U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 7567452

Date: FEB. 28, 2020

Appeal of California Service Center Decision

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

The Petitioner seeks to extend the Beneficiary's temporary employment[1] as its executive 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 denied the petition, concluding that the record did not establish that (a) the Petitioner has been doing business for the previous year; (b) the Beneficiary would be employed in a managerial or executive capacity in the United States; and (c) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer.

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, 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.*

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held;

[1] The Beneficiary was previously granted L-1A nonimmigrant status, valid from March 31, 2018, to March 30, 2019, to open a new office for the Petitioner. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii). This evidence must demonstrate that the beneficiary will be employed in a managerial or executive capacity, as defined at sections 101(a)(44)(A) and (B) of the Act, under the extended petition.

## II. DOING BUSINESS

A new office extension petition must include evidence that the petitioner has been doing business for the previous year. 8 C.F.R. § 214.2(l)(14)(ii)(B). "Doing business" means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad. 8 C.F.R. § 214.2(l)(1)(ii)(H).

On the extension petition, the Petitioner indicated that its business includes clothing design, manufacture, distribution, and marketing. In a letter submitted with the extension petition, the Petitioner stated that "[d]ue to unforeseen market developments in the Mexican economy" including the newly elected presidential administration and the decline of the Mexican market," its new office development "was delayed and did not advance as anticipated." It stated that its parent holding company, [redacted] in Mexico [redacted] produces, designs, and develops shirt collections for [redacted] and that because of the expansion delays, the development of these products has been done by staff located in Mexico and Switzerland.[2] It stated that the [redacted] collections "will soon be run exclusively" by the Petitioner and that for "2019 and beyond, all exports will be coordinated though [the Petitioner's] offices" in California. It stated that it plans to expand the [redacted] clothing brand in the United States by adding more locations and distribution centers, and that it has targeted a mall in California to serve as the initial location. It further stated that it signed a consulting agreement with [redacted] to expand its online store operations and that it "expects online store operations by the fourth quarter" of 2019. It stated that it plans to continue to outsource its financial,[3] accounting, and human resources functions and that, although it currently only employs the Beneficiary, it plans to hire five additional employees by 2020. It stated that it planned to pay the Beneficiary wages of $312,000 per year.

With the extension petition, the Petitioner provided invoices from the Petitioner to its parent company in Mexico for "administrative and representative expenses" for the months of January, April, May, and October 2018, and February and March 2019. However, the administrative and representative expenses are not specifically detailed anywhere in the record. The definition of "doing business" at 8 C.F.R. § 214.2(l)(14)(ii)(A) contains no requirement that a petitioner for a multinational manager or executive must provide goods and or services to an unaffiliated third party. A petitioner may establish that it is "doing business" by demonstrating that it is providing goods and/or services in a regular, systematic, and continuous manner to related companies within its multinational organization. *Matter of Leacheng*, 26 I&N Dec. 532 (AAO 2015). Unlike the petitioner in *Matter of Leacheng*, the Petitioner in this matter has neither defined the specific services it provides or submitted

[2] The Petitioner asserts that its parent company is [redacted]

[3] The extension petition was signed by the Petitioner's chief financial officer, but the record does not establish his duties or indicate that he has ever been paid.

documentation to corroborate that it is carrying out the broadly described "administrative and representative" services it claims to provide to its related foreign entities. Further, there were no invoices from the Petitioner to its parent company for March, June, July, August, September, November, and December 2018, and January 2019, so it is not clear that the Petitioner did any work for its parent company in those months. The Petitioner is expected to submit evidence that it has been doing business since the date of the approval of the initial petition in March 2018. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B). The Petitioner does not have to be a party to contracts with unaffiliated entities, but it is reasonable to expect it to provide some evidence of the types of activities in which it regularly, systematically, and continuously engages in the U.S. market. It has not done so here.

With the extension petition, the Petitioner also submitted internally created spreadsheets of "US purchase orders and invoices" from January 19, 2018, to December 20, 2018, for [redacted] The spreadsheet shows dozens of orders ranging from $102.90 to $160,971.17. However, as further detailed below, none of these orders were specifically reflected in the Petitioner's 2018 unaudited financial results. Further, the accompanying purchase orders show that the parent company facilitated the orders,[4] and do not show that the Petitioner was engaged in the regular, systematic, and continuous provision of goods and/or services to [redacted] in 2018. Another internally created spreadsheet shows invoices for [redacted] from January 25, 2018, to December 17, 2018, ranging from $9 to $13,642. However, none of these orders were reflected in the Petitioner's 2018 unaudited financial results. Further, the accompanying purchase orders show that the parent company facilitated the orders,[5] and they do not show that the Petitioner was engaged in the regular, systematic, and continuous provision of goods and/or services to [redacted] in 2018.

