U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-I- LLC

DATE: OCT. 17, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner intends to operate as a provider of IT services and retailer of IT equipment. It seeks to temporarily employ the Beneficiary as "Managing Director" of its new office[1] 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 Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that (1) it had a qualifying relationship with the Beneficiary's foreign employer at the time of filing; (2) the foreign entity continues to do business; (3) the Petitioner had secured sufficient physical premises from which to conduct its business operation as of the date this petition was filed; and (4) the new office would support the Beneficiary in a managerial or executive position within one year of the petition's approval.

On appeal, the Petitioner disputes the grounds for denial, pointing to previously submitted evidence that it claims adequately demonstrated that it met all eligibility requirements.

Upon *de novo* review, we find that the Petitioner has not provided sufficient evidence demonstrating that it has a qualifying relationship with the Beneficiary's foreign employer. Based on the dispositive effect of our findings, the appeal will be dismissed and we will reserve the remaining issues.

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 admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). In addition, the beneficiary must seek

[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.

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 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 issue to be addressed in this decision 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).

In the petition form and in a supporting statement, the Beneficiary, in his capacity as the Petitioner's managing director, stated that he is the sole owner of the Petitioner and the foreign employer and that the two are therefore affiliate entities.[2] With regard to the foreign entity, the Petitioner provided three translated documents: "Registration Certificate" naming the Beneficiary as the "Responsible" party; "Company Informations [*sic*]" listing the foreign entity's total share capital; and "Managers Informations [*sic*]" naming the Beneficiary as "Manager" of the foreign entity. The Petitioner also provided its own "Articles of Organization," which listed the Beneficiary as "Organizer," and the Petitioner's request for a taxpayer identification, which contained the Beneficiary's signature in his claimed capacity as owner of the requesting organization.

In its response to a request for evidence (RFE), the Petitioner resubmitted its "Articles of Organization" and provided a letter from the IRS containing the Petitioner's taxpayer identification number along with an operating agreement stating that the Petitioner is a member-managed organization in which the Beneficiary is a capital contributor and the "Initial Member." The Petitioner also provided a marketing agreement, which contains the Beneficiary's signature in his capacity as the Petitioner's "Director Manager." We note, however, that the issue of management is separate from that of ownership; the Petitioner did not provide evidence addressing the latter issue.

Based on the submitted evidence, the Director concluded that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's employer abroad because it did not demonstrate that the two entities share common ownership and control.

On appeal, the Petitioner contends that it has provided sufficient evidence pertaining to its own ownership, pointing to the previously submitted letter from the IRS as well as the Petitioner's operating agreement and Articles of Organization.

[2] The term "affiliate" applies when two entities are owned and controlled by the same parent or individual. *See* 8 C.F.R. § 214.2(l)(1)(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.

As indicated earlier, in order to be deemed affiliates, the Petitioner and the foreign entity must be owned and controlled by the same parent or individual. *See* 8 C.F.R. § 214.2(l)(1)(L). Since the term "affiliate" is the basis for the Petitioner's claimed qualifying relationship, supporting evidence of that relationship must necessarily demonstrate the ownership of both the Petitioner and the foreign entity with which it claims to have the affiliate relationship.

The Petitioner's statement on appeal, however, focuses entirely on its own ownership and bypasses the issue of the foreign entity's ownership. Thus, even if, *arguendo*, the Petitioner were to have adequately documented its own ownership, we would be unable to conclude that a qualifying relationship exists between it and the foreign entity because the Petitioner did not adequately address the issue of the foreign entity's ownership, which is equally critical for the purpose of establishing the existence of an affiliate relationship. By virtue of exclusively focusing on the ownership of one entity – in this instance, the U.S. employer – the Petitioner overlooks a critical component of the definition of the term "affiliate," which requires us to examine the ownership of both entities claimed to be affiliates. In light of this requirement, providing ownership evidence regarding only one of the two claimed affiliates would not be sufficient to establish that an affiliate relationship exists between two entities. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Moreover, despite the Petitioner's claim on appeal, we find that it has not adequately documented its ownership. As noted earlier, the previously submitted documents indicate that the Beneficiary is the Petitioner's "organizer," member, "manager director," and a capital contributor. However, none of these elements, either individually or collectively, establish that the Beneficiary is the Petitioner's majority owner. Despite section 5.1 of the Petitioner's operating agreement, which states that the Petitioner is a member-managed organization, the Petitioner did not define the term "member" or establish that membership in this context is synonymous with ownership. Likewise, the Petitioner did not establish that being the "organizer" or "director manager" of the U.S. entity equates to owning the majority of that entity. Although the previously mentioned IRS letter refers to the Beneficiary as the Petitioner's sole member, this reference appears to have been based on information that the Beneficiary himself provided in the application for a taxpayer identification number; the letter itself, however, is not an ownership document nor did the Petitioner provide evidence that the ownership reference contained in that letter was based on verified information.

In light of the lack of sufficient supporting evidence showing ownership of the Beneficiary's foreign and proposed U.S. employers, the Petitioner has not established that the two entities are commonly

owned by the Beneficiary, as claimed. Therefore, we cannot conclude that the Petitioner had a qualifying relationship with the Beneficiary's foreign employer at the time this petition was filed.

III. 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 G-I- LLC*, ID# 6196574 (AAO Oct. 17, 2019)