U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 16709265

Date: MAY 26, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, describing itself as an e-commerce shipping and logistics company, seeks to temporarily employ the Beneficiary in the United States as its director and chief commercial officer 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 Texas Service Center denied the petition, concluding the record did not establish that it had a qualifying relationship with the Beneficiary's former foreign employer. On appeal, the Petitioner contends the Director erred in concluding that the foreign employer was owned equally by three individuals. The Petitioner asserts that it and the foreign employer are affiliates since they are both wholly owned by the same entity.

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, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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 also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

## II. QUALIFYING RELATIONSHIP

The sole issue to address is whether the Petitioner established 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.

The Petitioner indicated in section 1, item 10 of the L classification supplement to the Form I-129, Petition for a Nonimmigrant Worker that it and the foreign employer are wholly owned by an affiliated company [redacted], and as such, that they qualify as affiliates.

Upon review, we conclude that the Petitioner has not provided sufficient evidence to establish its ownership as necessary to demonstrate a qualifying relationship. As general evidence of a petitioner's claimed qualifying relationship a petitioner must submit evidence to demonstrate the ownership and control of a corporate entity. The company's share certificates, 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.

Further, it is also reasonable for United States Citizenship and Immigration Service (USCIS) to look beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. This evidence could 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. Without full disclosure of all relevant documents, we cannot properly determine the elements of ownership and control.

The Petitioner has provided little of the required supporting documentation to establish the asserted ownership of its shares. For instance, the Petitioner only submitted its certificate of incorporation in the State of Delaware from March 2016, its bylaws, and a stock purchase agreement executed between it and the [redacted] company dated in April 2017. The stock purchase agreement was the only document provided that reflected any potential ownership of shares in the Petitioner. However, the Petitioner

did not submit the other required documentation to substantiate its ownership, such as share certificates, a corporate stock certificate ledger or registry, minutes of relevant annual shareholder meetings reflecting the issuance or transfer of shares, evidence of consideration paid for shares, or other such relevant supporting documentation. This lack of supporting evidence is notable since it is not clear how the Petitioner owned 1,000 shares of itself and how it could have transferred these shares to the [redacted] company. For instance, it is reasonable to conclude that shares in the Petitioner were issued upon its creation in March 2016, yet there is no evidence to corroborate this initial ownership and how, and from whom, these shares were transferred to the [redacted] company as claimed. Therefore, the Petitioner did not submit sufficient evidence to establish its ownership as necessary to demonstrate the required qualifying relationship.

Likewise, the Petitioner also did not provide sufficient evidence to demonstrate the foreign employer's ownership as of the date the petition was filed. For example, as noted by the Director, the Petitioner provided an incorporation form filed in October 2014 in [redacted] reflecting that the foreign employer was owned by three individuals, each holding 3,000 shares in the entity. The Petitioner also submitted a foreign employer "Annual Return" filed on [redacted] in October 2017 appearing to show in schedule 1 that all the foreign employer's shares were transferred to the [redacted] company. However, this schedule within the annual return indicated that 4500 shares each were transferred by two individuals to the [redacted] company, and not transferred by the three individual owners listed in its initial incorporation form. This discrepancy leaves uncertainty as to the foreign employer's ownership as well as question as to why all supporting documentation relevant to the foreign employer's ownership was not submitted, such as its share certificates, a stock registry, minutes of shareholder meetings, or other such probative documentation. 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, the Petitioner did not provide sufficient supporting documentation to demonstrate ownership in the foreign employer.

Therefore, the Petitioner has not established its ownership or that of the foreign employer with sufficient supporting evidence. Again, 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. For the foregoing reasons, the Petitioner has not established that it has a qualifying relationship with the Beneficiary's foreign employer.

**ORDER:** The appeal is dismissed.