U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31746246

Date: JUL. 10, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1B Specialized Knowledge Worker)

The Petitioner, described as a marble construction and design business, seeks to employ the Beneficiary as its manager under the L-1B 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-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The Director of the California Service Center denied the petition, concluding that the record did not establish the Petitioner is doing business as defined in the regulations. The matter is now before us on appeal pursuant to 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-1B 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 specialized knowledge capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

For purposes of the L-1 nonimmigrant classification, a "qualifying organization" is one that is or will be doing business as an employer in the United States and in at least one other country for the duration of a beneficiary's stay in the United States as an intracompany transferee. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*). The term "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. 8 C.F.R. § 214.2(l)(1)(ii)(H).

II. DOING BUSINESS IN THE UNITED STATES

The sole issue addressed by the Director is whether the Petitioner established that it is doing business in the United States.

The Director emphasized that neither the Petitioner's unaudited income statements nor its parent company's U.S. federal income tax returns reflect that it had reported any gross receipts or sales between 2018 and 2023. The Director acknowledged the Petitioner's submission of other documentation, such as vendor and contractor invoices and bank statements, as evidence of its business-related expenses and credits, but emphasized that these documents contained inconsistencies and were otherwise insufficient to demonstrate that the Petitioner has been "doing business" as defined in the regulations.

On appeal, the Petitioner asserts that the Director did not properly weigh all the submitted evidence of its activities in the United States. The Petitioner further asserts that the facts here are comparable to those presented in *Matter of Leacheng*, 26 I&N Dec. 532 (AAO 2015), and support a determination that the Petitioner is doing business by providing services to a related entity within the same organization.

For the reasons discussed below, the Petitioner has not met its burden to demonstrate that it has been engaged in the regular, systematic, and continuous provision of goods and or services in the United States.

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner indicated that it was established in the United States in 2018 as a marble construction and design company. The Petitioner stated on the Form I-129 that it had ten employees in the United States, gross annual income of more than $52 million and net annual income of $21.1 million at the time of filing in July 2023. While the Petitioner provided evidence that it was established in Nevada in 2018, the record indicates that it had no employees and had not yet generated any revenue in the United States. The Petitioner did not explain the staffing and revenue figures it provided on the petition.

The record establishes that the Petitioner's affiliate, [redacted] purchased approximately four acres of land in [redacted] in August 2018 for the purpose of establishing the [redacted] a 43,914 square foot building complex to be constructed in a Turkish architectural style using Turkish marble and natural stones. The Petitioner explained that the marble, other natural stone materials, and several key specialized knowledge workers are being provided by its two subsidiaries in Turkey. The Petitioner has consistently stated it is responsible for the "specialized construction and buildout" of the spa's multi-use building complex, which will include fine dining restaurants, Turkish baths, spa rooms, a salon, and other facilities, and will receive full support from the [redacted] which finances the project."

The record contains supporting documentation related to the [redacted] project, including evidence of the land purchase, site plan, the purchase of Turkish marble and other materials by [redacted]

[redacted] and photographs showing the start of construction at the building site. According to a statement from the majority shareholder of the Petitioner's corporate group, [redacted] has spent approximately $12 million to date and expects to allocate an additional $8 million to finish the building, with the Petitioner tasked to "finish the marble and ceramic installation." He explained that the Petitioner has not required full-time or salaried workers to date and "won't be earning any money nor profits" until the new building complex is completed and operational.

The evidence demonstrates that the [redacted] project was underway when the petition was filed and that the project is and will continue to be funded by the Petitioner's affiliated companies. The issue before us is whether the Petitioner's involvement in the project to date is consistent with the regulatory definition of "doing business" at 8 C.F.R. § 214.2(l)(1)(ii)(H).

The Petitioner maintains that the previously submitted evidence demonstrates business activities that go "beyond the mere presence of an agent or office" noting that it "currently works with its affiliate organizations and provides service to them by managing the contraction [sic] site." Specifically, it states it substantiated that it is an active business by providing evidence of "regular and consistent subcontractor compensation, timely settlement of outstanding bills and invoices, asset management, property upkeep for executive and owner stay[s] during essential [redacted] site visits, and employment of a 1099-contracted site manager." The Petitioner further emphasizes that it is "progressing with the construction" and is "charged with all future operations" of the building complex once it is completed and open for business.

