U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-H-G- LLC

DATE: SEPT. 26, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner intends to buy and refurbish solar mobile health units to be sold to the foreign parent entity. It seeks to temporarily employ the Beneficiary as "executive director" of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. 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 Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that it had secured sufficient physical premises to house its new office as of the date this petition was filed.

On appeal, the Petitioner disputes the denial and cites a published case from 1971 in support of its contention that it met the applicable regulatory criteria.

Upon *de novo* review, we find that the Petitioner has not established that it had secured physical premises to house the new office. Therefore, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, 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 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 submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner

[1] The term "new office" refers to an organization which has been doing business in the United States 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 no more than one year within the date of approval of the petition to support an executive or managerial position.

secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. SUFFICIENT PHYSICAL PREMISES

The primary issue we will address in this decision is whether the Petitioner submitted sufficient evidence to show that it had secured sufficient physical premises to house its new office as of the date it filed this petition. 8 C.F.R. § 214.2(l)(3)(v)(A).

The petition was filed in September 2018 and was accompanied by a supporting cover letter stating that during its first year of operation it planned to hire two part-time engineers a part-time administrator, and a part-time accountant. The Petitioner also provided a "Lease with Option to Purchase" effective April 2018 showing that the leased premises was for a townhouse with two bedrooms, one and a half baths, and a garage. The lease stated that the premises would be used for "residential and home office purposes," but it did not disclose the total square footage of the premises or state how much of the space would be used for home office purposes.

The Director issued a request for evidence (RFE) notifying the Petitioner that it did not provide sufficient evidence establishing that the leased premises would accommodate the Petitioner's staff and business operation.

In response, the Petitioner provided a statement in which it restated the address of the original leased premises and stated that it has since found a commercial property that it was in the process of purchasing. The Petitioner offered an amended page five of the petition to include the address of the commercial business property.

In the denial decision, the Director determined that the Petitioner did not provide adequate documentation establishing that it had obtained sufficient physical premises to house its new office at the time of filing. The Director reiterated prior concerns regarding the townhouse the Petitioner leased at the time of filing and further found that the new property that was under contract at the time of the RFE response had not been secured *at the time of filing* and therefore it could not be used to show that the Petitioner satisfied the new office requirement.

On appeal, the Petitioner argues that the physical premises requirement need not to be fully satisfied at the time of filing and cites *Matter of LeBlanc*, 13 I&N Dec. 816 (Reg'l Comm'r 1971), and a Federal Register final rule that was published in 1981to support its argument that "no pre-existing office is required" and that the issue concerning the physical premises requirement need not "be resolved in the initial submission" of the petition. The Petitioner contends that it is therefore entitled to rely on a contract for commercial property that it entered into after the petition was filed and argues that the current new office regulations should be contemplated within the context of case law and final rule that were published in 1971 and 1981, respectively.

We find, however, that the Petitioner relied on obsolete case law and Federal Register publications without properly considering the effects of future amendments that are now codified in the Code of

Federal Regulations and apply to new office petitioners. Namely, the Petitioner incorrectly disregards a more recent rule that resulted in the new office regulations, including the "physical premises" requirement, that went into effect after the publication of the case law and final rule that the Petitioner now cites on appeal. The summary of the final rule that was published in 1987 states the following:

> This final rule amends the regulations of the Immigration and Naturalization Service relating to alien workers seeking temporary classification under sections 101(a)(15)(H)(i) and section 101(a](15)(L) of the Immigration and Nationality Act. 8 U.S.C. 1101. The amendments are intended to clarify and conform Service policy to the intent of Congress as it relates to these classes of nonimmigrants . . . .

52 Fed. Reg. 5738 (February 26, 1987). Given that both *LeBlanc* and the 1981 final rule predate the later amendments that created the new office provisions, including the "physical premises" requirement, the items that the Petitioner cited to support its argument are obsolete and do not have the effect of allowing the Petitioner to provide a contract for commercial office space that had not been executed at the time this petition was filed. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). As the Petitioner has not established that the premises it had leased in the months prior to this petition's filing was sufficient to house its intended staffing and business operation, we agree with the Director that the Petitioner did not demonstrate that it had secured sufficient physical premises at the time of filing.

III. EMPLOYMENT ABROAD

In addition, while not previously discussed in the Director's decision, we find that the Petitioner has not established that the Beneficiary was employed abroad for one year out of the three years prior to this petition's filing. The Beneficiary's travel history and most recent entry into the United States in December 2017 is included in a list of arrivals and departures showing that the Beneficiary initially entered the United States in January 2014 and, with the exception of brief departures that coincide with breaks between semesters, remained in the United States through the date this petition was filed. The Petitioner also provided the Beneficiary's four-year college transcript and Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, both of which are consistent with the Beneficiary's travel history. Further, according to Part 3, No. 5 on the petition form, the Beneficiary still assumed the F-1 nonimmigrant status at the time this petition was filed in September 2018.

The Beneficiary was in the United States for over four years before this petition was filed and, therefore, he was not physically present at the foreign entity during the three years that preceded this petition's filing date. Although the Petitioner claimed that the Beneficiary came to the United States to obtain a master's degree at the behest of his foreign employer, this assertion, even if true, would not have the effect of adjusting the three-year period to the period immediately preceding the Beneficiary's entry to the United States as an F-1 student. Our finding is consistent with USCIS Policy

Memorandum PM-602-0167, *Satisfying the L-1 1-Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM)* (Nov. 15, 2018), which states the following:

> . . . the time spent in F-1 nonimmigrant status will not result in an adjustment to the three-year period, because the purpose of admission was for study and not to work "for" the qualifying organization. Moreover, this would not change even if the qualifying organization financed the F-1 nonimmigrant's studies. In neither of these instances should the three-year period be adjusted.

In light of the above, we find that the Petitioner has not established that the Beneficiary was employed abroad for one year during the three years that preceded the filing of this petition.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. 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 M-H-G- LLC*, ID# 6289457 (AAO Sept. 26, 2019)