U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-H-Y-L- LTD.

DATE: JAN. 19, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner,[1] a foreign entity planning to operate a shipping logistics business, seeks to temporarily employ the Beneficiary as CEO of a new office[2] under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 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 an executive or managerial capacity.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish, as required, that: (1) it has a qualifying relationship with the Beneficiary's prospective employer in the United States; (2) the Beneficiary has at least one continuous year of employment abroad with a qualifying organization within the three years preceding the filing of the petition; (3) the Beneficiary was employed abroad in a managerial or executive capacity; and (4) the Petitioner would support the Beneficiary in a managerial or executive position within one year of an approval of the instant petition.

On appeal, the Petitioner provides a "Business Plan Addendum," resubmits various documents, and offers an affidavit from the Beneficiary's spouse, claiming to be "the owner" of the foreign and U.S. entities.

Upon *de novo* review, we will dismiss the appeal. Because the existence of a qualifying relationship between the Beneficiary's foreign and U.S. employers and the Beneficiary's employment with a qualifying entity abroad are both fundamental to establishing eligibility, and the Petitioner has not met these requirements, we will not address the two remaining grounds for denial.

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[1] In the denial, the Director referenced an Articles of Incorporation, indicating that the Petitioner is "listed as . That observation is incorrect. The Articles of Incorporation names a new corporation that is entirely separate from the Petitioner, a previously existing entity in China where the Beneficiary's foreign employment is claimed to have taken place. The Articles of Incorporation lists a new entity where the Beneficiary's prospective employment is expected to take place.

[2] 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.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification for 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. Section 101(a)(15)(L) of the Act. The petitioner must also establish that the beneficiary's prior education, training, and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

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 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).

The Petitioner's initial claims regarding its relationship with the prospective U.S. employer were inconsistent. In the L Classification Supplement portion of the petition, the Petitioner referred to the U.S. employer as "our branch in ' while checking off the box for "subsidiary" when asked to describe the U.S. entity's relationship to the Petitioner and indicating that it is 100% owner of the U.S. entity. In a supporting cover letter, which wrote in her capacity as the foreign Petitioner's president, she referred to herself and the Beneficiary as the Petitioner's owners and went on to state that the "Board of Directors have authorized [the Beneficiary] to be our U.S. Chief Executive Officer and set up our new company in the United States." The Petitioner also provided the U.S. entity's Articles of Incorporation, thus indicating that the U.S. entity is not a branch office. However, the Petitioner did not provide supporting evidence identifying its owner(s) or the owner(s) of the U.S. entity.

In a request for evidence (RFE) the Petitioner was notified that the record lacked sufficient evidence to confirm the existence of a qualifying relationship between it and the prospective U.S. employer. The RFE provided a long list of documents that the Petitioner could submit to cure the evidentiary

deficiency. The Petitioner responded by providing its registration certificate, which identified as owner of the foreign entity. As evidence of the U.S. entity's ownership, the Petitioner offered a California Commercial Lease Agreement, which named the Beneficiary as the tenant.

The Director concluded that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's prospective U.S. employer. The Director focused on the lack of evidence to support the claim that the two entities have an established parent-subsidiary relationship. The Director found that despite the submission of evidence showing as owner of the foreign Petitioner, the record does not contain evidence to show that either or the Petitioner owns and has made monetary contributions towards the purchase of the U.S. entity.

On appeal, the Petitioner resubmits the U.S. entity's Articles of Incorporation and offers an affidavit from stating that she is the Petitioner's owner while explaining that the U.S. entity's "[t]itle was taken in my husband's name for simplicity purposes . . . ." maintained the claim that the Petitioner "completely owns the American company," thereby indicating that the two entities have a parent-subsidiary relationship in which she indirectly owns the U.S. entity.

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 must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, the Petitioner made ambiguous and inconsistent claims regarding the U.S. entity's ownership by implying on the one hand that the Beneficiary owns the company by virtue of having "title" to that entity "for simplicity purposes," while on the other hand maintaining the claim that the foreign and U.S. entities have a parent-subsidiary relationship whereby the Petitioner owns the U.S. entity. The Petitioner has not provided independent, objective evidence to resolve this incongruity in the record and point to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In light of the above, the Petitioner has not established that it has the requisite qualifying relationship with the Beneficiary's proposed U.S. employer and therefore the petition cannot be approved.

III. EMPLOYMENT ABROAD

Next, we will discuss whether the Petitioner established that the Beneficiary was employed abroad for at least one continuous year during the three-year period that preceded the filing of this petition.

In the denial decision, the Director determined that the evidence submitted by the Petitioner only showed that the Beneficiary was on the foreign entity's payroll in January 2017, but did not establish that the Beneficiary was employed abroad for one year during the relevant three-year time period.

While we agree with the Director's adverse conclusion, we find that the Petitioner did not provide a certified English translation of its January 2017 payroll record and therefore the Director's affirmative finding was not warranted because the translated document does not meet the relevant regulatory requirement, which states that any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Here, the Petitioner offered a translation that was not properly certified; therefore, we cannot determine whether the translated material is complete and accurate and supports the Petitioner's claims.

We also acknowledge that the RFE response included a document titled "Certificate of Employment," which states that the Beneficiary has been employed by the foreign Petitioner since August 2012. This certificate appears to be a translation of a foreign document, as indicated by the absence of the foreign entity's seal and the replacement of the seal with the words [redacted] However, the Petitioner did not provide the original employment certificate or submit a translator's certification stating that the translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Therefore, the certificate does meet the regulatory requirements and cannot be deemed as reliable evidence of the Beneficiary's employment abroad.

On appeal, the Petitioner attempts to address the documentary deficiency pertaining to the Beneficiary's employment abroad by submitting translated payroll statements, a translated proof of health insurance document, and a copy of the above described "Certificate of Employment." However, these documents, like those discussed above, are not accompanied by the required translator's certification. Rather, the Petitioner offers a document titled "Notarial Certificate" followed by the word "Translation" in parenthesis. The latter certificate states that its purpose "is to certify that the foregoing English Translation of the Notarial Certificate . . . conforms to the Notarial Certificate in Chinese." The translated certificate does not appear to apply to any of the documents that pertain to the Beneficiary's employment abroad, nor does it satisfy the above discussed regulatory requirements. *See id.*

In light of the above, we find that the Petitioner has not provided sufficient evidence to support its claim regarding the Beneficiary's employment abroad. We therefore cannot conclude that the Beneficiary was employed abroad for the statutorily required time period and on the basis of this finding, the instant petition cannot be approved.

III. CONCLUSION

For the reasons discussed above, we find that the Petitioner has not established that it has a qualifying relationship with the Beneficiary's proposed U.S. employer or that the Beneficiary was employed abroad by a qualifying entity for the mandated time period. The appeal will be dismissed for these reasons. As these elements are fundamental to establishing eligibility and the Petitioner has not met the two threshold requirements, the two remaining issues – whether the Beneficiary's

employment abroad was in a managerial or executive capacity and whether the Beneficiary's U.S. employment was in a managerial or executive capacity within one year of the petition's approval – will not be addressed.

ORDER: The appeal is dismissed.

Cite as *Matter of S-H-Y-L- Ltd.*, ID# 841489 (AAO Jan. 19, 2018)