



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 24549736

Date: JAN. 23, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, which is self-described as a seller of lamps, furniture, and pet products, seeks to permanently employ the Beneficiary as its chief executive officer (CEO) under the first preference immigrant classification for multinational executives or managers. *See* 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 revoked the approval of the petition, concluding that the record did not establish that the Petitioner continues to do business as defined in the regulations and that it has the ongoing ability to pay the Beneficiary's proffered wage. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

A. The Classification Sought

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 (Form I-140), 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).

B. Revocation of an Approved Petition

Section 205 of the Act, 8 U.S.C. § 1155, states: “The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.”

A notice of intent to revoke an immigrant visa petition “is properly issued for ‘good and sufficient cause’ where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof.” *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (quoting *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)). Notwithstanding the USCIS burden to show “good and sufficient cause” in proceedings to revoke the approval of a visa petition, a petitioner bears the ultimate burden of establishing eligibility for the benefit sought. A petitioner’s burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Haw., Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

II. ANALYSIS

The issue in this matter is whether the Director properly revoked the approval of the petition. As noted, the Director’s decision was based on a determination that the Petitioner did not establish that (1) it continued to do business in the United States and (2) it had the ongoing ability to pay the Beneficiary’s proffered wage.

A. Doing Business

Pursuant to 8 C.F.R. § 204.5(j)(3)(i)(D), a petitioner seeking to classify a beneficiary as a multinational manager or executive must provide evidence that it has been doing business for at least one year at the time it files the immigrant petition. In addition, the term “multinational” requires that the petitioner (or its affiliate or subsidiary) continues to conduct business in the United States and in at least one other country. *See* 8 C.F.R. § 204.5(j)(2).

The term “doing business” is defined as the regular, systematic, and continuous provision of goods and/or services and does not include the mere presence of an agent or office. 8 C.F.R. § 204.5(j)(2).

1. Facts and Procedural History

The Petitioner filed the Form I-140 on July 26, 2018. In a supporting letter, the Petitioner stated that it had two lines of business which included (1) the operation of a retail pet products store, and (2) the marketing, sales and distribution of lamps and furniture products imported from China. The Petitioner submitted copies of two lease agreements: one for the retail location and one for an office suite, which had a term of June 1, 2018 through May 31, 2019. Its initial evidence also included a seller’s permit and business license tax certificate for the pet store location.

As evidence of its business activities, the Petitioner provided its 2017 IRS Form 1120, U.S. Corporation Income Tax Return, showing over \$478,000 in gross receipts or sales and a profit and loss statement for the first five months of 2018, indicating over \$440,000 in sales. In addition, it provided invoices and other evidence of business activities for both lines of business in 2017 and 2018.

The Petitioner claimed to have nine staff (including the Beneficiary) at the time of filing. It provided a copy of its California state quarterly wage report for the first quarter of 2018 in which it reported eight employees as of March 2018, as well as copies of pay statements issued to nine employees in May 2018.

The Director issued a request for evidence (RFE) in May 2019 which instructed the Petitioner to provide additional evidence to confirm the company's business location(s), such as current leases, business licenses and evidence of ongoing business activities. In a response received on July 1, 2019, the Petitioner indicated that it continued to operate the retail pet store, in addition to marketing and distributing lamps and furniture imported from its foreign parent company. The Petitioner re-submitted the two lease agreements referenced above (one of which had expired in May 2019) and provided evidence of purchases made by the pet store in the first half of 2019.

The Petitioner's RFE response also included an updated letter describing the Beneficiary's duties as CEO. This description mirrored the job description provided at the time of filing and therefore represented to USCIS that the Beneficiary's duties and the company's staffing levels had remained unchanged as of July 2019. The Director approved the Form I-140 after reviewing the Petitioner's response to the RFE.

2. Revocation of Approved Petition

The Director issued a notice of intent to revoke (NOIR) in May 2022. The NOIR advised the Petitioner of derogatory information obtained during site visits conducted at the Petitioner's known locations in March 2020, which called into question whether the Petitioner was doing business as required by the regulations.

