U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 1989978

Date: MAR. 29, 2021

Appeal of Vermont Service Center Decision

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

The Petitioner seeks to operate as a convenience store. It intends to temporarily employ the Beneficiary as "President" of its new office[1] 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 Vermont Service Center denied the petition concluding that the Petitioner did not establish, as required, that: (1) it has a qualifying relationship with the Beneficiary's employer abroad; (2) the Beneficiary's employment abroad was in an executive capacity; and (3) the Petitioner would employ the Beneficiary in an executive capacity within one year of the petition's approval.[2] The matter is now before us on appeal.[3]

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 because the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's employer abroad. Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding the remaining issues pertaining to the Beneficiary's foreign and proposed employment in an executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

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[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.

[2] The Petitioner does not claim that the Beneficiary's employment abroad was, or that the proposed U.S. employment would be, in a managerial capacity.

[3] Although the Petitioner provided a letter from [redacted] listing the Form G-28, Notice of Entry of Appearance of Attorney or Accredited Representative, as among the Petitioner's submissions on appeal, a Form G-28 was not submitted. Therefore, we will treat the Petitioner as self-represented in this appeal proceeding.

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.*

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 primary issue to be addressed in this matter is whether the Petitioner established that it has a qualifying relationship with the Beneficiary's employer abroad. 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).

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 this matter, the Petitioner provided information in the L Classification Supplement to Form I-129 listing [redacted] as the Beneficiary's foreign employer and stating that the Petitioner is related to the foreign entity as its subsidiary, thereby indicating that the foreign entity owns and controls the U.S. Petitioner. 8 C.F.R. § 214.2(l)(1)(ii)(K). However, in a description of the stock ownership and managerial control in No. 10 of the L Classification Supplement, the Petitioner stated that the Beneficiary owns "100%" of both entities, thereby indicating that the two entities are related as affiliates because they are both owned and controlled by the same individual. *See* 8 C.F.R. § 214.2(l)(1)(L). As supporting evidence, the Petitioner provided its certificate of formation showing that it was authorized to issue one million shares and a stock certificate showing that all one million shares were issued to the Beneficiary.

Because the Petitioner provided evidence showing that it is owned by the Beneficiary and not by the foreign entity, a parent-subsidiary relationship cannot be said to exist between the two entities. As

such, we will examine the foreign entity's ownership to determine whether it and the Petitioner share common ownership and control by as affiliates. *See id.* In this instance, the record includes the following documents: (1) the foreign entity's "Taxpayer Online Verification," dated August 2017, listing the Beneficiary's name and the foreign entity's name, business address, and business activities; (2) the foreign entity's business registration for the one-year period from June 2016 to July 2017, also listing the Beneficiary's name and the foreign entity's name, business address, and business activities; (3) a "Renewal of Tenancy Agreement" signed by the managing director of [redacted] where the foreign entity's business was located, and the Beneficiary as "tenant" representing the business housed at a space at the [redacted] and (4) the Beneficiary's 2016 tax return listing the Beneficiary as "individual deriving income under the head business except salary." Although the submitted documents include the Beneficiary's name and indicate that he is the foreign entity's point of contact, they do not establish that the Beneficiary owns the foreign entity. The Petitioner provided no documents specifically identifying the Beneficiary as the business owner.

Accordingly, the Director issued a request for evidence (RFE) informing the Petitioner that it has not established that it has a qualifying relationship with the foreign entity because it has not provided sufficient evidence demonstrating the Beneficiary's ownership of the foreign entity. The Director requested that the Petitioner provide documents containing details about the foreign entity's formation, management, and ownership and any meeting minutes listing the shareholders of the foreign entity.

In response, the Petitioner stated that [redacted] is the company that is establishing the U.S. affiliate business" and submitted documents pertaining to the Petitioner's ownership and control. The Petitioner also provided the foreign entity's "interim" bank statement, which lists the Beneficiary's name and shows transactions between November 2016 and May 2017. Although this and the four originally submitted documents indicate that the Beneficiary was the foreign entity's point of contact, they do not adequately address the RFE's request for documents containing details about the foreign entity's formation, management, and ownership or any meeting minutes listing the shareholders of the foreign entity. document. Further, although the Petitioner also provided copies of fund transfer requests showing the Beneficiary as the account holder and recipient of various funds, the Petitioner did not explain how or if these documents are relevant to the issue of the foreign entity's ownership.

On appeal, the Petitioner provides a brief reiterating its claim regarding the Beneficiary's ownership of the foreign entity and again provides copies of the documents described above in Nos. 1-4 as a representation of the Beneficiary's ownership of the foreign entity. In light of the deficiencies listed above, we disagree with the Petitioner's assertions and question its reluctance to provide documents containing details about the foreign entity's formation, management, and ownership or the meeting minutes listing the foreign entity's shareholders, as requested in the RFE. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Because the Petitioner did not provide sufficient evidence establishing the Beneficiary's ownership of the foreign entity, we cannot conclude that the Petitioner and the foreign entity are affiliates and that they have the requisite qualifying relationship.

ORDER: The appeal is dismissed.