U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-F-H- INC

DATE: JULY 12, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a distributor of jewelry supplies, seeks to permanently employ the Beneficiary as its administrative services manager 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). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (2) the Petitioner has been doing business for at least one year prior to the petition's filing date; (3) the Beneficiary has been employed abroad in a managerial or executive capacity for at least one year during the three years preceding the filing of the petition; (4) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity; and (5) the Petitioner has the ability to pay the Beneficiary's proffered wage.

On appeal, the Petitioner asserts that it has not had time to review the request for evidence (RFE) that preceded the denial of the petition.

The record shows that the Director sent the RFE to the Petitioner's address as stated on the petition form and on the appeal form. Because the Petitioner did not respond to an RFE that was sent to the Petitioner's address of record, the Director had the discretion to summarily deny the petition for abandonment. *See* 8 C.F.R. § 103.2(b)(13). A denial due to abandonment cannot be appealed. *See* 8 C.F.R. § 103.2(b)(15). Because the Director chose instead to deny the petition on the merits, we will consider the merits of the appeal.

Upon *de novo* review, we will dismiss the appeal.

The Petitioner claims on appeal that it did not receive the RFE until it requested a copy in November 2018. (The record does not show that the original RFE, mailed in August 2018, was returned as undeliverable.) The Petitioner further asserts that it did not have time to respond to the RFE before the Director denied the petition in December 2018. As of July 2019, the record contains no further submission from the Petitioner, and therefore we consider the record to be complete as it now stands.

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. EMPLOYMENT ABROAD

Among other grounds for denial of the petition, the Director found that the Petitioner did not provide any information about the Beneficiary's employment abroad. This information is necessary because a petitioner must establish: (1) a qualifying relationship between the petitioning U.S. employer and the beneficiary's foreign employer; (2) that the beneficiary's employment abroad was in a managerial or executive capacity; and (3) that the beneficiary was employed in such a capacity for at least one year during the three years immediately preceding the filing of the petition or, under some circumstances, before the beneficiary entered the United States. *See* 8 C.F.R. § 204.5(j)(3)(i). Definitions of relevant terms can be found at 8 C.F.R. § 204.5(j)(2).

In a letter submitted with the petition, the Petitioner stated that the Beneficiary "is uniquely qualified" for the proffered position because of her "work experience in administrative work." The Petitioner, however, did not describe that experience, identify the employer(s), or specify when she attained that experience. The Petitioner stated only that she "acquired extensive experience both in the Philippines and in the Kingdom of Saudi Arabia."

The Petitioner stated that the petition included a copy of the Beneficiary's passport and "Comprehensive Resume." The record, however, includes no résumé. The partial copy of the Beneficiary's passport shows that the Beneficiary entered the United States in 2003, and again in 2004, under a B-1 nonimmigrant visa that she received as the "personal or domestic servant of [a] non-immigrant alien." This description does not suggest employment in a managerial or executive capacity. On the petition form, the Petitioner indicated that the Beneficiary has been in the United States since 2004, 13 years before the filing of the petition in 2017.

Because the Petitioner has not provided any information about the Beneficiary's employment abroad, the Petitioner has not shown that the Beneficiary was employed in a managerial or executive capacity. And because the Petitioner has not shown when the employment took place, the Petitioner has not established that the Beneficiary was thus employed abroad for at least one year during the three years immediately preceding the filing of the petition or her entry into the United States.

The Petitioner has not identified the Beneficiary's foreign employer or submitted any evidence to show that the foreign employer is a parent, subsidiary, or affiliate of the petitioning U.S. entity. Therefore, the Petitioner has not established a qualifying relationship with any foreign employer, and has not shown that it is a multinational organization that conducts business in at least two countries.

The Director requested information and evidence to address these deficiencies in the August 2018 RFE. As noted above, the Petitioner has not substantively responded to any of these issues, any one of which would, by itself, warrant denial of the petition. Because the Petitioner has not provided any affirmative basis to approve the petition, we will dismiss the appeal.

III. ADDITIONAL ISSUES

The Director also cited several other grounds for denial of the petition, finding that the Petitioner had not established that: (1) it would employ the Beneficiary in a qualifying managerial or executive capacity; (2) it had been doing business for at least one year prior to the filing date; and (3) it is able to pay the Beneficiary's proffered wage. Nevertheless, because the petition cannot be approved in the absence of evidence regarding the Beneficiary's foreign employment, we need not reach the other issues regarding the U.S. employer and therefore reserve those issues.

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 B-F-H- Inc*, ID# 4594300 (AAO July 12, 2019)