Specifically, the Director informed the Petitioner that a USCIS officer visited the retail pet store location and learned from its current owners that the Petitioner had sold the business to them in April 2019 and that they had never worked for or with the Beneficiary.¹ The NOIR also summarized a telephone conversation between USCIS officers and the Beneficiary that occurred on March 5, 2020. It noted that the Beneficiary "specifically stated that the business has been slow and that she was doing business on her own out of her house" and "also stated that she would not be able to provide new invoices or payroll as there had not been much or any business activity."

Based on this information, the Director emphasized that it appeared that the Petitioner's business model has changed, that the Beneficiary has been running the business out of her home with no

¹ The NOIR also summarized other details of the USCIS officers' interview with the pet store's new owners. Specifically, one of the owners indicated that he did not know the Beneficiary prior to purchasing the store, that he had learned about the opportunity to purchase it through an online advertisement, and that the new owners had been unable to renew the business license because the Beneficiary had not provided local governmental authorities with all necessary information and payments.

supporting employees, and that “the original petitioning company no longer exists.” The NOIR advised the Petitioner that it would need to provide evidence that it has been doing business and retains the necessary facilities and staff to continue doing business. The Director specifically requested copies of leases, income tax returns, payroll records, quarterly federal tax returns, and evidence of business transactions, such as invoices and contracts.

In response to the NOIR, the Petitioner acknowledged that it sold the pet supplies store in May 2019 but emphasized that the retail store was only one part of its business. As such the Petitioner emphasized that the sale of the store “does not mean that the petitioner is no longer the same entity,” or that the petitioning employer and the Beneficiary’s position no longer exist. In this regard, the Petitioner emphasized its initial statement that it was engaged in the marketing and sale of lamps and furniture in addition to operating the retail store.

The Petitioner also sought to address the Beneficiary’s telephone conversation with USCIS officers, noting that she had explained to them that she was trying to locate a new office location for the Petitioner and had only been temporarily working from her house. The Petitioner noted that “for a business, change of business address is not an abnormal thing, as such this does not mean that the petitioner was no longer in existence at the time of the phone call.”

The Petitioner conceded that, although the company still exists, its business activities encountered difficulties from the beginning of 2020, and it had been “in suspension due to Covid-19” since that time. It emphasized that it had positive financial results in 2018 and 2019. The Petitioner indicated that it anticipated signing a lease soon and expressed its intent to “make a qualitative leap in business income and employee hires from the end of 2022.”

The Petitioner provided copies of its IRS Forms 1120 for the years 2018 through 2020, as well as copies of its IRS Forms 941, Employer’s Quarterly Federal Tax Return and IRS Forms W-2 for these years. This evidence supports the Petitioner’s assertion that it suspended its business in 2020, as it reported no sales that year, and no expenses beyond paying the Beneficiary’s salary and related taxes.

As additional evidence of its business activities, the Petitioner provided screenshots from the website it used for online furniture and lamp sales, showing four orders placed and shipped between May 2018 and September 2019. It also provided evidence of purchase transactions made by the retail pet store throughout 2019. However, as noted, the Petitioner acknowledged that it sold this business in May 2019 and did not claim to be involved in its operation after that date.

Finally, the Petitioner’s provided additional evidence of the company’s staffing levels which contradicted its previous claims. As discussed, the Petitioner indicated that it had nine employees at the time of filing in July 2018 and indicated no change to its staffing or structure when it responded to the Director’s RFE in July 2019. Although the company paid \$128,120 in salaries and wages to the Beneficiary and other employees in 2018, its quarterly federal tax returns show that most of this amount (approximately \$100,000) was paid in the first two quarters of 2018. The Petitioner reported only one employee on its IRS Forms 941 by the end of 2018, and the Beneficiary was the sole employee throughout 2019 and 2020. Based on this evidence, the record indicates that the Petitioner had one or two employees (not nine employees) when it filed the Form I-140 at the end of July 2018, and one employee when it responded to the Director’s RFE.

The Director revoked the approval, concluding that the Petitioner's response did not adequately address or overcome the issues raised in the NOIR. The Director acknowledged the Petitioner's assertion that the COVID-19 pandemic disrupted its business activities. However, the Director emphasized that the evidence provided with the NOIR response indicated that the Petitioner's business activities had significantly declined well before the onset of any pandemic-related disruptions in early 2020. Specifically, the Director observed that the evidence showed that the Beneficiary had been the Petitioner's sole employee since the latter half of 2018 and noted that the record contained little evidence of activities following the sale of the pet store in 2019. The Director concluded that the Petitioner is therefore no longer doing business as claimed in the petition and no longer able to support the Beneficiary's claimed managerial or executive position.

