U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF C-USAG- LLC

DATE: JULY 31, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a cultural exchange and consulting services business, seeks to continue the Beneficiary's temporary employment as its general manager/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 revoked the approval of the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary's prior foreign employer continues to do business as a qualifying organization abroad.

On appeal, the Petitioner submits additional evidence, asserts that the Director relied on irrelevant factors in revoking the approval, and maintains that the foreign entity continues to do business in China. After a preliminary review of the appeal, we issued a request for evidence (RFE) and have incorporated the Petitioner's timely response into the record.

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.*

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period April 25, 2013, until April 24, 2014. 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 number 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). This evidence must demonstrate that the beneficiary will be employed in a managerial or executive capacity, as defined at sections 101(a)(44)(A) and (B) of the Act, under the extended petition.

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

## II. DOING BUSINESS ABROAD

The sole issue to be addressed is whether the Petitioner has established that its foreign parent company, [redacted] continues to do business as a qualifying organization abroad.

A "qualifying organization" is defined, in part, as a United States or foreign firm, corporation or other legal entity that 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. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G). "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 of the qualifying organization in the United States and abroad. 8 C.F.R. § 214.2(l)(1)(ii)(H).

Subsequent to the approval of the instant petition, officers from the Fraud Prevention Unit (FPU) of the U.S. Embassy in [redacted] conducted a site visit at the foreign entity's claimed current and former addresses after speaking with the company's deputy general manager, [redacted] The officers were unable to verify the presence of the company at the address provided on the Form I-129, or at the new address provided by [redacted] The Director issued a notice of intent to revoke and ultimately revoked the approval after reviewing the Petitioner's response to that notice.

On appeal, the Petitioner argues that the Director relied on irrelevant factors and failed to consider probative evidence such as lease agreements, contracts, bank statements showing business transactions, and the Petitioner's explanation that that it had only recently signed a lease for the new location at the time of the site visit in December 2015. As noted, we issued an RFE and have incorporated the Petitioner's response into the record. Upon review, and for the reasons discussed below, we find that the Director properly revoked the approval of the petition. The Petitioner has not established that the foreign entity continues to do business as a qualifying organization abroad.

A. Facts

At the time of filing in April 2014, the Petitioner stated that the foreign entity was located at [redacted] The Petitioner stated that the foreign company has a 5000 square foot high tech office with 40 employees and provides advertising, promotion, and other services.

The Petitioner's initial evidence included: photographs of the foreign office with company logos and employees present; an organizational chart depicting more than 30 staff; a profit and loss statement for 2013; internally generated monthly payroll sheets for the period May 2013 through April 2014; website screenshots; and a lease for the claimed office location.

The Director's notice of intent to revoke advised the Petitioner that FPU officers in China had spoken with [redacted] and visited both the [redacted] address provided on the petition and the new address [redacted] provided in December 2015. The investigative team found no signs of the foreign entity at its new office location. The FPU officers also interviewed individuals working at the old office address, including some who were familiar with the foreign entity and indicated that the company had moved. One security guard at the former office location stated that the foreign entity had "no more than two employees."

In response to the intent to revoke, the Petitioner explained that the foreign company moved after a number of its staff colluded to "secretly engage[] in some similar activities." The Petitioner provided documentation related to a lawsuit and settlement involving a former foreign employee. The Petitioner also stated that the foreign entity was still transitioning to its new office and in the process of rebuilding at the time of the FPU site visit. In order to establish that the foreign entity continued to do business, the Petitioner submitted:

- Copies of the foreign entity's leases for its current and prior office locations
- Internally generated "staff payroll sheets" for the period February 2015 through June 2017
- Untranslated Chinese language documents described as "Invoices and Tax Payment"
- Copies of two "Enterprise promotional film production contracts" entered by the foreign entity in April 2015 and December 2016
- Untranslated [redacted] account statements for the period February 2016 through May 2017
- The foreign entity's business license, with translation
- Office photographs
- Screenshots of the foreign entity's website

On appeal, the Petitioner again emphasizes that the FPU officers visited the foreign entity's new office just a few weeks after it signed its new lease, and noted that, based on the nature of the business, the company is actually capable of operating without a central office. The Petitioner maintained that "the vast weight of the evidence shows that [redacted] has been doing business based on its contracts with various Chinese companies, its payment of taxes, its social security payments, the flow of its income and expenses, its having a business license, and its lease of office

space, among other things." On appeal, the Petitioner submits translated versions of the foreign entity's monthly bank statements for 2015 and copies of electronic tax payment vouchers showing that the foreign entity made disability insurance payments in 2014 and 2015.

