U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29571799

Date: JULY 9, 2024

Certification of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1B Specialized Knowledge Worker)

The Petitioner is a law firm that seeks to employ the Beneficiary temporarily in the position of "Vice President Legal" under the L-1B 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 Director of the California Service Center denied the petition, concluding that the record does not show that the Petitioner and [redacted] the Beneficiary's employer abroad, have a qualifying relationship. The matter is now before us on certification pursuant to 8 C.F.R. § 103.4(a).

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will affirm the Director's denial of the petition.

I. LAW

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

II. QUALIFYING RELATIONSHIP

The sole issue to be addressed is whether the Petitioner established that it has a qualifying relationship with [redacted], the Beneficiary's foreign employer.

A. Factual Background

In a supplemental supporting statement to the nonimmigrant petition, the Petitioner describes [redacted] as "an international legal practice ("the Firm")" with its headquarters in [redacted] England and local offices operating throughout Europe, Asia and the United States. The Petitioner states that the Firm is set up under the Swiss verein structure,[1] which is comprised of 11 member firms,[2] including [redacted] It further states that the member firms operate under a "global brand" that uses "a consistent and cohesive approach to client services" and offers the brand's global clients "cross-sector, cross-jurisdictional expertise to meet all their business and legal needs in each jurisdiction in which they operate."

The Petitioner clarifies, however, that it is not a member of the Swiss verein and explains that it was established in 2021 as a "service company" whose purpose is to support the Firm's U.S.-based clients with a "significant business presence or extensive business activities outside the United States." Further, the Petitioner states that it does not provide U.S. legal representation or advise on U.S. law, but rather facilitates business development activities through foreign-credentialed lawyers who assume "the role of external international general counsel, advising our U.S.-based clients on foreign legal requirements in the international jurisdictions in which [redacted] operates."

B. Analysis

In describing its ownership structure, the Petitioner states and offers evidence to show that it is wholly owned by [redacted], which in turn is owned in equal shares by each of its verein-member firms. By virtue of being among the verein-member firms, [redacted] the Beneficiary's foreign employer, indirectly holds an equal minority ownership interest in the U.S. Petitioner. The Petitioner recognizes that law firms are not subject to the regulatory provisions that enable the formation of a qualifying relationship within the context of a Swiss verein structure. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L)(*3*). The Petitioner also recognizes that [redacted] the Beneficiary's foreign employer, is not a majority owner. However, the Petitioner highlights that it is not a member of the verein structure and claims that "the specific set[-]up of the U.S. Petitioner has resulted in the establishment of a qualifying parent-subsidiary relationship between our foreign verein-member firms and the Petitioner."

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[1] The Swiss verein is a type of legal structure which in the present case involves an international association of foreign law firms that operate under the [redacted] brand, contribute a portion of their profits to a centralized budget, and are subject to common governance.

[2] Although the Petitioner initially claimed that it was part of a Swiss verein structure that was comprised of ten member firms, on appeal it has clarified and provided evidence to show that the initial supporting statement did not accurately describe the international firm's verein membership, which consisted of 11, rather than 10 member firms at the time of filing. More specifically, the record shows that an eleventh firm became a member of the verein in March 2022, which preceded this petition's March 2023 filing date. Because the addition of an eleventh member firm is not material, the error in the initial supporting statement need not be further addressed.

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 that they are 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)(I)-(L) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate," respectively). As noted above, the Petitioner claims that the nature of its qualifying relationship is that of a parent and subsidiary with [redacted] as the parent.

A parent-subsidiary relationship can be formed through direct or indirect ownership by the parent entity where the latter owns half, more than half, or less than half of and has control over the subsidiary, or a parent-subsidiary relationship can be formed through a 50-50 joint venture where the parent owns 50% of a joint venture and has equal control and veto power over the subsidiary entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). 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). Case law further confirms that ownership and control "must be the same" for the parent and subsidiary in a parent-subsidiary relationship. *See Matter of Church Scientology Int'l*, 19 I&N Dec. at 595. 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. *Id.*; *see also* 6 USCIS *Policy Manual*, A.2, https://www.uscis.gov/policy-manual/volume-2-part-l-chapter-6. Essential to the element of control is "whether the same individual(s) or organization owns enough of the assets of both entities to enable the individual(s) or organization to control the management and operations of both entities." *Id.* at 596.

Here, despite [redacted] minority ownership alongside ten other law firms with the same respective ownership interests, the Petitioner claims that [redacted] qualifies as its parent. The Petitioner asserts that "the common governance and voting structures of the [redacted] Verein satisfy the lenient standards for *de facto* control for the purpose of L-1 eligibility." We disagree that the ownership and control structure documented in this matter equates to *de facto* control by [redacted] the claimed parent entity. While we agree that majority ownership is not necessary to establish *de facto* control and assume the role of the parent entity, the record does not show that [redacted] has *de facto* control over the management of the petitioning entity. *See Matter of Hughes*, 18 I&N Dec. at 293.

