



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

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

MATTER OF C-R-N-Y-L-O-, INC.

DATE: NOV. 4, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a New York corporation, seeks to employ the Beneficiary in the United States as an L-1A nonimmigrant intracompany transferee. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, initially approved the petition. After issuing a notice of intent to revoke (NOIR) and reviewing the Petitioner's Response, the Director revoked the approval of the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director concluded that the Petitioner did not provide sufficient evidence to establish: (1) that it has been and will continue to do business in the United States; and (2) that the Beneficiary is employed in the United States in a qualifying managerial or executive capacity.

I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. 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, executive, or specialized knowledge capacity.

In addition, In addition, the regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Further, with regard to the Director's decision to revoke a previously approved petition, under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the Director must issue a NOIR that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

In the present matter, the Director provided a detailed statement of the grounds for the revocation. The Director reviewed the Petitioner's rebuttal evidence submitted and concluded that the Petitioner had not established that it is actively doing business or that the Beneficiary is employed in the United States in a qualifying managerial or executive capacity. The Director revoked the approval under 8 C.F.R. § 214.2(l)(9)(iii)(A), noting that the Beneficiary is not eligible under section 101(a)(15)(L).

Upon review, we find that the bases specified for the revocation action in the instant matter are proper grounds for such action. The Director's statements in the NOIR were adequate to notify the Petitioner of the intent to revoke the approval of the petition in accordance with the provision at 8 C.F.R. § 214.2(l)(9)(iii)(A)(2).

II. FACTS AND PROCEDURAL HISTORY

The record shows that the Form I-129, Petition for a Nonimmigrant Worker, was filed on June 17, 2014. The Petitioner submitted supporting documents, including a cover statement, dated June 12, 2014, and corporate documents pertaining to the Petitioner and its foreign parent entity. The petition was approved on June 30, 2014.

On November 7, 2014, the Director issued the NOIR, informing the Petitioner of various evidentiary deficiencies that may preclude approval of the petition. Among the issues addressed were those of the Beneficiary's proposed employment and the Petitioner's level of business activity in the United States. The Director informed the Petitioner that USCIS attempted to conduct a site visit at the Petitioner's listed business address on August 21, 2014, but that no one was present at the office at such time. The Director indicated that USCIS was able to contact the Beneficiary by phone for an interview during which the Beneficiary indicated that he is the Petitioner's sole employee and

provided the job duties he currently performs. Subsequent to making contact with an official of the foreign parent entity in China, USCIS further learned that the Petitioner has not obtained a license to sell insurance and therefore is not generating revenue. With regard to the Beneficiary's employment capacity in the United States, the Director determined that the Petitioner, being a single-employee operation, lacks the means to support the Beneficiary in primarily managerial capacity.

The Petitioner responded by submitting a statement, dated December 8, 2014, addressing the issues raised in the NOIR. The Petitioner also provided documents demonstrating the Beneficiary's ongoing effort to forge business relationships within the U.S. insurance industry on behalf of the Petitioner's foreign parent entity.

On March 2, 2015, the Director issued a decision revoking the approval of the petition. The Director determined that the Petitioner had not submitted sufficient evidence to overcome the adverse findings, which were based, in part, on information provided during the Beneficiary's phone interview.

The Petitioner filed an appeal on April 2, 2015, contesting the Director's findings.

Based on our own comprehensive review of the record and for the reasons provided in our discussion below, we find that the Petitioner has not provided sufficient evidence to overcome the grounds for the Director's decision. While we have considered all evidence that has been submitted into the record, we will specifically reference only those submissions that are relevant to the grounds for the Director's revocation.

III. THE ISSUES ON APPEAL

A. Doing Business

The first issue to be addressed is whether the Petitioner has submitted sufficient evidence to establish that it has been doing business.

The term "doing business" is defined as 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)(1)(ii)(H). The Petitioner cannot be deemed a qualifying organization if it does not meet the regulatory definition of doing business. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G).

