U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32391285

Date: JULY 22, 2024

Appeal of California Service Center Decision

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

The Petitioner, a mobile phone store, seeks to temporarily employ the Beneficiary as controller of its new office 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 California Service Center denied the petition, concluding that the record did not establish that: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary was employed abroad for at least one continuous year during the three years preceding the filing of the petition; (3) the Beneficiary has been employed abroad in a managerial or executive capacity; (4) the Petitioner had secured sufficient physical premises to house the new office; and (5) the new office would be able to support a managerial or executive capacity within one year after approval of the petition. The matter is now before us on appeal under 8 C.F.R. § 103.3.

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 dismiss the appeal.

I. LAW

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).

II. EMPLOYMENT ABROAD

The Director determined that the Petitioner had not shown that the Beneficiary was employed abroad by a qualifying employer for at least one continuous year during the three years preceding the filing of the petition, as required by section 101(a)(15)(L) of the Act and at 8 C.F.R. § 214.2(l)(1)(i), (1)(ii)(A), and (3)(iii). Qualifying prior employment must have taken place while the Beneficiary was physically outside the United States. *See* 8 C.F.R. § 214.2(l)(3)(iii). Periods spent in the United States shall not be counted toward fulfillment of the requirement. 8 C.F.R. § 214.2(l)(3)(ii)(A).

When it filed the petition on August 18, 2023, the Petitioner indicated that the Beneficiary had been in the United States since January 14, 2021, and therefore that the Beneficiary had been in the United States for more than two years during the three years immediately preceding the filing date.

The petition form also asked for the dates of the Beneficiary's employment within the Petitioner's organization. The Petitioner answered that the Beneficiary had been employed since January 2021, the same month the Beneficiary entered the United States, at a biscuit bakery in India. Elsewhere on the form, asked to summarize the Beneficiary's work experience, the Petitioner again stated that the Beneficiary's employment at the bakery began in 2021. The Petitioner did not claim or describe any earlier employment by the Beneficiary.

In a separate letter, the Petitioner stated that the Beneficiary "has served as the Vice President of New Product Development and IT of the Parent company since January 2021." The Petitioner did not claim any earlier employment by the Beneficiary. On his own résumé, the Beneficiary did not list any dates of employment, but he claimed no employment other than as vice president of the foreign entity.

In a request for evidence, the Director stated that, given the Beneficiary's January 2021 entry date, "it appears that the beneficiary could not have worked abroad for at least one continuous year during the three-year period preceding the [petition's filing] date." The Director requested evidence of the Beneficiary's uninterrupted employment outside the United States during the relevant period.

In response, the Petitioner stated: "the beneficiary worked remotely when necessary, however he was outside the U.S. I am unable to provide a stamped I-94 copy because this document is no longer stamped when entering the U.S." The Petitioner submitted no documentary evidence to show that the Beneficiary ever left the United States after he entered in January 2021.

The Petitioner submitted a copy of a "Salary Certificate" indicating that the Beneficiary began working for the foreign entity on January 4, 2021, ten days before he entered the United States. The certificate purports to indicate that the foreign entity consistently paid the Beneficiary a salary throughout 2021.

The Director denied the petition, in part because the Petitioner had not established that the foreign entity had employed the Beneficiary outside the United States for at least one year. The Director observed that government records "show that the beneficiary had been in the U.S. in F-1 status from

August 18, 2020 to August 17, 2023, except for two brief trips abroad" in late 2020 and early 2021. The Director acknowledged the Petitioner's claim that the Beneficiary remained on the foreign entity's payroll, but the Director stated: "the one-year foreign employment requirement is only fulfilled by the time the beneficiary spends physically outside the U.S. A petitioner cannot use any time that the beneficiary spends in the U.S. to meet the one-year foreign employment requirement, even if the foreign entity continued to remunerate the beneficiary."

On appeal, the Petitioner states:

> [The Beneficiary] is still employed with the foreign business, he served as an executive manager for the foreign business prior to January 2021. [The Beneficiary] entered the U.S. as an F1 student on January 14, 2021 to complete his Master Degree and he was promoted to serve as the Vice President. Rather than return to the foreign company in India, the President offered [the Beneficiary] an opportunity to remain in the U.S. and develop their new business.

The Petitioner does not cite any evidence in the record to support the new claim that the Beneficiary "served as an executive manager for the foreign business prior to January 2021" and was promoted to the position of vice president after he entered the United States. In its initial submission, the Petitioner repeatedly and consistently indicated that the Beneficiary's employment with the foreign entity began in January 2021. The purported salary certificate indicates that the Beneficiary "has been working with [the foreign entity] as Vice President . . . from 4th January 2021," ten days before he entered the United States. The certificate does not say the foreign entity paid the Beneficiary a salary, or employed him as an executive manager or in any other capacity, before January 2021.

