U.S. Citizenship and Immigration Services

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

In Re: 10907516

Date: OCT. 15, 2020

Appeal of California Service Center Decision

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

The Petitioner, a label printing company, seeks to continue the Beneficiary's temporary employment as its operations manager 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 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 denied the petition, concluding that the record did not establish, as required, that: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (2) the foreign employer continuously employed the Beneficiary for at least one year during the three years preceding the filing of the petition; (3) the Beneficiary has been employed abroad in a capacity that is managerial, executive, or involved specialized knowledge; and (4) the Beneficiary will be employed in the United States in a managerial or executive capacity. The matter is now before us on appeal.

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.

## I. LAW

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.*

## II. QUALIFYING RELATIONSHIP

The Director determined that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer.

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).

The 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 for purposes of this visa classification. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, 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.

### A. Ownership of U.S. Company

The Petitioner asserts that its chief executive officer (CEO) owns 100% of the U.S. entity and 75% of the foreign entity. The materials submitted with the petition present conflicting information about the ownership of the petitioning entity:

- The Petitioner's articles of incorporation, filed [redacted] 2015, authorized the issuance of 100 shares of stock. A "Unanimous Written Consent" (UWC) dated [redacted], 2015, names the CEO as owner of all 100 shares.
- The Petitioner's 2016 and 2017 income tax returns both name four 25% shareholders, including the CEO; the Beneficiary; the general manager (GM); and one other individual.
- An organizational chart from 2018 names the same four individuals both as shareholders and as members of the Petitioner's board of directors.
- The CEO, the Beneficiary, and the GM signed a UWC, dated December 18, 2018, stating that "a certain [unnamed] past officer of the Company" prepared "certain documents . . . that are inaccurate, invalid, and potentially in violation of applicable law." The document indicates that the CEO is the sole shareholder, as specified on the 2015 UWC.
- A share ledger dated December 18, 2018, indicates that the CEO has been the sole shareholder since [redacted] 2015.
- A share certificate dated December 22, 2018, names the CEO as owner of all 100 shares.
- The GM signed the petition form, indicating his title as "Co-Owner."

Because of these inconsistent claims, the Director asked for additional documentation to resolve the question of share ownership. The Director noted that the Petitioner had not shown that it filed amended tax returns to correct ownership errors on the 2016 and 2017 returns. The Director also stated that the Petitioner had not submitted evidence that the CEO purchased shares in the company.

In response, the Petitioner stated that the CEO "did not purchase[] the shares, they were assigned to him in order to restore the valid situation of the shares." The 2018 UWC, however, referred to the "Number of Shares Purchased" by the CEO; quoted the "Aggregate Purchase Price"; and indicated that "the per share purchase price is equal to or in excess of the fair market value of the Company's Common Shares." The UWC also indicated that the shares were "offered and sold in accordance with" applicable securities laws.

The Director denied the petition, in part because the Petitioner had not sufficiently corroborated the company's actual ownership and resolved the discrepancies in the record. On appeal, the Petitioner repeats its prior assertions, and adds that U.S. Citizenship and Immigration Services (USCIS) approved another L-1A petition in February 2019, thus establishing that USCIS considered "that the documentation was sufficient to prove the relationship between the two companies." That petition is not part of the record before us, and neither is the 2016 petition that initially granted the Beneficiary L-1A nonimmigrant status. Therefore, we cannot determine whether those petitions were approved in error.

Some of the documents in the record present a plausible chronology, with the Petitioner taking steps in 2018 to remedy the erroneous issuance of shares. But discrepancies remain. The Director noted that the Petitioner does not appear to have corrected prior tax filings listing four shareholders, and the Petitioner submitted an organizational chart listing the same four shareholders. Also, the GM called himself the "Co-Owner" when he signed the petition form in September 2019, several months after the December 2018 UWC. As noted above, that UWC repeatedly refers to the purchase and sale of shares, but the Petitioner has twice denied that the CEO "purchased the shares."

The Petitioner must resolve these 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). Here, the Petitioner has not done so. The Petitioner has simply asserted that documents that support its claims should be given more weight than documents that contradict those claims.

For the above reasons, we agree with the Director's determination that the Petitioner has not submitted consistent, credible evidence of the ownership of the petitioning U.S. company, and therefore, the Petitioner has not demonstrated that it has a qualifying relationship with the foreign entity.

B. Ownership of Foreign Company

The Director's decision focused on the ownership of the petitioning U.S. entity. Beyond that decision, we note that the record also raises questions about the ownership of the foreign entity. Documentation from the [redacted] State Register of Incorporated Persons refers to the CEO as the 75% owner of the foreign entity, but it also acknowledges a "participants amendment" to the articles of organization, effective [redacted] 2019. The Petitioner acknowledges that "a transfer of shares took place" in [redacted] 2019, but does not say what the previous ownership structure was. (The documentation also reflects a "participants data change" in 2015, but does not provide further details.)

Given this information, it is highly significant that the 2018 organizational chart shows a significantly different breakdown of ownership of the foreign entity:

- 25% - The CEO of the U.S. company

- 25% - The GM of the U.S. company
- 50% - A third individual, not involved with the U.S. company

Based on the information in the organizational chart, it does not appear that the Petitioner and the foreign entity had a qualifying relationship in 2018, and in the absence of an amended petition, the earlier 2016 petition should have been either denied or revoked. In the event that the Petitioner pursues this matter further, the Petitioner must establish that a qualifying relationship existed between the two companies at all relevant times. If the initial petition should have been denied or revoked, then it is not evident that the petition qualifies for the extension that the Petitioner now seeks.

