U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-C-TV, [redacted]

DATE: JAN. 31, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a production company, seeks to temporarily employ the Beneficiary as chief financial officer 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, approved the petition but later revoked that approval based on a finding that the Beneficiary's foreign employer has ceased to do business, and therefore the Petitioner has no qualifying relationship with a multinational organization.

The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence in an effort to establish continued business activity by the foreign company.

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.*

II. QUALIFYING RELATIONSHIP

The Director revoked the approval of the petition based on a finding that the Petitioner no longer has a qualifying relationship with the Beneficiary's foreign employer.

To establish a "qualifying relationship" under the Act and the regulations, a petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e.

one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). In this case, the Petitioner asserts that it is a wholly-owned subsidiary of

A qualifying organization is or will be doing business as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the beneficiary's stay in the United States as an intracompany transferee. 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*). "Doing business" means the regular, systematic, and continuous provision of goods, services, or both, by a qualifying organization and does not include the mere presence of an agent or office. 8 C.F.R. § 214.2(l)(1)(ii)(H).

If the petitioning U.S. employer or the Beneficiary's former foreign employer ceases to be a qualifying organization, then the approved L-1A petition is subject to revocation. 8 C.F.R. § 214.2(l)(9)(iii)(A)(*1*).

The Petitioner's provided an address for on China. rented office space from The Petitioner submitted interior office photographs which showed logo at the front desk and several United States flags at various locations in the office.

The Director approved the petition on January 29, 2015, two days after its filing. In July of that year, U.S. Citizenship and Immigration Services investigators visited address and contacted the Beneficiary and the company's general manager, and reported the following findings:

- The office identified as belonging to had been abandoned for several months. logo was visible inside the office, but the sign outside the office identified the location as a travel agency. Other signs outside the office indicated that the property manager had locked the occupants out of the office for non-payment of various fees. A receptionist on the first floor of the office building knew that the closed office had been a travel agency, but was not familiar with
- The Beneficiary stated that she had been in and had not been to offices in several months.
- told the investigators that was still active at the address provided, but she acknowledged that she had not visited that office for several months.

The Director issued a notice of intent to revoke (NOIR) the approval of the petition, stating that the above information indicated that the foreign company was no longer doing business, and is therefore no longer a qualifying organization.

In the NOIR, the Director stated that "indicated she is not the general manager and legal person for" the foreign company. This is a transcription error from an earlier communication, which indicated that "confirmed she was *now* the general manager and legal person" for the

foreign company. We correct the error here because the Director cited the incorrect quotation as one of the grounds for the adverse finding.

In response to the NOIR, the Petitioner disputed several of the investigators' findings. The Petitioner claimed that the foreign company continuously occupied its office until July 2015, when a dispute with the landlord led to the company's removal. The Petitioner claimed that "the Property Manager has locked the office several time[s] in July," before forcing the company out of the office on July 31, 2015. The Petitioner claimed to have learned, in November 2016, that the property manager had illegally taken possession of the company's property that had been locked in the office. The Petitioner stated that the employees called the police for assistance, and that local television covered the dispute, although the Petitioner did not submit any corroborating evidence to support these claims. An attorney for the foreign company repeated these allegations, stating that legal action was pending and that the company had lodged complaints with local and national government agencies. The attorney added that the company would soon file a countersuit against the property manager.

The Petitioner provided what it called "A TRUE AND ACCURATE TIMELINE OF FACTS," including this assertion: "**On and after August 2015**, to avoid fight and to protect our employees' safety, The Company had to assign their employees either to work from home or at partners' job site for almost a year ever since."

The Petitioner submitted a translated letter from indicating that the company was fully staffed "all the time prior to July 31, 2015," and that had "never stated [the Beneficiary] works in and does not work in stated that she did not mention the landlord's actions when she first spoke to the investigators because of cultural factors that discourage open discussion of such matters.

Statements attributed to other employees contained similar claims that the landlord unlawfully forced the company out of the office on July 31, 2015, and that the company has continued operating and paying its employees nevertheless. The foreign company's human resources manager stated that "more than 10 core management personnel, have been working at a temporary office at our partner's company worksite." The Petitioner did not identify the partner or the partner's company or provide an address. The company's cameraman stated that the filming staff works "at my friend's studio who operates a film and television advertising company. We have to borrow their equipment to prepare domestic programs for our US Branch."

The Petitioner submitted what purport to be copies of tax and payroll records from after July 2015. The numbers on the photocopied tax documents are too faint to read.

We note that the site visit, when the investigators reported that they found the office vacant and "bare" apart from a receptionist's desk, occurred on Wednesday, July 29, 2015, two days before the Petitioner claims that the foreign company's employees were forced to leave the premises on in and more than a year before the Petitioner claims the foreign company

learned of the confiscation of its property in November 2016. None of the letters explained or acknowledged the exterior sign for a travel agency that the investigators saw when they visited the site. With regard to the receptionist's assertion that the office had been closed for months, the Petitioner simply called that statement "not true."

Copies of complaint letters addressed to government entities are dated several weeks after the Director issued the NOIR on November 1, 2016, and do not show that the foreign company had taken any remedial action before the Petitioner received the NOIR. Some court documents show earlier dates, but those documents relate to the property manager's suit against Documentation of legal action against for non-payment of fees does not establish that company's continued existence and operation as an active business.

The Director revoked the approval of the petition, stating that the Petitioner "did not provide evidence of actual business activity" by the foreign company during the disputed period, or identify any specific location from which the company conducted business during late 2015 or 2016. The Director acknowledged the Petitioner's submission of payroll and tax documents, but found that these materials did not show the company's active engagement in business.

On appeal, the Petitioner states: "The parent company is engaged . . . in production and distribution of films, TV programs, [and] large shows." The Petitioner submits copies of what purport to be recent production contracts for commercials, live events, and other programming, mostly showing dates in the second half of 2016. The record contains no evidence that the Petitioner fulfilled these contracts, most of which purport to have been executed after the landlord confiscated equipment but before the Petitioner learned of the confiscation. The Petitioner has not established how it fulfilled the contracts without its equipment.

The Petitioner has submitted various paperwork originating from but the record lacks independent corroboration to confirm that the company continues to engage in the regular, systematic, and continuous provision of goods, services, or both. The Petitioner has provided business addresses but investigators have been unable to confirm actual business activity there.

continued existence on paper cannot suffice to show that the company has, at all relevant times, not only employed workers but also done business as the regulation defines that term.

III. CONCLUSION

The Petitioner has not established that the Beneficiary's foreign employer is a qualifying organization.

ORDER: The appeal is dismissed.

Cite as *Matter of H-C-TV,* , ID# 547789 (AAO Jan. 31, 2018)