An invoice from [redacted] dated March 4, 2019, evidences that [redacted] charged a monthly fee of $300 to the Petitioner. The invoice references that the charges were incurred for "professional services" but those services are not described anywhere in the record. Thus, it is not clear what the Petitioner was paying [redacted] to do. Further, the single invoice does not reflect charges between March 2018 and February 2019.

The Petitioner also submitted a services agreement dated January 29, 2019, between [redacted] and its parent company for an upgrade to its cloud platform and the provision of additional support services. However, the agreement does not indicate how it relates to the Petitioner's business in the U.S. market. Although the Petitioner stated in its letter supporting the extension petition that it contracted with [redacted] to expand its online store operations, the record does not reflect any online store operations.

The Petitioner also submitted an "Office Service Agreement" with [redacted] indicating that the Petitioner rented "co-working" space in California "similar to a hotel" from September 1, 2017, to February 28, 2018. An invoice from early 2019 showed that the Petitioner paid $429.42 for the co-working space and kitchen amenities. However, the record does not indicate that the Petitioner was doing any business at this co-working space between March 2018 and March 2019.

[4] The Petitioner confirmed in a letter submitted with the extension petition that the development of [redacted] products has been done by staff located in Mexico and Switzerland, and not by the Petitioner in the United States.

[5] The Petitioner confirmed in a letter submitted with the extension petition that the development of [redacted] products has been done by staff located in Mexico and Switzerland, and not by the Petitioner in the United States.

Further, with the extension petition, the Petitioner submitted its unaudited financial statements[6] for the year ending December 31, 2018. Its income statement showed revenues of $14,500 from "professional fees," and $0 in cost of sales. The record reflects that the professional fees came solely from the Petitioner's parent company, and the Petitioner did not earn income from any other sources. The Petitioner's expenses listed on the income statement included accounting and bank charges, legal and professional fees, penalties and fines, and lease payments. It did not include payroll taxes, payroll fees, or wage expenses. It showed net income of $2,676.01. Further, its balance sheet showed current assets (cash) of $2,284.90 and liabilities (accounts payable) of $100. The 2018 financial statements do not show that the Petitioner was engaged in the regular, systematic, and continuous provision of goods and/or services from March to December 2018.

The Petitioner also submitted bank statements from [redacted] that were written in Spanish for the periods from July 2018 to February 2019. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). Because the Petitioner did not submit an English language translation of the bank statements, we cannot meaningfully determine whether the documents support the Petitioner's claims.

The Petitioner also submitted the Beneficiary's paystubs showing that it paid him $6,666.67 for the pay periods February 1-15, 2019; February 16-28, 2019; and March 1-15, 2019. The record does not reflect what the Beneficiary was actually doing in February and March 2019. Further, the paystubs do not evidence that he was paid from March 2018 to January 2019, and they do not support the Petitioner's assertion that the Beneficiary would be paid wages of $312,000 per year.[7] The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In a request for evidence (RFE), the Director stated that the financial statements and spreadsheets were unaudited and that the bank statements were not translated. In the RFE, the Director requested copies of the Petitioner's federal income tax returns or audited financial statements to establish the financial status of the Petitioner and to show that it is doing business in the United States. In response, the Petitioner provided the combined audited financial statements for [redacted] and its subsidiaries and affiliates for 2016 and 2017. However, the financial statements do not include the financial results of the Petitioner.[8] The Petitioner did not submit its federal income tax returns or audited financial statements for the relevant years. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The Petitioner also submitted a Form 941, Employer's Quarterly Federal Tax Return, showing that it paid $26,666.68 to the Beneficiary in the first quarter of 2019, but it also submitted an IRS Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, for the first quarter of 2019 showing no wages paid. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-

[6] Unaudited financial statements are the representations of management.

[7] Based on a bi-weekly pay schedule of $6,666.67, the annual salary would total approximately $173,333.

