U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-L-N-A- LLC

DATE: JAN. 25, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, planning to sell merchandise using an e-commerce platform and "offline physical shops," seeks to temporarily employ the Beneficiary as the chief operations officer of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 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 an executive or managerial capacity.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish, as required, that: (1) it had secured sufficient physical premises to house its business operation; (2) the Beneficiary has at least one continuous year of employment abroad with a qualifying organization within the three years preceding the filing of the petition; (3) the Beneficiary was employed abroad in a managerial or executive capacity; and (4) the Petitioner would support the Beneficiary in a managerial or executive position within one year of an approval of this petition.

On appeal, the Petitioner provides a brief along with new and previously submitted documents, contending that it met all of its eligibility requirements.

Upon *de novo* review, we will dismiss the appeal. Because the Beneficiary's employment with a qualifying entity abroad is fundamental to establishing eligibility, and the Petitioner has not met this threshold requirement, we will not address the three remaining grounds for denial.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification with 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

[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.

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. EMPLOYMENT ABROAD

The primary issue to be addressed in this decision is whether the Petitioner established that the Beneficiary was employed abroad for at least one continuous year during the three-year period that preceded the filing of this petition.

In the L Classification Supplement, the Petitioner identified the Beneficiary's employer abroad as and indicated that the Beneficiary has been working for that organization, with no interruptions, since February 1, 2015. In support of the petition, the Petitioner provided the foreign entity's business license which shows that the entity was established on July 3, 2015, and that is its legal representative.[2] This information, however, is inconsistent with the foreign entity's Articles of Association's June 2015 date of execution, which actually predates the date of establishment shown on the company's business license by one month. 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.*

Further, while we acknowledge the Petitioner's submission of multiple payroll statements dating back to March 2016, all statements, with the exception of the statement for November 2016, were unaccompanied by English language translations and the translation that was submitted for the November statement does not meet regulatory requirements. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a *properly certified* English language translation of any of the payroll documents, we cannot meaningfully determine whether the information offered in these documents is accurate and thus supports the Petitioner's claims.

[2] The information in the foreign entity's business license was confirmed in a subsequent overseas investigation, which we will discuss below in greater detail. The overseas investigation included a search of a commercial database, which identified the foreign entity and the date it was established.

In two subsequent requests for evidence (RFEs), the Director informed the Petitioner that the record lacked sufficient evidence to establish that the Beneficiary was employed for the statutorily mandated period. The second RFE went beyond requesting additional evidence and informed the Petitioner of derogatory information that was discovered during an overseas investigation, which led U.S. Citizenship and Immigration Services (USCIS) to question the validity of the Petitioner's claim pertaining to the Beneficiary's employment with a qualifying foreign entity. Namely, the RFE informed the Petitioner that an initial attempt was made to visit the foreign entity's business address, which is the same address that was provided in the entity's Articles of Association. The RFE stated that the attempt was unsuccessful because the entity "did not have office space, furniture, and employees at this location."

The RFE also made note of information that the on-site management office provided to the investigator, most notably that "the room, zone, and building do not exist and added that the [c]ompany was only virtually (online) registered at that address." The RFE described events that took place during a subsequent site visit at an address associated with the foreign entity. While the investigator was able to locate and question [redacted][3] the foreign entity's general manager, [redacted] was not able to provide corroborating evidence of the Beneficiary's foreign employment, such as payroll and tax withholding documents or a work schedule; nor was he able to list the Beneficiary's job duties during her claimed period of employment with the foreign entity. The investigator further pointed to the Beneficiary's multiple visits to the United States between December 2015 to June 2016, which resulted in absences from her foreign employment. Her latest absence is ongoing since her departure on July 19, 2016. Based on the sum of these absences, the Beneficiary's current ongoing absence since the date of her latest departure, and the information obtained from a commercial database, which revealed that the foreign entity was not established until July 3, 2015, the Director determined that the Beneficiary could not have been employed abroad for a full year prior to her latest departure in July 2016.

