U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-I- CORP.

DATE: NOV. 6, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an automobile parts and repair business, seeks to continue the Beneficiary's temporary employment as its "Executive Manager" under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 concluded that the Petitioner did not establish, as required, that it had a qualifying relationship with the Beneficiary's former foreign employer. Further, the Director determined that the Petitioner did not demonstrate that the Beneficiary would act in a managerial or executive capacity in the United States.

On appeal, the Petitioner asserts it has established that it is a branch office of the foreign employer wholly owned by the Beneficiary. With respect to the Beneficiary's U.S. employment, the Petitioner contends that the Director disregarded submitted evidence and did not take into account its reasonable needs. It states that it has sufficiently established that the Beneficiary would act in a managerial or executive capacity under an extended petition.

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 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

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period April 4, 2017, until April 3, 2018. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. QUALIFYING RELATIONSHIP

The first issue we will address 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.

The Petitioner indicated in the Form I-129, Petition for a Nonimmigrant Worker that it was a branch office of the Beneficiary's foreign employer [redacted] based in China. The Petitioner also stated in a support letter provided with the petition that the foreign employer was its "parent company" and referred to itself as the "subsidiary." The Petitioner further submitted a share certificate indicating that 1,000 of its shares were owned by the foreign employer.

Elsewhere in the record and now on appeal, the Petitioner submits statements and evidence that contradict the assertion that it is wholly owned by the foreign employer. For instance, on appeal, the Petitioner states that "[the Beneficiary] owns the company...but owning this company does not correlate [*sic*] the fact that this company is not the Chinese company's branch." In addition, the Petitioner provided a City of [redacted] business license application listing the Beneficiary as its owner in a section requesting the names of the owners and partners of the company. The Petitioner also submitted 2016 and 2017 IRS Forms 1120, U.S. Corporation Income Tax Returns indicating in Schedule G, Part II that 100% of its shares were owned by the Beneficiary. With these discrepancies, the Petitioner has not credibly established its actual ownership. Further, notably, the Petitioner does not indicate how, as it asserts on appeal, that it could be both a branch and subsidiary of the foreign employer, while also being wholly owned by the Beneficiary. The Petitioner must resolve

inconsistencies and discrepancies 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).

The Petitioner does not submit sufficient evidence to overcome the inconsistent statements and evidence as to its ownership. 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.

The regulations 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, a director 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.

However, without full disclosure of all relevant documents, we are unable to determine the elements of ownership and control. The Petitioner only submitted a stock certificate reflecting that 1,000 of its shares were owned by the foreign employer, but provided none of the other evidence required to substantiate its ownership, such as its stock ledger, articles of incorporation, minutes to demonstrate all stock issuances, stock purchase agreements, evidence of consideration paid for stock, or other similar evidence to sufficiently corroborate its actual ownership. This lack of evidence is particularly important here since the Petitioner makes conflicting statements as to its ownership. Therefore, the Petitioner has not submitted sufficient evidence to establish its ownership; as such, it has not demonstrated that it has a qualifying relationship with the Beneficiary's foreign employer.

Further, the Petitioner has also not submitted any evidence to demonstrate the foreign employer's ownership. In Section 1, Item 10 of the L Classification Supplement to the Form I-129, the Petitioner indicated that [redacted] [is] 100% owner of [the] Chinese Company." However, the Petitioner provides no supporting documentation to substantiate this statement, again a notable insufficiency given that it submitted evidence indicating, and it states on appeal, that it is wholly owned by the Beneficiary. Despite the Director noting this in the denial decision, the Petitioner provides no probative evidence to demonstrate the foreign employer's ownership.

For the foregoing reasons, the Petitioner has not established that it has a qualifying relationship with the Beneficiary's foreign employer.

III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

As we have discussed, the Director also denied the petition concluding that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. Because of the dispositive effect of the above finding of ineligibility; namely, our affirmation of the Director's conclusion that the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's foreign employer, we will only briefly address the remaining issue addressed by the Director.

