U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9687752

Date: AUG. 31, 2020

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, which intends to operate a convenience store, seeks to temporarily employ the Beneficiary as the "controller" of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. See Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the record did not establish that: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary's foreign employer continues to do business; (3) the Beneficiary had one continuous year of qualifying employment abroad during the three years preceding the filing of the petition; (4) the Beneficiary has been employed abroad in a managerial or executive capacity; (5) the Petitioner has secured sufficient physical premises to house its new office; and (6) the new office would support a managerial or executive position within one year of approval of the petition. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, the Petitioner has not met that burden. Accordingly, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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 or executive capacity. Id.

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. See generally, 8 C.F.R. § 214.2(l)(3)(v).

II. QUALIFYING RELATIONSHIP

The first issue to be discussed is whether the Petitioner has established that it has a qualifying relationship with the Beneficiary's foreign employer. To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices) or related as a "parent and subsidiary" or as "affiliates." See section 101(a)(15)(L) of the Act; see also 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

As a preliminary matter, we note that there are inconsistencies in the record regarding the identity of the Beneficiary's claimed foreign employer. On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner stated that he has been employed by [redacted] in India since January 2016. However, the Petitioner also submitted the Beneficiary's resume, which identifies his employer during this same period as [redacted]. In response to the Director's request for evidence (RFE), the Petitioner stated that the Beneficiary "has served as the Controller of the foreign company [redacted] which is also owned by the foreign business [redacted]." However, the Petitioner did not submit supporting evidence to corroborate the claimed ownership of [redacted] and therefore has not established that company's relationship with [redacted]. On appeal, the Petitioner once again claims that the Beneficiary has been employed by [redacted] since 2016. The Petitioner has not resolved this inconsistency in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

Nevertheless, we will evaluate the evidence submitted to establish the claimed qualifying relationship between [redacted] and the Petitioner. Regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities. See, e.g., Matter of Church Scientology Int'l, 19 I&N Dec. 593 (Comm'r 1988); Matter of Siemens Med. Sys., Inc., 19 I&N Dec. 362 (Comm'r 1986); Matter of Hughes, 18 I&N Dec. 289 (Comm'r 1982).

The Petitioner states that the Indian and U.S. companies have a parent-subsidiary relationship, but the claimed relationship, based on the facts described by the Petitioner, would fall within the definition of an affiliate relationship. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(L) defines "affiliate" as (1) one of two subsidiaries both of which are owned and controlled by the same parent or individual; or (2) one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

Here the Petitioner indicates that both it and [redacted] are owned in equal 50-50 proportions by the same two individuals, [redacted] and [redacted]. The Petitioner provided the foreign entity's partnership deed which supports the Petitioner's claim that these two individuals are

equal partners in the business. However, the Director determined that the record does not sufficiently document the ownership and control of the Petitioner.

The Petitioner stated on the Form I-129 that it was established in 2015 and submitted the following evidence related to its ownership and control:

- Georgia Certificate of Incorporation for [redacted] issued on June 22, 2015.
- Georgia Articles of Incorporation filed on June 22, 2015, which indicates that the company was incorporated by [redacted] and authorized to issue 100,000 shares of stock.
- A copy of [redacted]'s by-laws.
- Stock Certificate No. 1 indicating that [redacted] issued 5000 shares to [redacted] in [redacted] Texas in April 2017.
- Stock Certificate No. 2 indicating that [redacted]. issued 5000 shares to [redacted] in [redacted] Texas in April 2017.
- A partnership agreement dated June 3, 2017, which identifies [redacted] as equal partners in [redacted]. which is "incorporated under the laws of the State of Texas."[2]
- A one page "Bill of Sale" indicating that [redacted], a Georgia corporation represented by [redacted] purchased "all of the assets & liabilities of [redacted]" from [redacted] for the sum of $80,000 in November 2018.

The Petitioner also provided evidence that [redacted]. was issued a federal employer identification number (FEIN) in 2015 (the same FEIN provided on the Form I-129), copies of its Georgia Department of Revenue sales tax registration for 2016, and its [redacted] Georgia business license certificate issued in 2017.

After reviewing the initial evidence, the Director issued a request for evidence (RFE), advising the Petitioner as follows:

> [A]ccording to documents posted at the State of Georgia website, ecorp.sos.gov, [redacted], was administratively dissolved or had its certificate of authority revoked by the State of Georgia on September 7, 2018. Therefore, because [redacted] (Georgia) no longer exists as a legal entity, it cannot employ the beneficiary in the United States. Further, although [redacted]'s Partnership Agreement indicates that [redacted]. is incorporated under the laws of the State of Texas, you have not submitted evidence that [redacted] exists as a legal entity in Texas.