In response, the Petitioner acknowledged that the Beneficiary's visits to the United States totaled approximately 55 days. The Petitioner stated that despite these absences, the Beneficiary still has the required one year of employment abroad. The Petitioner pointed to a February 2015 employment agreement between [redacted] and the Beneficiary as proof that the Beneficiary's employment commenced on the date of the agreement rather than in July 2015, when the foreign entity was established. The Petitioner also submitted a second version of the foreign entity's Articles of Association without a signature and date, along with the foreign entity's payroll records, a May 2017 letter from [redacted] and an employment agreement ratification letter to support its claim that the Beneficiary was employed abroad by the foreign entity since February 2015.

[3] We note that the foreign entity's business license named [redacted] as its "Legal Representative" and that the overseas investigator referred to someone by a similar name, [redacted] as the foreign entity's general manager. Based on the substantial similarities of the names '[redacted]' and '[redacted]' we will assume that they are the same person.

In the denial decision, the Director acknowledged the Petitioner's submission of additional documents in response to the RFE and reviewed USCIS's findings from the above referenced overseas investigation. However, the Director found that the foreign entity did not legally exist prior to July 3, 2016, and that as a result, the Beneficiary could not have been employed with that entity on February 1, 2015, as the Petitioner claimed.

On appeal, the Petitioner disputes the Director's finding, arguing that [redacted] actually hired the Beneficiary on February 1, 2015, and that a new agreement was signed later, after the foreign entity was incorporated. The Petitioner's claim that the Beneficiary has the required one year of employment abroad relies entirely on the understanding that the Beneficiary was an employee of the foreign entity as of February 1, 2015, when she and [redacted] purportedly signed an employment agreement.

The document that forms the basis of the Petitioner's claim is titled "Employment [C]ontract"; it expressly names [redacted] as "Party A (the employer)" and the Beneficiary as "Party B (the employee)." Even if this document were to meet the regulatory requirements that pertain to all foreign language documents, it would, at most, establish that [redacted] extended an offer to employ the Beneficiary. Given that the foreign entity did not exist as of February 1, 2015, nor was it named in the employment contract, the contract cannot be interpreted as an offer of employment from the foreign entity. The earliest date that the Beneficiary's employment with the foreign entity could have commenced is July 3, 2015, the date that the entity was established. We find that the Director correctly determined that the Petitioner did not submit sufficient evidence demonstrating that the Beneficiary was employed by the foreign entity prior to the date that entity came into existence.

We further find that, regardless of the terms cited in the employment contract, the contract does not meet the relevant regulatory requirements because it was not accompanied by a *properly certified* English translation.[4] *Id.* As such, the contract cannot be deemed as reliable proof of the Beneficiary's period of employment abroad. Likewise, a number of other documents that the Petitioner offered as proof of the Beneficiary's employment abroad, including the foreign entity's payroll records, both versions of its Articles of Association, [redacted] May 2017 letter, and an employment agreement ratification letter, were all similarly deficient because they also lacked *properly certified* English translations. *See id.*

In light of the above, we find that the Petitioner has not provided sufficient evidence to support its claim regarding the Beneficiary's employment abroad. We therefore cannot conclude that the Beneficiary was employed abroad for the statutorily required time period.

III. CONCLUSION

[4] The only document in the record that was accompanied by a certified English language translation is the Beneficiary's diploma from a two-year accounting program completed in 1998 at [redacted].

For the reasons discussed above, we find that the Petitioner has not established that the Beneficiary was employed abroad by a qualifying entity for the mandated one-year time period prior to the filing of the instant petition and for this reason the appeal will be dismissed. As this element is fundamental to establishing eligibility and the Petitioner has not met this threshold requirement, the remaining issues – the Petitioner's ability to secure sufficient business premises, the Beneficiary's employment abroad in a managerial or executive capacity, and the Beneficiary's U.S. employment in a managerial or executive capacity within one year of the petition's approval – will not be addressed.

ORDER: The appeal is dismissed.

Cite as *Matter of H-L-N-A- LLC*, ID# 878487 (AAO Jan. 25, 2018)