U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-T- LLC

DATE: JAN. 25, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which sells small consumer electronics online, seeks to continue the Beneficiary's temporary employment as its chief executive officer (CEO) under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 approved the petition, but later revoked that approval based on information obtained during a post-adjudicative site inspection. The Director concluded that the Petitioner had not provided accurate information about its business activity, and therefore had not established that it employed the Beneficiary in the United States in a managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by drawing unwarranted conclusions from the site visit and by disregarding evidence that the Petitioner had submitted after that visit.

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 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

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period from September 1, 2016 until August 31, 2017. 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.

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; 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).

Under U.S. Citizenship and Immigration Services regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

II. U.S. MANAGERIAL OR EXECUTIVE CAPACITY

The primary issue to be addressed in this decision is whether the Petitioner has substantiated its primary business activities and whether it has been employing and will employ the Beneficiary in the United States in a managerial or executive capacity.

The Petitioner filed the petition in August 2017, claiming a business address on [redacted] in [redacted] California. The petition form advised the Petitioner that the information in the petition was subject to verification by various means, including on-site inspections.

The Petitioner did not indicate that the Beneficiary would work off-site or at any other location. Under "Type of Business," the Petitioner stated: "design and installation of multi-function audio & video systems." In a separate letter, the Petitioner specified four areas of business:

> 1) design and installation of multi-function audio & video systems for clients; 2) design and implementation for clients' projects of computer system integration; 3) design and implementation of building intelligence; 4) international trading of electronic products.[2]

The Petitioner claimed four employees in the United States: (1) The Beneficiary, CEO; (2) [redacted] General Manager; (3) [redacted] Sales Manager; and (4) [redacted] Sales.

The Petitioner submitted copies of contracts and invoices dated 2017, for services including:

[2] In 2015, when the Petitioner was based in Florida, it completed IRS Form SS-4, Application for Employer Identification Number. On that form, the Petitioner identified its principal business activity as "Real Estate Investment," but the record contains no evidence that the Petitioner ever pursued this line of business.

- [E]ngineering design of the
- [E]ngineering design of the
- Design of system engineering
- Service of e-commerce platform system [Client:
- Service fee of counseling [Client:

The Petitioner did not explain who within the company performed the contracted services. No submitted job description includes the functions listed above, and the Petitioner stated that it had not yet hired a technical manager "to conduct technology innovation and development."

The Director approved the petition in August 2017. On Tuesday, December 5, 2017, an immigration officer (IO) traveled to the Petitioner's claimed address for a routine post-adjudication site inspection. The sign outside identified the business as there were no employees present. The officer returned on Friday, December 15, and spoke to and both of whom stated that they worked for , which imports and sells caster wheels for products such as shopping carts. The on-site warehouse held boxes of cart wheels, but nothing identifiably related to the design, sale, installation, or service of electronics as the Petitioner had previously described.

contacted the Beneficiary, who later arrived at the site. The Beneficiary stated that the Petitioner controlled and had begun selling cart wheels because the Petitioner was having difficulty getting into the electronics market, and was preparing to dissolve. The investigating officer asked to see documentation such as payroll records and evidence of the petitioning entity's prior work, but the Beneficiary did not provide it at the time.

The Director concluded that the nature and extent of the Petitioner's business activity, and therefore the Beneficiary's employment, were in doubt. The Director issued a notice of intent to revoke (NOIR), advising the Petitioner of the information summarized above.

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, 591-92 (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.*

In response, the Beneficiary stated that the Petitioner had sublet office space from and eventually took over the lease entirely. She stated:

> intended to voluntarily dissolve the company due to long time business depression . . . . After a full negotiation with the top officer of , I decided to take over the employees of the company in Jan. 2017 . . . .

> When the IO conducted the site visit to our office, [redacted] pending business was not wound up yet, so it still needed its logo to be posted outside the office. This is why [redacted] logo, not [the Petitioner's] logo, was posted outside when the IO conducted the site visit.

The Beneficiary asserted that, even though [redacted] and [redacted] stated that they worked for [redacted] the Petitioner paid their salaries and was therefore their employer. The Beneficiary continued:

> When the IO conducted the site visit, I had no ready information to present immediately, because the documents related to payrolls and sales of electronic products were all kept in my laptop, and I did not bring the laptop with me that day. At that time, I did not go to my office regularly because I had to take care of my kids at home, thus sometimes I had to work from home.

We note that the Beneficiary offers a different explanation on appeal, stating: "I had gone to the office with my laptop, but without a charging cable. At the time, the laptop had low battery and I was unable to retrieve the requested information."

The Beneficiary stated that it took over [redacted] activity of selling wheels in September 2017, and in October 2017 the Petitioner "started its sales of audio and video electronic products via Amazon." The Beneficiary stated that it has its logo printed on electronics manufactured in China. A third-party business partner, [redacted] purchases these items and then, through another, unidentified third party, arranges for their sale on Amazon. As a result, the Beneficiary explained, the Petitioner itself does not have many of the documents relating to these sales.

The Director revoked the approval of the petition, stating that the Petitioner had not submitted enough credible evidence to overcome the findings from the site inspection. On appeal, the Petitioner stated that it had submitted ample evidence in response to the NOIR.

The NOIR response included documentation which partially corroborated the Beneficiary's statement. For example, the Petitioner submitted printouts from Amazon, identifying the Petitioner as a seller on transactions between November 2017 and March 2018. Bank statements from late 2017 and early 2018 show checks in amounts matching pay statements for the Beneficiary and her three subordinates. (On appeal, the Petitioner submits copies of the corresponding checks, confirming that they were paid to the named employees.)