The Petitioner also contends that the facts here are similar to those presented in *Matter of Leacheng*, 26 I&N Dec. 532 (AAO 2015), in which we concluded 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. The Petitioner maintains that, like the petitioner in *Leacheng*, "defined the specific services" it provides to its affiliate and substantiated that it is "actually carrying out its services of constructing the building complex on the land owned by its [affiliate] company."

To determine whether a petitioner has met its burden to show that it is providing services in a regular, systematic, and continuous manner to a related company, we consider the totality of the record, including relevant documentation to substantiate its business activities. In *Matter of Leacheng*, the petitioner provided a copy of its service agreement with a foreign affiliate and substantial evidence showing that it paid wages to its staff of employees, billed the foreign entity for its services, and was in fact performing the services described in the service agreement in a manner consistent with the regulatory definition of "doing business." *See Leacheng*, I&N Dec. at 536.

Unlike the petitioner in *Matter of Leacheng*, the Petitioner in this matter has not clearly defined the specific services it provides or submitted sufficient supporting documentation to corroborate that it has been performing services for its affiliate company in a regular, systematic, and continuous manner.

The Petitioner states it has been providing services to its affiliate by managing the construction of the [redacted] building complex on the [redacted] property owned by [redacted] The Petitioner's responsibility for the "construction and management" of the project is mentioned in the minutes of a board of directors meeting held by [redacted] in December 2022. It is

unclear whether there is any written agreement between the Petitioner and its affiliate further delineating the nature and scope of its services and each party's responsibilities with respect to the [redacted] project. While such an agreement is not required to demonstrate it is doing business, it is nevertheless the Petitioner's burden to clearly define and document the specific services it provides to its affiliate, and what is entailed by its responsibility for "construction and management" of the [redacted] project.

The record reflects that the Petitioner, established in 2018, has never had a full-time employee assigned to oversee the project's development or any other payroll staff. It did not explain how it has planned, coordinated, or managed any construction activities carried out to date without personnel to perform these functions or any associated administrative or operational duties that would reasonably be associated with a project of this size.

On appeal, the Petitioner emphasizes that, for over a year, it has been working with a general contractor, [redacted] to complete the construction of the building complex in [redacted] The record includes a January 2023 letter from [redacted] the company's owner. He stated that he "started working with [redacted] on the [redacted] project over a year ago." He did not mention the Petitioner, his company's relationship with the Petitioner, or the Petitioner's involvement with the project.

The record contains copies of monthly invoices issued by [redacted] for work on the [redacted] project between March 2022 and August 2023. From March 2022 until January 2023, the contractor issued monthly invoices for "employment services" in the amount $18,333.33. Between February 2023 and August 2023, the contractor invoiced this amount, plus an additional $10,000 monthly for the services of an individual identified as a "site supervisor/general superintendent." The invoices were issued to the attention of "O-S-" (the majority owner of the Petitioner's group) and include the Petitioner's company name. However, the record lacks sufficient supporting evidence of the Petitioner's relationship with the contractor, such as a copy of the contract between the two parties detailing the nature and scope of the contracted work and the Petitioner's role in overseeing that work.

There is also insufficient evidence that the Petitioner, as opposed to another company in its group, was consistently responsible for paying the invoices issued by [redacted] The record includes copies of the Petitioner's bank statements for the months of May 2023, September 2023, and October 2023. The May and October statements show "preauthorized debits" in the amount invoiced by [redacted] However, some of the earlier invoices submitted by this contractor bear approval stamps indicating they were paid from several different bank accounts. Given [redacted] statement that he had been working for [redacted] rather than for the Petitioner, the invoices and three bank statements are insufficient to demonstrate that the Petitioner contracted his services and is responsible for overseeing the services his company provides.