Furthermore, the Petitioner itself had acknowledged, on Form I-129, that the Beneficiary's "Date of Last Arrival" was January 14, 2021. This statement is consistent with government arrival and departure records. The Petitioner's own evidence also confirms that January 2021 was not the Beneficiary's first entry into the United States. The Petitioner initially submitted a copy of the Beneficiary's transcript from the [redacted] showing coursework from 2016 to 2019. The transcript was mailed to the Beneficiary at an address in [redacted] Arkansas in May 2020. The Petitioner has not submitted evidence of comparable or greater weight to show that the Beneficiary was outside the United States during his claimed employment with the foreign entity.

We note that the Petitioner has provided no information about the Beneficiary's newly claimed employment prior to 2021 to establish that it was in a qualifying managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B), and the Petitioner did not provide the dates of the newly claimed employment to establish that it took place over at least one continuous year. Even then, any newly claimed employment abroad before January 2021 would mostly fall outside the three-year period from August 2020 to the August 2023 filing date, and therefore cannot help to establish eligibility under the August 2023 petition.

The Petitioner's claims that the Beneficiary was abroad after January 2021, and was employed by the foreign entity before 2021, contradict the Petitioner's own evidence and prior claims. It is the Petitioner's responsibility to resolve these discrepancies with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the

Petitioner has not submitted any evidence to support the revised claims. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). The Petitioner has contradicted its own earlier claims without sufficient corroboration and explanation.

We agree with the Director that the Petitioner has not met its burden of proof to establish that the Beneficiary engaged in at least one continuous year of qualifying employment abroad during the three years before the petition's filing date. The Petitioner initially claimed that the foreign entity hired the Beneficiary the same month the Beneficiary last entered the United States. The Petitioner's subsequent revisions to that claim are not supported by any credible documentary evidence.

III. QUALIFYING RELATIONSHIP

The Director also determined that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer. 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).

Parent means a legal entity that has subsidiaries. 8 C.F.R. § 214.2(l)(1)(ii)(I). *Subsidiary* means a firm, corporation, or other legal entity of which a parent has an ownership interest and controls the entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). *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. 8 C.F.R. § 214.2(l)(1)(ii)(L).

The regulation and case law confirm that ownership and control are the factors that establish a qualifying relationship between U.S. and foreign entities for purposes of this visa classification. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, 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 asserted that the bakery is the Petitioner's parent company. The Petitioner submitted copies of "Supplementary Deed[s] of Partnership," dated August 2020 and May 2022, naming An.M.K., As.M.K., and M.A.K. as partners in the foreign company. The documents specify percentages of profit sharing under two different sets of circumstances, but they do not specify the division of ownership between those individuals.

The Petitioner stated that it had submitted, at "Exhibit D," a "Copy of the Partnership Agreement as evidence of the ownership and control of the US Corporation." The Petitioner is a limited liability company (LLC), not a corporation. The owners of an LLC are termed "members." Exhibit D includes the Petitioner's certificate of formation, filed with the State of Texas on [redacted] 2023, which named two members, specifically the Petitioner and another individual with the initials A.K. Exhibit D of

the initial submission does not include any partnership agreement or other instrument that transferred membership interests to the foreign company or its partners.

The Director issued a request for evidence (RFE), stating that the Petitioner's initial submission did not establish the claimed parent-subsidiary relationship between the foreign entity and the petitioning U.S. entity. The Director requested evidence to establish that relationship, such as state filings, tax returns, and evidence that the Beneficiary and A.K. had sold their interest in the U.S. entity to the foreign entity. One type of evidence the Director listed in the RFE is "The U.S. entity's current operating agreement and articles of organization, including all amendments as applicable, and listing the names of members and the type and percentage of all membership interests issued by the U.S. entity."

In response, the Petitioner stated that the Beneficiary traveled to the United States to establish the petitioning entity, but "the foreign entity has the controlling interest of 51% of the U.S. entity." The Petitioner submitted copies of five membership certificates and a bank statement which, the Petitioner asserted, documents a "wire transfer of $98,000 to the U.S. entity from India" in July 2023.

The membership certificates show the following membership interests:

As.M.K.	5%
An.M.K.	23%
M.A.K.	23%
The Beneficiary	46%
A.K.	3%

The Director denied the petition, stating that the submitted materials do not show that the foreign entity owns and controls the petitioning U.S. entity. The Director also noted that the ownership certificates contradict the membership information on the Petitioner's certificate of formation.

