U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32390088

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 director of sales and marketing 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. QUALIFYING RELATIONSHIP

The Director 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.[1] 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 G.S. 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.

[1] A third regulatory definition of "affiliate" relates only to "accounting services" and does not apply in this proceeding.

entity. The Director requested evidence to establish that relationship, such as state filings, tax returns, and evidence that the Beneficiary and G.S. had sold their interest in the U.S. entity to the foreign entity. One type of evidence the Director listed in the RFE is "[t]he 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 G.S. 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%
G.S.	46%
The Beneficiary	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 G.S. 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. But the bank statement identifies G.S. 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 G.S. 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 G.S. 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. 582, 591-92 (BIA 1988).

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 made any other filing 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 issue determines 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).

III. CONCLUSION

The Petitioner has not established a qualifying relationship with the Beneficiary's claimed former employer abroad. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.