U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13355861

Date: NOV. 20, 2020

Appeal of California Service Center Decision

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

The Petitioner, describing itself as an operator of a market, seeks to temporarily employ the Beneficiary as the president of its new office[1] in the United States 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 concluding the Petitioner did not establish that: 1) it had a qualifying relationship with the Beneficiary's foreign employer, 2) the Beneficiary was employed abroad for one continuous year in the three years preceding the date the petition was filed, 3) the Beneficiary was employed by the foreign employer in a managerial or executive capacity, and 4) the Beneficiary would be employed in a managerial or executive capacity within one year of an approval of the petition. On appeal, the Petitioner asserts that the Director overlooked submitted evidence demonstrating the Beneficiary's eligibility.

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 as the submitted evidence does not establish that the Petitioner had a qualifying relationship with the Beneficiary's foreign employer. Since this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments related to the Director's other grounds for denial. 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).

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

[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.

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 their 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 sole issue we will 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 was wholly owned by the Beneficiary's foreign employer. In support of the petition, the Petitioner provided no supporting documentation to support this assertion. In a request for evidence (RFE), the Director requested that the Petitioner submit supporting documentation to substantiate its ownership and control, such as share certificates, meeting minutes, a stock ledger, articles of incorporation, evidence of capital contributions in exchange for ownership, or other such relevant evidence. In response, the Petitioner provided documentation related to the purchase of a convenience store and market and its 2019 IRS Form 1120, U.S. Corporation Income Tax Return indicating in schedule G that 100% of its shares were owned by the Beneficiary's foreign employer. The Petitioner also provided its articles of incorporation; however, this document did not reflect the issuance of any shares or corroborate its claimed ownership.

In denying the petition, the Director emphasized that the Petitioner's 2019 IRS Form 1120 was unsigned and dated after the date the petition was filed. The Director also noted that the Petitioner's provided articles of incorporation did not include any indication of who owned and controlled the

entity. On appeal, the Petitioner now submits a signed 2019 IRS Form 1120, again reflecting in schedule G that 100% of its shares are owned by the foreign employer.

Upon review, we conclude that the Petitioner has not provided sufficient evidence to establish its ownership as required to demonstrate a qualifying relationship. As evidence of a petitioner's claimed qualifying relationship and to determine whether a stockholder maintains ownership and control of a corporate entity, we look to stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings to determine the total number of shares issued, the exact number issued to shareholders, 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 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, 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, the Petitioner has provided no documentation predating the date the petition was filed in September 2019 to establish that it is wholly owned by the foreign employer. Without full disclosure of all relevant documents, we are unable to determine the elements of ownership and control.

As noted by the Director, the Petitioner has only submitted a 2019 IRS Form 1120 signed in March 2020, after the date the petition was filed. In addition, the Petitioner provides no additional evidence dated prior to the date the petition was filed to establish its ownership nor any of the supporting documentation required by law to substantiate its ownership, discussed at length above. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). The Petitioner must resolve 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). In sum, the submitted evidence is insufficient to establish the Petitioner's ownership and that it is wholly owned by the foreign employer as asserted.

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.