U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11997018

Date: OCT. 23, 2020

Appeal of Texas Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

At the time of filing, the Petitioner, a mergers and acquisitions firm, sought to continue its temporary employment of the Beneficiary as its chief operating officer (COO)[1] under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center revoked approval of the petition concluding that the Petitioner is not doing business in the United States. The Director based this determination on a 2019 U.S. Citizenship and Immigration Services (USCIS) site visit that was conducted at the [redacted] address the Petitioner identified as its place of business at the time this petition was filed.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will remand the matter for further consideration.

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.

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

[1] After filing this petition, the Petitioner finalized its purchase of [redacted] in August 2017. Following the 2017 merger, the Petitioner changed its name to [redacted] and indicated that it would "continue[] the business operations of [redacted] as a publicly traded company." The Petitioner also indicated that the Beneficiary would assume the position of "vice president and director" of the merged entity, thereby indicating that it no longer seeks to employ the Beneficiary in the position of COO, which was listed in the petition.

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. BASIS FOR REMAND

The regulations state that approval of a petition may be revoked if the Director determines that revocation is warranted based on one of six identified grounds. 8 C.F.R. § 214.2(l)(9)(iii)(A). Because the revocation notice does not identify which of the six grounds prompted the revocation of this petition's approval, the decision does not constitute proper notice of the intended grounds for revocation, as required. See 8 C.F.R. § 214.2(l)(9)(iii)(B). We are withdrawing the revocation decision and remanding the matter to the Director.

We also conclude that the record as presently constituted does not warrant approval of the petition because it lacks sufficient evidence demonstrating that: (1) the Beneficiary would be employed in the United States in a managerial or executive capacity; (2) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; and (3) the Petitioner is doing business in the United States.

The regulations require a petitioner to file an amended petition "to reflect changes in approved relationships . . . or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act." 8 C.F.R. § 214.2(l)(7)(C).

In this matter, the record indicates that after this petition was filed and approved, the Petitioner experienced organizational changes that may have affected its eligibility. On the petition form, the Petitioner claimed to have a parent-subsidiary relationship with the Beneficiary's foreign employer and indicated that it was seeking to employ the Beneficiary as its chief operating officer (COO) and that it was engaged in "equity investment and acquisition consultation" activities at its office in [redacted] Following a 2019 USCIS site visit at the business address provided in the petition, the Petitioner provided a statement discussing its acquisition of and merger with [redacted] (and its related subsidiaries) in August 2017, approximately one month after this petition was approved. The Petitioner discussed changes that took place after the merger, including its name change to that of [redacted] a change in the Beneficiary's position from COO to "vice president and director of [redacted]" and a new chain of command requiring the Beneficiary to report to [redacted] CFO. Further, although the Petitioner stated that it planned for the Beneficiary to engage in ongoing travel between China and [redacted] it claimed that it established a "new branch office" in California in May 2019 and closed the [redacted] office in June 2019.

Despite the various developments catalogued above, the Petitioner did not file an amended petition reflecting the organizational changes, nor did the Petitioner provide sufficient evidence demonstrating that it (1) has a qualifying relationship with the Beneficiary's foreign employer, (2) is doing business in the United States, and (3) employs the Beneficiary in the United States in a managerial or executive capacity under the new circumstances that materialized after the Petitioner's merger with [redacted] The Petitioner must support its assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010).

Although the Petitioner claimed that it intended to "conduct continuous business operations of [redacted]" whose "primary business" is to provide "smart connected devices and cloud service solutions" on a global scale, it did not provide evidence demonstrating that it was engaging in these business activities in the United States on a regular, systematic, and continuous basis. See 8 C.F.R. § 214.2(l)(1)(ii)(H) (defining the term "doing business"). Rather, the Petitioner provided an internally generated business plan discussing [redacted] "pending acquisition" of another entity and a supply agreement between a Delaware limited liability company and [redacted] However, these documents do not establish that the Petitioner is and has been doing business in the United States. Although the Petitioner now offers invoices for office space rented at a [redacted] California location, those invoices show that they were issued to the attention of an individual at a China address and identify [redacted] as the account name. As such, the invoices do not establish that the Petitioner necessarily occupied the office space in [redacted] California following its merger. Moreover, the mere presence of an agent or office of the qualifying organization is not sufficient to establish that the Petitioner was doing business on a regular, systematic, and continuous basis. Id.

Furthermore, the Petitioner's claim regarding the issue of doing business is undermined by findings from a California business entities data base search, which did not identify the Petitioner as an entity or a branch office that was registered and authorized to do business in California. https://businesssearch.sos.ca.gov (last visited on Oct. 7, 2020). In addition, further research was conducted using the federal employer identification number (FEIN) that the Petitioner provided on the first page of the petition form. That search was also inconclusive, as the FEIN the Petitioner represented as its own is not linked to the Petitioner, either under its original name or under the name it assumed after merging with [redacted] In light of the Petitioner's initial supporting documents, which show that it was incorporated in the British Virgin Islands, the lack of evidence showing that the Petitioner was authorized to do business in the United States as a parent, branch, affiliate, or subsidiary of the Beneficiary's employer abroad gives rise to further question whether the Petitioner is eligible for this visa classification. See 8 C.F.R. § 214.2(l)(1)(i).

Because the Director did not comply with the specific requirements that pertain to the revocation of an approved petition, we cannot affirm the Director's decision. That said, the record as presently constituted does not demonstrate that a sustain of this appeal is warranted. Accordingly, we will remand the matter for entry of a new decision. If the Director determines that revocation of the approval may be warranted, the Director should issue a new notice of intent to revoke identifying which one of the six circumstances listed in 8 C.F.R. § 214.2(l)(9)(iii)(A) prompted the notice and provide a detailed statement of the reasons for the intent to revoke the approval of the petition.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for entry of a new decision.