U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-L- INC.

DATE: MAY 30, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a textile sales and distribution company, seeks to continue the Beneficiary's employment as its president 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 Vermont Service Center revoked approval of the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

On appeal, the Petitioner disputes the Director's conclusion, contending that the decision included "erroneous findings of fraud." We note, however, that the Director did not make a finding of fraud or willful misrepresentation. As stated above, the chief basis for the revocation, as articulated by Director, pertains to the Beneficiary's period of employment abroad prior to the filing of this petition.

Upon *de novo* review, we find that the Petitioner has not overcome the basis for the revocation. Therefore, 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.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

According to the regulations, a beneficiary must have "one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition." 8 C.F.R. § 214.2(l)(3)(iii).

The term "intracompany transferee" is defined as:

> An alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive *or* involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

8 C.F.R. § 214.2(l)(1)(ii)(A).

Under U.S. Citizenship and Immigration Services 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. EMPLOYMENT ABROAD

The primary issue in this proceeding is whether the Petitioner has established that the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years that immediately preceded the filing of this petition. As the instant petition was filed on September 1, 2016, the Petitioner must provide evidence to show that it was employed abroad for one continuous year by a qualifying entity during the three-year period from September 2013 to September 2016. Based on our review of the record and for the reasons discussed below, we find that the Petitioner has not established that the Beneficiary had one year of continuous employment with the foreign entity during the relevant three-year period.

In the Form I-129 L Classification Supplement, the Petitioner stated that the Beneficiary had two consecutive periods of employment with two related foreign entities. Specifically, the Petitioner stated that the Beneficiary was first employed by Homesense Inc. from October 2009 to October 2015 followed by a position with [redacted] from October 2015 to the present. We note the Petitioner did not complete section 1, item 9 of the L Classification Supplement; which asks the Petitioner to identify the nature of its qualifying relationship with the

Beneficiary's foreign employer.[1] However, in response to section 1, item 10 of the L Classification Supplement, the Petitioner described an affiliate relationship with [redacted] stating that the Beneficiary owns 100% of the foreign entity and has majority ownership of the Petitioner through direct and indirect ownership.[2]

The Petitioner also provided the Beneficiary's résumé, which indicates that the Beneficiary's employment with [redacted] began in November 2015. This information is inconsistent with the petition, where the Petitioner claimed that the Beneficiary's employment with [redacted] commenced in October, rather than November, of 2015. The Petitioner must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In a supporting statement, the Petitioner claimed that [redacted] purchased [redacted] in April 2016. To corroborate this claim, the Petitioner provided a document entitled [redacted] which named [redacted] as the buyer and [redacted] as the seller of [redacted] The document further indicates that the business is subject to an outstanding bank loan and that the bank's consent is necessary to complete the transfer of ownership between [redacted] and [redacted] Clause 8 of the document further states, "If the bank of [*sic*] any reason refuses to give its consent to the transfer of the said business than [*sic*] this agreement will be treated as cancelled." We note, however, that the record lacks evidence showing that the bank consented to the ownership transfer. Therefore, the Petitioner did not establish that [redacted] purchased [redacted]

Although the Director initially approved the petition, the Petitioner's eligibility came under question following the Beneficiary's November 2016 interview at a U.S. consular office overseas and a subsequent field visit to [redacted] place of business. In a notice of intent to revoke, the Director informed the Petitioner that [redacted] November 2015 date of incorporation indicates that the Beneficiary could not have worked there for at least one year prior to September 2016, when this petition was filed. The Director also pointed to an interview with the foreign entity's account manager and several of the foreign entity's employees, who confirmed that the foreign entity was established in November 2015; the Director noted various observations that were made during the site visit, including [redacted] lack of warehouse space and the small workspace.

The Petitioner's response included an affidavit from the Beneficiary in which he addressed the Director's concerns regarding the warehouse and workspace issues and clarified [redacted] role as the "back office" with respect to the U.S. operation. The Beneficiary stated that [redacted] is the successor-in-interest to [redacted] by virtue of its purchase "in full" of the latter entity; the

[1] To establish a "qualifying relationship" under the Act and the regulations, a petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e., one entity with "branch" offices), or that they are related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

[2] The term "affiliate" is defined, in relevant part, as (1) one of two subsidiaries both of which are owned and controlled by the same parent or individual, or (2) one of two legal entities owned by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(1)(ii)(L).

Beneficiary claimed that he started working for [redacted] in October 2015, despite the fact that it was incorporated in [redacted] 2015.

We find, however, that the Petitioner did not provide sufficient evidence documenting [redacted] successorship over [redacted] As previously noted, the April 2016 sales contract only establishes the purchaser's and seller's agreement to go forward with a transfer of ownership. It does not, however, serve as evidence that the required consent was obtained from the third party, i.e., the lender, whose consent is required in order to fully execute the transfer of ownership. As the Petitioner has not established that Affinity India was [redacted] successor-in-interest or that the Petitioner is otherwise related to [redacted] through an affiliate or parent-subsidiary relationship, the Beneficiary's employment with [redacted] is not relevant in this matter and it will not count toward his period of employment abroad with a qualifying entity.

The Petitioner also has not established that the Beneficiary has the required one year of employment with [redacted] as this entity was not established until [redacted] 2015. The claim that the Beneficiary was employed by [redacted] before its date of incorporation is unsubstantiated. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Moreover, even if [redacted] existed in [redacted] 2015, the Beneficiary still would not have met his foreign employment requirement, as he would have to establish that he was employed by [redacted] as of September 1, 2015, one year prior to the date the instant petition was filed.

III. CONCLUSION

For the reasons discussed above, we find that the Petitioner has not established that the Beneficiary met the foreign employment requirement. The revocation of the approval is therefore affirmed and the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of A-L- Inc.*, ID# 1240552 (AAO May 30, 2018)