U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9070067

Date: DEC. 2, 2020

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as the President of its new office 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 denied the petition and a subsequent motion, concluding that the record did not establish that (a) sufficient premises for the U.S. entity's new office have been secured; and (b) the new office will support a managerial or executive position within one year after the approval of the petition. The matter is now before us on appeal.

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 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*.

A 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. SUFFICIENT PHYSICAL PREMISES

The Director determined that the record did not establish that sufficient premises for the U.S. entity's new office have been secured. When a petition indicates that a beneficiary is coming to the United States to open a "new office," the petitioner must show that it is ready to commence doing business immediately upon approval. At the time of filing the petition to open a "new office," a petitioner must demonstrate that it has acquired sufficient physical premises to commence business. *See* 8 C.F.R. § 214.2(l)(3)(v). A petitioner bears the burden of establishing that its physical premises should be considered "sufficient" as required by the regulations. *See* 8 C.F.R. § 214.2(l)(3)(v)(A). To do so, it must clearly identify the nature of its business, the specific amount and type of space required to operate the business, and its proposed staffing levels, and document that the space can accommodate a petitioner's growth during the first year of operations.

On the petition, the Petitioner described itself as an importer and exporter of "computer and communication accessories, etc." The Petitioner's business plan submitted with the petition states that it will "mainly engage in import, export and re-export trade of computer and communication accessories, daily necessities, office supplies and etc, especially new energy products and energy-saving products." The business plan indicated that the Petitioner will create 11 job positions in the first year after approval of the petition. The record contains a Commercial Lease Agreement dated November 15, 2018, and an Assignment of Lease dated March 4, 2019, indicating that the Petitioner subleases a 1,300 square foot office and warehouse space in [redacted] California. The lease terminates on November 30, 2021.

In a request for evidence (RFE), the Director stated the lease does not provide sufficient detail of the Petitioner's premises and requested the Petitioner to provide additional evidence relating to its premises. In a letter of support dated October 2, 2017, submitted in response to the RFE, the Petitioner stated that the company "is committed to operate and expand business into the whole American market." The letter stated that the Petitioner's location in [redacted] California "was chosen because of its convenient transportation, easy access, and close proximity to major freeways that lead to major ports and airports." It stated that it "can directly access major ground transportation routes in and out of Southern California;" that it has easy access to a train station, and that it is close to several freeways. Thus, it appears from this description that it has chosen its office space in close proximity to readily available transportation so that it can easily store and transport goods to and from its [redacted] California office.

However, the Petitioner also asserted in the support letter that the space in [redacted] California will be used as an office and a showroom area, and that in the beginning of the development of the U.S. entity, all products sold will be shipped directly from the supplier and the affiliate company overseas to its customers, without storage in its California office space. It stated that the office will be used for marketing and research analysis; meeting with potential customers, clients, or partners; and general administration including accounting, filing, meetings, contract negotiations, internal logistics coordination, and customer services. It stated that the showroom area will be a small exhibition space to display and store company's product samples, which will be required when clients visit the office. The Petitioner further asserted that according to its business needs, it will consider renting a warehouse to store products. This description indicates that no storage or transport of goods to or from its office will be necessary in the initial phase of the business, other than samples for client display.

Thus, the record contains conflicting descriptions of whether or not goods would be stored and transported to and from the Petitioner's office in [redacted] California. The Petitioner must resolve this discrepancy with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

In her initial decision and in her decision on motion, the Director concluded that the premises does not appear sufficient for the Petitioner's business. The Director noted in her motion decision that the Petitioner offers a wide range of products, including solar heaters, LED lighting products, photovoltaic systems, interactive whiteboards, language teaching labs, audio equipment, and computer accessories. She also noted its business profile, which includes about 96 pages of items, some with large sizes. Thus, the Director determined that the record does not establish that the Petitioner's physical premises would be sufficient for its office space and the display and storage of its product samples.

