U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T- INC.

DATE: OCT. 16, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a biotechnology research and development company, seeks to temporarily extend the Beneficiary as its director of administration 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 it has a qualifying relationship with the Beneficiary's foreign employer.

On appeal, the Petitioner submits additional evidence and maintains that the Petitioner and the Beneficiary's foreign employer are part of the same multinational organization and ultimately owned and controlled by the same individual.

Upon *de novo* review, we will sustain 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 qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

A "qualifying organization" is a United States or foreign firm, corporation, or other legal entity which meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate, or subsidiary." *See* 8 C.F.R. § 214.2(l)(1)(ii)(*I*). Therefore, 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.

The term "subsidiary" is defined as a firm, corporation or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity. 8 C.F.R. § 214.2(l)(1)(ii)(K).

The term "affiliate" refers to: one of two subsidiaries both of which are owned and controlled by the same parent or individual, or (2) one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(1)(ii)(L).

II. QUALIFYING RELATIONSHIP

The Director found that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer. In denying the petition, the Director emphasized that the Petitioner did not demonstrate that the foreign entity is the Petitioner's majority owner, or that a single individual or entity owns a majority stake in both the Petitioner and the foreign employer. Further, although the Director recognized that the companies have some common ownership, the Director noted that the evidence did not establish that requisite common control. The Director was particularly concerned that the record did not include amended by-laws or similar instruments in which the Petitioner and foreign entity formally recognized *de facto* control by a specific individual or entity.

On appeal, the Petitioner asserts that the president and chief executive officer of the foreign employer, has "*de facto* control" over the Petitioner and the Beneficiary's foreign employer through a combination of his direct ownership in each entity and his indirect ownership through a foreign holding company, In turn, it asserts that holds substantial shares in both the Petitioner and the foreign employer, thereby giving control over both entities. The Petitioner also emphasizes that the Petitioner and the foreign entity have the same chairman (, the same senior executive management team, and have worked in tandem on the development, FDA approval, and commercialization of the same patented gene therapy pharmaceutical product for more than a decade, during which time and have invested over $12 million into the petitioning company.

Upon review of the evidence, including the new evidence submitted on appeal, the Petitioner has established an affiliate relationship with the Beneficiary's foreign employer.

The Petitioner and foreign entity are part of a multinational Korean group of companies, known as the ' which is headed by a publicly traded holding company, while stock is widely dispersed among nominal shareholders. The foreign entity's corporate

documentation indicates that [redacted] is recognized as the sole "major shareholder" of [redacted] based on his ownership of 47.4% of its shares, and, considered within the totality of the evidence, is sufficient to establish [redacted] *de facto* control of the [redacted] under the preponderance of the evidence standard.

The Beneficiary's foreign employer, [redacted] is owned by [redacted] (15.4%), [redacted] (20.5%), other [redacted] subsidiaries (1.1%), with the remainder of its stock widely distributed among nominal shareholders. It is recognized as a [redacted] subsidiary in the [redacted] annual reports.

Finally, the record shows that the Petitioner was established with [redacted] as its founding majority shareholder. It is currently owned by [redacted] (20%), [redacted] (30.6%), [redacted] (14.1%), and other [redacted] subsidiaries (3.8%), with its remaining shares distributed among more than 300 nominal shareholders. The Petitioner's published company documents refer to the "[redacted] and its subsidiaries" as the "majority shareholder" and owner of more than two-thirds of its issued stock.

Overall, the record supports the Petitioner's claim that [redacted] ownership stake and *de facto* control over the [redacted] as a whole, and the Petitioner and foreign entity, specifically, is sufficient to establish an affiliate relationship in which the same individual owns less than 50% of each entity, but controls both entities.

III. CONCLUSION

The Petitioner has established that it has a qualifying relationship with the Beneficiary's foreign employer.

ORDER: The appeal is sustained.

Cite as *Matter of T- Inc*, ID# 623247 (AAO Oct. 16, 2017)