[2] The Partnership agreement indicates that [redacted]i would contribute initial capital in the amount of $40,000 on June 3, 2017 and that his contribution would "made by [redacted]." Similarly, the agreement states that [redacted] would contribute $40,000 and his contribution would be "made by [redacted]"

The Director also advised the Petitioner that it did not provide evidence that [redacted] had each paid $45,000 (5000 shares with $9.00 par value) for their respective ownership interests in [redacted] (Texas). The Director further advised that, in addition to lacking evidence of the existence of this Texas entity, the record also lacked sufficient evidence to establish its ownership.

In response to the RFE, the Petitioner did not address the administrative dissolution of [redacted] (Georgia) or respond to the Director's request that it submit additional evidence to establish the existence and ownership of [redacted] (Texas). The Petitioner referred the Director to the previously-submitted corporate by-laws and asserted that "for all intents and purposes, the bylaws clearly designate the Executive Partners, [redacted] and [redacted] These partners also ow[n] the foreign entity."

Finally, noting the Director's request for evidence that its claimed owners had paid for their ownership interest in the company, the Petitioner stated that "[o]nly limited funds have been invested into this new business venture, which have been used to establish a bank account, lease a location, establish license and or permits, and order basic supplies."

The Director, emphasizing that the Petitioner's response did not address the issues raised in the RFE, determined that the record did not establish the Petitioner's ownership and therefore did not demonstrate its qualifying relationship with [redacted]

On appeal, the Petitioner maintains that the partnership agreement for the U.S. company and the Deed of Partnership for [redacted] are sufficient to establish, by a preponderance of the evidence, that both entities are owned and controlled by [redacted] and [redacted]

Upon review, the Petitioner has not established that it has a qualifying relationship with [redacted] As noted by the Director in the RFE, there are several unexplained discrepancies and deficiencies in the record with respect to the Petitioner's ownership.

First, the Petitioner has not addressed the fact that [redacted] was administratively dissolved by Georgia's secretary of state in 2018. In order to satisfy the definition of a "qualifying organization" at 8 C.F.R. § 214.2(l)(1)(ii)(G), the Petitioner must not only establish the requisite relationship with the Beneficiary's foreign employer, but also demonstrate that it is or will be doing business as an employer in the United States. The fact that the Petitioner claims to be a "new office" does not exempt it from establishing that it was authorized to do business as of the date of filing the petition.[3]

Regarding its ownership, the Petitioner provided evidence that [redacted] was incorporated in Georgia in 2015 and authorized to issue 100,000 shares of stock. However, the record does not contain evidence, such as stock certificates or a stock ledger, identifying the total number of

[3] The Petitioner claims that it is not yet operational, but also provides evidence that the company was established in 2015, obtained all necessary licenses in 2016, and signed a lease for a gas station and convenience store located in [redacted] Georgia in 2016. The Petitioner also submitted photographs of a [redacted] gas station and food mart operating at the address identified in the lease. Additional evidence would be needed to clarify the Petitioner's claim that the company has never been operational or otherwise qualifies as a "new office" as defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

shares issued since the company was incorporated. The Petitioner emphasizes that [redacted] and [redacted] are both identified as "executive partners" in the submitted by-laws, but this evidence alone does not establish the company's ownership and control. Neither the articles of incorporation nor the by-laws address the company's ownership. The by-laws indicate that the company would issue paper stock certificates and record stock issuances and transfers in a stock transfer book, but as noted, this evidence has not been provided.

Although the Petitioner submitted copies of stock certificates issued to [redacted] and [redacted] these certificates, issued in Texas in 2017, cannot be accepted as evidence of the ownership of a Georgia corporation established in 2015. Rather, these certificates were ostensibly issued by a Texas corporation with the same name. The Petitioner submitted a partnership agreement for this Texas corporation, rather than articles of incorporation filed with and accepted by the Texas Secretary of State. While the partnership agreement and stock certificates indicate 50-50 ownership by [redacted] and [redacted], the Petitioner did not establish that the Texas company is recognized as a legal entity in Texas, that it would serve as the Beneficiary's employer, or that it is authorized to do business in Georgia, where the Petitioner claims it will operate.

In sum, the Petitioner has not consistently identified which foreign entity [redacted] or [redacted] has served as the Beneficiary's employer abroad, and it has documented the ownership of only one of these entities. The Petitioner describes an affiliate relationship with [redacted], but has not adequately documented who owns and controls the U.S. entity, nor has it addressed adverse information indicating that the U.S. company has been administratively dissolved in Georgia and likely must take additional action before it can be authorized as a U.S. employer in the United States. For these reasons, the Petitioner has not established that it has a qualifying relationship with the Beneficiary's foreign employer and the appeal will be dismissed.