[8] We note that the auditor included an adverse opinion with the financial statements, stating in part that the company's "adverse financial situation and performance… are indicators of a material uncertainty that may cast significant doubt on the Company's ability to continue as a going concern."

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.* A payroll summary dated February 15, 2019, to April 30, 2019, shows total pay to the Beneficiary of $40,000.02 during that period. The record does not reflect what the Beneficiary was actually doing in early 2019. Further, the payroll statement does not evidence that he was paid from March 2018 to February 2019, and it does not support the Petitioner's assertion that the Beneficiary would be paid wages of $312,000 per year.

The Petitioner submitted monthly bank statements for the periods between January 1, 2019, and April 30, 2019. The only credits shown on the bank statements are wire transfers from the Petitioner's parent company. The Petitioner did not receive income from any other sources. As previously noted, the Petitioner has not established with relevant, probative, and credible evidence that it is carrying out the broadly described "administrative and representative" services it claims to provide to its related foreign entities. Further, the bank statements do not cover the period from March to December 2018. The Petitioner is expected to submit evidence that it has been doing business since the date of the approval of the initial petition in March 2018. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B).

It also submitted invoices for consulting work purportedly performed by [redacted] on the Petitioner's behalf. The two monthly invoices are for "consulting services; market research" performed by [redacted] from March 15, 2019, to April 15, 2019, and from April 15, 2019, to May 15, 2019. They reflect charges to the Petitioner of $476.00 each month. The Petitioner's bank statements do not indicate that these invoices were paid by the Petitioner, and the record does not specifically indicate what type of "market research" services he performed. Further, the two invoices do not show that the Petitioner was engaged in the regular, systematic, and continuous provision of goods and/or services from March 2018 to March 2019.

In response to the RFE, the Petitioner also submitted letters from purported business clients. One letter dated April 19, 2019, was from [redacted] It stated that the "design office in Switzerland and the office in the US do research and development together for our fabric designs for various types of garments." However, the letter did not give the title or address of the writer, and it was not signed by the writer. Therefore, the letter is not credible evidence of the Petitioner's business relationship with [redacted] We note that the Petitioner confirmed in a letter submitted with the extension petition that the development of [redacted] products has been done by staff located in Mexico and Switzerland, and not by the Petitioner in the United States. *See Matter of Ho*, 19 I&N Dec. 591-92.

Another undated letter from the [redacted] stated that the Petitioner "experts in the in the excellent fabrication of dress sports shirts" and that it and [redacted] have come together to carry out the project [redacted] for the American market. It states that the project involves a special clothing collection "being developed" and that the clothes will be made by [redacted] in Mexico. However, since the letter is not dated, it is unclear whether the letter refers to the period between March 2018 and March 2019. Further, the letter describes a project that is under development but does not indicate specifically what work the Petitioner has specifically done on the project.

Another letter from [redacted] dated May 28, 2019, stated that it was collaborating with the Petitioner for development of a sportswear collection for the California market for its brand

[redacted] It asserts that the collection began to be developed at the beginning of the year with the investigation of competition and trends on the west coast market, and that the manufacture of the clothes would be done in Mexico. The letter states that the development began in early 2019, but does not show any collaboration in 2018. It describes a project that is under development but it does not indicate specifically what work the Petitioner has specifically done on the project. Although the investigation of competition and trends are indicative of steps the companies may have taken to prepare themselves for doing business in the foreseeable future, we do not agree that these preliminary activities are synonymous with providing goods and/or services in the course of doing business. The record included designs of [redacted] products, but the submitted designs do not indicate that they were created by the Petitioner.

In her denial decision, the Director determined that the evidence was insufficient to establish that the Petitioner is engaged in the regular, systematic, and continuous provision of goods and/or services. Thus, she found that the Petitioner has been not doing business for the previous year in accordance with the regulations. On appeal, the Petitioner asserts that although it does not manufacture clothing in the United States, it is doing business. However, on the petition, it indicated that its business includes the manufacture of clothing. The Petitioner has not resolved this inconsistency in the nature of its business with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

On appeal, the Petitioner provides an unaudited financial statement for the six-month period ending June 30, 2019. Its income statement showed revenues of $89,500 from "professional fees,"[9] and $0 in cost of sales. Its expenses included accounting and bank charges, dues and subscriptions, legal and professional fees, payroll taxes, payroll fees, postage, lease payments, and wage expenses. It showed net income of $1,430.87. Its balance sheet showed current assets (cash) of $2,283.77 and liabilities (accounts payable) of $100. The financial statements do not show that the Petitioner was engaged in the regular, systematic, and continuous provision of goods and/or services from January to March 2019. A wage report showed wages paid to the Beneficiary in the second quarter of 2019 of $40,000.02, but the wage report does not support the Petitioner's assertion that the Beneficiary would be paid wages of $312,000 per year. As previously noted, the record does not reflect what the Beneficiary was actually doing for the Petitioner in 2019.

