U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15324039

Date: FEB. 3, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a coffee bean importer, seeks to temporarily employ the Beneficiary as "General Manager" 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 Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that it has a qualifying relationship with the Beneficiary's employer abroad. The matter is before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, 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*.

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).

[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.

II. QUALIFYING RELATIONSHIP

The primarily issue in this matter is whether the Petitioner established that it has a qualifying relationship with the Beneficiary's employer abroad. To establish a "qualifying relationship" under the Act and the regulations, a 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 generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

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). Ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology Int'l*, 19 I&N Dec. at 595.

The Petitioner in this matter provided information in the L Classification Supplement to Form I-129 listing [redacted], as the Beneficiary's foreign employer and stating that the Petitioner is related to the foreign entity as its subsidiary based on the foreign entity's "100% ownership and 100% control" of the Petitioner.[2] As supporting evidence, the Petitioner provided an operating agreement which referenced "Exhibit A" as an addendum containing the Petitioner's ownership breakdown. Although no explanation was offered, the Petitioner provided two iterations of this exhibit, both iterations containing the same title, date of execution, and the Beneficiary's signature as "Manager"; both iterations also list [redacted] and the Beneficiary as the Petitioner's owners, owning 53% and 47% of its membership units, respectively. By naming two parties with ownership interests in the Petitioner, the addendum directly contradicts the L Classification Supplement, which states that the Petitioner is wholly owned and entirely controlled by the foreign entity.[3]

Further, despite containing identical ownership breakdowns, the two iterations of Exhibit A are inconsistent in their designation of the Beneficiary's ownership interest as voting or non-voting. Although both iterations of the addendum designate [redacted]'s units as voting, the same is not true of the Beneficiary's ownership, which one iteration describes as voting, while the other iteration shows as non-voting. Thus, not only did the Petitioner provide addendum exhibits that contradict the claim that [redacted] has "100% ownership and 100% control" of its membership units, but it also provided two inconsistent versions of the same exhibit, thereby precluding a determination as to whether or not the Beneficiary's ownership includes voting rights, which in turn

[2] The term "subsidiary" is defined as a firm, corporation, or other legal entity of which a parent owns more than half of the entity, owns half and controls the entity, owns half of a 50-50 joint venture and has equal control and veto power, or owns less than half but in fact controls the entity. 8 C.F.R. § 214.2(l)(1)(ii)(K).

[3] The record also contains evidence showing that the Beneficiary has a 15% ownership interest in the foreign entity, thereby indicating that she derives an 8% indirect ownership interest in the Petitioner. Adding the 8% to the 47% ownership depicted in both iterations of Exhibit A would result in a 55% ownership interest, thereby making the Beneficiary majority owner of the Petitioner.

precludes a determination as to who actually controls the U.S. entity. In a parent-subsidiary relationship, the Petitioner would have to establish that the foreign entity has ownership and control of its membership units. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). The unresolved inconsistencies described herein undermine the validity of the Petitioner's claims and supporting evidence regarding its ownership and control. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Given the deficiencies described above, we cannot conclude that the Petitioner is owned and controlled by the foreign entity as in a parent-subsidiary relationship or that the two entities are owned and controlled by the same individual as affiliates.[4]

III. EMPLOYMENT IN A MANAGERIAL CAPACITY

In addition, although not discussed in the Director's decision, the record lacks sufficient evidence showing that the Beneficiary's position abroad was in a managerial capacity and that the Beneficiary would, within one year of the petition's approval, perform primarily managerial job duties in her position as the Petitioner's general manager.

To be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary performed and will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the foreign position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties will be primarily managerial, we consider the Petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Although the Petitioner briefly discussed the Beneficiary's employment abroad and claimed that such employment was managerial in nature, it did not provide a detailed account of the Beneficiary's actual job duties within the context of the foreign entity's coffee importing and exporting operation or discuss the foreign entity's staffing and the Beneficiary's placement within the organizational hierarchy. The Petitioner also did not adequately describe the Beneficiary's proposed job duties in the new office or provide a hiring timeline stating what positions it plans to fill and the timeframe for such hires. As such, it is unclear how the company will operate within its first year and whether it would adequately

[4] The term "affiliate" applies when two entities are owned and controlled by the same parent or individual. *See* 8 C.F.R. § 214.2(l)(1)(L). The record indicates that [redacted] owns 70% of the foreign entity and is therefore its majority owner. Although this ownership interest results in [redacted]'s indirect ownership of 37% of the Petitioner, this does not amount to a majority and no evidence was provided showing that this minority owner has control of the U.S. entity. As such, the degree of shared ownership between the Petitioner and the foreign entity is not sufficient to create an affiliate relationship.

grow and develop so that it could support the Beneficiary in a managerial capacity within one year of the petition's approval.

In light of these deficiencies, we cannot adequately evaluate the Beneficiary's foreign and proposed positions or reach a determination as to whether it is more likely than not that the Beneficiary was employed abroad and would more likely than not be employed in the United States in a managerial capacity within one year of the petition's approval.[5]

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision.

ORDER: The appeal is dismissed.

[5] The Petitioner claimed that the Beneficiary's foreign and proposed positions are in a managerial capacity and did not claim that either position was or would be in an executive capacity.