In the present matter, the record indicates that the Petitioner's business purpose is to serve as the U.S. liaison between its foreign parent entity and U.S. insurance companies for the purpose of introducing the foreign entity into the U.S. insurance market, forging business relationships between the foreign entity and U.S. insurance companies, overseeing and coordinating legal matters concerning the foreign entity, and reporting any complaints or inquiries regarding the products and services offered by the foreign entity. In response to the NOIR, the Petitioner asserted that its

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provision of services to its parent entity constitutes doing business and submitted a letter, dated December 5, 2014, which explains that certain provisions of the U.S. Bank Holding Act of 1956 preclude the Petitioner from engaging in the reinsurance business in the United States and thus limit the Petitioner's presence in the United States to that of a representative office of the foreign parent entity. Although the letter indicated that negotiations were taking place on the Petitioner's behalf in an effort to obtain approval from the U.S. Federal Reserve to allow the Petitioner to engage in the reinsurance business in the United States, the present circumstances remain such that the Petitioner is precluded from engaging in the reinsurance business and thus would continue in its current role as the foreign entity's representative office for the time being. We note that a petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Thus, regardless of the Petitioner's continued efforts in seeking the Federal Reserve's approval to engage in the reinsurance business in the United States, our determination of whether the Petitioner meets the definition of "doing business" must be based on the actual activities in which the Petitioner has engaged since the date the petition was filed.

Here, the record indicates that the Petitioner's activities are limited to maintaining a business presence in the United States in an effort to represent the interests of the Petitioner's foreign parent entity. However, such activities have not resulted in any revenue generation and do not rise to the level of doing business contemplated by the regulatory definition. In fact, based on a letter, dated December 5, 2014, issued by the [REDACTED] it is understood that the Beneficiary has undertaken the role of representing the Petitioner's foreign parent by forging a "working relationship" with [REDACTED] to "promote communications between the Chinese insurance industry and the American insurance industry" in hopes of "potentially establishing a future China Re branch or subsidiary based in the United States." In other words, based on an assessment of an organization that currently has business ties with the Beneficiary, the Petitioner is not currently engaged in doing business in the insurance industry.

On appeal, the Petitioner compares its circumstances to those described in *Matter of Leacheng International, Inc.*, 26 I&N Dec. 532 (AAO 2015), a precedent decision where we determined that a petitioner may establish that it is "doing business" by demonstrating that it is providing goods and/or services in a regular, systematic, and continuous manner to related companies within its multinational organization, rather than to third party persons or entities. The Petitioner asserts that, similar to the petitioner in *Matter of Leacheng*, it also provides services to its overseas parent company, rather than to a third party, and claims that such activities, like those in *Leacheng*, rise to the level of doing business pursuant to the regulatory definition. As such, the Petitioner asserts that despite the regulatory restrictions that currently limit its ability to sell or underwrite reinsurance contracts in the United States, the Petitioner is not precluded from being able to meet the "doing business" criteria.

While we have reviewed the facts and circumstances of this case and find that there are certain facts that are common to this Petitioner and the petitioner in *Leacheng*, we find that the argument on

appeal fails to take into account several key distinctions. One notable distinction is that the petitioner in *Leacheng* provided considerable supporting evidence to establish the existence of an ongoing business relationship with its foreign parent counterpart. Namely, the service agreement stated that the petitioner's services to its foreign affiliate include "performing marketing research to support the affiliate's marketing strategies, assisting in the expansion of its customer base, supporting customer relations, assisting with after-sales services, facilitating import customs clearance for foreign-manufactured products, arranging storage and logistics issues in the United States, and assisting in the collection of payments." *Id.* at 533. The petitioner in *Leacheng* also provided copies of monthly service fee invoices it issued to its foreign affiliate and evidence of the foreign entity's payment for services rendered as well as "extensive evidence of [the petitioner's] correspondence with customers and other evidence of its performance of the services outlined in the service agreement." *Id.* In fact, the *Leacheng* petitioner submitted documentation showing that it "billed the foreign entity for over \$4.1 million in service fees in 2012 and paid \$2.5 million in wages to its employees in the United States." *Id.* at 536. In other words, the petitioner demonstrated that it generated revenue and paid wages to support personnel who contributed to the petitioner's overall ability to provide services to the foreign affiliate on a regular, systematic, and continuous basis.