In our RFE, we asked the Petitioner to provide additional evidence showing that the foreign entity paid rent at both office locations according to the terms of the submitted lease agreements. We noted that, although there were references to rent payments in some of the 2015 bank statements, the amount paid was not the amount indicated in the submitted lease agreement. We also noted the record did not contain any evidence of rental payments made by the foreign entity at its newer location.

We acknowledged that the Petitioner submitted a payroll sheet indicating that the foreign entity paid nearly 77,000 RMB in salaries to 24 employees in December 2015, but noted that the foreign entity's December 2015 bank statement showed no salary payments made during that month. We asked the Petitioner to explain the apparent discrepancy. Finally, we provided a list of suggested evidence that may support the Petitioner's claim that the foreign entity continues to do business abroad, such as audited financial statements or tax returns, translated bank statements for 2016 and 2017, evidence of ongoing rental payments in accordance with the foreign entity's lease agreement, evidence of business transactions (contracts, purchases, invoices issued to clients, correspondence with clients, etc.), and evidence of the current number of employees working for the foreign entity.

In response to the RFE, the Petitioner states that its parent company pays part of its rent in cash according to its landlord's preference, so the full rental amount is not recorded in its bank transactions. It also maintains that the landlord pays for the foreign entity's utilities even if the lease agreement states that it is the responsibility of the foreign entity. The Petitioner explains that the foreign entity's "operates in a business environment in China where a lot of transactions are done in cash," and therefore its bank statements generally "do not show the full extent of its business transactions." The Petitioner emphasizes that the foreign entity's 2015 bank statements nevertheless show continuous flow of income and payment of expenses that are consistent with doing business.

The Petitioner also explains that the foreign entity's equipment and supplies purchases were paid in cash, so that the bank statements do not reflect all of the company's expenses. It maintains that "whatever expenses are shown in the bank statements should be sufficient to prove the company's regular, systematic and continuous provision of services because the size of its operations, amount of income, or amount of its expenditures is not an element of the definition of 'doing business.'"

In addition, the Petitioner submits a letter from the foreign entity's HR manager, who reiterates that the company has many cash transactions and explains that vendors prefer to be paid in cash and do not issue receipts for cash purchases. The HR manager also explains that company tax returns do not exist in China and states that the Petitioner is instead providing the foreign entity's annual reports filed with the [redacted] which is claimed to be "the equivalent of a tax return."

The Petitioner submits: the foreign entity's annual reports for the years 2013 through 2016; translated bank statements for 2016, 2017, and 2018; copies of contracts dated in 2017; and the foreign entity's current employee list.

B. Analysis

Upon review, the Petitioner has not submitted sufficient evidence to establish that the foreign entity continued to do business as a qualifying organization abroad for the duration of the Beneficiary's approved period of stay in L-1A status. Accordingly, the approval of the petition was properly revoked. *See* 8 C.F.R. § 214.2(l)(9)(iii)(A)(*1*).

The newly submitted annual reports for the foreign entity report "0" in revenue for the years 2013 through 2016, with total profits ranging from -980,000,000 RMB in 2013 and 2014, to -92,800 RMB in 2015, to -78,000 RMB in 2016. The Petitioner has not explained why the foreign company reported having no revenue during this four-year period and does not attempt to reconcile this evidence with its own statements regarding the foreign entity's level of business activity. Although the Petitioner provided copies of bank statements indicating that the foreign entity had incoming funds, the record does not contain any other financial records or business documents that would corroborate the source of the deposits made to the foreign entity's bank account.

The Petitioner claims that the foreign entity does not generate documentation for every cash transaction, but it is reasonable to expect an operational company to have some invoices, receipts, accounting records, correspondence, or other types of documentation incidental to doing business beyond bank statements and contracts, of which the Petitioner submitted only two dated in 2015 or 2016. The Petitioner emphasizes that business practices are different in China and rely more on cash transactions, but has not credibly explained why the foreign entity cannot provide any additional evidence of its activities. We provided the Petitioner with an opportunity to submit additional documentation, and did not simply request receipts for purchases as implied by the Petitioner's response to the RFE. While the bank statements do show incoming and outgoing funds in most months, they are not consistent with the information the foreign entity provided in its own annual reports filed with governmental authorities in China and are not sufficiently corroborated with other evidence.

