U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8908790

Date: JULY 29, 2020

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, a travel agency, seeks to temporarily employ the Beneficiary in the United States 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 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, as required, that the Petitioner had a qualifying relationship with the Beneficiary's foreign employer on the petition's filing date.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. 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).

[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.

II. QUALIFYING RELATIONSHIP

The Director denied the petition based on a determination that the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's foreign employer on the petition's filing date.

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 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 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 filed the petition in February 2019. Nigerian corporate documentation from 2015 shows that the Beneficiary owns 60% of shares in the foreign entity ( ), and her spouse owns the remaining 40%. The Petitioner claimed the following ownership of the U.S. entity:

- 50%
- 30% The Beneficiary
- 20% The Beneficiary's spouse

The above structure would indicate that the two companies had, effectively, the same ownership, with the Petitioner directly or indirectly owning 60% of each company, and her spouse owning the rest. But the Petitioner's initial submission did not include documentation of the ownership or control of the petitioning U.S. entity. The Petitioner did submit a "Special Resolution" from October 2018 by indicating that the petitioning U.S. entity "shall be a subsidiary of ."

The Director advised the Petitioner that the record did not establish the ownership of the U.S. entity. In response, the Petitioner submitted copies of share certificates and a stock ledger, consistent with the amounts claimed above. purchased its shares in January 2019; the Beneficiary and her spouse purchased their shares in May 2019, nearly two months after the Director requested evidence of ownership.

A petitioner must meet all eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). In this instance, the evidence indicates that was the Petitioner's sole shareholder at the time of filing. This establishes ownership, but not control.

The Petitioner's bylaws indicate that "each Stockholder will be entitled to one vote for each share of stock held by that Stockholder, **except for[ ] which is deemed to have one extra vote.**" This arrangement would give "a tie-breaking vote" and, thus, *de facto* control over the petitioning entity, but the bylaws are dated June 2019, several months after the February 2019 filing date. The Petitioner did not adopt these bylaws until after the Director requested evidence of the Petitioner's ownership and control.

In the denial notice, the Director found that bylaws created after the filing date cannot retroactively show that the Petitioner met all requirements at the time of filing.

On appeal, the Petitioner contends that, although it did not adopt its bylaws until June 2019, it nevertheless adhered to the voting procedures before the adoption of those bylaws. This unverified and unverifiable after-the-fact assertion cannot meet the Petitioner's burden of proof to show that qualifying circumstances existed at the time of filing.

The Petitioner's articles of incorporation, filed in October 2018, state: "The number of directors of the corporation shall be 3 which number may be increased or decreased pursuant to the bylaws of the corporation." The Petitioner essentially concedes that it had no bylaws prior to June 2019, and therefore the Petitioner had three directors at the time of filing. Two of the named directors are the Beneficiary and her spouse, with the third being the corporation's registered agent. The Petitioner has not established that, before the formulation and approval of bylaws, control of the company lay with rather than with the company's three directors. The Beneficiary controls as majority shareholder, but the other two directors — including one with no ownership stake in — had the ability to outvote her on issues pertaining to the petitioning U.S. entity.

The Petitioner has not established that it had a qualifying relationship with the foreign entity on the petition's filing date. We will dismiss the appeal for this reason.

III. OTHER ISSUES

Beyond the above issue, which forms the basis for our dismissal of the appeal, we note other issues material to eligibility for the benefit sought. First, we note that a petitioner must show that its intended new office will support an executive or managerial position within one year of the approval of the petition. To this end, a petitioner must established the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(*1*).

At the time of filing, the Petitioner's business plan indicated that the company would hire two employees subordinate to the Beneficiary during the first year of operations. Specifically, the company would hire a manager and a travel agent. The Petitioner did not establish that a company with one first-line employee would require two layers of management.

After the Director issued a request for evidence, the Petitioner modified its organizational plans, indicating that it would also hire an office assistant during its first month of operations. The Petitioner also identified a number of outsourced service providers not previously mentioned. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently

deficient petition conform to requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). As such, these post-filing changes cannot overcome deficiencies that existed at the time of filing. Furthermore, the Petitioner did not explain how these changes would affect the prior financial forecast.

While not a basis for dismissal of the appeal, we also note additional relevant information regarding the Beneficiary's past employment. By law, the Beneficiary must have at least one continuous year of qualifying experience abroad with a qualifying entity during the three years immediately preceding the filing of the petition. *See* section 101(a)(15)(L) of the Act. The Petitioner states that the Beneficiary earned this experience as chief executive officer of [redacted]

However, in 2015 and again in 2017, the Beneficiary appeared at the U.S. Consulate in [redacted] Nigeria, to apply for a nonimmigrant visa. On both occasions, when asked about her current employment, the Petitioner identified herself as the executive director of [redacted] She did not mention [redacted][2] These two inconsistent employment histories raise questions that the Petitioner must address in any proceeding in which her 2015-2017 employment history is a material issue.

IV. CONCLUSION

Because the Petitioner has not satisfactorily established a qualifying relationship with [redacted] as of the filing date, we will dismiss the appeal.

ORDER: The appeal is dismissed.

[2] The Petitioner's business plan discusses the Beneficiary's employment history, indicating that she "served in a non-executive capacity in various companies such as [redacted]"