3. Petitioner's Appeal

On appeal, the Petitioner asserts that the Director reached an erroneous conclusion and contends that the current owner of the pet store made false statements to USCIS. The Petitioner also maintains that the Director "did not consider the serious impact of COVID-19 on enterprises, which is also one of the reasons for its wrong conclusion." Finally, the Petitioner emphasizes that the sale of its retail store should not have led to a conclusion that the company is no longer in existence or that it no longer conducts business.

Regarding the sale of the pet store, the Petitioner takes issue with statements made by the store's new owner, noting that he conveyed incorrect information regarding his pre-existing relationship with the Beneficiary, the reason for the expired business license, and how he learned that the store was for sale. The Petitioner asserts that these issues should lead to a conclusion that "the USCIS officers' report was not that objective." However, the Petitioner does not deny that it sold the store in May 2019 while the petition was pending adjudication with USCIS and does not explain why this information was not conveyed to USCIS when the Petitioner responded to the Director's RFE in July 2019.

The Petitioner claims for the first time on appeal that it "has been maintaining its wholesale business relations with the pet store" and that "[t]he two parties share 50-50 profit from the wholesale business." The Petitioner does not elaborate on this claimed wholesale business or profit-sharing arrangement or provide any supporting evidence demonstrating that it has engaged in, or profited from, any activities related to the pet products business following the sale of the store in May 2019. As noted, the record reflects that the store was operating under new ownership as of March 2020, but the Petitioner reported no income during that year.

The Petitioner has also not shown that it has continued to do business as a seller and distributor of furniture and lamps on a regular, systematic and continuous basis in 2019, or that it had any business activities in 2020 and beyond. The record reflects that the Petitioner had a substantial decline in gross revenue between 2018 and 2019, and that most of its revenue in 2019 was likely derived prior to the sale of the pet store. The Petitioner has provided evidence of only one furniture sales transaction in 2019. Further, there is no evidence that the company had any commercial premises from which to conduct business following the sale of the pet store in May 2019 and the expiration of its office lease that same month.

The Beneficiary also asserts that, when interviewed by USCIS, she mentioned to the officers that she was actively looking for a new location while temporarily working at home but did not state that the company no longer exists or was no longer engaged in any activities. While the company continues to exist, maintains an active corporate status in California and is authorized to conduct business, the Petitioner has not provided any evidence that it was doing business as defined in the regulations at any point in 2020 or beyond. Further, as noted above, its activities in the latter half of 2019 appear to have been extremely limited and were handled solely by the Beneficiary as the company's sole employee. The Petitioner has not established that the Director erred by concluding that the Petitioner was no longer doing business as described in the petition and according to the regulatory definition of "doing business" at 8 C.F.R. § 204.5(j)(2).

Finally, the Petitioner asserts its position that "by reason of the adverse influence of Covid-19, some of the requirements set forth in the US immigration law and regulations, such as the requirements of doing business and ability to pay, etc, shall be waived as long as the business is still in existence"

We acknowledge that the COVID-19 pandemic posed challenges for most businesses and that it reasonably could have impacted the Petitioner's operations beginning in 2020. However, as discussed above, the Petitioner's staffing levels declined from nine employees to one employee during 2018 and its business activities had sharply declined even prior to the approval of the Form I-140 in July 2019. The Petitioner cannot attribute these material changes to the pandemic. Further the Petitioner cites no USCIS policies or announcements that would waive or remove the statutory or regulatory requirements applicable to immigrant petitions filed under section 203(b)(1)(C) of the Act.

For the reasons discussed above, the Petitioner has not established that it has been doing business as defined in the regulations. Accordingly, we will affirm the revocation of the petition's approval and dismiss the appeal.

B. Ability to Pay

Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Director's separate determination that the record did not establish its ability to pay the Beneficiary's proffered wage, as required by 8 C.F.R. § 204.5(g)(2). *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).

III. CONCLUSION

For the reasons discussed, the Petitioner has not established that it has been doing business as defined in the regulations. Accordingly, we conclude that the Director properly revoked the approval of the petition.

ORDER: The appeal is dismissed.