U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-Z-B-C-C- LTD.

DATE: FEB. 28, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an importer and wholesaler of perfume and cosmetics, seeks to extend the Beneficiary's temporary employment as the general manager of its U.S. subsidiary under the L-1A nonimmigrant classification for intracompany transferees. *See* 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, Vermont Service Center, denied the petition. The Director concluded that the evidence of record did not establish that: (1) the Beneficiary had at least 1 continuous year of full-time employment abroad with a qualifying organization within the 3 years preceding the filing of the initial L-1 petition on his behalf; and (2) the Beneficiary would be employed in a managerial or executive capacity under the extended petition.

The matter is now before us on appeal. On appeal, the Petitioner submits a Form I-290B, Notice of Appeal or Motion and additional evidence, much of which was previously provided.

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

I. LAW

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Here, although the Petitioner submitted additional evidence after filing the Form I-290B, it has not specifically identified any erroneous conclusion of law or statement of fact as a basis for the appeal. The Petitioner has not provided a brief nor did not it provide with its appeal a separate statement regarding the basis of the appeal, as instructed at Part 4 of the Form I-290B. A petitioner filing an appeal is required to provide a statement that specifically identifies an erroneous conclusion of law or fact in the decision being appealed. Here, the Petitioner has made no reference or objection to the

specific findings set forth in the Director's previous decision. Therefore, consistent with 8 C.F.R. § 103.3(a)(1)(v), we will summarily dismiss the appeal.

II. DISCUSSION

Further, even if we reviewed the evidence submitted in support of the appeal, we find that such evidence would be insufficient to overcome the stated grounds for denial of the petition.

The Director denied the petition, in part, based on a finding that the evidence of record did not establish that the Beneficiary had at least 1 continuous year of full-time employment abroad with a qualifying organization within the 3 years preceding the filing of the initial L-1 petition on his behalf,[1] as required by 8 C.F.R. § 214.2(l)(1)(iii). The Petitioner has not submitted a statement specifically identifying an erroneous conclusion of law or fact the Director made with respect to this issue.

The Petitioner, a Chinese entity, claimed that it employed the Beneficiary as its chief executive officer from February 2011 until December 2012, at which time he began working for its U.S. subsidiary in L-1A status. The record of proceeding reflects that during the vast majority of this claimed period of foreign employment, the Beneficiary was either residing in Canada on a student visa or residing in the United States on a B1/B2 nonimmigrant visa. The Petitioner stated that the Beneficiary was physically present in China for only 3 months, from November 16, 2011, until February 20, 2012, during his entire claimed tenure as its CEO.

With respect to the Beneficiary's period of residence in Canada, the Petitioner has not explained how the Beneficiary maintained a full-time position as the CEO of the Chinese company while attending school as an undergraduate student on a different continent. While the Petitioner submitted an assortment of company documents bearing the Beneficiary's signature, and documents indicating that he was present at management meetings during his 3 months in China, it has not provided sufficient evidence of his day-to-day involvement in or oversight of the foreign entity's operations to support a finding that he was a full-time employee of the company. In addition, based on a Canadian work permit in his passport, it appears that the Beneficiary, in addition to working towards completion of his undergraduate studies, was authorized to work at his community college in [redacted] which casts further question on his ability to maintain a full-time job overseeing the operations of a company located in [redacted] China. If U.S. Citizenship and Immigration Services (USCIS) finds reason to believe that an asserted fact stated in the petition is not true, USCIS may reject that assertion. *See, e.g.*, Section 204(b) of the Act, 8 U.S.C. § 1154(b); *Anetekhai v. INS*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

[1] The record reflects that the Petitioner filed the initial L-1 petition on November 30, 2012. The Beneficiary, who had been admitted to the United States in B-1 status on June 5, 2012, was granted a change of status from B-1 to L-1A and his status was extended for the period December 9, 2012, to December 8, 2013 [redacted].

With respect to the period of time the Beneficiary spent in the United States as a visitor, we note that brief trips to the United States for business or pleasure shall not be interruptive of the 1 year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement. 8 C.F.R. § 214.2(l)(1)(ii)(A). Therefore, the Beneficiary cannot be considered a full-time employee of the petitioning Chinese company during the period between his admission as a B1/B2 visitor on June 5, 2012 and the filing of the initial L-1A petition on November 30, 2012.

