U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38949663

Date: JUN. 23, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, describing itself as a seller of electrical accessories, seeks to temporarily employ the Beneficiary as the general manager 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 record did not establish that it had a qualifying relationship with the Beneficiary's foreign employer. 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 remand the matter for entry of a new decision.

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

[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.

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

As discussed, the Director concluded the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's former foreign employer.

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").

Beyond meeting the regulatory definition of qualifying relationship, we also look to regulation and case law which 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). 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.

In denying the petition on this ground, SCOPS focused on the ownership of the asserted foreign parent company and concluded the Petitioner did not demonstrate that it and the foreign employer qualified as affiliates. More specifically, SCOPS stated the Petitioner did not establish that it and the foreign employer were two companies owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity.

On appeal, the Petitioner contends that SCOPS misapplied the regulatory definition of affiliates and asserts that it and the foreign employer qualified as parent and subsidiary. The Petitioner asserts that the submitted bylaws, stock certificate, and stock ledger reflect that the foreign employer wholly owns the Petitioner, and in turn that they are parent and subsidiary.

Upon review, SCOPS erred in applying the definition of affiliates when concluding that a qualifying relationship had not been established. The Petitioner clearly indicated in section 1, item 10 of the L Classification Supplement to the Form I-129, Petition for a Nonimmigrant Worker, that the foreign employer owned 100% the Petitioner.[2] The Petitioner submitted a stock certificate reflecting that the

[2] A parent is a firm, corporation, or other legal entity that owns another firm, corporation, or other legal entity that qualifies as its subsidiary. A parent owns a subsidiary when it:

- Owns more than 50 percent (directly or indirectly) of the entity and controls the entity;
- Owns 50 percent (directly or indirectly) of the entity and controls the entity;
- Owns 50 percent (directly or indirectly) of the entity that is a 50-50 joint venture and has equal control and veto power over the entity; or

foreign employer owned 100,000 shares in the Petitioner, or all of its issued shares. The Petitioner also provided a stock transfer ledger indicating that all 100,000 shares in the Petitioner were issued to the foreign employer.

However, as general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. In addition, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting control of the entity. *See Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. at 365. Without full disclosure of all relevant documents, we cannot determine the elements of ownership and control.

The regulations also specifically allow a director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, SCOPS may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. Evidence should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence could include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

The submitted evidence is insufficient to establish that consideration was paid by the foreign employer for ownership in the Petitioner. For instance, the Petitioner submitted documentation reflecting that the Beneficiary (50% owner of the foreign employer) contributed $302,000 to the Petitioner in January 2025, while the 40% owner of the foreign employer transferred $320,000 to the Petitioner in December 2024. Based on this evidence, it is not clear that consideration was paid by the foreign employer for its claimed ownership of 100,000 of the Petitioner's shares. For example, there is no indication that money was transferred from the foreign employer to the Petitioner and the record includes no stock purchase agreement and insufficient supporting documentation to substantiate that a stock transaction took place, such as meeting minutes. The lack of this evidence and the documentation reflecting contributions to the Petitioner by the foreign employer owners, and not the foreign employer, leaves uncertainty as to whether the foreign employer was in fact the parent company of the Petitioner. The Petitioner must resolve inconsistencies and ambiguities 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).

As such, due to SCOPS' error in applying the definition of affiliates rather than the parent-subsidiary regulatory definition, SCOPS will reconsider the submitted evidence on remand and determine whether the Petitioner established this asserted qualifying relationship. The Director may request additional evidence considered pertinent to the new determination we have instructed.

- Owns less than 50 percent (directly or indirectly) of the entity but in fact controls the entity. *See* 8 CFR 214.2(l)(1)(ii)(K).

III. MANAGERIAL OR EXECUTIVE CAPACITY WITHIN ONE YEAR

Further, beyond the decision of the director, the record as currently constituted is also not sufficient to demonstrate that the Beneficiary would more likely than not be employed in a managerial or executive capacity within one year. The Petitioner submitted generic duty descriptions for the Beneficiary and his asserted subordinates that do not sufficiently demonstrate that he would primarily perform qualifying managerial or executive duties within one year. In addition, although the Petitioner provided evidence indicating that there were investments transferred to the Petitioner from two of the foreign employer owners, it did not adequately discuss how this amount would be used to successfully launch the business within one year.[3] On remand, the Petitioner should also consider this issue and request any additional evidence deemed necessary. We express no opinion regarding the ultimate resolution of this matter on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[3] In the case of a new office petition, we review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in analyzing whether the proposed managerial or executive position is plausible based on a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the managerial-level and that often the full range of managerial responsibility cannot be performed. To qualify for the L-1 nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment and establish that the proposed enterprise will support a managerial or executive position within one year of the approval of the petition. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying managerial or executive-level duties. *Id.*