U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26271576

Date: APR. 21, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The petitioning company manages a restaurant and seeks to continue temporarily employing the Beneficiary as its chief executive officer (CEO). The Petitioner requests his continued classification under the L-1A nonimmigrant visa category for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Acting Director of the California Service Center denied the extension petition. The Director concluded that the Petitioner did not establish its proposed U.S. employment of the Beneficiary in the claimed executive capacity or that it was "doing business" the year before the petition's filing.

On appeal, the Petitioner acknowledges that the restaurant did not open to the public until after the extension petition's filing. But the company contends that it met the "doing business" requirement by providing management services to the restaurant's owner in preparation for the opening and that the Director overlooked evidence of the executive nature of the Beneficiary's proposed employment.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Director that the Petitioner has not demonstrated that it was "doing business" the year before the petition's filing. We will therefore dismiss the appeal.[1]

I. LAW

A petitioner seeking to employ an L-1A manager or executive must demonstrate that - for at least one continuous year in the three years before a beneficiary's initial U.S. admission in nonimmigrant status - the petitioner or its parent, branch, subsidiary, or affiliate employed the noncitizen abroad in a capacity that was managerial, executive, or involved specialized knowledge. 8 C.F.R. § 214.2(l)(3)(i), (iii), (iv). A petitioner must also establish that they would employ a beneficiary in the United States in a managerial or executive capacity and that the noncitizen's education, training, and employment qualify them for the proposed job. 8 C.F.R. § 214.2(l)(3)(ii), (iv).

[1] The Petitioner also filed a later appeal in this matter, which we will address in a separate decision.

II. ANALYSIS

The record shows that the Petitioner's affiliate - a restaurant management company in China - employed the Beneficiary as assistant general manager from 2003 to 2019. In 2020, he transferred to the Petitioner in L-1A nonimmigrant visa status to serve as CEO of the U.S. operations.

The Petitioner's initial L-1A petition for the Beneficiary authorized him to work in a "new office," an organization that had been doing business in the United States for less than one year. *See* 8 C.F.R. § 214.2(l)(ii)(F) (defining the term "new office"). A new-office petition may not remain valid for more than a year. 8 C.F.R. § 214.2(l)(7)(i)(A)(*3*). Accordingly, the Petitioner's initial L-1A petition for Beneficiary ran from June 2020 to June 2021.

The Petitioner filed a second petition for the Beneficiary, extending his L-1A status for an additional year, from June 2021 to June 2022. The petition that we review seeks to extend his L-1A status for a third, consecutive year.

A. "Doing Business"

To be a "qualifying organization" for L visa purposes, the Petitioner must demonstrate that it "[i]s ... doing business (engaging in international trade is not required) as an employer in the United States ... for the duration of the alien's stay in the United States as an intracompany transferee." 8 C.F.R. § 214.1(l)(ii)(G)(*2*). The term "doing business" means "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(ii)(H).[2]

The record shows that the restaurant the Petitioner manages did not open to the public until July 2022, two months after this petition's filing. Nevertheless, the company claimed that it "had regularly provided restaurant management services to the . . . restaurant even before it launched" and submitted supporting evidence. The Director, however, discounted the Petitioner's pre-opening activities. The Director found that "maintaining records, entering data, ordering ingredients, hiring staff, [and] paying rent and utilities are not considered to be 'doing business' in accordance with the regulations."

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[2] The Director treated the Petitioner's most recent petition as a new office extension petition, requiring the company to establish that it had been "doing business" for the prior year. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B). The plain language of 8 C.F.R. § 214.2(l)(14)(ii), however, indicates its application only to an initial filing to extend an L-1A new office petition, not to a second extension request. As indicated above, under 8 C.F.R. § 214.1(l)(ii)(G)(*2*), the Petitioner must still demonstrate that it was "doing business" during the Beneficiary's L-1A stay in the United States. Thus, although the Director did not cite 8 C.F.R. § 214.1(l)(ii)(G)(*2*), the Director's findings that the Petitioner was not "doing business" the year before the petition's filing would allow us to affirm the petition's denial under that regulation. *See S.E.C. v. Chenery Corp.*, 318 U.S. 80, 88 (1943) ("[I]n reviewing the decision of a lower court, it must be affirmed if the result is correct 'although the lower court relied upon the wrong ground or gave a wrong reason.'"); *see also* 5 U.S.C. § 557(b) (stating that, on appeal, a federal agency "has all the powers it would have in making the initial decision except as it may limit the issues on notice or by rule").

On appeal, the Petitioner notes that we have broadly interpreted the term "doing business" to include providing services to related companies within a multinational organization. *See Leacheng Int'l, Inc.*, 26 I&N Dec. 532, 535 (AAO 2015) (interpreting nearly identical "doing business" provisions for immigrant visa petitions for multinational managers and executives at 8 C.F.R. § 204.5(j)(2), (3)(i)(D)). The company contends that, like the petitioner in *Leacheng*, it was "doing business" when it provided services to the restaurant's owner before the eatery's public opening.

