



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

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

MATTER OF A-, INC.

DATE: OCT. 1, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a network security company, sought to employ the Beneficiary as its vice president of sales, Americas, under the immigrant classification of a multinational executive or manager. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. LAW

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) *Certain multinational executives and managers.* An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

A United States employer may file Form I-140 to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The regulation at 8 C.F.R. § 204.5(j)(5) states:

No labor certification is required for this classification; however, the prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such letter must clearly describe the duties to be performed by the alien.

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II. ISSUES ON APPEAL

The Director denied the appeal for two related reasons. First, the Director determined that a qualifying relationship no longer exists between the Petitioner and the Beneficiary's former foreign employer; and second, the Director found that the Petitioner is no longer doing business.

A. Qualifying Relationship

The prospective employer in the United States must be the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas. See 8 C.F.R. § 204.5(j)(3)(i)(C). This prospective employer is the only entity able to file the petition. See 8 C.F.R. § 204.5(j)(1).

1. Facts

The Petitioner filed Form I-140, Immigrant Petition for Alien Worker, on January 6, 2014. The record establishes that the Beneficiary worked for [REDACTED] as its vice president, Europe, Middle East and Africa.¹

A list of the Petitioner's subsidiaries and affiliates as of April 20, 2009, prepared in conjunction with a blanket L-1 petition, identified [REDACTED] as both the "U.S. Petitioner" and the "Parent Company," with [REDACTED] listed among its wholly-owned subsidiaries. Subsequently, a December 16, 2010 press release from [REDACTED] "announced the completion of its parent company [REDACTED] acquisition of [REDACTED]"

The director issued a request for evidence (RFE) on June 19, 2014. The director noted the confusion regarding the Beneficiary's foreign employment, and asked the Petitioner for evidence "that [REDACTED] remains the parent company of the Beneficiary's previous employer abroad or that such foreign entity still exists."

The response to the RFE resolved the issue of the Beneficiary's foreign employment, but it raised new concerns about his intended U.S. employment. A chart dated June 30, 2013, [REDACTED] Group legal structure," included this excerpt:

[REDACTED] USA
[REDACTED] United Kingdom
[REDACTED] France
[REDACTED] (California) USA

¹ The Petitioner originally stated that the Beneficiary held his vice presidential position with [REDACTED]. Subsequent submissions have clarified that the Beneficiary held a lower position for [REDACTED] from October 1997 to August 2000, and then worked for [REDACTED] in various capacities from September 2000 to May 2011. The director has not disputed this revision of the Beneficiary's foreign employment history.

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In a letter dated July 16, 2014, [REDACTED] legal counsel for [REDACTED] attested to the accuracy of a “list of companies affiliated with [REDACTED],” of which [REDACTED] is the ultimate parent company.” The list included [REDACTED] a direct subsidiary of [REDACTED], and [REDACTED], a subsidiary of [REDACTED]. The list did not include [REDACTED], the entity that had filed the petition.

Documents submitted in response to the RFE referred to the Beneficiary’s intending, and then-current, employer as [REDACTED]. At the time, the Petitioner did not explain the substitution. [REDACTED] and [REDACTED] though affiliated, are separate legal entities with different Federal Employee Identification Numbers.

The Director denied the petition on November 28, 2014. The Director acknowledged the affiliation between the Petitioner and [REDACTED] but stated that they are “distinct and separate legal entit[ies].” The Director added that California state records show the status of the petitioning entity as “dissolved.” The Director stated that “the relationship between the petitioner and the beneficiary’s foreign employer must exist in the present, i.e., at the time of filing and continue to exist until such time as the beneficiary is granted an immigrant visa or adjust status to that of a permanent resident of the United States.” The Director concluded: “The evidence does not demonstrate that there ‘is’ a qualifying relationship between the petitioner, [REDACTED] and the beneficiary’s former foreign employer because the petitioner has been dissolved.”

On appeal, the Appellant submits a copy of the Petitioner’s certificate of dissolution and a filing receipt showing that the Appellant filed an amended Form I-140 petition. The Appellant states: [REDACTED] was dissolved but the assets and employees were immediately transferred to an affiliated company [REDACTED] which became the successor in interest.” The Appellant contends that [REDACTED] and its parent company, [REDACTED] have gone through a number of complicated corporate reorganizations since the instant immigrant visa petition was filed,” but that “extensive documentation . . . prove[s] that there was a qualifying relationship between [REDACTED] and the alien’s employer abroad.”

In a letter dated December 19, 2014, [REDACTED] general counsel for [REDACTED] states: “As part of a corporate reorganization, the assets and all of the employees of [the Petitioner] have been transferred to its immediate parent company, [REDACTED] . . . result[ing] in [REDACTED] becoming the [Petitioner’s] successor-in-interest.” [REDACTED] asserted that the transfer did not result in the creation of a new entity or any change in the Beneficiary’s duties.

2. Analysis

For the reasons discussed below, the record does not establish that the necessary qualifying relationship existed at the time the Petitioner filed the petition.

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The appellant cites a 2009 USCIS memorandum² indicating that adjudicators should not be excessively strict when determining whether a valid successorship-in-interest exists. The issue here, however, is not simply whether the Appellant is the Petitioner's successor-in-interest.