On appeal, the Petitioner asserts that it does not need warehouse space because goods are transferred directly from the supplier to its customers. It asserts that its showroom is a small exhibition space to show sample products, and that "many companies display and promote products through pictures, videos and other methods." However, the record contains no evidence indicating that it promotes its products through videos, a website, or social media. On appeal, the Petitioner further asserts that product samples are not the only way for it to display and market its products, and that its product list and company profile are good examples to show its products to clients. However, it is not clear how the Petitioner plans to distribute and market paper copies of its product list and company profile to prospective customers. A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Further, on appeal, the Petitioner states that product samples cover "a small part of [its] products and only will be used when there are clients actually visiting [its] office." However, the Petitioner indicated that it plans to hire a full-time customer service agent who will be responsible for organizing the showroom and presenting the company's samples to customers when needed. The Petitioner has not reconciled its assertion that will show a small portion of its samples in its showroom with the fact that it will staff a full-time customer service agent to organize and show the samples. *See Matter of Ho*, 19 I&N Dec. at 591-92.

Additionally, the Petitioner has not established that the premises is sufficient for its proposed employees. The Petitioner indicated that it plans to employ 11 employees within the first year, but it has not indicated how it plans to accommodate these employees in 1,300 square feet of office and warehouse space, while also using part of the space as a showroom. The two pictures of the warehouse space submitted on appeal show some space for storage, but they do not show sufficient office space for 11 workers. The lease at Exhibit A-1 shows a front entryway, one bathroom, two offices, and a "full-height warehouse" with a truck door in the rear of the space. It is not clear whether all of the employees will be sitting in the two small offices; if the Petitioner plans to repurpose the warehouse space into office space and, if so, how; or whether other plans are proposed for the employee

workspaces. Without a clear idea of what the Petitioner plans to show and store in the space or how and where its proposed staff will work, we cannot determine whether it has secured sufficient premises for its new office.

Further, the lease does not establish that the Petitioner will have access to sufficient parking for 11 employees and its visiting customers. Paragraph 1.2(b) of the Lease states that the Petitioner gets a "pro-rata share (2:1,000) of unreserved vehicle parking spaces... and -0- reserved vehicle parking spaces." Exhibit A to the lease, which diagrams the parking in the shared complex, does not indicate that there will be sufficient parking based on the Petitioner's pro-rata share of 2:1,000. As noted by the Petitioner on appeal, the "preponderance of the evidence" standard requires that the evidence demonstrate that the claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I& N Dec. at 375-76 (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). The truth is to be determined not by the quantity of evidence alone, but by its quality. For the reasons set forth above, the Petitioner has not established by a preponderance of the evidence that sufficient premises for the U.S. entity's new office have been secured. Thus, we will dismiss the appeal.

Finally, on appeal, the Petitioner states that the issue of whether the physical premises will be sufficient for its business because it was also used as a showroom was not mentioned in the Director's RFE, and that it did not have a chance for rebuttal before the decision was entered. We disagree. The Director's RFE specifically indicated that the evidence was inadequate to establish that the Petitioner had secured sufficient premises for its new office, and the RFE expressly detailed the evidence that the Petitioner could submit to establish eligibility. The RFE requested an explanation of "the type of building [the Petitioner] is occupying, such as an office suite, factory, warehouse, showroom, house, etc." and an explanation of "how it will be sufficient to conduct business." The Petitioner had the ability to present evidence relating to the sufficiency of its physical premises in response to the RFE, on motion, and on appeal. Furthermore, even if the Director had committed a procedural error by failing to properly solicit further evidence, which she did not, it is not clear what remedy would be appropriate beyond the motion and appeal process itself. The Petitioner has supplemented the record on motion and appeal, and therefore it would serve no useful purpose to remand the case simply to afford the Petitioner the opportunity to supplement the record with new evidence.

III. RESERVED ISSUE

The Director also concluded that the record did not establish that the new office will support a managerial or executive position within one year after the approval of the petition. However, because the issue discussed in Part II above is dispositive in this case, we need not reach the remaining issue and therefore reserve it.[1]

ORDER: The appeal is dismissed.

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).