We acknowledge that the Petitioner provided evidence that the Beneficiary was on its Chinese payroll from May 2011 until December 2012. However, we agree with the Director's determination that the Beneficiary's receipt of a salary in Chinese currency from the foreign entity during the period when he was residing and studying in Canada and residing in the United States as a visitor is insufficient to establish that he was employed abroad in a managerial or executive status on a continuous full-time basis for at least 1 year. In addition, the fact that the Beneficiary's claimed 10 percent ownership interest in the foreign entity is also insufficient to establish that he was a full-time employee of the Chinese entity during his period of residence in Canada and the United States.

Finally, we note that U.S. Department of State records show that when the Beneficiary applied for his B1/B2 visa at the U.S. Consulate in [redacted] in December 2011, he stated on his visa application that he had never been employed. While we are not making an adverse determination based on this information obtained from the U.S. Department of State, the Petitioner may need to address the Beneficiary's statements regarding his employment abroad in any future petition filed by the Petitioner on his behalf.

We acknowledge that USCIS previously approved two L-1A petitions filed on behalf of the Beneficiary. In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give some deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *See, e.g., Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the Director reviewed the record of proceeding and concluded that the Beneficiary was ineligible for this classification based on the lack of evidence that he had 1 year of continuous full-time employment with a qualifying entity abroad in the 3 years preceding the filing of the initial L-1 petition. If the previous petitions were approved based on the same minimal evidence of the Beneficiary's foreign employment, the approvals would constitute error on the part of the Director.

The Director also denied the petition, in part, based on a finding that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity under the extended petition. As noted, the Petitioner has not submitted a statement specifically identifying an erroneous

conclusion of law or fact the Director made with respect to this issue. Moreover, upon review, most of the evidence submitted on appeal that is relevant to this issue was previously submitted and already considered.

The record indicates Beneficiary is employed as general manager of its U.S. subsidiary, which imports and distributes perfume. It claimed to have five employees and $1.3 million in sales as of the date of filing in December 2015. The U.S. company's payroll records showed that it employed the Beneficiary and three other employees as of September 2015, and that the three subordinates each earned $13,000 annually. On appeal, the Petitioner provides evidence that the U.S. company employed these same four employees during the first quarter of 2016, just after filing the petition. The Petitioner submitted position descriptions for a vice president, internal sales representative, external sales representative, accountant, market analyst, and import trade/customs expert, but did not indicate which of these positions were filled at the time of filing. While the Petitioner submitted additional evidence in response to the RFE and on appeal, none of the evidence clarifies the structure of the company as of December 2015, and we cannot determine whether the three subordinate employees, who, based on their salaries do not appear to work full-time, would relieve the Beneficiary from involvement in the company's day-to-day sales, marketing, import, purchasing, financial, administrative, and clerical duties, particularly in light of evidence that the company has employed as many as six employees previously.

In fact, the Petitioner submitted copies of e-mail correspondence between the Beneficiary and the U.S. company's suppliers, logistics companies, and customers which indicate that his job title is "sales manager" and that he is involved in a number of routine, non-managerial duties, including arranging pick-ups and shipments, purchasing packaging for the company's products, providing customers with price lists and product availability information, and answering inquiries from potential customers. Based on the current record, we are unable to determine whether the claimed managerial duties constitute the majority of the Beneficiary's duties, or whether the Beneficiary primarily performs non-qualifying administrative or operational duties. The Petitioner's description of the Beneficiary's job duties does not sufficiently establish what proportion of the duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Section 101(a)(44)(C) of the Act requires us to "take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function." We interpret the statute to prohibit discrimination against small or medium-size businesses. However, it is the Petitioner's burden to establish that the Beneficiary's position consists of "primarily" managerial and executive duties and that it has sufficient personnel to relieve him from performing operational and administrative tasks. The reasonable needs of a petitioner will not supersede the requirement that a beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *Brazil Quality Stones v. Chertoff*, 531 F.3d 1063, 1070 n.10 (9th Cir., 2008). Here, we agree with the Director's determination that the Petitioner did not submit sufficient evidence to establish that the Beneficiary would be employed in a managerial or executive capacity under the extended petition.

III. CONCLUSION

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.

Cite as *Matter of H-Z-B-C-C- Ltd.*, ID# 191433 (AAO Feb. 28, 2017)