III. DOING BUSINESS ABROAD

The Director also denied the petition, in part, because the Petitioner did not establish that the Beneficiary's claimed foreign employer, [redacted] was doing business as defined in the regulations at the time the petition was filed. As noted, in order to satisfy the definition of a qualifying organization, the Petitioner must show that it is or will be doing business in the United States and in at least one other country for the duration of the Beneficiary's stay in the United States. 8 C.F.R. § 214.2(l)(1)(ii)(G).

At the time of filing in January 2019, the Petitioner submitted copies of [redacted] tax returns, bank statements, billing invoices and what appeared to be screenshots from the company's website; however, the most recent evidence provided was dated April 2017. In the RFE, the Director instructed the Petitioner to submit more recent evidence of the foreign entity's business activities. The Petitioner did not directly address this request in the cover letter accompanying its RFE response but did note that it has "provided copies of the Indian Income taxes for the years 2017-18 and 2018-19." Tax returns for these years were neither provided at the time of filing nor attached to the RFE response. Accordingly, the Director concluded that the Petitioner had not met its burden to establish that the foreign entity is doing business as a qualifying organization abroad.

On appeal, the Petitioner asserts that it submitted foreign tax returns for the tax years 2014-15 and 2016-17 which serve "as evidence of the company's systematic and continuous provision of services" and demonstrate that the company has been doing business as defined at 8 C.F.R. § 214.2(l)(1)(ii)(H). However, the evidence referenced by the Petitioner does not establish that the foreign entity was doing business when the petition was filed in January 2019 and continues to do business. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Accordingly, the appeal will be dismissed for this additional reason.

IV. EMPLOYMENT ABROAD

The third issue addressed by the Director is whether the Petitioner established that the Beneficiary has at least one continuous year of full-time employment with a qualifying organization abroad within the three years preceding the filing of the petition. See 8 C.F.R. § 214.2(l)(3)(ii).

As noted, the Petitioner stated on the Form I-129 that the Beneficiary has been employed by [redacted] since January 2016. In support of this claim, the Petitioner submitted a letter from [redacted] who confirmed the Beneficiary's employment with his company since 2016, and a corporate organizational chart from 2018 which identifies him as [redacted]'s controller. However, the Petitioner also provided the Beneficiary's resume, in which he states that he has been employed by [redacted] since January 2016.

In the RFE, the Director observed this apparent discrepancy and requested an explanation and additional evidence, such as personnel or payroll records, to establish that the Beneficiary was employed by [redacted] for at least one continuous year in the three years preceding the filing of the petition. In response the Petitioner stated that the Beneficiary "has served as the Controller of the foreign company [redacted] which is also owned by the foreign business" and re-submitted his resume. The Petitioner did not provide the requested payroll or personnel records to document the Beneficiary's full year of employment with either company, nor did it provide evidence of [redacted] ownership in support of its claim that this entity is a qualifying organization. Accordingly, the Director determined that the Petitioner did not meet its burden to demonstrate that the Beneficiary had been employed by a qualifying foreign entity for at least one year during the relevant three-year period.

On appeal, the Petitioner emphasizes that it previously provided an "employment verification letter" from [redacted] which demonstrates the Beneficiary's employment with that company. The Petitioner does not mention [redacted]

The "preponderance of the evidence" standard requires that the evidence demonstrate that the claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010) (quoting Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). The truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, a director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. Id. Here, the Director noted inconsistencies in the

evidence submitted to document the Beneficiary's foreign employment, which diminished the probative value of the statement from [redacted]

Consistent with determining whether a petitioner has established a beneficiary's eligibility by a preponderance of the evidence, a director may request additional evidence. The regulation states that a petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. See 8 C.F.R. § 103.2(b)(8). Further, the regulation at 8 C.F.R. § 214.2(l)(3)(viii) provides that a petition shall be accompanied by "such other evidence as the director, in his or her discretion, may deem necessary."

Here, in light of the noted ambiguity in the record regarding the identity of the Beneficiary's foreign employer, the Petitioners unsupported statements were insufficient to carry its burden of proof, and the Director's request for payroll or personnel records to document his foreign employment was an appropriate exercise of discretion. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

For the reasons discussed, the Petitioner has not established that the Beneficiary has at least one year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. For this additional reason, the appeal will be dismissed.

V. RESERVED ISSUES

As the identified bases for denial are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's employment abroad in a managerial or executive capacity, the Petitioner's physical premises, and the Petitioner's ability to support a managerial or executive position within one year of approval of the petition. 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).

VI. CONCLUSION

The appeal will be dismissed because the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer, that the foreign employer is and will be doing business, and that the Beneficiary has at least one year of employment with a qualifying organization abroad in the three years preceding the filing of the petition.

ORDER: The appeal is dismissed.