U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-E- INC.

DATE: JULY 31, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, initially described as a wholesaler of sporting goods, 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 initially approved the petition, but then revoked the approval, because the Director had not been able to verify the Petitioner's claims about the nature of its business.

The matter is now before us on appeal. On appeal, the Petitioner submits copies of previously submitted documents and asserts that changes to the business operation have not affected the Beneficiary's managerial capacity. The Petitioner also observes that the site inspection underlying the revocation occurred on a Sunday, when the Petitioner's business was closed.

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 continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period September 22, 2015, until September 21, 2016. 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.

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. GROUNDS FOR REVOCATION

Because the Petitioner's earlier petition was for a new office, the extension petition under review must include a description of the Beneficiary's duties during his first year in L-1A status. *See* 8 C.F.R. § 214.2(l)(14)(ii)(C). To satisfy this requirement, the Petitioner submitted a statement from the Beneficiary, who stated that the petitioning entity is "engaged in wholesale of sporting goods."

The Petitioner filed the petition in August 2016, describing the company's business as "wholesale – sporting goods" and claiming 10 employees in the United States. The initial filing included copies of six invoices for bicycle parts which the Petitioner sold to various purchasers between February and May 2016. All but one of the invoices indicated that the Beneficiary himself took the sales orders. The individual identified as a marketing associate took the remaining order in May 2016.

The Director approved the petition nine days after it was filed, but later the case was randomly selected for post-adjudicative verification, including an on-site inspection of the workplace identified in the petition. The Petitioner received advance notice that an inspection would take place on November 28, 2016. Because the inspecting officer still had questions after the visit, the officer made an unannounced follow-up visit on December 4, 2016. At that time, the business was closed and no employees were present.

Because the office was closed during the follow-up site visit, the Director issued a notice of intent to revoke the approval of the petition, questioning the extent of the Petitioner's business activity and the Beneficiary's role as an executive.

In response, the Petitioner asserted that the business was closed during the second site visit because December 4, 2016, was a Sunday. The Petitioner further asserted that it "is shutting down its original sports goods distribution business," and "has adjusted its business direction and moved to two new locations around the end of 2016," specifically a dessert/snack bar in and a restaurant in

The Director revoked the approval of the petition, stating that, because of the significant change in the Petitioner's business activity, the Petitioner should have filed an amended petition as required by the regulation at 8 C.F.R. § 214.2(l)(7)(i)(C). The Director also concluded that the record cast doubt on some of the Petitioner's material claims.

On appeal, the Petitioner asserts that there has not been a material change of the kind that would require an amended petition under 8 C.F.R. § 214.2(l)(7)(i)(C). That regulation reads, in full:

> The petitioner must file an amended petition, with fee, at the USCIS office where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e., from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

The Petitioner asserts that none of the specified changes took place, and therefore the cited regulation does not apply. It is true that there is no evidence of a change in the qualifying relationship between the Petitioner and its foreign parent company, and that the Petitioner did not state that the Beneficiary's position would change from an executive capacity to one involving specialized knowledge. Also, there is no blanket petition in this proceeding. Nevertheless, there remains the clause concerning "any information which would affect the beneficiary's eligibility."

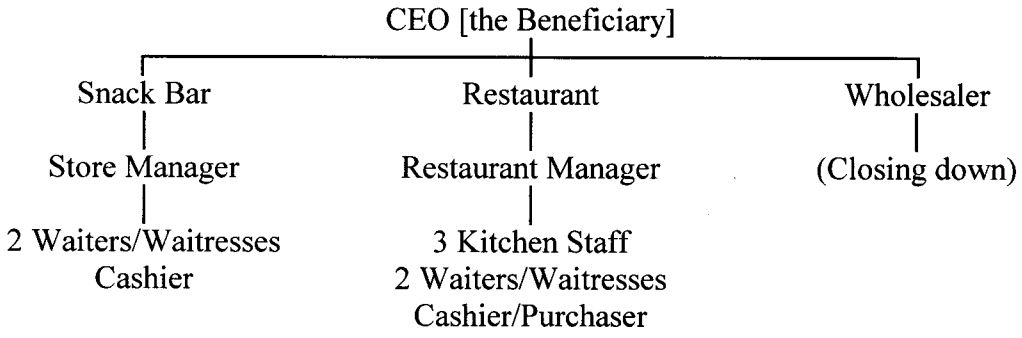
Not every business requires primarily executive leadership, which is why petitioners are expected to describe the business that seeks to employ the Beneficiary. A beneficiary cannot qualify for L-1A status simply by declaring an intention to serve as an executive of an unspecified business, to be determined and identified later. In this case, the Director approved the petition based on the claim that the Beneficiary would be running a company that sells bicycle parts wholesale, with the organizational structure described in the petition. The Petitioner now states that the wholesale business is winding down, and the company will focus its efforts on two restaurants. We disagree with the Petitioner's contention that this fundamental change in the nature of the business is immaterial to the proceeding.

