U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-A-S- LLC

DATE: FEB. 13, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which claims to build and repair amusement park rides, seeks to continue the Beneficiary's temporary employment as its chief executive officer 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, concluding that the record did not establish, as required, that: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; and (2) the Petitioner would employ the Beneficiary in the United States in a managerial or executive capacity.[1]

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred by not giving deference to the prior approval of the first petition filed on the Beneficiary's behalf.

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.*

[1] The Director also found that the Beneficiary was ineligible for an extension of stay because the Beneficiary was not physically present in the United States at the time of filing. Much of the appellate brief revolves around this issue and its ramifications. This issue is outside the scope of this proceeding, however, because there is no appeal from the denial of an application for extension of stay. 8 C.F.R. § 214.1(c)(5).

II. DEFERENCE TO PRIOR APPROVAL

With respect to the approval of an earlier petition on the Beneficiary's behalf, that petition is not before us for review. An adjudicator's fact-finding authority should not be constrained by any prior petition approval, but instead, should be based on the merits of each case. USCIS Policy Memorandum PM-602-0151, *Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status* 3 (October 23, 2017), http://www.uscis.gov/legal-resources/policy-memoranda. In this instance, the Director plainly articulated two separate grounds for denial of the petition. The Director did not err by omitting a discussion of the earlier petition and an explanation for why the two petitions had different outcomes.

Similarly, the Petitioner objects that, because the Beneficiary's absence from the United States precluded extension of stay, the Director subjected the Petitioner to the more rigorous evidentiary requirements of a petition for new employment. In every case, including extension petitions, the Director has the discretion to issue a request for evidence (RFE) if the Petitioner has not established eligibility. *See* 8 C.F.R. §§ 103.2(b)(8) and 214.2(l)(14)(i).

III. STATED GROUNDS FOR DENIAL

The Director cited two substantive grounds for denial of the petition. First, the Director found that the Petitioner had not established a qualifying relationship between the petitioning U.S. employer and the entity that had previously employed the Beneficiary abroad. Second, the Director found that the Petitioner had not established that it would employ the Beneficiary in a managerial or executive capacity.

On appeal, the Petitioner offers no substantive discussion as to why it disagrees with the Director's findings, and identifies no specific error. Instead, the Petitioner states:

> Petitioner disagrees with the Director's findings on 'qualifying relationship' and 'manager or executive capacity.' However, these are fact issues best directed to the Director. Rather than protracting this appeal, Petitioner submits that the appropriate remedy is to remand this case so that Petitioner may submit its evidence in the first instance to the Director.

The Petitioner has already had an opportunity to submit additional qualifying evidence to the Director. The Director identified specific deficiencies in the record in an RFE issued on April 2, 2018. The Director stated that the Petitioner had not submitted documentary evidence to establish the ownership and control of either the foreign entity or the petitioning U.S. employer. The Director also stated that the Petitioner had not provided enough details and evidence to establish that it would employ the Beneficiary would be employed as a manager or executive. The Director listed specific documents that the Petitioner could submit in order to overcome these deficiencies. The Director

reviewed the Petitioner's response to the RFE, and found the submitted evidence to be insufficient. We agree with that finding.

A. Qualifying Relationship

To establish a qualifying relationship under the Act and the regulations, a 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 generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The Petitioner initially filed articles of organization with the State of North Carolina on [redacted] 2015, naming the Beneficiary as the sole member (owner) of the petitioning limited liability company. Three months later, the Petitioner amended its articles of organization. When asked for "[t]he name and address of each person executing these articles of organization," the Petitioner responded [redacted] The Director found that the Petitioner had not established how the claimed transfer of ownership took place.

We note that the definitive evidence of membership in the limited liability company would come in the form of an operating agreement, which the Petitioner has not submitted. The Director did not specifically request the Petitioner's operating agreement. If this had been the only deficiency in the record, then it might have prompted a remand of the case in order to address it; but it is not the only deficiency.

The Petitioner's response to the RFE included not only the [redacted] 2015 amendment to the articles of organization, but also copies of the Petitioner's annual reports for 2017 and 2018, required by the State of North Carolina. On each of those printouts, the section reserved for filing receipt information is blank. As will be discussed below, the State of North Carolina administratively dissolved the petitioning entity for failure to file annual reports as required. The Petitioner's submission of annual reports that it had not actually filed raises questions regarding the Petitioner's credibility and good faith.

Also, on its 2016 income tax return, the Petitioner answered "no" when asked whether any foreign person owned at least 25% of the entity's voting interest. The Petitioner did not explain how this information is consistent with other evidence in the record, indicating that [redacted] was established in South Africa, with a South African national as its sole owner. Therefore, the record is ambiguous at best regarding the question of [redacted] claimed ownership and control of the petitioning entity.

