U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7141830

Date: MAR. 20, 2020

Appeal of California Service Center Decision

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

The Petitioner, describing itself as a wholesale distributor of Indian imports, seeks to temporarily employ the Beneficiary as the president 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 Director of the California Service Center denied the petition on multiple grounds. The Director concluded that the Petitioner did not establish, as required, that: 1) it had a qualifying relationship with the Beneficiary's foreign employer; 2) the Beneficiary is employed in a managerial or executive capacity abroad; and 3) the Beneficiary would be employed in a managerial or executive capacity in the United States within one year.

On appeal, the Petitioner contends that the same four individuals own both it and the foreign employer thereby establishing common ownership and a qualifying relationship. Further, the Petitioner asserts that the Beneficiary acts in a managerial capacity abroad and that he would act in this capacity in the United States.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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*.

[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.

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 first issue we will address is whether the Petitioner established that it has 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"). 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). 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 the L Classification Supplement to [the] Form I-129, Petition for a Nonimmigrant Worker, the Petitioner stated in section 1, item 9 that it was a subsidiary of the Beneficiary's foreign employer. The Petitioner also indicated in section 1, item 10 that the foreign employer was owned by four members each holding 2500 shares, [redacted], [redacted], [redacted] and [redacted] It further explained that there was the "same percentage of ownership for the [Petitioner] for each member" and that the Beneficiary "is a member of the [redacted] family which owns the foreign company."

In response to the Director's request for evidence (RFE) and now on appeal, the Petitioner submits its asserted operating agreement listing the four claimed owners of the foreign employer discussed above and stated that "the four members listed…are the only Members of the Company." Further, section B. 4. of the operating agreement states "the members shall contribute the amount of $100,000 in cash for working capital derived from the parent company." Meanwhile, section I. 22. of the operating agreement indicated that "the Members own [a] 100% interest in the Company and its business."

As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership, and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of

membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting control of the entity. *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986).

The Petitioner has not submitted sufficient supporting documentation to establish its ownership and a qualifying relationship with the Beneficiary's foreign employer. For instance, the asserted operating agreement does not reflect the specific percentages of ownership in the Petitioner or the amount of contributions made by its claimed members. Further, the asserted operating agreement only ambiguously states that "the Members own 100% interest in the Company and its business" and also vaguely indicates that "the members shall contribute the amount of $100,000 in cash for working capital derived from the parent company." However, the agreement does not reflect the amounts contributed by each member nor is there any evidence of these contributions being made by each member. Similarly, the Petitioner has not provided membership certificates, minutes of member meetings reflecting the issuance of membership interests or contributions made, or other similar supporting documentation to clearly demonstrate its ownership. In fact, as noted by the Director in the RFE and the denial decision, the record includes no evidence of the $100,000 investment in the Petitioner set forth in the submitted operating agreement, leaving question as to whether its members made contributions in exchange for an ownership interest as claimed. Therefore, since the Petitioner has not sufficiently established its ownership, it has not demonstrated that it has a qualifying relationship with the foreign employer.

In addition, the Petitioner submitted other conflicting documentation leaving further uncertainty as to its assertion that it is owned equally by its four asserted members. For example, on appeal, the Petitioner provides a New Jersey business registration document including a section "ownership type" which identifies the company as a "Ltd. Liability Co. – Single Member." Likewise, this document lists only one owner [redacted] and reflects that he "(Owns 100%)." Similarly, the Petitioner submitted its certificate of formation listing only one "member/manager;" namely, the same aforementioned owner set forth in its New Jersey business registration document. In sum, these discrepancies only leave further question as to the Petitioner's actual ownership and whether it is owned equally by four members as claimed. The Petitioner must resolve inconsistencies 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). For these reasons, the Petitioner has not established that it and the foreign employer are affiliates, or one of two subsidiaries both owned and controlled by the same parent or by the same group of individuals, each owning and controlling approximately the same share of proportion of each entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L).[2]

The appeal must be dismissed as the Petitioner has not demonstrated that there was a qualifying relationship between it and the foreign employer.

[2] We acknowledge that in the supplement to the Form I-129 the Petitioner indicated that it and the foreign employer were subsidiary and parent. However, there is no indication based on the Petitioner's assertions or the submitted evidence that either entity owns a majority of the other. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K).