On appeal, the Petitioner states that it has already "submitted the LLC Membership Certificates and a copy of the U.S. business checking account which reflects the $98,000 wire transfer the foreign owners paid to establish their membership shares in the U.S. business."

We acknowledge this evidence, but we agree with the Director that the evidence is not sufficient to establish a qualifying relationship between the two entities.

The Petitioner asserts, on appeal, that the USA Patriot Act made it difficult for the Beneficiary to establish "a joint checking account for the U.S. business" that included the foreign entity's partners.

A bank statement in the record shows that the Petitioner received $98,000 in incoming wire transfers in July 2023. The bank statement identifies the Beneficiary as the source of the transferred funds. The Petitioner did not submit any documentary evidence to show that the foreign entity, or any of its partners, provided those funds to the Beneficiary. The foreign entity's bank statements, submitted with the petition, do not show that the foreign entity had $98,000 in mid-2023 or transferred that amount to the Beneficiary. The record, therefore, does not establish that the foreign entity or any of its three partners provided any of the transferred funds.

Even so, the Director did not cite the wire transfer as a basis for the denial. Rather, the Director raised issues regarding the claimed proportion of ownership, which the Petitioner has not addressed.

The regulatory definitions at 8 C.F.R. § 214.2(l)(1)(ii) indicate that, to establish a parent-subsidiary relationship, the parent must own some portion of the subsidiary and control the subsidiary. The Petitioner has claimed to be a subsidiary of the foreign entity, but the Petitioner has not submitted any evidence that the foreign employer, as a legal entity, holds any membership interest in the petitioning U.S. employer. The membership certificates name the individual partners, not the foreign entity, as members of the petitioning U.S. LLC. Therefore, the membership certificates do not show that the foreign entity is the Petitioner's parent.

The same regulations require that, to qualify as affiliates, two entities must both be owned and controlled by the same parent or individual, or by the same group of individuals, with each individual owning and controlling approximately the same share or proportion of each entity. The Petitioner's evidence does not satisfy either of the two applicable definitions of "affiliate."

The Petitioner has not shown that any of the foreign entity's individual partners owns a majority interest in, or has de facto control over, both the foreign and U.S. entities. Therefore, the Petitioner has not shown that the two entities are not both owned and controlled by the same parent or individual. Also, the Petitioner has not claimed or established that the two entities are owned and controlled by the same group of individuals, with each individual owning and controlling approximately the same share or proportion of each entity. Rather, the Petitioner has claimed that the two entities are owned by overlapping, but not identical, groups of individuals, with 49% of the U.S. entity held by individuals who are not partners of the foreign entity.

Even then, the Petitioner has not established that the membership certificates are credible. The membership certificates purport to show that the partners of the foreign entity are also members of the petitioning U.S. entity, but the Petitioner submitted no evidence that it had filed these certificates with the State of Texas or otherwise formally notified the state of a change in membership in its required state filings. We note that each of the five certificates states that the petitioning entity "has a total of 1 member." The Petitioner has not established that the membership certificates have any legal force as instruments of membership in the petitioning LLC.

The Petitioner's certificate of formation, filed with the State of Texas on [redacted] 2023, shows only two members, neither of whom is a partner in the foreign entity. The membership certificates bear the same date as the certificate of formation, but they identify five members instead of two. Thus, the Petitioner has submitted two sets of documents showing two different sets of LLC members on the same date. The Petitioner must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

In this instance, the certificate of formation has the most evidentiary weight. It is the only official, state-filed document in the record that shows the Petitioner's membership structure. The Petitioner filed that certificate with the State of Texas on a verifiable date. In contrast, the Petitioner has not submitted any evidence to show that it filed the membership certificates with the state, or that it filed any documentation to amend the list of members. In the RFE, the Director gave the Petitioner the opportunity to submit a copy of a properly filed operating agreement, identifying the LLC's members, but the Petitioner did not

do so. Therefore, the document with the greatest weight in this proceeding identifies only two members of the petitioning U.S. LLC, neither of whom is a partner in the foreign entity.

For the above reasons, we conclude that the Petitioner has not met its burden of proof to establish that it has a qualifying relationship with the foreign entity.

Because the above issues determine the outcome of the Petitioner's appeal, we need not reach, and therefore reserve, the issues of the Beneficiary's employment abroad, the Petitioner's physical premises, and whether the Petitioner's new office would support a managerial or executive position within one year after approval of the petition. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

IV. CONCLUSION

The Petitioner has not established a qualifying relationship with the Beneficiary's claimed former employer abroad and has not shown that the Beneficiary was employed abroad continuously for at least one year during the three years preceding the petition's filing date. We will therefore dismiss the appeal for the above reasons, with each considered an independent and alternative basis for the decision.

ORDER: The appeal is dismissed.