U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31013649

Date: MAY 03, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, which intends to operate a retail and wholesale grocery business, seeks to temporarily employ the Beneficiary as the president of its new office under the L-1A 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-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 denied the petition on multiple grounds, concluding that the record did not establish that: (1) the Petitioner secured sufficient physical premises to house its new office; (2) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (3) the Beneficiary was employed by a qualifying entity abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition; and (4) the new office would employ the Beneficiary in a managerial or executive capacity within one year. 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

The term "new office" refers to 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). To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, the Petitioner must establish that a qualifying organization has employed the beneficiary in a managerial or executive capacity abroad for one continuous year within three years preceding the filing of the petition, and that the proposed U.S. employment involves executive or managerial authority over the new operation. 8 C.F.R. § 214.2(l)(3)(v)(B).

A petitioner seeking approval of an L-1A new office petition must also submit evidence to demonstrate that the new office will be able to support a managerial or executive position, as defined at section 101(a)(44)(A) or (B) of the Act, within one year of the approval of the petition. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See* 8 C.F.R. § 214.2(l)(3)(v).

II. SUFFICIENT PHYSICAL PREMISES

The first issue we will address is whether the Petitioner established that it secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

The Petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it intends to operate a "convenience store" and indicated that the Beneficiary would work at an address in [redacted] Texas. In a cover letter accompanying the petition, the Petitioner stated that it purchased "an established convenience store" at this address "for the purpose of renovating and revitalizing the store."

The Petitioner submitted a "Business Purchase Agreement" indicating that the Beneficiary agreed to purchase an existing grocery business located at the [redacted] Texas address for a price of $80,000. The agreement states that the current lease for the premises "is in good standing" and that "all payments required to be made under the lease have been made by Seller." The agreement identifies the seller as a Texas limited liability company and was signed by the company's president (A-N-). The Petitioner was not a named party to this agreement.

In addition, the Petitioner provided a sublease agreement for the same [redacted] Texas location, which indicates the parties agreed to a 36-month term beginning on December 1, 2022. The agreement identifies the sublessor as an individual (L-A-S-) and the sublessee as the Petitioner. While the lease is signed by both parties, it indicates that the date of signature was December 1, 2022. The Petitioner filed the Form I-129 on November 7, 2022.

In a request for evidence (RFE) issued in May 2023, the Director acknowledged the Petitioner's submission of the sublease agreement and purchase agreement but explained that the evidence was insufficient to demonstrate that the Petitioner had secured sufficient physical premises to house the new office. With respect to the business purchase agreement, the Director noted that it identified the Beneficiary, not the Petitioner, as the purchaser of the existing grocery business. Further, the Director advised that the sublease did not provide sufficient details regarding the square footage of the premises and was not accompanied by evidence that the owner of the property authorized the sublease, or by an explanation of how the leased premises would be sufficient to house the Petitioner's business operations and the projected staffing of its new office. The Director provided a list of suggest evidence the Petitioner could submit to meet the physical premises requirement and advised that any other relevant evidence would be considered.

In response to the RFE, the Petitioner submitted two new lease agreements, both of which post-dated the issuance of the RFE. One lease is for premises located in [redacted] and is intended for "the storage of inventory and sale of wholesale goods to vendors," while the other location is in [redacted] and intended "for retail sales." The Petitioner also submitted a Property Bill of Sale for the [redacted] location,

indicating it purchased inventory, equipment and fixtures of an existing business located at that property, as well as evidence that it was issued a Texas sales and use tax permit for the premises located in [redacted] as of June 1, 2023.

In the decision denying the petition, the Director observed that the Petitioner's response did not address the issues raised in the RFE with respect to the sublease agreement provided in its initial submission. The Director further noted that the evidence submitted in response to the RFE was dated subsequent to the filing of the petition and pertains to physical premises that are different from the location identified in the previously submitted sublease agreement. In this regard, the Director emphasized that, under 8 C.F.R. § 103.2(b)(1), eligibility for the benefit sought must be established at the time of filing. Accordingly, the Director concluded that the Petitioner did not demonstrate that it had secured sufficient physical premises to house its new office as required under 8 C.F.R. § 214.2(l)(3)(v)(A).

On appeal, the Petitioner briefly addresses the sublease, asserting it "was only temporary until we were able to secure a permanent location." The Petitioner notes that it was unable to obtain the requested copy of the original lease from the sublessor (L-A-R-) and therefore leased another location. The Petitioner resubmits copies of its lease and its sales and use tax permit for the premises located in [redacted] Texas.

Upon review, we agree with the Director's determination that the record does not establish that the Petitioner had secured sufficient physical premises to house its new office as of the date of filing.

The Petitioner's statements at the time of filing indicated that it intended to continue the operation of a business located in [redacted] Texas. However, as noted by the Director, the submitted business purchase agreement indicated that the Beneficiary, rather than the Petitioner, was the buyer of this existing retail business. In addition, we note the purchase agreement was not accompanied by sufficient evidence showing the funds for the purchase were transferred to the seller.

Further, although the purchase agreement indicated that the seller, a Texas limited liability company owned or managed by A-N-, had a lease for the premises where its store was located, the submitted sublease identified a different party as the current lessor of the same premises, and no explanation was provided for this apparent discrepancy. Finally, as noted above, the sublease agreement, although submitted to USCIS on November 7, 2022, indicated that it was signed by the parties on December 1, 2022.

While the Petitioner now claims on appeal that it only intended to occupy the [redacted] Texas location temporarily, such statement is inconsistent with its prior claim that it purchased "an established convenience store" at this [redacted] address "for the purpose of renovating and revitalizing the store." Due to the evidentiary deficiencies in the record, we cannot determine that the Petitioner had completed the claimed business purchase or had a valid lease agreement for premises sufficient to house its new office when it filed the petition in November 2022. We acknowledge that the Petitioner secured physical premises located in [redacted] and [redacted] while the petition was pending, but it must still demonstrate that it met all eligibility requirements as of the date of filing. 8 C.F.R. § 103.2(b)(1). Moreover, a petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998).

The Petitioner's statement on appeal does not resolve the issues addressed above or overcome the Director's conclusion that it did not meet the physical premises requirement at 8 C.F.R. § 214.2(l)(3)(v)(A) as of the date of filing.

III. RESERVED ISSUES

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding its qualifying relationship with the Beneficiary's foreign employer, the Beneficiary's employment abroad, and the ability of the new office to support the Beneficiary's proposed managerial or executive position within one year. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

IV. CONCLUSION

The Petitioner did not establish that it secured sufficient physical premises to house its new office. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.