U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36068339

Date: JAN. 16, 2025

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, describing itself as a real estate and property management company, seeks to temporarily employ the Beneficiary as the chief executive officer of its new office[1] 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 Director of the California Service Center denied the petition concluding the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's foreign employer. In addition, the Director concluded the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial or executive capacity within one year of an approval of the petition. The matter is now before us on appeal. 8 C.F.R. § 103.3.

Upon de novo review, we will dismiss the appeal as the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's foreign employer when the petition was filed. Since this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments related to the Director's other ground for denial. *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). 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.

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

[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.

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).

II. QUALIFYING RELATIONSHIP

The sole issue we will address is whether the Petitioner established that it had a qualifying relationship with the Beneficiary's foreign employer.

The Petitioner indicated in the L Classification Supplement to the Form I-129, Petition for a Nonimmigrant Worker, that it was a branch office of the foreign employer. The Petitioner further stated in the Form I-129 that 60% of its "stock" was owned by the Beneficiary while the 45% of the foreign employer's "stock" was owned by the Beneficiary. The Petitioner also provided a foreign "Turkey Trade Registry" document registered on March 24, 2024[2] stating the following:

> [redacted] Owns 2200 shares, each valued at 25.00 Turkish Lira, totaling 55,000.00 Turkish Lira, [the Beneficiary]: Owns 1800 shares, each value at 25.00 Turkish Lira, totaling 45,000 Turkish Lira.

Later in response to the Director's request for evidence, the foreign employer submitted a letter discussing its ownership and that of the Petitioner. The foreign employer stated that prior to 2024 it was owned as follows: 1) Beneficiary owning 45% of its shares, 2) [redacted] owning 45% of its shares, and 3) [redacted] owning 10% of its shares. The foreign employer further indicated that "at the beginning of 2024" the shares "would be" redistributed such that the Beneficiary would hold 60% of its shares while [redacted] would hold the remaining 40%. The Petitioner also submitted an "Agreement on Operational Control" dated March 21, 2024, stating the following:

> Based on previously agreed arrangement, [the Beneficiary] has authorized [redacted] to temporarily register [redacted] relinquished shares under [redacted] name. This agreement further confirms that, until the Power of Attorney facilitating the transfer of these shares to [the Beneficiary] is received and enacted, the operational control of [the foreign employer], as well as its US affiliate, [the Petitioner], will remain under [the Beneficiary].

The Petitioner further provided a foreign employer document reflecting a share transfer dated August 14, 2024, where [redacted] transferred 600 shares in the amount of 15,000 Turkish lira to the Beneficiary. The document showed that the shareholding structure of foreign employer was [redacted] – 40,000 Turkish liras corresponding to 1600 shares and the Beneficiary– 60,000 Turkish liras corresponding to 2400 shares. In addition, the Petitioner submitted its membership agreement reflecting in schedule A that the Beneficiary had a 60% ownership interest as a result of a 240,000 initial

[2] The petition was filed on May 21, 2024.

capital contribution and that [redacted] had a 40% ownership interest following a $160,000 initial capital contribution. In the RFE response letter, the Petitioner stated that "we understand that [the Petitioner] and [the foreign employer] are affiliates because Mr. [redacted] [the Beneficiary] holds 60% ownership in [the foreign employer] and, at the time of filing, 45% ownership interest and de facto control of [the foreign employer]."

In denying the petition and concluding that the Petitioner did not establish a qualifying relationship between it and the foreign employer, the Director reasoned that the evidence reflected that the Beneficiary owned and controlled 60% of the Petitioner and only 45% of the foreign employer when the petition was filed, and therefore, that they did not qualify as affiliates both owned by the same individual.

On appeal, the Petitioner emphasizes that its ownership, and that of the foreign employer, was dictated by legal advice he received when filing the petition. The Petitioner indicates that they did not file a complaint against former counsel as the Beneficiary was driven by [the] pressing need to attend to immediate personal and family health matters." The Petitioner asserts that the Beneficiary "effectively controlled 60% of the shares in the foreign entity" when the petition was filed but noted that the shares were not formally registered in his name "due to delays in issuing a power of attorney to my brother, [redacted] The Petitioner states that the "trust between [him and his brother] as siblings and business partners assured [the Beneficiary] that this temporary arrangement would not affect the actual and intended ownership distribution."

Upon review, the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer, or more specifically, that there was sufficient common ownership and control between the entities to qualify them as affiliates when the petition was filed.

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").

Beyond meeting the regulatory definition of qualifying relationship, we also look to regulation and case law which 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.

In this matter, the Petitioner asserts that it and the foreign employer qualify as affiliates. Affiliate means: (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. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L).