As noted, the Petitioner states on appeal that it employs the services of a "1099 contracted site manager," but it does not identify this individual in its brief or provide a copy of an IRS Form 1099 it issued to the claimed site manager or tax forms issued to any other contractors. In response to the Director's request for copies of the Petitioner's income tax returns, it submitted a letter from [redacted] which states "for U.S. tax purposes, the income and expenses of [the Petitioner] are required to be included with its owner, [redacted] and be reported on the owner's U.S. tax return."

While the Petitioner submitted copies of this entity's federal tax returns, they did not include all accompanying statements, and, as submitted, and do not include any references to the Petitioner.

The Petitioner also submitted copies of its unaudited income statements and balance sheets for the years 2018 through 2022 and a partial-year statement for 2023. The most recent statements, for 2022 and 2023, indicate significant payments to contractors. However, without additional corroborating evidence showing how the Petitioner is actively overseeing the [redacted] project, the information provided in the unaudited financial statements is insufficient to demonstrate that the Petitioner has been regularly and systematically providing the claimed "construction and management services" for its affiliate. As discussed further below, the statements show that the company had almost no other business-related expenses in 2022 or 2023.

On appeal, the Petitioner emphasizes that in addition demonstrating that it has been engaged in the construction of the [redacted] spa by relying on contractors, it provided evidence of its "timely settlement of outstanding bills and invoices, asset management, [and] property upkeep for executive and owner stay[s] during essential [redacted] site visits." In this regard, the Petitioner provided an affidavit from D-H-, who indicates that, as the Petitioner's contractor, she has hosted visitors to [redacted] and arranged for them to stay at residential properties owned by [redacted] She indicates that the Petitioner pays her a fixed monthly fee for her services and pays for all overhead expenses related to these [redacted] based company meetings. D-H- also indicates that she organized the Petitioner's participation in a June 2019 trade show, for which the Petitioner paid all associated expenses. She does not identify any other functions she currently performs for the company or indicate that she performs duties related to the construction of the [redacted] building complex. She states she will serve as the facility's customer service manager when it opens for business.

The record does not contain a copy of the Petitioner's contract with D-H- outlining the terms of their relationship and the nature and scope of services she provides. However, it contains copies of invoices she submitted to the Petitioner, some evidence corroborating the Petitioner's payment of expenses related to the 2019 trade show, and evidence that it paid utility bills and other invoices associated with maintenance of the two residential properties owned by [redacted] For example, the Petitioner's income statement for 2019 reflects it paid trade show expenses as well as expenses categorized as telephone, auto, travel, cleaning, accounting, internet, house supplies, insurance, legal, meals and entertainment, office expenses, utilities, and repairs and maintenance, among others. Similar types of payments appear on its income statements for 2020 and 2021.

However, the submitted income statements reflect the Petitioner was no longer paying most of these expenses in 2022 or at the time it filed the petition in 2023. In fact, in 2023, the Petitioner reported $1324 in auto expenses, $700 in legal expenses, $40 in bank charges, and no other office or business-related expenses other than payments to contractors.[1] As such, it appears that any services it may have been providing to manage the [redacted] residential properties owned by its affiliate had ceased prior to the filing of the petition. Further, the minimal business-related expenses reported for the 18-month period preceding the filing of the petition do not substantiate the Petitioner's claim that it was doing

[1] The Petitioner submitted an affidavit and invoices from its attorney. The evidence shows that the attorney invoiced the company $700 annually to handle certain filings with the Nevada Secretary of State. The invoices are addressed to the Petitioner at the Canadian address of its majority owner.

business by actively managing the [redacted] project and other facilities on behalf of its affiliate company.

Finally, we acknowledge the Petitioner's claim that it will be responsible for managing the operations of the new building complex once it is completed and open for business, at which point it would hire additional staff and generate revenue. The Petitioner cannot establish its eligibility based on its planned future business activities. Rather, it must demonstrate it met all eligibility requirements for the requested benefit at the time of filing. 8 C.F.R. § 103.2(b)(1).

For the reasons discussed, the Petitioner has not met its burden to establish that it was doing business as defined in the regulations when it filed the petition. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.