## III. EMPLOYMENT ABROAD

The Petitioner must establish that the foreign entity employed the Beneficiary (1) for at least one continuous year during the three years prior to the filing of the petition (2) in a capacity that was managerial, executive, or involved specialized knowledge. *See* 8 C.F.R. § 214.2(l)(1)(i). The Director determined that the Petitioner did not meet either of these requirements.

### A. One Continuous Year

The Director concluded that the Beneficiary does not meet this requirement. The Director stated that the petition form indicates the Beneficiary's employment abroad began in November 2016, although the Beneficiary was in the United States at that time.

The record shows a somewhat more complicated picture. Page 22 of the petition form instructed the Petitioner to provide the "Name of Employer Abroad" and "Address of Employer Abroad." The following page asked for the "Dates of beneficiary's employment with this employer." Because this instruction is on a separate page from the previous questions, it is not immediately obvious that the phrase "this employer" refers to the "Employer Abroad." The form instructions do not clarify this point.

On the line of the petition form asking for the "[d]ates of beneficiary's employment with this employer," the Petitioner responded: "11/01/2016 [to] Present." This date coincides with the effective date of the Beneficiary's change of nonimmigrant status from B-1 to L-1A. It therefore seems likely that the Petitioner misunderstood the form instruction.

Apart from the notation on the petition form, the initial submission did not address the Beneficiary's employment abroad.

The Director requested evidence of the Beneficiary's employment abroad. In response, the Petitioner submitted partial copies of three contracts between the foreign entity and a client, respectively dated 2011, 2014, and 2015. The documents refer to the Beneficiary as a director of the foreign entity.

The Director denied the petition, stating that the contracts, by themselves, are not sufficient evidence of at least one year of continuous employment abroad.

On appeal, the Petitioner states:

> The [contracts] were additional documents filed to supplement previously submitted ample documentation that the service received and considered when they approved the initial L1 visa in 2016. The service failed to consider the totality of evidence and documentation existing in applicant's file and erred in making an arbitrary decision.

The Petitioner does not describe, or submit copies of, the documentation that accompanied the initial petition in 2016. That evidence is not part of the file that contains the present record of proceedings. For L-1 extension petitions, "supporting documentation is not required, *unless requested by the director*." 8 C.F.R. § 214.2(l)(14)(i). If, as here, the Director *does* request more supporting documentation, the Petitioner cannot satisfy that request merely by referring back to the approval of the earlier petition.

An adjudicator's fact-finding authority should not be constrained by any prior petition approval, but instead, should be based on the merits of each case.[1] The prior approval of a visa petition does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa.[2] Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, we are limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

The three contracts are the only documents in this record that directly pertain to the Beneficiary's employment abroad. The contracts do not provide enough information about the nature of the Beneficiary's role with the company to establish at least one year of continuous employment abroad during the relevant three-year period.

The Petitioner has not overcome this ground for denial.

B. Executive Capacity

An issue related to, but separate from, the *continuity* of the Beneficiary's employment abroad is the *nature* of that employment. The Petitioner states that the Beneficiary served in an executive capacity. The Director concluded that the Petitioner had not submitted sufficient evidence to support that claim.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

To be eligible for L-1A nonimmigrant visa classification as an executive, the petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B) of the Act. If a petitioner establishes that the offered position meets

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[1] USCIS Policy Memorandum PM-602-0151, *Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status* 3 (October 23, 2017), http://www.uscis.gov/legal-resources/policy-memoranda.

[2] *See, e.g.*, *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir. 2007); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988).

all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary will be *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

As noted above, the Petitioner's initial submission minimally addressed the Beneficiary's position abroad. On the petition form, the Petitioner stated that the Beneficiary's duties abroad were to "co[n]duct official correspondence for the company, oversee the operation of the company, deter[m]ine staffing requirements, hire and fire employees, approve expenditures, administer funds."

An organizational chart indicates that the Beneficiary was a board member and chief financial officer of the foreign entity, but the chart does not show where the Beneficiary fit into the foreign company's organizational structure. The chart shows a general manager with authority over a production manager, art director, technical manager, and sales and financial manager, each of whom had several subordinates. The chart does not indicate which, if any, of these titles the Beneficiary held while employed abroad. It does not show that the chief financial officer has general authority to "oversee the operation of the company" and control staffing.

The Director requested more information and evidence relating to the foreign company's organizational structure; the Beneficiary's place in the organizational hierarchy; and the roles of the Beneficiary and his subordinates, if any.

The Petitioner's response included one sentence about this issue, referring to the Beneficiary's position as "primarily executive" "as shown in the contracts" submitted previously. Those contracts identify the Beneficiary as a director of the foreign entity, and his signatures on those documents establish his authority to enter into contracts on the company's behalf. Beyond those basic facts, the contracts say little about the Beneficiary's role with the foreign entity.

On appeal, the Petitioner cites the three contracts and states that it "previously submitted ample documentation" with the 2016 petition. As stated above, each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. The Petitioner cannot meet its burden of proof by asserting that unspecified evidence exists in a separate record of proceedings.

The Petitioner has not provided sufficient information about the Beneficiary's role and duties at the foreign entity to establish that the Beneficiary was employed abroad in an executive capacity.

The above conclusions warrant dismissal of the appeal. Discussion of the remaining ground for denial, concerning the Beneficiary's claimed managerial capacity in the United States, cannot change the outcome of this appeal. Therefore, we reserve that issue.[3]

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

## IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision.

**ORDER:** The appeal is dismissed.