First, the Petitioner did not submit sufficient evidence to establish its ownership. As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership, and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting control of the entity. *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986).

Here, the Petitioner only provided an operating agreement reflecting its asserted ownership on a schedule, but did not provide other supporting documentation required by caselaw to fully substantiate this claimed ownership, such as membership certificates, evidence of capital contributions made, meeting minutes, and other relevant supporting evidence. On this basis alone, the appeal will be dismissed, nonetheless we will still analyze whether common ownership and control between the Petitioner and foreign employer was sufficiently demonstrated based on this asserted ownership.

We note that the regulations and caselaw require common ownership and control between the Petitioner and foreign employer as of the date the petition was filed to establish a qualifying relationship. The Petitioner submitted supporting documentation reflecting that there was not common ownership and control between it and the foreign entity when the petition was filed necessary to establish them as affiliates consistent with the regulatory definition. The Petitioner provided an "Agreement on Operational Control" dated March 21, 2024, stating that "the operational control of [the foreign employer], as well as its US affiliate, [the Petitioner], will remain under [the Beneficiary]" until legal documentation effectuating the transfer was executed.

However, this document is insufficient to establish that the Beneficiary had control of the foreign employer when the petition was filed, particularly since it indicates that his control would "remain," despite him previously not having this apparent control. This document also does not formally modify the foreign "Turkey Trade Registry" registered on March 24, 2024, reflecting that Mr. [redacted] owned and controlled the foreign employer. In fact, the agreement on operational control questionably was not provided in support of the petition and predates the trade registry document indicating that Mr. [redacted] held a majority of shares. In addition, there was no apparent consideration paid for the claimed change in control to the Beneficiary reflected in the agreement on operational control leaving question as to whether this would effectively transfer such control. The Petitioner must resolve ambiguities 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).

The Petitioner provided a foreign employer document reflecting that the discussed share transfer did not take place until at least August 14, 2024, and it indicates on appeal that this transfer in ownership and control was delayed due to issues with counsel and family health issues and not completed prior

to the date the petition was filed on May 21, 2024. The Petitioner states on appeal that the Beneficiary "effectively controlled 60% of the shares in the foreign entity" when the petition was filed but noted that the shares were not formally registered in his name "due to delays in issuing a power of attorney to my brother, [redacted] The Petitioner indicates that the "trust between [him and his brother] as siblings and business partners assured [the Beneficiary] that this temporary arrangement would not affect the actual and intended ownership distribution." However, a familial relationship does not constitute a qualifying relationship under the regulations. *See Ore v. Clinton*, 675 F. Supp. 2d 217, 226 (D.C. Mass. 2009) (finding that the petitioner and the foreign company did not qualify as "affiliates" within the precise definition set out in the regulations at 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*), despite petitioner's claims that the two companies "are owned and controlled by the same individuals, specifically the Ore family"). The "Turkey Trade Registry" document dated March 24, 2024, reflects that 2200 of foreign employer shares were owned by Mr. [redacted] while only 1800 were owned by the Beneficiary. The Petitioner has not sufficiently substantiated that this ownership and control in the foreign employer was modified, as it claims, prior to the date the petition was filed in May 2024.

In addition, we acknowledge that the Beneficiary dealt with a family health issue and/or issues with his former counsel[3] which may have delayed him in completing the necessary documentation to change ownership and control of the foreign employer prior to the date the petition was filed. Regardless, the eligibility requirement remains, the Petitioner must demonstrate common ownership and control between it and the foreign employer when the petition was filed, however, the supporting documentation reflects that this was not the case when the petition was filed in May 2024. Further, the Petitioner's shifting assertions related to the foreign employer's ownership and control prior to the date the petition was filed leave substantial uncertainty as to its ownership during this time.

The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also* Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts."). Again, the Petitioner must resolve discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582, 591-92.

For the foregoing reasons, the Petitioner has not established that it and the foreign employer were commonly owned and controlled as affiliates when the petition was filed, and therefore, it did not demonstrate a qualifying relationship between the entities.

ORDER: The appeal is dismissed.

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[3] To the extent the Petitioner makes an ineffective assistance of counsel claim, we note that they have not complied with the requirements described in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), or established that their former attorney's assistance was so deficient they were prejudiced by the performance. *See Matter of Melgar*, 28 I&N Dec. 169, 171 (BIA 2020). The Director concluded that the Petitioner did not comply with the requirements of *Lozada*, indicating that it did not show it filed a complaint against its former counsel. The Petitioner does not contest this determination of the Director on appeal, as such, we will not analyze it again here. We note that the Petitioner is free to file a new petition where common ownership and control is established as of the date of that petition.