In denying the petition on these grounds, the Director determined that the Beneficiary's duties were generic and noted that the Petitioner did not submit supporting documentation to substantiate that he was primarily engaged in qualifying managerial or executive duties as of the date the petition was filed. On appeal, the Petitioner contends that the Director disregarded submitted evidence and did not take into account its reasonable needs. It states that it has sufficiently established that the Beneficiary would act in a managerial or executive capacity under an extended petition.

Upon review, the provided evidence does not sufficiently demonstrate that the Beneficiary would act in a managerial or executive capacity in the United States under an extended petition.

The Petitioner indicated that it was, or would be engaged in, the "selling of both American and Chinese auto spare parts to Chinese and American consumers" and stated that the Beneficiary "exports U.S. Automobile Parts to Chinese distributors and consumers." The Petitioner further submitted evidence indicating that it purchased a U.S. business in November 2017, stating that this business "also does auto repairs using spare auto parts."

As previously mentioned in this decision, the Petitioner was previously approved for a new office petition. Despite this, in Section 1, Item 10 of the L Classification Supplement to the Form I-129 the Petitioner asserted that the Beneficiary was coming to the United States to open a new office. Likewise, the Petitioner stated in support letters that it was in an "initial phase of operations" and in a "critical startup phase;" and it indicated that the Beneficiary would "establish a healthy set up for the company" and create "the Company's customer base."

We note that the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the intended U.S. operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations allowing for an extension of this one-year period. If the Petitioner does not have the necessary staffing after one year to sufficiently relieve the Beneficiary from performing operational and administrative tasks, they are ineligible for an extension. As such, the Petitioner's assertions and its apparent request for another year as a new office leaves substantial uncertainty as to whether it has developed sufficiently during the first year to support the Beneficiary in a managerial or executive capacity.

The Petitioner also submitted substantial documentation reflecting the Beneficiary's performance of non-qualifying operational duties near to and after the date the petition was filed. For instance, the Petitioner provided documents reflecting the Beneficiary's name on purchase invoices for automobile parts, him signing checks of small value for the purchase of parts, and him paying the company's

expenses such as its electric bill. Indeed, in response to the Director's request for evidence (RFE), the Petitioner states that the Beneficiary "wants to export U.S. Automobile Parts to Chinese distributors and consumers," and it otherwise provides no documentation to demonstrate that he is primarily delegating the non-qualifying operational tasks related to this to subordinates. In fact, it provides no evidence that it has any employees beyond the Beneficiary, as its submitted organizational chart reflects no specific information related to the names, duties, salaries, or educations of its employees. Further, a California employer's quarterly wage tax report for the first quarter of 2018 reflected that the automobile repair and parts business it acquired in November 2017 employed only two mechanics at the time coinciding with the date the petition was filed in March 2018. This evidence only reinforces a conclusion that the Beneficiary is most likely engaged in the non-qualifying operational duties related to buying and selling automobile parts, as reflected in numerous transactional documents submitted on the record. This evidence indicates that the Petitioner has not developed sufficiently during the first year to support the Beneficiary in a managerial or executive capacity.

Whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties would be managerial or executive functions and what proportion would be non-qualifying. The Petitioner submitted documentation reflecting the Beneficiary performing non-qualifying operational tasks, but it does not quantify the time he spends on these duties as compared to qualifying managerial tasks. Indeed, it is notable that the Petitioner did not provide any detail and submitted no documentation to substantiate the Beneficiary's daily managerial tasks. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of a manager or an executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Lastly, the regulations further require that a petitioner requesting the extension of a new office petition on behalf of a beneficiary submit evidence of the financial status of the United States operation. 214.2(l)(1)(14)(ii)(E). However, the Petitioner does not articulate or provide evidence to substantiate its financial position as of the date the petition was filed as necessary to demonstrate that it is operating sufficiently to support the Beneficiary in a managerial or executive capacity after one year. In fact, a submitted 2017 IRS Form 1120 reflected that it earned only approximately $8,000 in revenue during the first eight months of the Beneficiary's new office petition. Otherwise, the Petitioner submits no evidence to demonstrate its financial position after one year.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-I- Corp.*, ID# 6503963 (AAO Nov. 6, 2019)