III. FOREIGN EMPLOYMENT IN A MANAGERIAL CAPACITY

As we have discussed, the Director also denied the petition concluding that the Petitioner did not establish that the Beneficiary is employed in a managerial or executive capacity abroad. Because of the dispositive effect of the above finding of ineligibility, we will only briefly address whether the Beneficiary acts in a managerial or executive capacity abroad. The Petitioner does not claim that the Beneficiary is employed in an executive capacity abroad. Therefore, we restrict our analysis to whether the Beneficiary is employed in a managerial capacity.

In denying the petition on these grounds, the Director determined that the Beneficiary's foreign duties were insufficient to demonstrate his day-to-day tasks abroad. On appeal, the Petitioner lists additional duties for the Beneficiary. However, these additional tasks do little to establish that the Beneficiary primarily acts in a managerial capacity abroad.

The Petitioner submitted a duty description that does not credibly convey the Beneficiary's actual day-to-day managerial duties within the context of its business. For instance, the duty description vaguely indicated that the Beneficiary makes "decisions on debt reduction," "reduction in staff," "established financial rewards," "company's spending, debt service, investment strategies, and profits," and noting that he establishes "lines of credit with banks." Likewise, the Petitioner ambiguously indicated that the Beneficiary "works on advertising" and "sales events," makes "final decisions on add[ing] new product line[s] or eliminat[ing] product line[s]," prepares the annual budget, and that he establishes and revises "the required training program." However, the Petitioner provides no credible details and supporting documentation to substantiate the debt or staff reductions the Beneficiary managed, the financial rewards he established, spending and investment decisions he made, or lines of credit he secured abroad. Similarly, the Petitioner submitted no specifics and documentation to corroborate the advertising the Beneficiary decided on, the product lines he added or eliminated, annual budgets he set, or training programs he established abroad. The Petitioner's vague statements and the lack of documentation relative to the Beneficiary's asserted role abroad did not sufficiently substantiate his actual day-to-day managerial tasks. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

For the foregoing reasons, we affirm the Director's conclusion that the Petitioner did not establish that the Beneficiary acts in a managerial capacity abroad.

IV. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The last issue we will address is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity in the United States within one year of an approval of the petition. Again, because of the dispositive effect of the above findings of ineligibility, we will only briefly address this issue.

In denying the petition, the Director emphasized that the Petitioner did not provide sufficient detail regarding its first year hiring plans, the proposed positions subordinate to the Beneficiary did not appear to be supervisory or professional, and the lack of evidence of its proposed investment in the

new venture. On appeal, the Petitioner does not address these insufficiencies noted by the Director. For example, the Petitioner submitted a proposed organizational chart reflecting that it would hire an operations manager, a health and safety inspector, an import/export compliance manager, a warehouse supervisor, and warehouse and delivery associates subordinate to the Beneficiary to manage and operate its proposed food distribution business. However, as noted by the Director, the Petitioner did not provide a timeline to demonstrate when these proposed employees would be hired. In fact, the Petitioner only ambiguously stated that "staff will be hired as needed based on the financial growth and development of the business." These generic statements do not establish that the Petitioner is likely to develop sufficiently during the first year to support the Beneficiary in a qualifying managerial capacity. Indeed, the record includes several non-qualifying operational duties for the Beneficiary, including discussion of him making frequent visits to small grocery stores to generate sales, promoting seasonal products, and overseeing the shipping of goods. However, the Petitioner has not clearly articulated and supported how the Beneficiary would be primarily relieved of these non-qualifying operational level tasks within one year.

Lastly, the Petitioner did not demonstrate the foreign employer's investment in the new venture in the United States as required by the regulations. In order to qualify for 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. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). The Petitioner submitted a business plan indicating that the total start-up funding required to launch the business was $200,000; and as discussed, it claimed that its members had invested $100,000 when forming the company. However, as noted, the Petitioner provides no supporting documentation to corroborate that these amounts were invested in the new venture. In fact, as noted by the Director, the Petitioner provided bank account information reflecting that only $14,000 had been committed to the business. On appeal, the Petitioner vaguely states that "only limited funds have been invested into the new business venture" and that "the partners will provide future funding when the beneficiary is able to work in the U.S." The Petitioner's generic statements and the submitted evidence are not sufficient establish the size of the U.S. investment in the proposed new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

For the above stated reasons, the Petitioner did not establish that the Beneficiary would act in a managerial capacity in the United States within the first year.

V. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that: 1) it had a qualifying relationship with the Beneficiary's foreign employer; 2) Beneficiary is employed in a managerial or executive capacity abroad; or 3) the Beneficiary would be employed in a managerial or executive capacity in the United States within one year.

ORDER: The appeal is dismissed.