B. Managerial or Executive Capacity

Section 101(a)(44)(A) of the Act defines "managerial capacity"; section 101(a)(44)(B) of the Act defines "executive capacity." Based on these statutory definitions, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940

F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Director found that the Petitioner had not provided enough details about the Beneficiary's intended duties in the United States. The Director also noted that quarterly tax returns in the record indicate that, since July 2017, the company had no employees to perform the functions that the Beneficiary purports to oversee. We agree with these findings. Several elements of the job description submitted in response to the RFE are general statements regarding the Beneficiary's authority, and others presume the existence of a subordinate staff that the Petitioner no longer has.

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that it has a qualifying relationship with the foreign entity or that it will employ the Beneficiary in a managerial or executive capacity. The absence of any substantive response to these findings is grounds for dismissal of the appeal.

IV. DOING BUSINESS

Beyond the Director's decision, it is not apparent that the Petitioner continues doing business, defined as the regular, systematic, and continuous provision of goods, services, or both. 8 C.F.R. § 214.2(l)(1)(ii)(H). The mere presence of an agent or office does not constitute doing business. *Id.* If the Petitioner has ceased doing business, then it no longer constitutes part of a qualifying organization. *See* 8 C.F.R. § 214.2(l)(1)(G)(*2*). The Petitioner must meet all applicable requirements at the time of filing, and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

Routine checks of public records revealed that the State of North Carolina administratively dissolved the petitioning entity on [redacted] 2018.[2] Therefore, the Administrative Appeals Unit contacted the Petitioner on December 20, 2018, and requested "substantive and credible documentary evidence to establish that the company is in good standing with the State of North Carolina, and to show that the company has continued to do business, pay salaries, taxes, and bills, and otherwise conduct the usual activities of a lawfully active business."

In response, the Petitioner claims to have applied for reinstatement. It does not submit a copy of that application, but it submits bank documents to show that it submitted two $200 checks to the North Carolina Secretary of State in March 2018. The Petitioner states that it made these payments in an effort to overcome the grounds for dissolution, and is waiting for state authorities to reinstate the company's good standing. We cannot determine, from the available evidence, whether the reinstatement application is still pending. As of February 13, 2019, the administrative dissolution remains in effect.

[2] A searchable database is available at https://www.sosnc.gov/search/index/corp.

The Petitioner states:

> The request for evidence also asks for proof that the Petitioner remains a going concern. The RFE does not indicate that any particular documentation or quantum of proof is mandatory. Accordingly, as further proof that Petitioner is functioning and a *de facto* entity, Petitioner has attached copies of its last 3 bank statements reflecting corporate expenses.

We worded our December 2018 notice broadly because evidence of ongoing business activity could take a variety of forms. Nevertheless, we did request "substantive and credible documentary evidence . . . to show that the company has continued to do business, pay salaries, taxes, and bills, and otherwise conduct the usual activities of a lawfully active business." The submitted bank statements do not meet this threshold. They show some outgoing payments, but no income that the Petitioner has tied to business activity. They also show no salary payments. They contain the following figures:

Month	Starting balance	Debits	Deposits	Ending balance
September 2018	$1398.77	$961.00	$0.00	$437.77
October 2018	437.77	456.75	10,000.00	9981.02
November 2018	9981.02	8332.85	0.00	1648.17

All withdrawals were in the form of debit card purchases except one check for $7901.10, to an unidentified payee, processed in November. The debit card payments went to these recipients:

Recipient	Number of payments	Amount or range per transaction
[redacted]	1	$95.09
	2	2.50–13.40
	3	8.53
	12	52.94
	1	424.99
	2	43.35
	3	170.97–172.04
	1	39.42

The Petitioner attempted to obscure the names of [redacted] and [redacted] with black ink, but they remain legible under strong lighting.

Some transactions might plausibly relate to business activity. [redacted] for instance, provides various services to businesses, and the nature of the Petitioner's claimed business would require the purchase of tools. Nevertheless, the burden of proof is on the Petitioner to establish eligibility by a preponderance of the evidence, and none of the reported expenses are self-evidently exclusive to the operation of an active business. The Petitioner has not submitted invoices or other evidence to

explain how these expenses relate to the manufacture and repair of amusement park rides, which is the Petitioner's only stated business activity. The Petitioner has also not explained how it performs this activity with no employees. (If the Beneficiary performs the work himself, such work is neither managerial nor executive.) An entity is not "doing business" simply by incurring expenses. We note that the bank statements do not reflect the $1200 monthly rent payments described in a March 2018 lease agreement in the record.

The Petitioner has not established that it continues to be engaged in the regular, systematic, and continuous provision of goods, services, or both. If the Petitioner is not doing business, then it is not part of a qualifying organization and it cannot support, and has no need for, a managerial or executive position.

V. CONCLUSION

The Petitioner has not established a qualifying relationship with the Beneficiary's foreign employer, or that it would employ the Beneficiary in a managerial or executive capacity. The Petitioner also has not shown that is doing business.

ORDER: The appeal is dismissed.

Cite as *Matter of T-A-S- LLC*, ID# 1833542 (AAO Feb. 13, 2019)