U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-H-USA LLC

DATE: FEB. 7, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, which arranges payment plans for individuals traveling from China to obtain medical care in the United States, seeks to temporarily employ the Beneficiary as manager and president of its new office[1] 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 Vermont Service Center approved the petition, but later revoked that approval, concluding that the Beneficiary lacked the required year of continuous employment abroad in a managerial or executive capacity.

The matter is now before us on appeal. On appeal, the Petitioner asserts that the Director erred by relying on a selective and flawed reading of the evidence.

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

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization (i.e., a parent, branch, subsidiary, or affiliate of the petitioning U.S. employer) 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).

Under U.S. Citizenship and Immigration Services 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

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

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).

The Petitioner filed the petition on June 24, 2016, while the Beneficiary was outside the United States. The Petitioner asserted that the Beneficiary meets the foreign employment requirement because she worked as an executive of the Petitioner's foreign parent company, [redacted] "continuously on a full-time basis from January of 2011 through June 30, 2014." The Beneficiary then took extended maternity leave in the United States from June 30, 2014 to February 21, 2016. Because this long visit to the United States interrupted the continuity of her employment abroad, the Beneficiary's year of continuous employment abroad had to have taken place in 2013-2014.

The Director approved the petition, but later issued a notice of intent to revoke that approval, based on information that called into question the Beneficiary's claimed employment with [redacted] from 2011 to 2014. In nonimmigrant visa applications that the Beneficiary filed in 2011, 2012, and 2014, the Beneficiary identified [redacted] as her current, primary employer. She did not mention [redacted] on any of these applications. In 2016, after the approval of the present petition, she stated that she had left [redacted] in December 2010, and worked at [redacted] thereafter.

Because the Beneficiary had provided conflicting employment information, a consular investigator contacted a human resources representative at [redacted] That representative stated that the Beneficiary worked regularly at [redacted] until 2014, and that she resigned in August of that year. The Director determined that this information cast doubt on the Petitioner's claim that [redacted] continuously employed the Beneficiary from 2011 to 2014.

In response, the Petitioner asserted that "the Beijing consulate received inaccurate information from an employee in the Chinese Parent company's Human Resources department." The key information cited in the notice, however, came from [redacted] not [redacted] (the Petitioner's parent company). A [redacted] official acknowledged that the company's employees provided conflicting information to the consular investigator, but did not provide any contemporaneous documentary evidence to resolve the acknowledged discrepancies.

An attorney, based in Beijing, described a Chinese social benefit registration system called [redacted] and asserted that state-owned businesses such as [redacted] can maintain their employees' registrations. The attorney contended that, owing to certain local policies, the Beneficiary had to keep her [redacted] registration with [redacted] even after moving to the privately owned [redacted] As a result, the attorney claimed, the Beneficiary was nominally an employee of [redacted] after 2011, but her actual employment was exclusively with [redacted]

In a letter dated December 26, 2016, an individual identified as the general manager of [redacted] labor union stated: "In January of 2011, [the Beneficiary] requested that she also be allowed to work for a private business, and she has done so since that time. This company permitted her to work for a private company and also agreed to keep her archive and accreditation with us."

The Director revoked the approval of the petition, stating that the submitted statements did not explain why the Beneficiary repeatedly identified her employer as , rather than in her statements to consular employees between 2011 and 2014. In those statements, the Beneficiary did not simply identify as her employer; she also described her duties there, which contradicts the new claim that she had no duties at after 2011.

On appeal, the Petitioner resubmits the letters previously submitted in response to the notice of intent to revoke, and asserts that the Director mischaracterized and selectively interpreted those letters. The Petitioner, who bears the burden of proof, has not submitted first-hand documentary evidence to support the assertions in the letters. General (and uncorroborated) assertions about the system cannot establish specific facts about the Beneficiary's employment during 2011-2014. Similarly, the Petitioner cannot dismiss the various discrepancies and inconsistencies simply by attributing them to employee error.

The Petitioner must resolve these inconsistencies 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.*

The Petitioner has not persuasively explained why the Beneficiary repeatedly told consular officials that her employer was rather than The Petitioner has not shown that these statements to U.S. government employees would somehow affect her eligibility for Chinese government benefits. Furthermore, in 2016, once she had an approved nonimmigrant petition for an L-1A visa, the Beneficiary changed her story, saying that she left in 2010 to work for The Petitioner has not provided a corroborated explanation for why this statement would have affected her registration in 2011-2014, but not in 2016. We are left only with the bare facts presented in the consular materials: The Beneficiary consistently identified her employer as until she sought immigration benefits that required past employment with at which time she provided a new employment history consistent with the approved petition.

Furthermore, there are other discrepancies among the Petitioner's supporting documents. These additional discrepancies color the Petitioner's overall credibility. The Beneficiary's résumé indicated that she worked for from August 2005 to May 2011, and then for since May 2011. This information conflicts with subsequent assertions that the Beneficiary left in December 2010 or January 2011, and began working for in January 2011. Also, a translated "Payroll for December 2015" showed the same title for the Beneficiary, and the "Attendance" column showed "21 Days" by her name. But the Beneficiary was in the United States throughout the entire month of December 2015.

We note that the Petitioner submitted a payroll report, with information dated from January 2011 through June 2014. This report was compiled in May 2016, several years after the events it purports to substantiate. Similarly, documents identified as Beijing Individual Social Security Payment

Statements for 2011 through 2014 show print dates of June 2016, and the printouts are in English with no indication that they have been translated from Chinese. Therefore, these materials are not contemporaneous evidence of the Beneficiary's employment, and source of income, in 2011-2014.

The Petitioner did not overcome derogatory information that cast doubt on the Beneficiary's claimed employment history. Therefore, the Petitioner has not sufficiently established that a qualifying organization continuously employed the Beneficiary in a managerial or executive capacity for at least one year during the three years preceding the filing of the petition. We find that the Director properly revoked the approval of the petition.

ORDER: The appeal is dismissed.

Cite as *Matter of H-H-USA LLC*, ID# 1989123 (AAO Feb. 7, 2019)