U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-G-A- LLC

DATE: SEPT. 25, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which seeks to offer [redacted] of [redacted] Nevada, and surrounding sites, seeks to temporarily employ the Beneficiary as chief executive officer 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 initially denied the petition concluding that the Petitioner did not establish a qualifying relationship with the Beneficiary's foreign employer. The Petitioner filed an appeal which we sustained, and the petition was approved. Later, the Director revoked the approval of the petition, based on new information that led the Director to conclude that the Petitioner had not established, as required, that (1) the Beneficiary has been employed abroad in a managerial or executive capacity, and (2) the Petitioner has a qualifying relationship with the foreign entity.

The matter is now before us on appeal. In its appeal, the Petitioner submits new statements and asserts that the Director erred by relying on an incomplete investigation. The Petitioner contends that a more diligent investigation would have confirmed the foreign entity's continued operation.

Upon *de novo* review, 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.*

II. CONSULAR INVESTIGATION OF FOREIGN EMPLOYER

The Department of Homeland Security and U.S. Citizenship and Immigration Services (USCIS) have the right to verify any information the Petitioner submits to establish eligibility for the claimed immigration benefit. The right to verify this information is conferred by statute and regulation. *See* 8 U.S.C. §§ 1103, 1155, 1184 and 8 C.F.R. §§ 103, 204, 205, and 214.

The Petitioner claims that the Beneficiary formerly served as president of a private joint-stock company in Russia. The Petitioner claims affiliation with that company, because the Beneficiary holds all shares of both companies. Translated documents including the foreign company's July 2011 charter and October 2012 meeting minutes placed the company at an address on A purported lease agreement for the site indicated that the "agreement is for 36 months from July 27, 2011 to July 27, 2014."

After the approval of the petition, an investigator at the U.S. Consulate in traveled to the company's claimed address on on March 25, 2014. The investigator was not able to locate the company's office at that address. As a result, the consulate asked the Beneficiary for photographs of his office.

In response, the Beneficiary stated that the company had recently moved. The Petitioner submitted several photographs and a rental agreement for an office at a new location on The rental agreement (identifying the lessor as is dated April 1, 2014. It does not explain why the office was not at the address at the time of the site visit a week earlier on March 25th. The photographs included one exterior view of a building on but the windows on that structure do not match the windows shown in the interior photographs. Also, the interior photographs show a brick building visible through the windows. No similar building is visible in the exterior photograph. Therefore, the interior photographs do not appear to depict an office inside the building shown in the exterior photograph.

On April 23, 2014, a consular investigator visited the office center at the newly claimed address on The center's access guard stated that was not in the center. A different company was using the office that the Petitioner had claimed as its own.

The Director issued a notice of intent to revoke (NOIR) in August 2015, stating that two site visits had not yielded any evidence that the foreign company is doing business, and therefore the Petitioner had not established that the Beneficiary had the required experience abroad. The Director later issued a superseding NOIR in March 2016, repeating this information and adding that the Petitioner had not established a qualifying relationship with a *bona fide*, active foreign company. In response to each NOIR, the Petitioner submitted copies of the aforementioned photographs and lease agreement, and a statement in which the Beneficiary made several claims in an attempt to explain the consular findings:

- The company had only recently moved to the new address, and therefore it was not yet listed on the access guard's documents.
- The Beneficiary claimed to have asked the consular officials to call prior to any visit, but they did not do so. The Beneficiary stated that he made this request because the office complex is large and the office could be difficult to find.
- The Beneficiary asserted that he and his co-workers were present and working in the office at the time of the site visit, and the investigating officer must have left after speaking to the guard rather than speak to the workers in the office.

In his first response, the Beneficiary added: "The investigating officer also might be confused with the nameplates on walls outside the building, because they [were] left from the previous lessee." The business that the investigator found at the foreign company's claimed site was not one of the businesses named on the exterior signage shown in the photographs.

The Director found the Petitioner's responses to be insufficient, and revoked the approval of the petition. On appeal, the Beneficiary asserts that the foreign entity exists, as attested by a registration certificate. This document attests to the company's existence as a legal entity, but it does not show that the company has ever actively conducted business, or that it was doing so at the time of filing. Our regulations define "doing business" as the regular, systematic, and continuous provision of goods, services, or both. The definition does not include the mere presence of an agent or office. 8 C.F.R. § 214.2(l)(1)(ii)(H).

The Petitioner submits a translated letter attributed to the chief executive officer of [redacted] repeating the claim that the access guard for the office complex had an outdated list of occupants. This assertion is uncorroborated by first-hand evidence such as the occupant lists from the period in question. Also, this claim does not take into account the report that the investigator entered the office center after speaking with the access guard, and found another company in the office that the Petitioner claims to have rented. The Beneficiary, on appeal, acknowledges that the investigator found "a different company," but maintains that "our real employees were [in] place and working." This assertion denies the Director's finding but does not rebut or overcome it.

