U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28494549

Date: JAN. 23, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a convenience store, seeks to temporarily employ the Beneficiary as controller of its new office 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 of the California Service Center denied the petition, concluding that the record did not establish that: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary has been employed abroad for at least one continuous year during the three years preceding the filing of the petition; (3) the Beneficiary has been employed abroad in a managerial or executive capacity; and (4) the new office will be able to support a managerial or executive capacity within one year after approval of the petition. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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.*

The 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. ANALYSIS

If a petitioner seeks to employ the beneficiary as a manager or executive of a new office, the petitioner must submit evidence that the beneficiary has been employed in an executive or managerial capacity for one continuous year in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(B). This employment must have occurred outside the United States. *See* 8 C.F.R. § 214.2(l)(3)(iii).

On the petition, filed in February 2018, the Petitioner asserted that the Beneficiary "has served as the Controller for the foreign parent company since March 1, 2012." The Beneficiary's claimed foreign employer is a grocery store in [redacted], Pakistan. On the petition form, the Petitioner did not indicate that the Beneficiary was in the United States at the time of filing. Also on that form, the Petitioner claimed that the Beneficiary is a citizen of Canada.

The Petitioner submitted an organizational chart and job description relating to the Beneficiary's claimed position abroad, but the Petitioner did not submit contemporaneous documentation showing that the Beneficiary was in Pakistan, working for the foreign company, during the time claimed.

The Director issued a request for evidence, stating that the Petitioner "did not submit corroborating evidence of the beneficiary's one continuous year of full-time employment [abroad]." The Director also stated: "According to USCIS records, the beneficiary entered the U.S. on January 30, 2008, as a J-1 nonimmigrant and has not departed the U.S." This information is material to the petition because if the Beneficiary has been in the United States since 2008, then he could not have been employed continuously outside the United States for at least one year between February 2015 and February 2018.

In response, the Petitioner submitted purported payroll records from the company in Pakistan, showing claimed salary payments to the Beneficiary throughout 2017. But the Petitioner also submitted documents indicating that the Beneficiary was in the United States in 2017 and 2018. The Petitioner's "Company Agreement," dated September 15, 2017, and its lease agreement for the store location, dated February 1, 2018, both bear the Beneficiary's signature, indicating he was in Texas in September 2017 and February 2018. The purported payroll records list travel allowances, but the Petitioner did not submit any evidence such as airline itineraries to document, or provide any details about, the Beneficiary's claimed travel in 2017.

The Petitioner's certificate of formation, filed September 15, 2017, names the Beneficiary as the company's registered agent. By signing the document, the Beneficiary attested under penalty of perjury that he was qualified to serve as the registered agent. The certificate specifies that the registered agent must be a "resident of the state" of Texas, and the certificate shows a Texas address for the Beneficiary.

The Director denied the petition, in part because the Petitioner had not established that the Beneficiary was employed abroad for at least one continuous year during the three years preceding the filing of the petition. The Director acknowledged the Petitioner's response to the request for evidence, but

concluded that the evidence in that response did not overcome the evidence that the Beneficiary has been in the United States since 2008.

On appeal, the Petitioner states:

> The beneficiary was in Canada before he entered the U.S. . . .
>
> When the beneficiary entered the U.S. via the Canadian/U.S. border, the Customs Border Patrol [sic] looked at his passport, however they did not stamp his passport or issue an I-94. Presumably because the beneficiary is a Canadian National. To date, the beneficiary is still employed with the foreign company.

Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). Even then, the Petitioner provides no details about the dates of the Beneficiary's claimed crossings of the U.S./Canadian border, and the Petitioner does not say when the Beneficiary left the United States after his documented entry in 2008. Although the Petitioner asserts that "the beneficiary is still employed with the foreign company," time spent in the United States does not count toward the requirement of continuous employment abroad. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A).

The Petitioner does not cite any verifiable record evidence placing the Beneficiary outside the United States during the period claimed. But several of the documents submitted by the Petitioner place the Beneficiary in the United States after he purportedly began working in Pakistan in 2012:

- The Indian consulate general in [redacted], Texas, issued an identification document to the Beneficiary in March 2014;
- The Beneficiary, claiming a [redacted] address, is named on the Petitioner's certificate of formation, filed with the State of Texas in September 2017;
- Also in September 2017, the Beneficiary and two other company officials signed the Petitioner's "Company Agreement," showing a [redacted] address; and
- The Beneficiary, claiming a [redacted] address, signed the lease agreement for the Petitioner's business location in February 2018.

The Petitioner did not submit any evidence of comparable weight placing the Beneficiary in Pakistan during the time of his purported employment there from 2012 to 2018.

With respect to the claim that "the beneficiary is a Canadian National," the Petitioner had previously claimed on the Form I-129 petition that the Beneficiary is a citizen of Canada, but the Petitioner submitted no evidence to support that claim. The identification document that the Beneficiary obtained in 2014 was issued by an Indian, not Canadian, consulate in the United States. That document specifies the Beneficiary's "Nationality" as "Indian."

When considering the Petitioner's unsubstantiated claim that the Beneficiary is a Canadian citizen whose border crossings were not recorded and reported, we bear in mind that the record contains several other discrepancies that raise general questions about the reliability of the Petitioner's claims and some of the documents in the record. For example, the lease agreement for the convenience store

is dated February 2018, but state filings show that the Beneficiary and the Petitioner were both already claiming that address in 2017. Also, the lease agreement specifies that the rent for the property is $3,000 per month, totaling $36,000 for the first year, rising to $3,500 per month, totaling $42,000 for the second year. But the financial projections in the Petitioner's business plan show a much lower rental rate of $13,000 per year with no annual increase. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We agree with the Director that the Petitioner has not overcome evidence showing that the Beneficiary has been in the United States since 2008, and therefore was not working in Pakistan from 2012 to 2018 as claimed. The Petitioner has not met its burden of proof to establish that the Beneficiary worked abroad in a qualifying capacity for at least one continuous year during the three years preceding the petition's 2018 filing date.

The above conclusion, by itself, is sufficient to determine the outcome of the appeal. Therefore, we will reserve argument on the remaining issues, concerning the Petitioner's ownership, the Beneficiary's claimed managerial or executive capacity abroad, and the Petitioner's ability to support a managerial or executive position within one year of approval of the petition. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the appellant did not otherwise meet their burden of proof).

III. CONCLUSION

We will dismiss the appeal for the above stated reasons.

ORDER: The appeal is dismissed.