To establish *de facto* control by the Beneficiary's foreign employer, the Petitioner must provide evidence that the claimed parent entity has partial ownership of the Petitioner's shares which it controls "by possession of proxy votes," thereby establishing the Petitioner as "subordinate to the control of" [redacted] *Id.* Equally relevant are "all agreements relating to the voting rights of owners, the distribution of profits, the management and direction of the petitioning company, and any other factor affecting actual control of the [subsidiary] entity." 6 USCIS *Policy Manual*, A.1, https://www.uscis.gov/policy-manual/volume-2-part-l-chapter-6.

The Director's adverse decision is premised on two key findings: that the claimed parent entity does not have *de jure* control through majority ownership of the Petitioner's stock, and alternatively, that it does not have *de facto* control of the Petitioner through irrevocable proxy votes or by some other

means that satisfies the requisite element of control over the U.S. entity. Regarding *de facto* control, the Director highlights Clause 64 of the Regulations of [redacted] Verein, which outlines provisions for termination of a firm's verein membership. The Director determined that by virtue of making provisions that allow a member firm to unilaterally voluntarily terminate its membership, any right to control the Petitioner is revocable and thus substantially different from the control derived from an irrevocable proxy agreement. While we recognize Clause 64's potential to impact the verein's membership composition thereby impacting who controls the Petitioner, we do not find the provisions of this clause to be dispositive or impactful on the critical issue of who controlled the petitioning entity at the time of filing. *See* 8 C.F.R. § 103.2(b)(1) (requiring that eligibility be established at the time of filing and continuing throughout the adjudication). Although provisions in the verein regulations would theoretically enable [redacted] to terminate its membership at some future time, we note that there are other provisions that are more compelling to this analysis.[3]

The Director also highlighted provisions in Clauses 25 and 35 of the [redacted] Verein regulations, which discuss the quorum for meetings concerning the verein's governing bodies – the International Board and International Council. However, because these provisions pertain specifically to the control and governance of the verein itself, they are not relevant to the issue that is central to this discussion, which is whether [redacted], one of 11 [redacted] Verein members, has *de facto* control over the Petitioner.

More to the point of the issue of control is the Director's discussion of Clause 37.1 of the verein regulations, which outlines a tiered voting scheme in deciding on resolutions that are brought before the International Council. Namely, Clause 37.1 states that a member firm's revenue will be used to determine the number of votes a member firm will be allotted in voting on council resolutions, thus indicating that voting control is subject to change based on the member-firms' changes in revenue. In other words, to the degree that a member-firm's revenue may undergo changes relative to that of other member-firms, so may the weight of a member-firm's votes. Such a tiered voting scheme further undermines the Petitioner's claim that [redacted], its claimed parent entity, has *de facto* control to direct the Petitioner's management and operations. An alteration in the vote distribution based on changing revenue would potentially change the level of control that an entity might have, resulting in a shift in *de facto* control.

In sum, the Director was correct in determining that the record lacks evidence establishing that [redacted] has *de facto* control over the Petitioner. On certification, the Petitioner does not adequately address or satisfy this evidentiary deficiency. The Petitioner further discusses the role and governance of the underlying verein structure, stating that the firms themselves are "commonly controlled by two leadership and governance bodies, the International Council [] and the International Board" which are comprised of "senior individuals from each verein-member firm." Furthermore, the Petitioner states that it is "wholly owned in equal proportion by each of the [11] verein-member firms" and explains that it and [redacted] its direct parent entity, "contract with each verein-member firm to provide various services and incur costs and liabilities on behalf of the international organization." However, the Petitioner neither claims nor offers evidence to show that is controlled by an individual member firm. Therefore, while the record indicates that the Beneficiary's foreign employer is one of 11 firms that

[3] Any L-1 petitioner that undergoes a change rendering it ineligible for the L-1 classification either after the petition has been filed or after it is approved, would be subject to denial if its petition is not yet approved and would be subject to revocation in the event of an approved petition. *See* 8 C.F.R. § 103.2(b)(1); *see also* 8 C.F.R. § 214.2(l)(9) (outlining grounds for automatic revocation and revocation on notice).

likely partakes in directing and managing the petitioning entity as an asset of the [redacted] Verein members to whom the Petitioner provides professional services on a contractual basis, the record lacks evidence to show that [redacted] has *de facto* control of the Petitioner to establish a qualifying relationship.

III. CONCLUSION

In sum, we conclude that the Petitioner has not demonstrated that its relationship with the Beneficiary's foreign employer qualifies as that of parent-subsidiary. As such, it has not established that it has the requisite qualifying relationship to qualify for an L-1 nonimmigrant petition. Therefore, we will affirm the Director's decision, dated August 2, 2023.

ORDER: The petition is denied.