One of the considerations when determining if a given position qualifies as an executive capacity is the employer's personnel structure. When it filed the petition, the Petitioner stated that the Beneficiary's subordinate employees held the following titles:

- Operation Manager
- Marketing Associate
- Two Sales Associates
- Administrative Manager
- Administrative Assistant
- Accountant (part-time)
- Warehouse Manager
- Warehouse Worker

None of the specified positions relate to the operation of a restaurant. Payroll tax records from the third quarter of 2016, which includes the filing date, do not corroborate the employment of the individual identified as a warehouse worker.

Later, the Petitioner submitted a 2017 organizational chart, showing a subordinate personnel structure entirely different from the one that the Director relied on when approving the petition:



Some individuals appeared on both lists, with significantly different titles. One of the two sales associates named initially became the manager of the restaurant; the other became the cashier/purchaser there.

Because the nature of the business and the structure of the staffing are material to the petition, a petitioner must be truthful when describing those aspects of the company, and a petitioner's signature on the petition form is an attestation, under penalty of perjury, that the assertions in the petition are true to the best of the petitioner's knowledge.

The Petitioner claims that "it decided to expand its business scope to include restaurant and cafeteria business around the end of 2016." There is, however, reason to believe that the Petitioner was already anticipating and acting upon this change before it filed the petition to extend the Beneficiary's status.

The liquor license for the Petitioner's restaurant in was issued August 9, 2016, nearly three weeks before the Petitioner filed its petition. A "Sellers Permit" issued to the Petitioner's snack bar in is dated December 1, 2015, nearly nine months before the petition's filing date and a year before "the end of 2016." Both of these documents show the name of the petitioning company, and therefore are clearly not holdovers from previous owners of the two establishments.

The Petitioner's 2015 income tax return, submitted with the petition in August 2016, points to the Petitioner having operated one or more restaurants, rather than a wholesale sporting goods business, in 2015:

- In at least three places, the tax return described the petitioning entity as a "Restaurant."
- The list of the Petitioner's assets did not include any inventory.
- The return indicated that the Petitioner had paid $54,306 in rents for the year. As of June 2016, the Petitioner paid only $1101 per month to rent its stated place of business on in , California, which accounts for less than a quarter of what the Petitioner paid in rent in 2015. The Petitioner's initial submission did not account for the

> discrepancy by identifying the other property or properties that the Petitioner rented during 2015. The preponderance of the available evidence strongly suggests that the Petitioner rented at least one restaurant space during 2015.

The Petitioner has submitted copies of 10 invoices showing its sale of bicycle parts, but these invoices all date from February–May 2016 and February–April 2017. These documents do not show that the Petitioner sold bicycle parts in 2015 or at the time of filing in August 2016.

Because the record contains multiple lines of evidence leading toward the conclusion that the Petitioner was already running one or more restaurants in 2015, there is significant doubt that the job titles and descriptions submitted with the petition were accurate at the time of filing. The Petitioner did employ most of the named individuals, but at least some, and possibly all, of these individuals must have been working in the Petitioner's restaurant(s) rather than in the warehouse of a bicycle parts wholesaler. If the Petitioner misrepresented the titles and duties of these individuals, then the petition should not have been approved and the Director acted properly by revoking that approval.

