] The Petitioner's lack of qualification to transact business in Georgia where it purportedly operates an automotive parts manufacturing facility, coupled with the payment of the Beneficiary's wages by a separate entity, raises questions about the identity of the Petitioner; whether it is an importing employer;[6] and whether it is authorized to conduct business in a regular and systematic manner in Georgia where the Beneficiary works. *See* section 214(c)(1) of the Act; *see also* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (1)(3). As a result of such anomalies, we will remand the matter to the Director to clarify the identity of the Petitioner.

II. QUALIFYING RELATIONSHIP

Further, share certificates in the file indicate that [redacted] Inc. is owned 80.52% by [redacted]. Co. Ltd. in South Korea, and 19.48% by [redacted] SK, s.r.o., in Slovakia.[7] On the petition, the Petitioner indicated that the Beneficiary was employed abroad by

[3] *See* Ga. Comp. R. & Regs. r. 590-7-21-.07 (requiring a foreign limited liability company transacting business in Georgia to procure a certificate of authority to do so from the Georgia Secretary of State).

[4] Further, based on Alabama state records, the Petitioner is not qualified to transact business there. Ala. Sec'y of State, Bus. Entity Records, https://www.sos.alabama.gov/government-records/business-entity-records (last visited Aug. 1, 2019).

[5] Del. Dep't of State, Div. of Corps., https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx (last visited Aug. 1, 2019).

[6] It is fundamental to the intracompany transferee nonimmigrant classification that a U.S. importing employer files the petition. *See* Section 214(c)(1) of the Act. Furthermore, in order to meet the definition of "qualifying organization," there must be a U.S. employer. *See* 8 C.F.R. 214.2(l)(1)(ii)(G)(*2*).

[7] The consolidated financial statements for [redacted] Inc. and subsidiaries in the record state that on October 31, 2014, [redacted] SK, s.r.o., an affiliate in Slovakia, acquired a 19.48% ownership in [redacted], Inc. and that, as a result, [redacted], Inc. is "80.52% owned by [redacted].

[redacted] Co. Ltd. from September 3, 2007, to February 22, 2015.[8] In a letter submitted with the petition, the Petitioner claimed a qualifying parent/subsidiary relationship between "[redacted] Co., Ltd. f/k/a [redacted] Ind. Co., Ltd." and [redacted] Inc. However, the record contains no evidence of the name change from [redacted] Ind. Co., Ltd. to [redacted] Co. Ltd.[9] 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"). Here, based on deficiencies in the evidence, the qualifying relationship between the proposed U.S. employer and the Beneficiary's foreign employer is not clear. We will therefore remand the matter to the Director to clarify the qualifying relationship.

III. CONCLUSION

For the reasons discussed above, we will withdraw the Director's decision and return the matter for further development of the record.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of D-A-T- Inc.*, ID# 05440666 (AAO Aug. 20, 2019)

Co. Ltd., (the 'Parent') in Korea and 19.48% owned by [redacted] SK, s.r.o." Prior to October 31, 2014, the share certificates reflect that [redacted] Inc. was a wholly-owned subsidiary of [redacted] Ind. Co. Ltd.

[8] Certificates of income and employment in the record indicate that the Beneficiary was employed abroad by [redacted] Co. Ltd. from 2009 to 2014.

[9] The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The burden of proof is on the Petitioner in this matter. Section 291 of the Act, 8 U.S.C. § 1361.