U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10670587

Date: NOV. 23, 2020

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, describing itself as a provider of "specialized services," seeks to permanently employ the Beneficiary as a "function manager" in the United States under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish, as required, that: (1) it was doing business as defined by the regulations for at least one year prior to the date the petition was filed; and (2) it would have the ability to pay the Beneficiary's proffered wage.

On appeal, the Petitioner contends that the Director acknowledged its submitted tax returns, bank statements, and other evidence demonstrating it was doing business as required. Further, the Petitioner asserts that submitted tax returns reflect that it had the ability to pay the Beneficiary's proffered wage.

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 dismiss the appeal because the Petitioner did not sufficiently establish that it was doing business for at least one year prior to the date the petition was filed. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether it had the ability to pay the Beneficiary's proffered wage. *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).[1]

[1] Beyond the decision of the Director, we note that the record includes a sworn statement from the Beneficiary dated August 12, 2019 leaving substantial question as to whether the Beneficiary has, or ever had, a bona fide job offer from the Petitioner. This document indicates that this matter is now likely moot. For instance, in the sworn statement the Beneficiary stated that he "got a job offer I used to be a manager in Brazil before I came [to the United States], but the offer never came through." The Beneficiary further indicated that this proposed employment was with the Petitioner in Florida. Further, the Beneficiary attested that he did not want to move to Florida to "open a part of the business" and suggested his proposed employment with the Petitioner could potentially have been in Hawaii, his current place of residence. However, the Beneficiary stated that the Petitioner "didn't end up coming to Hawaii" and that he did not want

I. LEGAL FRAMEWORK

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

II. ANALYSIS

The sole issue we will analyze is whether the Petitioner was doing business as defined by the regulations for at least one year prior to the date the petition was filed. The regulations require that the beneficiary work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3). The regulations define doing business as "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent." 8 C.F.R. § 204.5(j)(2).

Upon review, the Petitioner has not provided sufficient evidence to establish it regularly, systematically, and continuously provided goods and/or services from February 2015 through to the filing of the petition in February 2016. The Petitioner submitted a 2014 IRS Form 1120S U.S. Income Tax Return for an S Corporation reflecting that it earned approximately $1,190,000 in revenue and a 2016 IRS Form 1120S indicating it generated approximately $824,000 in income. Likewise, a provided unaudited profit and loss statement for [redacted] (the Petitioner's doing business as name) showed that the Petitioner earned nearly $535,000 in total income from January 2015 to June 2015. However, the Petitioner did not provide an IRS Form 1120S or other similar tax documentation for fiscal year 2015. Further, the record includes little evidence to substantiate that the Petitioner was actually providing good and services to, and receiving payments from, customers.

In a request for evidence (RFE), the Director requested that the Petitioner provide evidence to substantiate its regular, systematic, and continuous provision of goods and services, including receipts and invoices. However, in support of the petition and in response to the RFE, the Petitioner only provided invoices reflecting its purchase of supplies, such as several invoices indicating the purchase of [redacted] trays, supplies, and equipment dating from March 2015 through May 2017. Likewise, it provided invoices from vendors for the purchase of gloves and swabs in June 2016, invoices from March 2014 and May 2017 related to the purchase of "pillow boxes," and another

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to move to Florida. Lastly, when asked if the petition would be withdrawn, the Beneficiary explained that he "would withdraw it now [and] that I have no need to pursue that process."

invoice from January 2016 showing the purchase of flyers. In addition, it submitted invoices from a security company dating from October 2015 to January 2016. However, despite the Petitioner's substantial asserted levels of income reflected in its IRS Forms 1120S and a provided profit and loss document indicating the same, there is questionably no documentation reflecting its regular provision of goods and services or its receipt payments related thereto. Further, the Petitioner also provided two apparent leases for kiosks in a mall "for the use of [ ] and [the] sale of [ ] supplies," but the first expired prior to the date the petition was filed in December 2015, and the latter just after the date the petition was filed.

Furthermore, the Petitioner provided ambiguous statements as to its business activities that leave only further uncertainty as to whether it had been doing business for one year prior to the date the petition was filed. For instance, in support of the petition, the Petitioner stated that it was engaged "in the business of quality specialized service and technology" and noted that "since its inception has been increasingly involved in bringing internal logistic solutions for important corporate customers." It further explained that it "participat[ed] in large public works in Brazil and other countries as the main goal [was] to seek new markets around the world in which will generate more revenue and jobs in the United States." In a support letter in response to the RFE, the Petitioner also stated that its "main goal is to expand and be profitable," including "new branches" in Florida. It noted that it had ten employees and that it was engaged in the "business of import and export and sales of our products and quality specialized services." Meanwhile, it also stated that "since its inception [it] has been increasingly involved in bringing internal logistic solutions for important corporate customers."

In sum, the Petitioner never specifically articulated the nature of its business and only reiterates its ambiguous statements on appeal specific to its business, mentioning "specialized services," "public works," and import and export sales. These assertions related to the Petitioner's claimed business operations bear little relation to the submitted documentary evidence reflecting its apparent purchase of [ ] supplies and involvement with kiosk leases specific to this purpose. In totality, the lack of documentary evidence of the Petitioner's actual provision of goods and services in a regular and systematic fashion along with its lack of clarity as to its business operations leaves substantial uncertainty as to whether it is doing business for one year prior to the date the petition was filed as defined by the regulations. The Petitioner must resolve inconsistencies and ambiguities 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).

For the foregoing reasons, the Petitioner has not submitted sufficient evidence to establish it was doing business for at least one year prior to the date the petition was filed.

ORDER: The appeal is dismissed.