U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

ATTN: [redacted]

DATE: MAR 2 7 2014 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

ALAN LEE, ESQ.
ALAN LEE, ATTORNEY AT LAW
408 8TH AVENUE, SUITE 5A
NEW YORK, NY 10001

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The petitioner is a U.S. subsidiary of a Chinese clothing manufacturing company that filed an Immigrant Petition for Alien Worker (Form I-140) to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C) (2012). The petitioner seeks to employ the beneficiary in the position of Deputy General Manager. The Director, Texas Service Center, denied the petition, finding that the petitioner failed to establish that it had been doing business for at least one year as of the date the petition was filed. The petitioner's appeal to the Administrative Appeals Office (AAO) will be sustained.

I. THE 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 who 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.

Pursuant to section 8 C.F.R. § 204.5(j)(3)(i)(D), the petitioner must establish that it has been doing business for at least one year. In turn, section 8 C.F.R. § 204.5(j)(2) provides that "*[d]oing 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."

II. FACTUAL BACKGROUND

The subsidiary-petitioner is an affiliate of the beneficiary's former Hong Kong employer, which is also owned by the petitioner's Chinese parent company. Established in New York in 2008, the petitioner imports and sells the parent company's products to U.S. customers, primarily major clothing retailers. The petitioner directly performed these sales activities through 2011. However, beginning on or about January 2012, it has provided marketing, sales, and shipping services in the United States pursuant to a service agreement with its Hong Kong affiliate.

The petitioner submitted a service agreement with its affiliate, which indicates that the petitioner "accepts commissions from [the Hong Kong affiliate] on the basis of full investigation of the overseas market" and provides services which include: performing marketing research to support the affiliate's marketing strategies;

assisting in the expansion of its U.S. customer base; supporting customer relations; assisting with after-sales services; facilitating import customs clearance for foreign-manufactured products and arranging storage and logistics issues in the United States; and assisting in the collection of payments.

For these services, the Hong Kong affiliate pays a service fee ("payment quota multiplied by 3.5%") and compensates the petitioner for labor and other expenses (rent, mailing fees, and travel). The petitioner submitted copies of monthly service fee invoices issued to its Hong Kong affiliate in amounts ranging from approximately $300,000 to $590,000, along with evidence of payments received. The petitioner also provided extensive evidence of its correspondence with U.S. customers and other evidence of its performance of the services outlined in the service agreement. Finally, the petitioner submitted copies of commercial sales invoices issued by the Hong Kong affiliate to U.S. customers and copies of bills of lading as evidence of the import and sales activities. Finally, the record establishes that the petitioner maintains service contracts with several shipping carriers to fulfill its obligations under the service agreement.

The director concluded that the petitioner was not doing business as required by the regulations, reasoning that the petitioner's evidence "do[es] not indicate 'doing business' with independent corporations or entities" for a full year preceding the filing of the petition, but rather "only demonstrate[s] the shipment of goods from the foreign company to the U.S. company." Specifically, the director found that the petitioner, as a clothing importer, should have provided invoices or evidence of payment of invoices from the customers that purchased the clothing for the year preceding the filing of the petition.

On appeal, the petitioner asserts that the director erred and that existing case law and regulatory history support a conclusion that the petitioner is doing business in a regular, systematic, and continuous fashion despite the fact that it is not a named party to contracts with U.S. buyers. The petitioner states that the evidence establishes it acts as an intermediary between its Hong Kong affiliate and the U.S. buyers and suppliers, by locating customers and finalizing the details of sales contracts for the benefit of the Hong Kong affiliate. In a letter submitted on appeal, the petitioner further explains that while its affiliate is named on customer contracts, the record shows the petitioner "continues to secure these sales contracts by marketing, designing, corresponding and finalizing the terms of every U.S. sales contract" and by receiving all shipments of imported goods for U.S. customers at its New York location. The petitioner contends that the regulatory definition of "doing business" does not require that it be a direct party to contracts or a direct provider of goods and services to a U.S. customer.

