U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-G-G-USA

DATE: JULY 26, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which describes itself as a "trading and mortgage loan business," seeks to continue the Beneficiary's temporary employment as its president 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, concluding that the record did not establish, as required, that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity; and (2) the Beneficiary will be employed 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 relying on a flawed report from a post-adjudication site visit.

Upon *de novo* review, we will remand the matter for further consideration and action, based in part on newly discovered information.

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 December 5, 2016 to December 4, 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).

II. ADDRESS

Throughout this proceeding, the Petitioner has stated that its address is [redacted] Boulevard, Suite 800, [redacted] California. It is this address that an officer of U.S. Citizenship and Immigration Services visited on May 30, 2018.[2] The officer found signage identifying the business as '[redacted] and concluded that the Petitioner did not operate at that address. But the record shows that the Petitioner had claimed an association with [redacted] since the beginning of this proceeding.

The Petitioner's initial submission indicated that the Petitioner began subletting office space, designated Suite 880, from [redacted] Home Loans, Inc. in July 2017. The Petitioner further asserted that it purchased [redacted] a few months later. A stock purchase agreement refers to the Petitioner's purchase of [redacted] Home Loans, Inc., a Maryland corporation," from [redacted] signed the purchase agreement as president of [redacted]

California business records, searchable at https://businesssearch.sos.ca.gov/, indicate that [redacted] remains active in California, and continues to use the [redacted] Blvd. address. [redacted] signed a Statement of Information (Foreign Corporation) as president of [redacted] on November 21, 2018, with no changes reported, indicating, if indirectly, that the company continues to operate from the [redacted] Blvd. address.

There are also two different companies using the name [redacted] both listed as "active" in California, both at the [redacted] Blvd. address, and both showing [redacted] as president: [redacted] Home Loans, Inc., a Maryland corporation; and [redacted] Financial Corporation, incorporated in California. The record does not show that either [redacted] or [redacted] Financial Corporation has a qualifying relationship with the petitioning entity as an affiliate, parent, or subsidiary. Without such a qualifying relationship, any business activity undertaken by [redacted] or by [redacted] Financial Corporation would not constitute business activity by the Petitioner or by any related entity. The record requires additional clarification to show the extent to which [redacted] and [redacted] Financial Corporation are actively doing business at Suite 800.

[redacted] business license records, searchable at https://businesslicense[redacted].gov/Search/Index/BusinessLicense, show another company, [redacted] Group, Inc., operating from Suite 800.

[2] The Petitioner has protested that the site visit was unannounced, but this spontaneity is a critical part of the inspection process, to ensure that an inspecting officer observes a company's actual business operations rather than conditions that may be staged for the purpose of misleading or misdirecting the officer.

[redacted] Group's Statement of Information filed with the State of California on July 9, 2019, also shows the same Suite 800 address, and indicates that at least four company officials use that address.

If multiple companies, including at least three headed by [redacted], are all doing business from Suite 800, then the Petitioner's ability to operate from that address would seem to be greatly reduced. If multiple companies are not actually conducting business from Suite 800, but are claiming the address anyway, then this practice raises questions of its own that the record does not yet answer.

It is notable that the Petitioner claims five employees outside of [redacted], but the sublease for Suite 880 refers to only one office and one parking space. [redacted]'s own lease for Suite 800 shows a "Maximum Parking Allocation" of "Fifteen (15) parking passes," which presumably includes the spaces provided to sublessees because [redacted] would not have the authority to sublet parking spaces not already under its control. The Petitioner initially claimed that [redacted] has 20 employees of its own, not including the Petitioner's employees, which later expanded to 38 employees in June 2018 after [redacted] acquired [redacted] Financial Group.

It is also of interest that, although the Petitioner claims to have sublet Suite 880 since July 2017, and used that address on a Statement of Information filed that month, the Petitioner's bank statements from late 2017 show the Beneficiary's residential address in [redacted] and they do not reflect the monthly $1100 rental payments specified in the sublease agreement. These discrepancies raise further questions about the extent of the Petitioner's actual presence at [redacted] Blvd.

III. OTHER BUSINESS ACTIVITY

The Petitioner initially stated: "As of November 30 2017, [the Petitioner] has been engaged in two types of business: a[n] import and export business and a mortgage loan business." The only documentation of the Petitioner's import/export business consists of three purchase orders, dated September and October 2017. All three purchase orders related to the same client in [redacted] which had ordered several thousand metric tons of rolled paper.

The three submitted purchase orders from September and October 2017 showed prices adding up to nearly $2.7 million, but a financial statement for the "Eleven Months Ended November 30, 2017" showed less than $500,000 in income, categorized as follows:

Sales Products Service	$418,463.06
Sales – Other	2,327.97
Investment Income	45,000.00

This discrepancy requires an explanation.

Furthermore, the record does not reveal who took or processed the orders, who arranged for shipping, or where the inventory was stored pending shipment. The Petitioner did not identify any employees responsible for these tasks, and its sublet office space is not suitable for receiving, storing, or shipping thousands of tons of inventory.

The Petitioner must address these issues in order to provide a more complete and credible picture of the actual nature, and full extent, of its business activities (and therefore its need for the Beneficiary to fill a managerial or executive position). The Director must seek additional information to determine the nature and extent of the business activities at [redacted] Blvd., Suite 800, including, where possible, independent, third-party documentation.

Some of the above information derives from sources outside the record. This remand order constitutes notice of that information as required by 8 C.F.R. § 103.2(b)(16)(i). Nevertheless, if the Director concludes that the Petitioner has not met its burden of proof, and intends to use any of the new information as a basis for revocation, then the Director must issue a new notice of intent to revoke. A petitioner must be given the opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval. 8 C.F.R. § 214.2(l)(9)(iii).

The initial notice of intent to revoke, and revocation notice, discussed issues regarding the Beneficiary's claimed duties both in the United States and abroad. The findings relating to the Beneficiary's employment abroad derived, in part, from statements that the Beneficiary made to consular officials while applying for a nonimmigrant visa. In light of the additional discussion above, we offer no conclusions about those issues in this decision, but reserve them in the event that this case again comes before us. One assertion that may require further development is that, in October 2013, the Beneficiary indicated that her "Primary Occupation" was at [redacted] Image Design Center. The Petitioner has since contended that "the company was managed through Beneficiary's assistant . . . [so that] it would not interfere with her job performance and duties with the Parent Company," an assertion that raises the question of how a job that took up little of the Beneficiary's time could amount to her "*Primary* Occupation." Any further attempts to address this issue should take into account that the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

We note that the Administrative Appeals Office is not in possession of the record of proceedings for Form I-140, Immigrant Petition for Alien Worker, with receipt number [redacted]. Therefore, we cannot determine whether or not the above issues have been resolved in that case, or if that immigrant petition was approved in error.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of H-G-G-USA*, ID# 4676659 (AAO July 26, 2019)