U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-B-H- LLC

DATE: MAY 10, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner operates a restaurant and seeks to continue the Beneficiary's temporary employment as its president under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 concluding that the Petitioner did not establish, as required, that it had been doing business for one year as of the date it filed this petition or that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner explains that its restaurant opening was delayed due to factors that were out of the Beneficiary's control and contends that the Beneficiary was employed abroad and would be employed in the United States in an executive capacity.

Upon *de novo* review, we will dismiss the appeal because the Petitioner has not established that it had been doing business for one year prior to filing this petition. As the Petitioner has not satisfied this fundamental element of eligibility, we will reserve the two remaining issues.

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 July 7, 2017, until July 1, 2018. 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. DOING BUSINESS

The primary issue to be addressed in this decision is whether the Petitioner had been doing business for at least one year as of June 2018, when this petition was filed. The term *doing business* is defined as the regular, systematic, and continuous provision of goods and/or services and does not include the mere presence of an agent or office. 8 C.F.R. § 214.2(l)(14)(ii)(B).

The record indicates that the Petitioner previously filed a new office petition seeking to operate a restaurant. The initial supporting evidence included a business lease, bank statements, photographs showing remodeling of the business premises, and a 2017 tax return showing no gross income.

In a request for evidence (RFE), the Director observed that the Petitioner would not commence operation as a food service provider until renovations are completed at the facility out of which it seeks to operate its restaurant. In light of these observations, the Director instructed the Petitioner to provide evidence showing that had been doing business over the course of the year that preceded the filing of the instant petition.

Although the Petitioner's response included payroll documents and multiple order invoices, these submissions showed that the earliest business activity commenced in July 2018, one month after this petition was filed. Although the Petitioner provided invoices showing that it incurred business expenses during the relevant one-year period prior to the date this petition was filed, such evidence pertains to the Petitioner's remodeling expenses and purchases that were necessary to get the business premises operational so that the Petitioner could commence doing business at a future date. The submitted evidence did not indicate that the Petitioner was actually operational and providing food services during the one year that preceded this petition's filing date.

On appeal, the Petitioner claims to be a "start-up entity" that has been doing business "since its date of formation." Notwithstanding this claim, the Petitioner explains that the restaurant's opening was hindered as a result of a delay in obtaining "final permits allowing the remodeling to be conducted" and lists the various actions the Beneficiary completed to ensure that its restaurant would eventually become operational. However, the does not provide evidence showing that the restaurant was, in fact, operational prior to the date this petition was filed. Rather, it claims that circumstances beyond the Beneficiary's control were responsible for a delay in the restaurant's opening. It also cites to "C[.]F[.]R[.] § 212.19" to support the claim that it "has lawfully done business and was established to sustain a substantial potential or rapid growth and job creation."

Although the Petitioner has described activities that are indicative of steps taken in preparation for doing business in the foreseeable future, these preliminary activities are not synonymous with providing food services in the course of doing business as a restaurant. The earliest evidence that the Petitioner was operating a restaurant consists of business invoices with issue dates showing that business expenses were incurred *after* this petition was filed. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, despite claiming that it has been doing business since its inception, the Petitioner did not cite to an existing regulatory provision or offer evidence establishing that it was doing business for one year prior to filing this petition.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of D-B-H- LLC*, ID# 3409961 (AAO May 10, 2019)