U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF PCS-T- CORP.

DATE: FEB. 12, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a wholesaler and exporter of computers and electronics, seeks to continue the Beneficiary's temporary employment as its chief operating officer under the L-1A nonimmigrant classification for intracompany transferees. 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 Petitioner did not establish, as required, that it had a qualifying relationship with the Beneficiary's foreign employer at the time of filing. On the basis of this conclusion, the Director determined that the Petitioner does not meet the eligibility requirements that pertain to the Beneficiary's employment abroad and his proposed U.S. employment in a managerial or executive capacity.

On appeal,[1] the Petitioner disputes the denial, claiming that it and the Beneficiary's foreign employer have an affiliate relationship by virtue of the Beneficiary's majority ownership of both entities.

Upon *de novo* review, we will dismiss the appeal because the Petitioner has not overcome the chief basis for denial regarding its claimed qualifying relationship with the Beneficiary's former employer abroad. As the Petitioner has not satisfied this fundamental element of eligibility, we will reserve the remaining issues regarding the Beneficiary's employment abroad and his proposed U.S. employment in a managerial or executive capacity.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary

[1] Although the Petitioner's supplemental brief is titled "Motion to Reopen," the Form I-290B indicates that the Petitioner filed an appeal, rather than a motion. We will therefore consider the brief as part of the appeal.

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.*

II. QUALIFYING RELATIONSHIP

The primary issue to be addressed in this decision 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).

In the petition form, the Petitioner stated that it and the Beneficiary's foreign employer are affiliates. In order to meet the criteria for an affiliate relationship, the Petitioner must demonstrate that: (1) it is one of two subsidiaries that are both owned and controlled by the same parent or individual, or (2) it and the foreign entity are owned by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(1)(ii)(L).

The Petitioner stated that [redacted] owns 56% of its shares and that [redacted] owns the remaining 44% of its shares. The Petitioner initially accounted for only 79.48% of the foreign entity's ownership, stating that [redacted] owns 39.09% while [redacted] owns 40.39% of that entity. In a supporting exhibit list, the Petitioner indicated that the Beneficiary indirectly owns 53.76% of the foreign entity, i.e., the majority, by virtue of his claimed ownership of [redacted] and [redacted] which were claimed as the direct owners of 39.09% and 14.67% of the foreign entity, respectively. The Petitioner indicated that [redacted] indirectly owns the remainder of the foreign entity's shares through his ownership of [redacted] and [redacted], which are claimed to directly own 40.39%, 4%, and 1.85% of the foreign entity, respectively.

In support of these claims, the Petitioner provided two translated letters dated March 8 and May 2, 2017, respectively. Both letters are on the foreign entity's letterhead and are signed by its "legal representative," who described multiple ownership schemes for the foreign entity. Each letter contains different ownership breakdowns and there was no documentation determining the dates of these changes in ownership or specifying the terms of the shares' sales and purchases as reflected in these varying ownership schemes. The March 2017 letter delineates an ownership scheme that includes five corporate owners of the foreign entity – [redacted] and [redacted] The ownership breakdown indicates that [redacted] indirectly owns 46.24% of the foreign entity while [redacted] owns the remaining 53.76% by virtue of their respective ownership interests in these five entities.

The May 2017 letter describes two additional ownership schemes, which also list the foreign entity's claimed owners and their respective ownership interests. The first ownership scheme lists five corporate owners: [redacted] and [redacted] which are owned by [redacted] thereby giving him a total of 21.72% ownership of the foreign entity; [redacted] and [redacted] both showing the Beneficiary as owner, thereby giving him a total of 50.04% ownership interest; and [redacted] showing [redacted] as the owner, thereby giving her 28.24% ownership interest in the foreign entity. The letter indicates that [redacted] sold her stock in the foreign entity resulting in a new ownership breakdown that includes five corporate shareholders and indicates that either the Beneficiary or [redacted] owns each shareholder, thereby giving them indirect ownership of the foreign employer. Specifically, [redacted] is identified as the owner of [redacted] and [redacted] thereby indicating that he indirectly owns 46.24% of the foreign entity; and the Beneficiary is identified as owner of [redacted] and [redacted] thereby indicating that he indirectly owns 53.76% of that entity. As indicated above, the Petitioner did not provide corroborating evidence of these claimed changes in the foreign entity's ownership. We note that the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In a request for evidence (RFE) the Director advised the Petitioner that the ownership schemes depicted in its supporting documents did not establish that an affiliate relationship exists between it and the foreign entity. Specifically, the Director observed that although [redacted] is shown as the majority owner of the Petitioner's stock, the same cannot be said of the foreign entity, which is shown to have five corporate shareholders with no one shareholder owning the majority of that entity's stock. The Petitioner was asked to provide further evidence of a qualifying relationship between it and the Beneficiary's foreign employer.

In response, the Petitioner provided a letter dated May 30, 2018, pointing out that the Beneficiary has continuously been in L-1A status since 2003 and eight L-1A petitions filed by the Petitioner on the Beneficiary's behalf have been approved. The Petitioner claims that the same relationship existed at the time of each approval. The record does not support this claim, as it contains documents indicating that ownership changes took place as recently as 2017, while several of the referenced petition approvals took place prior to 2017. Furthermore, there is no requirement to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988).

