U.S. Citizenship and Immigration Services

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

In Re: 18347284

Date: SEP. 08, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, describing itself as a company engaged in general merchandising and services, seeks to temporarily employ the Beneficiary in the United States as its general manager 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 Director of the Texas Service Center denied the petition, concluding the record did not establish that: 1) it had a qualifying relationship with the Beneficiary's former foreign employer, 2) the Beneficiary was employed abroad in a managerial or executive capacity, and 3) the Beneficiary would be employed in a managerial or executive capacity in the United States.

On appeal, the Petitioner submits additional evidence it contends demonstrates that it and the Beneficiary's former employer are affiliates owned and controlled by the same individual. Further, the Petitioner asserts the Beneficiary was employed in an executive capacity abroad and states that, contrary to the Director's determination, he acted as more than a first line supervisor overseeing "mid-level degreed professionals." Lastly, the Petitioner provides additional evidence on appeal it contends establishes that it would develop sufficiently during the first year to support the Beneficiary in a managerial or executive capacity.

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 former 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).

[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.

## 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 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 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 51% owned by [redacted] and that the foreign employer is wholly owned by the same individual, qualifying the entities as affiliates. The Petitioner further submitted a certificate of formation filed in New Jersey indicating that it was established as a limited liability company in November 2018. The Petitioner also provided a December 2018 operating agreement and in section 3 the document reflected the following membership interests: 1) [redacted] – 50%, 2) the Beneficiary – 25%, 3) [redacted] – 25%, 4) [redacted] 25%, 5) [redacted] – 25%, and 6) [redacted] – "one-sixt[h]." Adjacent to the stated membership interests in the Petitioner's operating agreement was a category "capital contribution," however, no capital contributions were listed for any of its claimed members.

The Director later issued a request for evidence (RFE) noting that the Petitioner's asserted ownership interests questionably amounted to more than 100% and requested relevant documentation to substantiate ownership. In response, the Petitioner submitted a different undated and unsigned operating agreement within a business plan. This additional operating agreement did not specifically

discuss the Petitioner's ownership, but stated in Section 4.1 that "contemporaneously with the execution of the Agreement, each Member shall make or contractually bind him or herself to make the initial cash or capital contribution set opposite such Member's name in Exhibit A." However, this operating agreement did not include an Exhibit A reflecting its members and their capital contributions, a date, or an executed signatory page. The president of the Petitioner, [redacted] also stated the following in response to the RFE in June 2020:

> While [redacted] and I agreed that she would have controlling stake or interest (at least 51%) in the business, we agreed that I would have 35% interest, and the remaining 14% to be divided among several people, including her officers, [the Beneficiary] (6%), [redacted] (3%), [redacted] (3%) and [redacted] (2%). We all have each made our partial initial investment contributions or investments, but the correct percentage of interest by each investor is as stated above.

Now, on appeal, the Petitioner provides a membership certificate "Number 02" dated in December 2018 showing that [redacted] holds "one hundred [and] two shares of [a] total [of] two hundred shares." Further, the Petitioner submits a letter from its president dated in March 2021 stating they "certify that [redacted] is owner of 51% of the outstanding shares of stock in [the Petitioner]." In addition, in the letter, the Petitioner points to the "copy of [the] stock certificate."

Upon review, we conclude that the Petitioner has not provided sufficient evidence to establish its ownership as necessary to demonstrate a qualifying relationship. As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership, and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting control of the entity. *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986). Without full disclosure of all relevant documents, we cannot determine the elements of ownership and control.

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, the Director was justified in inquiring beyond the identification of the members of an LLC into the means by which this membership interest was acquired. Evidence should include documentation of monies, property, or other consideration furnished to the entity in exchange for the membership interest. Additional supporting evidence could include an operating agreement, minutes of relevant membership or management meetings, or other legal documents governing the acquisition of the ownership interest.

The Petitioner has provided little of the required supporting documentation to establish its asserted ownership. For instance, the Petitioner only submitted one claimed membership certificate issued in December 2018 showing that [redacted] holds 101 "shares" in the Petitioner and a letter dated well after the petition was filed in March 2021 stating she is 51% owner of the "outstanding shares" of the company. However, the Petitioner otherwise did not submit the other required supporting documentation to substantiate its claimed ownership, such as the other membership certificates issued, minutes of its meetings contemporaneously substantiating their issuance, other evidence of capital contributions in exchange for membership interests in the company, or other such relevant documentary evidence to substantiate its claimed ownership. To illustrate, this lack of supporting documentation is noteworthy since the asserted membership certificate provided is listed as "number 02," suggesting that other such interests were issued. The Petitioner also did not provide this required supporting evidence to corroborate the claimed ownership asserted in response to the RFE, namely, that it was owned by six members in various interests amounting to 100%.[2] Likewise, it submitted no supporting documentation to substantiate the contributions or investments that were made by these individuals upon its formation.

In fact, the Petitioner provided a conflicting operating agreement, also executed in December 2018, reflecting that there were ownership interests in the Petitioner amounting to 150% and "one-sixth." This conflicting operating agreement also showed that [redacted] held only a 25% membership interest. The Petitioner further provided another unexecuted and undated operating agreement reflecting no membership interests or capital contributions in the company. The Petitioner leaves only further uncertainty on appeal by submitting a membership certificate that refers to the issuance of "one hundred [and] two *shares* [emphasis added]," as well as a letter referring to [redacted] 51% ownership of "the outstanding shares of stock of [the Petitioner]." The supporting documentation provided on appeal referring to "stock" and "shares" is inconsistent with the Petitioner's apparent formation as a limited liability company that would have members and capital contributions.

The Petitioner provides little credible explanation for these material discrepancies or additional documentary evidence to resolve them. The Petitioner must resolve 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). As such, the Petitioner has not submitted sufficient and consistent evidence to establish its ownership, and in turn, that it has a qualifying relationship with the Beneficiary's foreign employer.

Lastly, the Petitioner has also not sufficiently demonstrated that the Beneficiary's asserted foreign employer exists as a legal entity and that is wholly owned by [redacted] as claimed. For instance, the Petitioner provided [redacted]s 2015 through 2017 individual annual tax return listing the foreign employer as a "trade name." On appeal, the Petitioner submits a letter from the foreign employer's "accounting manager" dated in March 2021 stating that the foreign employer "is a sole proprietorship registered with the Department of Trade and Industry of the Philippines." The accounting manager further he indicates that "I personally know that [redacted] is the sole owner of [the foreign employer]."

[2] As discussed, the Petitioner appeared to state in response to the RFE that it was owned by the following members in the reflected percentages: 1) [redacted] ("at least 51%"), 2) its president [redacted] (35%), 3) the Beneficiary (6%), 4) [redacted] (3%), 5) [redacted] (3%) and 6) [redacted] (2%).

However, under United States law, a sole proprietorship is a business in which one person personally owns all of the assets and liabilities, and operates the business in his or her personal capacity. *Black's Law Dictionary* 1520 (9th ed. 2009). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual proprietor. *Matter of United Inv. Grp.*, 19 I&N Dec. 248, 250 (Comm'r 1984). As such, this leaves substantial uncertainty as to whether the foreign employer exists as a legal entity with an actual ownership necessary to establish a qualifying relationship. The foreign employer provides no supporting documentation to substantiate the assertions in its letter, nor supporting evidence to establish that the foreign employer exists as a legal entity with a particular legally established ownership. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if a petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). Therefore, the Petitioner did not sufficiently demonstrate the claimed foreign employer's ownership.

The Petitioner has not established its ownership or that of the foreign employer with sufficient supporting evidence. Again, 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. 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.