In addition, the reported "number of people engaged," as stated on the foreign entity's annual reports, ranges from one to three employees. As the Petitioner provides evidence that the foreign entity filed this document with governmental authorities in China, we find that it has greater probative value than the internally generated payroll records showing that the foreign company has consistently maintained a staff of more than 20 payroll employees. The Petitioner has not offered an explanation for this significant discrepancy in the number of employees. Further, we note that the FPU officers interviewed a security guard at the foreign entity's previous location who stated that the company employed "no more than two employees," which would be consistent with the information provided in the annual reports, notwithstanding the Petitioner's claim that the security guard's statement was "obviously a lie and incredible."

Moreover, the salary payments recorded in the foreign entity's bank statements are generally inconsistent with the information stated in the corresponding payroll sheets for the same month. For example, the foreign entity's 2016 payroll records show total monthly salaries and wages in the range of 80,000 to 86,000 RMB throughout that calendar year. The monthly bank statements show payroll expenses ranging from 80,000 to 100,000 RMB for January through May 2016, and no payroll expenses for the remainder of the year. In fact, payroll expenses do not re-appear on the foreign entity's bank statements until September 2017, despite the Petitioner's submission of payroll sheets for the first six months of that year which indicate that the foreign entity continued to pay more than 20 employees.

The Petitioner also places emphasis on the foreign entity's lease agreements and irregular rent payments as evidence that the company continues to have an office from which to conduct business. As noted, the Petitioner asserts that the foreign entity changed locations near the end of 2015. The Petitioner's claim that the foreign entity's landlords expected to be paid in some combination of cash and bank transfer, and that this expectation changed from month to month, is not adequately supported by the terms of the submitted lease agreements. The Petitioner has not provided other evidence, such as a letter from the foreign entity's current or former landlord, to corroborate its assertions. The one-year lease signed in November 2015, and renewed in 2016 and 2017, indicates an annual rental rate of 600,000 RMB. Between November 2015 and October 2017, the foreign entity's bank statements show a single rent payment of 85,000 RMB. Further, the foreign entity's annual reports for 2015 and 2016, filed in 2016 and 2017, continue to show the street address indicated on the Form I-140 and not the "new" address provided in 2015 just before the FPU site visit.

Based on the foregoing discussion, there are a number of discrepancies in the Petitioner's evidence. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has not done so and in fact has submitted new evidence that introduces additional discrepancies into the record, such as the annual reports indicating that the foreign entity had few employees and no revenue for a period of four consecutive years. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

The evidence as a whole is insufficient to establish that the foreign company relocated at the end of 2015 as claimed or that it continued to do business at the time of the FPU site visit. The Petitioner's claim that the company had simply not yet set up the new office location at the time of the site visit, on its face, is not unreasonable based on the timeline involved. However, given that the FPU was not able to verify the company's existence, the Petitioner has a burden to submit evidence that the foreign entity has been operating since the time of the claimed office relocation. In light of the deficiencies and unresolved discrepancies already addressed, the foreign entity's bank statements, business license, contracts, internally generated payroll records, and lease agreements have limited probative value.

The Petitioner contends that the documentation it provided is sufficient to establish by a preponderance of the evidence that the foreign entity continues to do business, and that we should not require a certain staffing level or number of business transactions in determining whether the foreign entity satisfies the definition of "doing business." The Petitioner correctly notes that it must establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

For the reasons discussed, there are omissions, deficiencies and unresolved inconsistencies in the evidence the Petitioner submitted to establish the foreign entity's ongoing operations. While we do not require that the foreign entity establish a certain revenue figure, staffing level, or scope of operations in order to meet the "doing business" standard, it is reasonable to require the Petitioner to support its own claims regarding these factors with relevant, consistent, and probative evidence. The Petitioner has not met this burden.

## III. CONCLUSION

The appeal will be dismissed because the Petitioner did not establish that the Beneficiary's foreign employer continues to do business as a qualifying organization abroad.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-USAG- LLC,* ID# 1209023 (AAO July 31, 2018)