We recognize that the Petitioner agreed to provide the restaurant's owner with some services that did not require the restaurant to be publicly open. A copy of the May 2020 agreement between the Petitioner and the restaurant's owner, for example, requires the Petitioner to: procure the restaurant's inventories and supplies; hire all its workers[3]; maintain and repair it at the owner's expense; and obtain and maintain all required government licenses and permits. Thus, before the restaurant opened, the Petitioner could have been "doing business" by providing contracted services to the restaurant's owner.

But, contrary to the regulatory definition of "doing business," the Petitioner has not demonstrated that, during the year before the petition's filing in May 2022, the company provided services to the restaurant's owner on a "regular, systematic, and continuous" basis. *See* 8 C.F.R. § 214.2(l)(ii)(H). The Petitioner submitted copies of federal and state tax returns and payroll records for the second quarter of 2021 through April 2022. The documents indicate that, including the Beneficiary, the Petitioner employed three people in the second and third quarters of 2021, four in the first quarter of 2022, and six in April 2022. The documents, however, do not show the company's "continuous" employment of the workers. The materials indicate that the Petitioner did not pay any of them during the final four months of 2021.

The Petitioner also submitted copies of an invoice and email messages showing that it contacted vendors in preparation for buying a software system to digitize customers' orders and facilitate the restaurant's processing of electronic payments. The evidence, however, documents the Petitioner's contact of only three vendors in April and May of 2021. These documents therefore do not establish that, from May 2021 to May 2022, the company provided services to the restaurant's owner on a "regular, systematic, and continuous" basis. *See* 8 C.F.R. § 214.2(l)(ii)(H).

The Petitioner also claims that it received payments in exchange for its services. The requirement in the May 2020 management agreement that the restaurant's owner pay the Petitioner an annual fee of up to 3% of the restaurant's gross revenues did not appear to apply before the eatery's public opening. But the Petitioner demonstrated that the restaurant's owner later agreed to pay the Petitioner an additional monthly fee of $20,000. The Petitioner submitted copies of its monthly invoices to the owner for that amount, beginning in September 2021. But the invoices do not demonstrate the Petitioner's continuous receipt of the monthly fees for the entire, one-year period before the petition's filing. The materials also do not prove the company's receipt of the fees since September 2021, as the record lacks evidence that the restaurant's owner paid the invoices.

[3] The agreement requires the Petitioner to employ the restaurant's workers and to "observe all state and federal laws regarding the hiring, compensation, and working conditions of all employees."

The Petitioner submitted additional evidence of purchases it made for the restaurant - including furniture in October 2021 and soup ingredients in March 2022. The record also indicates that the company hired additional restaurant workers both before and after its public opening in July 2022. But, even in the aggregate, the Petitioner's evidence does not establish its provision of services to the restaurant's owner from May 2021 to May 2022 on a "regular, systematic, and continuous" basis. *See* 8 C.F.R. § 214.2(l)(ii)(H).

Attributing the restaurant's delayed public opening to the COVID-19 pandemic and related restrictions, the Petitioner requests a discretionary grant of an additional, one-year L-1A period. The Petitioner submits evidence that, since the restaurant opened to the public, the company employs about 60 people and the restaurant generated more than $200,000 in its first month of operation. Noting USCIS' policy of providing "flexibilities" to petitioners and applicants during the pandemic, the company urges the Agency to exercise similar leniency with it because of the difficulties of establishing a restaurant during the epidemic.

We acknowledge that COVID-19 and restrictions designed to contain the virus's spread caused hardships to many petitioners and applicants. From March 2020 to March 2023, USCIS eased these burdens by accepting responses to certain requests and notices after their due dates and granting additional time for filings of appeals, motions, and certain hearing requests. *See, e.g.,* "USCIS Announces End of COVID-Related Flexibilities," Mar. 23, 2023, www.uscis.gov/newsroom. The Agency's measures, however, did not include multiple, new office periods or extensions of those periods for L-1A petitioners. Thus, we lack authorization to deviate from applicable regulations and cannot grant the Petitioner's request for leniency.

Even if we could, the record lacks sufficient, supporting evidence of how the COVID-19 pandemic delayed the restaurant's opening. The Petitioner claims that, in response to the epidemic, the government of its home state ordered restaurants to close and later imposed on-site dining restrictions on the industry. The company also states that global, supply-chain disruptions delayed its ability to obtain food ingredients for the restaurant. But the Petitioner did not support its claims with sufficient documentation showing the pandemic's impact on its business.

For the foregoing reasons, the Petitioner has not demonstrated that, for the year before the petition's filing, the company provided services to the restaurant's owner on a "regular, systematic, and continuous" basis. *See* 8 C.F.R. § 214.2(l)(ii)(H). Thus, the company has not established that it was "doing business" for the duration of the Beneficiary's L-1A stay in the United States. *See* 8 C.F.R. § 214.1(l)(ii)(G)(*2*). We will therefore affirm the petition's denial.

B. The Nature of the Proposed Position

The Director also found that the Petitioner did not demonstrate its proposed U.S. employment of the Beneficiary in the claimed executive capacity. But our conclusion above that the company did not establish that it was "doing business" for the year before the petition's filing resolves this appeal. We will therefore reserve consideration of whether the Petitioner demonstrated the claimed executive nature of the Beneficiary's proposed employment. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.") (citations omitted).

III. CONCLUSION

The Petitioner has not established that it was "doing business" for the year before the petition's filing. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.