U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10928704

Date: JUL. 16, 2021

Appeal of Texas Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner installs Internet services and develops software. It seeks to employ the Beneficiary as its president in L-1A nonimmigrant status as a manager or executive. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

After initially granting the filing, the Director of the Texas Service Center revoked the petition's approval. The Director concluded that, contrary to facts alleged in the petition, the Petitioner did not acquire sufficient U.S. business premises.

In revocation proceedings, the Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will dismiss the appeal.

I. L-1A MANAGERS AND EXECUTIVES AT NEW OFFICES

The Petitioner described itself as a "new office." The term means an entity that, at the time of the petition's filing, had done business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).

If a "new office," an L-1A petitioner must demonstrate that, during the three years before the petition's filing, the beneficiary worked at least one full-time continuous year abroad for a parent, branch, affiliate, or subsidiary of the petitioner in a position that was managerial, executive, or involved specialized knowledge. Section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner must also establish that: (1) the proposed U.S. employment will primarily involve performance of managerial or executive duties; (2) the business will be able to support the managerial or executive position within one year of the petition's approval; and (3) "[s]ufficient physical premises to house the new office have been secured." Section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l)(3)(v)(A)(B), (C).

U.S. Citizenship and Immigration Services (USCIS) may revoke the approval of an L-1 petition under certain circumstances, including when "[t]he statement of facts contained in the petition was not true

and correct." 8 C.F.R. § 214.2(l)(9)(i), (iii)(A)(*4*). Before revoking an L-1 approval, USCIS must generally send a notice of intent to revoke (NOIR) to the petitioner, detailing the proposed revocation grounds and allowing the business a reasonable opportunity to rebut the allegations. 8 C.F.R. § 214.2(l)(9)(iii).

II. THE NEW OFFICE

On the Form I-129, the Petitioner listed its address as "Suite 2" in a building in [redacted] New York, and claimed to have two employees.

The Director's NOIR noted that USCIS officers visited the Petitioner's office in April 2019, about nine months after the petition's approval. The officers reported finding the Beneficiary in an apartment where he lived. They said a room in the apartment contained an "office" consisting of a laptop computer on a coffee table. The officers observed that the room lacked workstations or office equipment. The officers found no evidence of another employee, and the Beneficiary told them that he was the company's only worker. The officers found that the office space in the apartment could not accommodate two employees. Thus, the Director concluded that the petition incorrectly stated the Petitioner's acquisition of sufficient business premises. *See* 8 C.F.R. § 214.2(l)(3)(v)(A) (requiring a petitioner to demonstrate that "[s]ufficient physical premises to house the new office have been secured").

In the Petitioner's NOIR response, the company contended that it has regularly conducted business since the Beneficiary's U.S. admission in L-1A status in November 2018. The Petitioner stated that the Beneficiary told the USCIS officers that the office in the apartment was "temporary." The company said it moved its office to another part of [redacted] in July 2019, a few months after the USCIS site visit. As proof of the company's business operations, it submitted copies of purported client contracts, paystubs, and a bank account statement.

The Director concluded that the evidence in the NOIR response did not establish the Petitioner's acquisition of sufficient business premises. The Petitioner did not submit copies of leases or deeds to its [redacted] or [redacted] offices. The two paystubs, which are dated about two months after the company's purported move to [redacted] list its [redacted] address. The two contracts identify the Petitioner's clients as Ukrainian and U.S. companies. But the record indicates that these companies have close ties to the Beneficiary. His resume states that he founded the Ukrainian company and served as its chief technology officer. Similarly, the website of the U.S. company identifies the Beneficiary as the firm's founder and chief executive officer.[1] The Beneficiary's ties to the Petitioner's purported clients cast doubt on the authenticity of the contracts. The Petitioner's description of the [redacted] office as "temporary" also appears to acknowledge the space's insufficiency.

Moreover, the Petitioner stated that the Beneficiary entered the United States in L-1A status in November 2018, in part, to "[f]ind an office space." But a petitioner must demonstrate eligibility "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1). Thus, the company had to secure

[1] Presumably because of translation differences, the website spells the Beneficiary's name differently than listed in the petition.

sufficient U.S. business premises as of the petition's filing in March 2018. The Beneficiary's search for office space upon his admission in November 2018 indicates that the Petitioner did not acquire sufficient business premises by the petition's filing.

The Petitioner asserted that USCIS "unreasonably" required the company to have "a spanking new expensive office in the first year of its existence." USCIS, however, placed no requirements on the cost of the company's business premises. Rather, consistent with 8 C.F.R. § 214.2(l)(3)(v)(A), the Director required the Petitioner's site to be "sufficient." The Petitioner indicated that two employees would work at the [redacted] address. At the site visit, however, USCIS officers found the Beneficiary alone in the apartment's office and reported that the room could not accommodate another worker. Thus, the Director's NOIR reasonably requested evidence of the Petitioner's acquisition of sufficient business premises.

The Petitioner further asserted the sufficiency of the office in the [redacted] apartment. The company claimed to submit photographs of the office showing a room with "a desktop, 2 computers, a printer, a scanner, fax, and Internet access." The record, however, lacks office photos and does not otherwise support the Petitioner's assertions.

On appeal, the Petitioner submits more evidence, including copies of: additional paystubs; a certificate of workers' compensation insurance; and letters from the Internal Revenue Service (IRS) to the company. The NOIR, however, afforded the Petitioner a reasonable opportunity to document the company's acquisition of sufficient business premises. We therefore decline to consider the additional evidence on appeal. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

Even if we considered the appellate evidence, it would not establish the Petitioner's acquisition of sufficient business premises by the petition's filing as required by regulation. The additional paystubs continue to list the company's address in [redacted] The insurance certificate does not bear the name of the Petitioner, but rather its U.S. client that the Beneficiary purportedly founded. In addition, the IRS sent its December 2019 letters to the Petitioner at an address in Delaware.[2]

III. CONCLUSION

For the foregoing reasons, the record does not establish the Petitioner's acquisition of sufficient business premises at the time of the petition's filing. Because the petition stated incorrect facts, we will affirm the revocation of its approval.[3]

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[2] Although not alleged as an additional potential ground of revocation, the record does not establish the Petitioner's legal operation of its business from the [redacted] apartment. *See Matter of I-Corp.*, Adopted Decision 2017-02 (AAO Apr. 12, 2017) (barring USCIS from approving an L-1 petition based on an offer of illegal employment). [redacted] residents can operate certain types of businesses from their homes. But offices can't exceed 500 square feet or 25% of a home's area. [redacted] N.Y. Zoning Resolution § 12-10(5), https://[redacted] (defining the term "home occupation") (last visited Jul. 15, 2021). The record doesn't establish that the Petitioner's office in the [redacted] apartment complied with local zoning rules.

[3] The record also does not demonstrate the Petitioner's qualifying relationship with the Beneficiary's foreign employer or the qualifying nature of his work abroad. *See* 8 C.F.R. § 214.2(l)(3)(v)(B). The NOIR, however, did not notify the Petitioner of these additional deficiencies. They therefore don't justify revocation of the petition's approval. *See* 8 C.F.R. § 214.2(l)(9)(iii) (requiring USCIS, before revoking the approval of an L-1 petition, to notify a petitioner of the revocation grounds and afford it an opportunity to submit rebuttal evidence).

ORDER: The appeal is dismissed.