The Beneficiary's statement, however, is not fully substantiated. With respect to the signage at the business address, the August 2017 petition submission included exterior photographs of the site. The only company logo visible was for the Petitioner, not [redacted] Therefore, sometime between August and December 2017, the [redacted] sign replaced the Petitioner's sign, which is not consistent with the Beneficiary's original explanation. (The Beneficiary later offered a conflicting explanation, stating that it re-mounted the [redacted] sign because customers visited the site looking for [redacted].)

The Petitioner did not submit a contract or other documentation to explain exactly what services provides to the Petitioner. Invoices from dated between August 2017 and March 2018, indicate that billed the Petitioner for the purchase of the products, and also for marketing and reviews. (This information appears to suggest that the Petitioner paid not only to market the products, but also to review them.)

Copies of the Petitioner's tax returns show gross income of $4984 in 2016 and $258,473 in 2017, a more than 50-fold increase in one year. The 2017 return identified the Petitioner's business activity as "consultation and project implementation," and the Petitioner did not claim "cost of goods sold" as an expense against gross sales.

The Petitioner also submitted copies of invoices from April and December 2017, charging five-figure sums for "intelligent system engineering" for customers in China, along with schematic drawings of what appear to be electronic systems. The Petitioner did not explain who designed these systems. The Petitioner has only four employees, and none of their job descriptions include design of such systems.

It is significant that half of the Petitioner's employees are said to have sales duties. The Petitioner, however, has indicated that charges the Petitioner for marketing and works through "a third party to conduct products marketing on Amazon." The Petitioner does not claim to sell its goods through any other outlet besides Amazon. Therefore, it is not clear what function an in-house sales staff would serve with respect to sales of consumer electronics.

The Petitioner acknowledges that "two employees mentioned they worked with during the site inspection. The Petitioner contends that this information is unimportant, because the Petitioner paid their salaries. We disagree with the Petitioner's assertion that this is a minor technicality. There is no evidence that the Petitioner has any ownership interest in or any other legal basis for paying its employees to work for . The Petitioner claimed that it absorbed employees because was in the process of winding up, but there is no evidence in the record to support this assertion. On appeal, the Petitioner states: "It wasn't until later that Beneficiary found out that this assurance of dissolution had not happened." The Petitioner does not explain how this development has affected its claimed relationship with or the duties of the Petitioner's employees. If continues to exist as a separate entity, unrelated to the Petitioner, then any individual who "worked with was not supporting or furthering the operations of the Petitioner.

It is highly significant that the site visit showed no sign of the business described in the petition. Instead, the IO found a company identified as , staffed by individuals who said they were working for with a warehouse stocked only with products. An interior photograph submitted with the petition shows pictures of casters and wheels tacked to an office wall. If the Petitioner did not legally and formally acquire business, then the business activity taking place at the location was business, not the Petitioner's, even if the workers were on the Petitioner's payroll. Even if we were to assume that the Beneficiary continues to have authority over these employees, the Petitioner has not shown that is a qualifying organization rather than an entirely separate business.

On appeal, the Beneficiary contends that [redacted] and her subordinates are primarily focused on" "the business of wheels," and [redacted] states that [redacted] products were being sold and offered by [the Petitioner]." The record, however, does not substantiate the assertion that the Petitioner, as an organization, plays any role in the sale of [redacted] products. The Petitioner has submitted copies of invoices for services to customers in China, and Amazon printouts showing various electronic products for sale, but there is no documentary evidence that the Petitioner is involved in any way with the manufacture, importation, purchase, or sale of [redacted] caster products. If the Beneficiary's subordinates are selling these products, they do so on behalf of [redacted] not the Petitioner.

We note the submission of invoices that the Petitioner issued to [redacted] but these invoices specifically referred to "[s]ervice of e-commerce platform system." We cannot construe that term to refer to the sales activities described in the record. The Petitioner did not submit any contract or agreement between itself and [redacted] to identify more specifically the services performed.

Because there is no reliable link between the business activities of [redacted] and the Petitioner, the Petitioner has not shown that its employees do anything to support the Beneficiary in a managerial or executive capacity or to relieve her from having to perform non-qualifying tasks. The Petitioner has invoiced customers in China for tens of thousands of dollars' worth of electronics work, but the record does not say who actually performed that work or what role the Beneficiary plays in managing or overseeing that work. The Petitioner's affiliate in China is in the electronics industry, and is therefore possibly in a position to perform the work for the clients, but any services provided by a Chinese company, in China, for Chinese customers, do not amount to business activity by the Petitioner in the United States.

The only business activity that the record reliably connects to the Petitioner is the sale of small electronics. Even then, the Petitioner's involvement appears to be limited to paying third parties to print the Petitioner's name on existing products and arrange for their sale online. The Petitioner has not shown that this activity requires or justifies managerial or executive oversight.

The post-adjudication site visit raised serious issues which the Petitioner has not fully resolved. The Petitioner has not shown that its primary business activities have any substantial resemblance to the activities described in the petition. Because the Director relied on that original description to approve the petition, the major shift in business activity is a central concern. The Petitioner also has not shown that the company's post-approval activities require oversight, planning, and decision-making to an extent that would warrant the employment of a manager or executive.

III. CONCLUSION

The site visit did not substantiate the Petitioner's initial claims about the nature of its business activity. The Petitioner has not overcome many of the resulting credibility questions, or shown that its current business supports or justifies the employment of a manager or executive. The revocation of the approval is therefore affirmed.

ORDER: The appeal is dismissed.

Cite as *Matter of M-T- LLC*, ID# 1989488 (AAO Jan. 25, 2019)