U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10065800

Date: SEPT. 24, 2020

Appeal of Texas Service Center Decision

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

The Petitioner identifies itself as a business that cultivates, manufactures, dispenses, and conducts laboratory testing of cannabinoid medicines. It seeks to employ the Beneficiary temporarily as its "Senior Vice President, Head of Business Development" 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 approved the petition, but later determined that (1) the Petitioner is engaged in business activities that contravene a federal law and (2) the Beneficiary's employment abroad was not in a managerial or executive capacity. The Director therefore concluded that the Petitioner is ineligible for the requested immigration benefit and revoked approval of the petition. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner did not overcome the determination that it operates a business that is in violation of a federal statute. Since the identified basis for revocation is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding the Beneficiary's employment abroad in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

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, or in a position requiring specialized knowledge 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)(1). The prospective U.S. employer must also be a qualifying organization that seeks to employ a beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(i).

II. ILLEGAL OR INVALID EMPLOYMENT

The issue to be addressed in this matter is whether the petition for the Beneficiary's proposed employment is based on an illegal offer of employment.

A. Procedural Background

The Petitioner states that it has a multi-state business presence that includes owning and operating cannabis dispensaries and sites where cannabis is cultivated and processed for distribution. The Petitioner described the Beneficiary's role within its organization as one that will involve managing corporate finance and mergers and acquisitions, identifying new business opportunities, negotiating, ensuring completion of transactions, and managing efforts to raise capital for existing and future business opportunities.

In a notice of intent to revoke, the Director cited *Matter of I- Corp.*, Adopted Decision 2017-02 (AAO Apr. 12, 2017), which precludes U.S. Citizenship and Immigration Services (USCIS) from approving a visa petition that is based on employment that contravenes another federal law. The Director determined that because the Beneficiary would perform job duties in support of a business whose activities are related to marijuana, the Beneficiary's proposed employment would be invalid as it would violate the Controlled Substances Act (CSA), which restricts the manufacture and distribution of marijuana in the United States. *See* 21 U.S.C. § 812, 841(a)(1). The Director also cited the U.S. Attorney General's January 2018 memorandum, which states the following regarding the federal government's current policy with respect to marijuana:

> In the Controlled Substances Act, Congress has generally prohibited the cultivation, distribution, and possession of marijuana. 21 U.S.C. § 801 et seq. It has established significant penalties for these crimes. 21 U.S.C. § 841 et seq. These activities also may serve as the basis for the prosecution of other crimes, such as those prohibited by the money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act. 18 U.S.C. §§ 1956-57, 1960; 31 U.S.C. § 5318. These statutes reflect Congress's determination that marijuana is a dangerous drug and that marijuana activity is a serious crime.

Jefferson B. Sessions, III, Att'y Gen., Memorandum for All United States Attorneys: Marijuana Enforcement (Jan. 4, 2018).

Applying this memorandum to the matter at hand, the Director determined that the Beneficiary's proposed employment would be in violation of the CSA and therefore precludes approval of this visa petition.

In response, the Petitioner challenged the Director's reliance on the adopted decision and the Attorney General's memorandum, citing *U.S. v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016), whose finding has the effect of prohibiting the federal government from prosecuting state-licensed entities or individuals under the CSA, where such entities or individuals have been authorized to engage in activities related

to medical marijuana. The Petitioner further argued that revoking approval of this petition would be inconsistent with certain legal principles established by the U.S. Constitution.

In revoking approval of the petition, the Director rejected the Petitioner's constitutional arguments, pointing out that the instant adjudication is not a criminal proceeding and that questions of guilt or innocence are not at issue. The Director determined that although the Petitioner's business is legal in certain states, it nevertheless violates the CSA thereby leading the Director to conclude that the Beneficiary's proposed employment is in violation of a federal law and that the Beneficiary does not merit the requested nonimmigrant classification.

On appeal, the Petitioner reiterates its prior constitutional arguments and challenges the Director's reliance on *Matter of I- Corp.,* the 2018 Attorney General memorandum, and provisions of the CSA to support the decision to revoke approval of this petition.

B. Analysis

We conclude that the Director's revocation of the approval of the petition was correct. USCIS may not approve a visa petition that is based on employment that contravenes another federal law.

The CSA states that "it shall be unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." 21 U.S.C. § 841(a)(1). Under the CSA, anyone seeking to manufacture or distribute marijuana must apply for registration. *See* 21 U.S.C § 822(a)(1).

Although certain states have legalized or decriminalized the use of marijuana, its possession, cultivation, and distribution remains illegal under federal law. Thus, applying the CSA together with the Attorney General's 2018 memorandum, there is little question that the Petitioner's marijuana manufacturing and distribution activities contravene federal law.

We further note that the Petitioner's citation of *U.S. v. McIntosh* in this instance is not relevant, as this is an immigration proceeding which does not involve a federal criminal prosecution by the U.S. Department of Justice. Rather, our assessment seeks to determine for immigration purposes whether it is more likely than not that the Beneficiary's employment as stated in the petition would involve conduct that contravenes federal law. Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Under the preponderance of the evidence standard, the evidence must demonstrate that the Petitioner's claim is "probably true." *Id.* at 376. Therefore, following the Director's notice of intent to revoke, which raised questions about the legality of the proposed position, the Petitioner was required to demonstrate that it is more likely than not that the Beneficiary's employment would not contravene federal law. Given the Petitioner's participation in business activities that include cultivation, manufacturing, and distribution of marijuana products, the Petitioner has not met this burden. In fact, even though engaging in these activities may be legal in certain states, the submitted evidence demonstrates that the Beneficiary's proposed employment would more likely than not involve duties that contravene federal law.

The Petitioner also challenges the Director's reliance on *Matter of I- Corp.*, arguing that because the adopted decision concerns an entity that violated state and federal labor law, it is "factually and legally inapplicable" to the matter at hand, where the violation of labor laws is not in question. The Petitioner's reasoning would have the effect of narrowly limiting the applicability of the adopted decision to only those cases that specifically concern violations of labor law. Such reasoning is flawed because it places focus squarely on the nature of the law being violated, rather than on the fact of the violation itself. In other words, the Petitioner asks us to disregard the adopted decision's determination that any visa petition that is based on employment that contravenes another federal law cannot be approved. Although USCIS's primary responsibility is to adjudicate immigration benefit requests available under applicable immigration law, we will also take into account other intersecting areas of law, including federal criminal law, in determining whether a petition warrants approval. As discussed, the Petitioner's business activities violate the CSA.

Accordingly, the appeal will be dismissed as the Beneficiary's proposed employment is based on an offer of employment that contravenes federal law.

ORDER: The appeal is dismissed.