Review of the record, including materials submitted with the petition and in response to the notice of intent to revoke, supports the conclusion that the Petitioner did not accurately or correctly describe the nature of its business operation at the time it filed the petition. The Director approved the petition so that the Beneficiary could run a wholesale bicycle parts operation, and once the Petitioner ceased top operate that business (to whatever extent it operated previously), the Beneficiary ceased to be eligible for immigration benefits predicated on claims about that business.

The Petitioner asserts that the timing of the revocation decision exposes the Beneficiary to "unusually severe and unfair" immigration consequences for factors "beyond [his] control." As an officer of the petitioning company, the manner in which the Petitioner represented itself before immigration authorities was not beyond the Beneficiary's control. The law permits revocation of a petition approval "at any time." Section 205 of the Act, 8 U.S.C. § 1155. The purpose of this proceeding is to determine whether the Director erred in revoking the approval of the petition, not to provide relief from the potential consequences of that decision. Those consequences are beyond the scope of this proceeding.

III. ADDITIONAL ISSUE

We will dismiss the appeal based on the issues discussed above. Apart from those grounds, review of the record reveals an additional issue which the Petitioner must resolve if it seeks to pursue this matter further.

Although not addressed by the Director in the revocation notice, we note that it does not appear that the Beneficiary has the required year of continuous experience abroad. The beneficiary of an L-1A petition must have been employed abroad by a qualifying employer continuously for one year within

three years preceding the time of the filing of the petition. 8 C.F.R. § 214.2(l)(1)(ii)(A). Here, the Beneficiary's L-1A status derived from a new office petition filed on September 15, 2015.[2]

Time spent in the United States interrupts the continuity of foreign employment, except for brief trips for business or pleasure and periods spent in lawful status for a qualifying U.S. employer. 8 C.F.R. § 214.2(l)(ii)(A). On the petition form, the Petitioner indicated that the foreign parent company had employed the Beneficiary as a Vice President from May 1, 2012, to August 31, 2013. This employment ended more than two years before the Petitioner filed its initial new office petition on September 15, 2015. The Beneficiary entered the United States as an F-1 nonimmigrant student on September 1, 2013, and remained in the United States after that apart from a one-month departure in August and September 2014. As an F-1 student, the Beneficiary was in the United States to study, not to work for the Petitioner or any related entity. Also, the time he spent in the United States was neither brief nor for business or pleasure (which would be covered by a B-1 or B-2 visa, rather than an F-1 student visa).

The Beneficiary's studies interrupted his qualifying employment abroad. The approved petition was filed more than two years after the Beneficiary stopped working abroad, and therefore the petition should not have been approved. An interruption in employment lasting more than two years, whether that interruption occurred in the United States or abroad, is inherently disqualifying. *Cf. Matter of S-P-, Inc.*, Adopted Decision 2018-01 4 (AAO Mar. 19, 2018).[3] The Beneficiary, who has not worked abroad since August 2013, cannot qualify for L-1A status until he accrues at least one more continuous year of continuous employment abroad in a capacity that is managerial, executive, or involves specialized knowledge.

Therefore, even if the Petitioner had overcome the ground of revocation discussed above on appeal, we would have been required to remand this matter to the Director for the issuance of a new NOIR to address this additional ground of eligibility.

IV. CONCLUSION

The Petitioner mischaracterized the nature of its business, and therefore the petition should not have been approved. The Director properly revoked the erroneous approval of the petition.

ORDER: The appeal is dismissed.

Cite as *Matter of J-E-, Inc.*, ID# 1558620 (AAO July 31, 2018)

[2] The Petitioner filed a prior petition on the Beneficiary's behalf, with receipt number [redacted] on August 7, 2015, but that petition was denied and therefore the Beneficiary never derived any qualifying status from it. That filing did not stop or reset the clock for eligibility deriving from foreign employment.

[3] *Matter of S-P-* concerns an immigrant petition for a multinational manager or executive, but the reasoning is the same because the immigrant classification, like the nonimmigrant classification, requires one year of qualifying experience in the three years preceding either the filing of the petition or the beneficiary's relevant entry into the United States.