In the present matter, the main basis for the Petitioner's reliance on *Leacheng* is the claim that it, like the petitioner in *Leacheng*, provides services to an affiliated foreign entity rather than to an unaffiliated third party. However, this single commonality is not sufficient to establish that the reasoning and analysis that were applied in *Matter of Leacheng* should similarly apply in the matter at hand, where the facts and circumstances are considerably different from those presented in the precedent case. In contrast with the petitioner in *Leacheng*, the Petitioner in the present matter did not provide evidence to show that it has a contractual agreement with its foreign parent entity, that it consistently bills and receives payment from the foreign entity for services rendered, or that it retains a staff to help generate revenue by acquiring new business for the benefit of its foreign parent entity. While the Beneficiary generated a spreadsheet showing quarterly and yearly expenses and receivables, there are no contemporaneous business documents in the record to support the finding that the expenses or receivables were the result of the Petitioner's ongoing business activities. The only supporting document was the balance sheet that the Beneficiary himself created. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Therefore, the Petitioner has not established that there is a basis or justification for applying our analysis in *Leacheng* to the significantly different set of facts and circumstances presented herein. While we acknowledge that several of the Petitioner's nonimmigrant L-1A petitions had been approved, beyond its new office petition, the prior nonimmigrant approvals do not preclude USCIS from denying an extension petition. *See, e.g., Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross

error on the part of the director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Accordingly, in light of the above analysis, which points to considerable evidentiary deficiencies and notes considerable distinctions between the facts presented in the instant matter and those in a previously issued precedent decision, we find that the Petitioner has not provided sufficient evidence to establish that it has been doing business and on the basis of this conclusion, the instant petition cannot be approved.

B. Managerial or Executive Capacity in the United States

The second issue discussed addressed by the Director is whether the Petitioner established that the Beneficiary is employed in a qualifying managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term “managerial capacity” as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor’s supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term “executive capacity” as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

We generally commence our analysis of the Beneficiary's employment by looking first to the description of the Beneficiary's job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The job description must clearly describe the beneficiary's job duties and indicate whether such duties were in either an executive or a managerial capacity. *Id.* Published case law has determined that the duties themselves will reveal the true nature of the beneficiary's employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). We then assess the Beneficiary's job duties within the context of other relevant factors, including the Petitioner's organizational structure and the existence of in-house or contractual support personnel capable of relieving the Beneficiary from having to allocate his time to primarily non-qualifying operational tasks. These factors contribute to a comprehensive understanding of the Beneficiary's daily tasks and his role within the petitioning organization.

In the present matter, the Director determined that the scope and structure of the Petitioner's business was not consistent with the Beneficiary's directorial role with respect to marketing, research, consulting, liaison service activities, and data compilation. The Director pointed out that the Petitioner had no staff to support the Beneficiary in his position as chief representative, thus leaving unanswered the question of who is actually performing the work that the Beneficiary was purportedly directing.

On appeal, while the Petitioner fully addresses the first ground for the revocation concerning the regular, systematic, and continuous nature of the Petitioner's business activity, it expressly declines to address the issue of the Beneficiary's managerial or executive capacity in his position with the U.S. entity, explaining that there is no longer a need to address this issue given the fact that the Beneficiary has left the United States. However, we note that when an appellant does not offer an argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims abandoned when not raised on appeal to the AAO).

Further, in light of the Petitioner's decision not to address one of the grounds that served as a basis for the revocation, the Petitioner in effect concedes the adverse determination on the issue of the Beneficiary's employment capacity in his position as chief representative. We will not disturb the Director's adverse finding.

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IV. CONCLUSION

The approval of the petition will be revoked and the appeal dismissed for the above stated reasons, with each considered as 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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of C-R-N-Y-L-O-, Inc.*, ID# 14286 (AAO Nov. 4, 2015)