The Beneficiary states: "I've never seen a requirement in the Law that we must . . . work in an office to be eligible [for the] L1A visa. . . . [W]e can do business remotely, there is no need [to work] in a physical office any more." Nevertheless, in this instance, the Petitioner had provided two specific addresses for the foreign company, and a consular investigator found no evidence that the company was operating at either site. The Petitioner cannot resolve these major discrepancies with the observation that a company can, in principle, operate remotely.

The Petitioner notes the prior approval of the petition. That approval, however, took place before the consular investigation, and therefore the prior approval does not demonstrate that the revocation was in error.

III. WILLFUL MISREPRESENTATION OF A MATERIAL FACT

In both NOIRs and in the revocation notice, the Director stated: "It appears that material misrepresentations were made in order to obtain an immigration benefit and that the [Beneficiary] was not working" for the foreign company as claimed.

A misrepresentation is an assertion or manifestation that is not in accord with the true facts. As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

USCIS will deny a visa petition if the petitioner submits evidence which contains false information. In general, a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See Spencer Enters. Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, if a petition includes serious errors and discrepancies, and the petitioner does not resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the facts stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In this case, the continued operation of the foreign company is material to the statutory requirements at section 101(a)(15)(L) of the Act and the regulatory criteria at 8 C.F.R. § 214.2(l)(3)(i) and (iii). Because repeated efforts to verify the Petitioner's claims have not yielded evidence that the foreign company continues to operate, the Petitioner has not established that its claims in this regard are true or credible. When given an opportunity to rebut these findings, the Petitioner provided copies of information already provided to the consulate and contended that the investigator could not find [redacted] office, or possibly went to the wrong place. The Petitioner did not submit verifiable documentary evidence, such as receipts or invoices documenting ongoing business activity or utility bills confirming the company's continued occupancy of the named office space.

The foreign company's lease for the office on [redacted] did not expire until July 2014, and its purported lease for the space on [redacted] did not commence until April 2014. The Petitioner has not explained why the [redacted] office was already empty in March 2014, or how the company was able to operate without a workplace. It did not acknowledge or attempt to explain the period during which it appears the business did not have an office. We will not disregard the results of the second site visit simply because the Beneficiary asserts that the investigator could not find the right office location.

Beyond the adjudication of the visa petition, a misrepresentation may lead USCIS to enter a finding that a beneficiary sought to procure a visa or other documentation by willful misrepresentation of a material fact. This finding of fact may lead USCIS to determine, in a future proceeding, that the alien is inadmissible to the United States based on the past misrepresentation.

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), provides:

> Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

To find a willful and material misrepresentation in visa petition proceedings, an immigration officer must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

First, as previously discussed, the Petitioner provided USCIS with documents regarding the Beneficiary's claimed employment with the foreign entity. A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). Here, the Beneficiary, acting in his capacity as an official of the petitioning entity, provided false information to government officials of USCIS and the U.S. Consulate in [redacted] regarding two claimed addresses for [redacted]

Second, we find that the Beneficiary willfully made the misrepresentation. As a claimed official of the foreign entity, the Beneficiary would have knowledge of the company's location and operational status. He would also know whether the submitted photographs depicted the company's offices. Furthermore, the Beneficiary signed the Form I-129, Petition for a Nonimmigrant Worker, certifying under penalty of perjury that the information provided with the petition is all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2).

Third, the evidence is material to the Beneficiary's eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cut off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Matter of Ng*, 17 I&N Dec. at 537.

The misrepresentations cut off a potential line of inquiry regarding the Beneficiary's claim of continued employment with [redacted] and the ongoing qualifying relationship between the foreign company and the Petitioner. The company's continued existence is directly material to

the requirement that the Beneficiary has worked at least one continuous year for the foreign entity, and that a qualifying relationship continues to exist between the U.S. and foreign employers at 101(a)(15)(L) of the Act. Based on the information referenced above, it is reasonable to question whether the Beneficiary willfully misrepresented material facts regarding his claimed prior employment abroad during the relevant three-year time period, and the current status of the foreign company. The Director advised the Petitioner on three occasions that the Petitioner and the Beneficiary appeared to have misrepresented information about the foreign company. In light of the information we described above, we find that the Petitioner's and the Beneficiary's misrepresentations were material to the Beneficiary's eligibility.

By signing the petition form, providing unverifiable addresses for the foreign company, and submitting photographs that do not appear to depict that company's actual offices, the Beneficiary has sought to procure a benefit provided under the Act through the willful misrepresentation of material facts. Accordingly, we will enter a finding that the Petitioner and the Beneficiary willfully misrepresented material facts. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

IV. CONCLUSION

The Petitioner has not overcome the consular investigator's finding that the foreign company is not at either of its claimed locations. Therefore, the Petitioner has not met its burden of proof regarding the Beneficiary's claimed former employment and the ongoing qualifying relationship between the U.S. and foreign employers. The Petitioner and the Beneficiary willfully misrepresented material facts by providing false addresses for the foreign company.

ORDER: The appeal is dismissed.

Cite as *Matter of A-G-A- LLC*, ID# 595754 (AAO Sept. 25, 2017)