Further, similar to the previous invoices for consulting work purportedly performed by [redacted], the Petitioner submitted additional monthly invoices for "consulting services; market research" performed by [redacted] from May 15, 2019, to June 15, 2019, and June 15, 2019, to July 15, 2019. They reflect charges to the Petitioner of $476.00 each month. The record does not indicate that these invoices were paid, and the record does not specifically indicate what type of "market research" services he performed. On appeal, the Petitioner also submits the resume and a letter of recommendation for [redacted]. While it states on appeal that she is a design officer, there is no evidence that she ever performed any design work for the Petitioner.

On appeal, the Petitioner submits an undated letter from [redacted]. It states that [redacted] has worked with the parent company "for a couple of years" and will "continue to collaborate" with the petitioner for the "design, manufacture and delivery" of accessories. The letter indicates that a collaboration

[9] It appears that the fees were paid solely by the Petitioner's parent company.

agreement is attached, but the agreement is not included. Further, the letter is not signed. Therefore, the letter is not credible evidence of the Petitioner's business relationship with [redacted] We note that the Petitioner confirmed in a letter submitted with the extension petition that the development of [redacted] products has been done by staff located in Mexico and Switzerland, and not by the Petitioner in the United States. *See Matter of Ho*, 19 I&N Dec. 591-92.

On appeal, the Petitioner also submits pictures of [redacted]' clothing products, but there is no indication that they were designed by or on behalf of the Petitioner. The Petitioner also submits information regarding an investment opportunity relating to the sale of up to 49% of the stock of [redacted], but it the record does not indicate how the potential stock sale relates to the Petitioner's regular, systematic, and continuous provision of goods and/or services.

The Petitioner also submits a bill from [redacted] dated May 23, 2019, for $110.28. The bill is partially in Spanish and is not translated, although it appears to be related to a domain name registration. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The record does not show how [redacted]'s services relate to the Petitioner's business.

On appeal, the Petitioner states that the foreign parent company is permitted to pay the Petitioner's employees/vendors/consultants and can provide "direct financial support" to the Petitioner as needed. It states that the Petitioner's day-to-day activities are performed by outsourced individuals, including an accounting firm, a corporate law firm, [redacted] (design officer), and many managers who work for its parent holding company abroad. It asserts that much of its work is "strategic in nature" and also involves design. However, as discussed above, the evidence submitted does not reflect that the Petitioner was engaged in the regular, systematic, and continuous provision of goods and/or services, whether through its single employee or via consultants, during the previous year.

On appeal, the Petitioner also asserts that the Director applied a standard of proof that is higher than the applicable preponderance of the evidence standard, and that the Petitioner has met its burden of proof in this case. We disagree. Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner's claim is "probably true." *Id.* at 376. We will examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. Here, the Petitioner has not documented receiving any income from anyone other than its parent company, and it has not shown what products and/or services it provided, if any, in exchange for the funds from its parent company. Invoices issued over the course of six months to its parent company for undetermined services do not show the regular, systematic, and continuous provision of goods and/or services related to clothing design, manufacture, distribution, and marketing. Given the Petitioner's inconsistent and uncorroborated assertions regarding the nature and extent of its business activity, we find that the Petitioner has not met its burden of proof to show that it was doing business, as the regulations define that term, during the previous year.

## III. RESERVED ISSUES

The Director also determined that the Petitioner did not establish that (a) the Beneficiary would be employed in a managerial or executive capacity in the United States; and (b) it has a qualifying relationship with the Beneficiary's foreign employer. However, because the Petitioner did not establish that it has been doing business for the previous year and that issue is dispositive in this case, we need not reach the issues of the Petitioner's employment of the Beneficiary in the United States in an executive or managerial capacity or its qualifying relationship with the Beneficiary's foreign employer. We therefore reserve those two issues.

**ORDER:** The appeal is dismissed.