III. ANALYSIS

The director's finding -- that the petitioner did not submit evidence of doing business with "independent corporations or entities" -- implies a requirement that a petitioner must transact directly with an unaffiliated third party. However, the definition of "doing business" at 8 C.F.R. § 204.5(j)(2) contains no requirement that a petitioner for a multinational manager or executive must provide goods and/or services to an unaffiliated third party. Neither the plain language nor the regulatory history of the "doing business" provision supports such a requirement.

The regulatory definitions of "doing business" applicable to immigrant multinational manager and executive petitions and to nonimmigrant intracompany transferee petitions are nearly identical. Compare 8 C.F.R. § 204.5(j)(2) (immigrant multinational) with 8 C.F.R. § 214.2(l)(1)(ii)(H) (L-1 nonimmigrant intracompany transferee). The former Immigration and Naturalization Service (INS) proposed the current definition of "doing business" in the nonimmigrant L-1 context in a 1986 Proposed Rule. *See* 51 Fed. Reg 18591 (May 21, 1986) ("'Doing business' means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and shall not include the mere presence of an agent or office of the qualifying organization in the United States or abroad.").

Responding to public commenters' concern that the proposed definition might disqualify liaison office arrangements from L-1 classification, the INS explained in the preamble to its final rule that "[t]he Service recognizes that company representatives and liaison offices provide services in the United States, even if the services are to a company outside the United States. Such services are included in the doing business definition . . . ." 52 Fed. Reg. 5738, 5741 (Feb. 26, 1987). In its 1991 Final Rule promulgating the current "doing business" definition in the immigrant context at 8 C.F.R. § 204.5(j)(2), the INS indicated, "[t]his requirement is similar to one pertaining to intra-company transferees under the L-1 nonimmigrant classification." 56 Fed. Reg. 60897, 60899 (Nov. 29, 1991). As such, we interpret the two "doing business" provisions similarly and decline to read a third party or non-affiliation requirement into these regulations.[1]

Accordingly, for a petitioner to establish that it is "doing business," it need only demonstrate that it provides goods and/or services regularly, systematically, and continuously. To determine whether a petitioner has met its burden, we consider the totality of the record, including relevant documentation to substantiate the petitioner's business activities.

That a petitioner serves as an agent, representative office, or liaison office that serves as an intermediary between a related foreign entity and its U.S. customers does not preclude a finding that it is doing business as defined in the regulations. A petitioner that is a representative or liaison office may provide services in a regular, systematic, and continuous manner, even if the services are provided to related companies within its multinational organization. On the other hand, a company whose existence is limited to "the mere presence" of an office would not be able to provide evidence of its regular, systematic, and continuous provision of goods or services. 8 C.F.R. § 204.5(j)(2).

Here, the petitioner established that it provides services to its foreign affiliate by marketing the foreign entity's products, locating buyers, maintaining relationships with U.S. customers, and facilitating the completion of sales contracts and shipping arrangements in the United States. It provided a copy of its service agreement with the foreign affiliate and substantial evidence that it is in fact performing the services specified in the contract on a regular, systematic, and continuous basis. The petitioner billed the foreign entity for over $4.1 million in service fees in 2012 and paid $2.5 million in wages to its U.S. employees.

---

[1] Our regulatory interpretation also advances the legislative purpose of facilitating the exchange of managerial and executive personnel within multinational companies. *See, e.g.,* H.R. Rep. 101-723(I) (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6740, 1990 WL 200418 (Leg. Hist.); H.R. Rep. No. 91-851 (1970), *reprinted in* 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815 (Leg. Hist.).

The petitioner has established that it is doing business based on its regular, systematic, and continuous provision of services in the United States, and it has demonstrated that its operation does not constitute the "mere presence" of an office. 8 C.F.R. § 204.5(j)(2). Accordingly, the director's decision will be withdrawn.

IV. CONCLUSION

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 sustained that burden. Accordingly, the director's decision dated April 23, 2013 is withdrawn.

ORDER: The appeal is sustained and the petition is approved.