

Silva Software de Concepção

L-1A RFE Sample Case Study

How a Post-COVID Approach Resolved an RFE

A New Reality

The pandemic and politics, among other things, will help to shape a new immigration paradigm in this decade.

These forces will also influence how existing regulations are interpreted.

Adjudications of immigration visa applications will also reflect these changes--including requests for evidence.

Silva Software de Concepção

The Request for Evidence issued by the USCIS was successfully resolved and the petition approved within a month.

While we did not create the original business plan in this instance, we did create a new one for the RFE response because the petitioner was not presenting a new business model, they were simply clarifying how their original business model qualified the beneficiary for an L-1A visa.

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How an RFE was Resolved for an L-1A New Office Petition

Silva Software de Concepção, a Brazilian Company headquartered in Sao Paulo, had high brand visibility in South America and their software was used widely by structural engineering companies. The Company had managed to grow their market over the last decade by capturing a small, but steadily increasing, share of a global market that had continued to expand exponentially. The primary market for the software was the structural engineers that used it and this market was in turn contingent on the performance of the commercial construction industry .



The beneficiary, Maria de Almeida, is a software engineer who had coordinated the establishment of the other two operations in Asian countries. With her marketing background, Silva decided that she was the person to direct the US branch start up.

Post-COVID Approach

Historical information was considered when creating this response--and revising the business plan--but the basis for it was the US economy and health situation in 2020 and the projected situation to 2025

Challenge

The **RFE** received by Silva Software de Concepção questioned--among other things--two primary inclusions in the application. First, the USCIS questioned whether there was adequate documentation to establish that a new office in the US did in fact exist. Also called into question was the basis for the US revenue projections since this income would ultimately support the new office operation. A response was required that would adequately answer these questions to the satisfaction of the USCIS.

Background

The initial investment by the parent company provided for the initial hire of three marketing employees and three Salesforce employees that would establish and implement a nationwide virtual distribution program. Silva had set up such operations in two other countries and the new offices had operated out of a brick-and-mortar office in the city in which they were headquartered. These had been established before the pandemic. After submitting an application for a new office in the US, the petitioner had received an RFE for not establishing to the satisfaction of the USCIS that the new office had been set up according to existing guidelines.

The L-1A New Office Reality

RFE Excerpt Regarding L-1A New Office

"Your lease agreement lacked sufficient detail to determine whether the new location is sufficient for the proposed business. You have not provided us the actual office size to appear sufficient for a total of three or more people."

A copy of the lease had been requested by the USCIS. The Silva Software de Conceção US operation had not, in fact, obtained office space because the City's stay-at-home mandates were becoming increasingly restrictive and they didn't even know if they would be able to use the office space. At this point, Silva felt that leasing office space might well be an expense that shouldn't be incurred. Commercial leasing rates in the City were high as it is and this could turn out to be a waste of money.



A Post-COVID L-1A New Office Scenario

Given the USCIS requirement to obtain leased space, Silva proposed a hybrid remote work/office work arrangement. This approach was accepted. At least through the first six months of 2021, the employees would have no choice but to work at home. At the point that the COVID mandates became less restrictive, this arrangement would allow them to cost-effectively operate without sacrificing productivity.

The success of this presentation rested completely on a reasonable, thorough explanation of the concept with detailed figures (data) to support it. The premise was that even if the Company had leased commercial office space, it was unlikely that their employees could have worked there consistently because of the City's stay-at-home mandates. Supporting documentation was submitted to validate this hybrid solution in the context of the local COVID situation in 2021 and the projected post-COVID situation.

VALIDATING INFORMATION:

- Current City/County COVID conditions and restrictions, and anticipated COVID conditions for 2021 and beyond were presented
- Job descriptions validated that all US employees could work remotely when necessary
- While collaboration could be done virtually, some functions required up to three employees--and Maria--to be in the office at the same time
- A 12-month lease was obtained for co-working space sufficient for a private office for Maria de Almeida and three glass-enclosed cubicles for employees, which would ensure social-distance requirements were met
- The leasing company's COVID policies and procedures--including building maintenance--were provided

Market Validation

RFE Excerpt Regarding Feasibility/Validation of the Market

"A copy of the market research study, or similar, by which the foreign company determined the need for, and the probability that the proposed U.S. company would support, a manager or executive within one year of approval of the petition"

The USCIS requested that Silva establish the feasibility of the new operation in the US. Revenue projections and market penetration estimates that they presented were based on historical performance of the Company in South America and the two Asian locations. This approach had to be altered for two reasons. First, and most obvious, any revenue projections must take into consideration a post-COVID economy. Also, the projections need to be specific to the United States and its economy over the next five years.



A Post-COVID Market/Feasibility Approach

Ironically, even though 2020 estimates for commercial construction and engineering services anticipate declines of up to 8%, the picture to 2025 is more positive. By simply using their historical figures, Silva had not presented an accurate post-COVID projection for this industry. Silva's revenue over the past five years had increased at a fairly steady rate of 2.5% a year--even after the addition of the new markets. While it was unrealistic to assume that the new US operation could achieve that type of revenue growth in a post-COVID environment, a modest projection of one percent to 1.5% a year would be reasonable. Industry estimates are that between 2022 and 2025, revenue gains of 1.1% to 1.5% are possible. Of course all of this is contingent on politics, economy and COVID but there is at least a well-sourced basis for the revised projections. An important component of the recovery in this industry is the adoption of digital and software services similar to the ones offered by Silva so this was made part of the argument.

VALIDATING INFORMATION:

- Current, 2020, statistics on the performance of the US engineering and construction industry during the pandemic
- Projections of US industry performance post-COVID to 2025 with industry and economic trends as influencers
- Company-specific revenue projections, including sensitivity analysis
- Overview of Silva historical and current performance, impact of new Asian operations and projections for Company performance
- Overview of engineering and construction industries in South America and Asia
- What-if scenarios for variables such as politics, economy and COVID.

Other RFE Questions Answered

There were a number of other questions raised by the request for evidence, among them:

- Verification that a *qualifying relationship exists between the U.S. entity and the foreign operation that employs or employed the beneficiary abroad*

This was resolved by obtaining a VIBE validation that clearly indicated the relationship between the parent company and the new US operation

- Verification that *the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position*

This was resolved by presenting the updated market information and the revenue projections based on that information--which at that point were realistic. The parent company contribution was also clearly delineated, as was the expense that it would defray, and copies of the funds transfer provided

A Successful RFE Response

This RFE response was successful because it was reasonable, supported by verifiable facts and it answered all points of the request. Redoing the business plan was essential to answering the questions in the RFE, many of which directly referred to the business plan. The client received a notice of the positive outcome within a month.

It is worth noting that the client paid more than twice as much as we normally charge for a business plan only to end up with one that had to be redone to save the application...

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Petition 19070570, Form I-140, Petition for Multinational Managers or Executives, September 29, 2021

Petition 18353061, Form I-140, Petition for Multinational Managers or Executives, September 24, 2021