A petitioner must establish eligibility for the requested benefit at the time of filing the petition, and must continue to be eligible through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Form I-140 and the accompanying documents clearly and consistently identified the Petitioner not as [REDACTED], but as [REDACTED], an affiliated, but separate and distinct, legal entity. The following chronology shows that the Petitioner was not eligible at the time of filing the petition:

December 23, 2013	The Petitioner files articles of dissolution with the State of California.
December 31, 2013	Effective date of the Petitioner's dissolution, and of a bill of sale and assignment transferring all of the Petitioner's assets to [REDACTED]
January 6, 2014	USCIS receives Form I-140 from the Petitioner, thus establishing the filing date.

Under the above chronology, the Petitioner no longer existed as of the January 6, 2014, filing date. The corporation was dissolved before the petition was filed. Therefore, this is not a matter of a change of circumstances after the filing date. The Petitioner did not exist on January 6, 2014, and therefore it could not extend a valid job offer to the Beneficiary or otherwise meet eligibility requirements as of the time of filing. [REDACTED] may well have been in a position to meet those requirements at the time of filing, but [REDACTED] did not file the petition. Successorship-in-interest can accommodate a substitution of petitioners during adjudication, but it cannot compensate for an improper initial filing.

The Appellant submits a confirmation receipt, indicating that [REDACTED] filed its own Form I-140 petition [REDACTED] on December 19, 2014. The Appellant refers to this filing as an amended petition. The Director denied the instant petition on November 28, 2014, three weeks before the filing of the amended petition. The Appellant cites no authority that would allow a substituted petitioner to amend a petition after it has been denied. The record does not contain the new petition, and it is not before us on appeal. Following the issuance of our decision, the file will be returned to the Nebraska Service Center for adjudication of the newly filed petition.

On appeal, the Appellant notes that the Director, in the RFE, did not raise the issue of the Petitioner's dissolution. This is because the information submitted at the time of filing did not

² Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations, USCIS, HQ 70/6.2, *Successor-in-Interest Determinations in Adjudication of Form I-140 Petitions* (Aug. 6, 2009). <http://www.uscis.gov/sites/default/files/USCIS/Laws%20and%20Regulations/Memoranda/2009%20Memos%20By%20Month/August%202009/Successor-in-Interest-8-6-09.pdf>

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mention the dissolution or give any indication that any entity other than [REDACTED] would employ the Beneficiary. An authorized official of the petitioning entity signed Part 8, line 1.a., of Form I-140, thereby certifying under penalty of perjury that the petition and the evidence submitted with it are all true and correct. The response to the RFE reflected the change of employers, which alerted the Director to an issue that the Petitioner initially neither addressed nor explained. Under the circumstances, we cannot find that the Petitioner and its parent company, the Appellant, were effectively interchangeable at the time of filing, such that any reference to one could be taken to be an implied reference to the other.

For the above reasons, we find that the Petitioner did not exist on the date of filing, and therefore it could not have had a qualifying relationship with the Beneficiary's former foreign employer as of that date. For this reason, USCIS cannot properly approve this petition.

B. Doing Business

The second cited ground for denial concerns the finding that the Petitioner is no longer doing business. The Petitioner must establish that it has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3)(i)(D). *Doing business* means 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 or office. 8 C.F.R. § 204.5(j)(2).

1. Facts

Owing to the Petitioner's dissolution, discussed above, the director determined: "The evidence does not demonstrate that the petitioner continues to do business as defined by regulation. This is grounds for denial."

On appeal, the Appellant submits copies of recent tax and financial documents, to establish that [REDACTED] continues doing business.

2. Analysis

For the reasons discussed below, we find that the Petitioner was not doing business on the petition's filing date.

The same findings detailed above also apply here. The Appellant does not dispute the finding that the Petitioner is no longer doing business, but instead maintains that the dissolution is an unimportant administrative technicality that should not affect the outcome of the petition. We cannot agree with this interpretation. A legal entity cannot properly file a petition after that legal entity has already dissolved or otherwise ceased to exist. The dissolution does not prevent the successor entity from filing its own petition (as the Appellant has already done, shortly before filing the appeal), but the provisions for successorship-in-interest do not permit a dissolved entity to file a placeholder petition on behalf of its successor.

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The Neufeld Memorandum, submitted and cited on appeal, states: “The successor bears the burden of proof to establish eligibility in all respects, including the provision of required evidence from the predecessor entity, such as evidence of the predecessor’s ability to pay the proffered wage, as of the date of filing.” *Id.* at 3. The Petitioner lacked the legal authority to conduct business on January 6, 2014, and therefore it could not have met any of the related requirements as of that date. The Petitioner also did not have the ability to pay the proffered wage as of the date of filing on January 6, 2014, because it had transferred all of its assets to [REDACTED] six days earlier. The successorship-in-interest provisions outlined in the Neufeld Memo apply to developments after filing; they do not waive or excuse disqualifying circumstances that already existed on or before the filing date.

For the reasons discussed above, we find that the Petitioner permanently ceased doing business on December 31, 2013, and was not eligible to file the petition on January 6, 2014. For this additional reason, USCIS cannot properly approve the petition.

III. CONCLUSION

We will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate 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, the Petitioner has not met that burden.

The above findings are without prejudice to the outcome of [REDACTED] new petition, filed December 19, 2014.

ORDER: The appeal is dismissed.

Cite as *Matter of A-, Inc.*, ID# 12977 (AAO Oct. 1, 2015)