The Petitioner also provided additional ownership documents pertaining to itself and the foreign entity. Regarding the Petitioner's ownership, evidence includes two stock certificates issued on May 5, 2017; stock certificate no. 11 names [redacted] as the owner of 44% of the Petitioner's stock and stock certificate no. 12 names [redacted] as the owner of the remaining 56%. The certificates were accompanied by [redacted] and [redacted] respective stock certificates and corresponding translated certifications, which identified the Beneficiary as the sole owner of [redacted] and [redacted] as the sole owner of [redacted] These documents establish that when the instant petition was filed in 2018, the Beneficiary indirectly owned the majority of the Petitioner's stock. However,

the issue of the Beneficiary's control of [redacted] is brought into question by the Petitioner's submission of a document titled "Shareholder Structure Certificate," dated May 8, 2017, which states that [redacted] was "acting in his capacity of proxy" of that entity, thereby indicating that [redacted] rather than the Beneficiary, had control of [redacted].

With regard to the foreign entity's ownership and control, the RFE response includes a statement containing attestations from the Petitioner's and the foreign entity's respective legal representatives certifying each entity's ownership breakdown. The foreign entity's legal representative listed five owners and their respective shares as follows: [redacted] with 40.39% of shares, [redacted] with 1.85% of shares, [redacted] with 4% of shares, [redacted] with 39.09% of shares, and [redacted] with 14.67% of shares. The ownership breakdown also indicated that [redacted] owns the first three listed entities and that the Beneficiary owns the other two entities. If correct, this ownership breakdown would indicate that the Beneficiary indirectly owns 53.76% of the foreign entity's stock, thereby making him the majority owner of that entity. However, the record contains insufficient evidence of the Beneficiary's ownership of [redacted] and his control of [redacted][2] both of which are necessary to establish that the Beneficiary owns the majority of and controls the Petitioner and the foreign entity as affiliates.

The Petitioner also provided the minutes from the foreign entity's "Extraordinary Shareholders' Assembly" meetings with the latest minutes reflecting the results of a meeting that took place on September 23, 2017. Although all five of the above-named corporations were consistently listed as the foreign entity's shareholders, the Beneficiary's name did not appear anywhere in the document to identify him as the owner of [redacted] or [redacted] Rather each ownership breakdown identified the corporate shareholder by name, listed the shareholder's shares and respective percentage owned, and named the individual who "represented" those shares. We note that [redacted] rather than the Beneficiary, was identified as the representative of [redacted] and [redacted] despite the account of the foreign entity's legal representative, who claimed that the Beneficiary owns these entities. Although the Petitioner provided other evidence, which adequately establishes the Beneficiary's ownership of [redacted] it did not provide similar evidence with regard to [redacted] nor did it provide evidence establishing that the Beneficiary, rather than the named proxy [redacted], controls [redacted]

The Director found that the record lacked sufficient evidence of an affiliate relationship between the Petitioner and the Beneficiary's foreign employer. The Director made this determination based on an analysis of the direct ownership of the Petitioner and the foreign entity, finding that while [redacted] owns the majority of the Petitioner's stock, it is only one of five minority shareholders of the foreign entity and therefore does not own the majority of that entity. Although we agree with the Director's conclusion, the underlying analysis was incomplete because it did not address the element of control or take into account the Beneficiary's indirect majority ownership of the Petitioner's stock and his claimed indirect majority ownership of the foreign entity.

[2] As indicated earlier, ownership of [redacted] was established through the submission of a stock certificate and corresponding certification naming the Beneficiary as the owner of that entity.

On appeal, the Petitioner reiterates its prior argument, contending that the Beneficiary is the majority owner of [redacted] and [redacted] and that as a result of these ownership interests, an affiliate relationship exists wherein the same individual, i.e., the Beneficiary, effectively owns the Petitioner and the foreign entity. In support of the appeal, the Petitioner provides an incomplete copy consisting of only two pages of the previously submitted May 2017 letter. The portion of the letter that the Petitioner submits on appeal contains an account of the foreign entity's legal representative claiming that [redacted] and [redacted] together, own the majority of the foreign entity's stock and that by virtue of the Beneficiary's ownership of these two entities, he is the foreign entity's majority owner.

We disagree with the Petitioner's reliance on a third party claim and find that it has not provided sufficient evidence establishing that the Beneficiary actually owns [redacted] as claimed. Although the Petitioner provided a stock certificate and corresponding certification corroborating the Beneficiary's ownership of [redacted] it did not provide comparable evidence of the Beneficiary's ownership of [redacted] and instead based its claim entirely on the statements of the foreign entity's "legal representative" without providing evidence to show how that individual determined that the Beneficiary owns [redacted] As noted earlier, assertions such as these must be supported with relevant, probative, and credible evidence. *See Chawathe*, 25 I&N Dec. at 376.

Moreover, even if the Petitioner were to provide corroborating evidence of the Beneficiary's ownership of [redacted] the record still indicates that [redacted] rather than the Beneficiary, controls [redacted] Therefore, even if the Petitioner were to provide sufficient evidence of the Beneficiary's majority ownership of its and the foreign entity's shares, the record still lacks sufficient evidence showing that he also controls both entities.

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.*, *Church Scientology Int'l*, 19 I&N Dec. 593; *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. *Church Scientology Int'l*, 19 I&N Dec. at 595.

In light of the above analysis, we find that the record lacks sufficient evidence corroborating the Petitioner's claim that the Beneficiary owns the majority of the foreign entity and controls it and the Petitioner.

III. CONCLUSION

Accordingly, the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's former employer abroad.

ORDER: The appeal is dismissed.

Cite as *Matter of PCS-T- Corp.*, ID# 2001089 (AAO Feb. 12, 2019)