U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39424808

Date: SEP. 22, 2025

Appeal of Service Center Operations Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a restaurant business, seeks to temporarily employ the Beneficiary as its general manager 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.

Service Center Operations (SCOPS) denied the petition on multiple grounds, concluding the record did not establish that the Beneficiary: (1) had at least one continuous year of full-time employment with a qualifying organization abroad in the three years preceding the filing of the petition; (2) has been employed abroad and would be employed in the United States in a managerial capacity; and (3) is qualified to perform the intended services for the Petitioner based on his prior education and employment. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

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*. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3)(iv).

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act; 8 U.S.C. § 1101(a)(44)(A).

II. ANALYSIS

As noted, SCOPS denied the petition on multiple grounds, concluding the Petitioner did not demonstrate that the Beneficiary will be employed in the United States in a managerial capacity, that he has been employed abroad in a managerial capacity, that he is qualified to perform the intended services in the United States, and that he has at least one continuous year of employment abroad with the Petitioner's claimed foreign affiliate in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(ii)-(iv).

For the reasons discussed below, SCOPS' decision is not supported by the record and will be withdrawn. However, we cannot sustain the appeal because the record does not demonstrate the required qualifying relationship between the Petitioner and the Beneficiary's foreign employer. Accordingly, we will remand the matter to SCOPS for further consideration and entry of a new decision.

A. Employment in a Managerial Capacity

The Petitioner has consistently claimed that the Beneficiary has been employed abroad and would be employed in the United States in a managerial capacity as defined at section 101(a)(44)(A) of the Act. The Petitioner seeks to transfer the Beneficiary from its claimed Brazilian affiliate, where he served as general manager between 2017 and December 2023, to undertake the same position at its restaurant in [redacted] The record indicates that both the Petitioner and the Beneficiary's employer abroad operate restaurants specializing in Brazilian cuisine.

In support of the petition, the Petitioner provided letters from both entities which describe the Beneficiary's previous and proposed duties as general manager. The Petitioner also submitted organizational charts, detailed position descriptions for his direct subordinates within both entities, and payroll evidence to corroborate the companies' respective staffing and structure.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." *Id.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

SCOPS' conclusion that the Beneficiary does not qualify for L-1A classification as a manager, and its determination that he is not qualified to perform the intended services in the United States, was based primarily on a determination that his previous and proposed position as general manager does not involve the supervision and control of subordinate professional employees.

On appeal, the Petitioner emphasizes that, contrary to SCOPS' determination, it never claimed that the Beneficiary has been or would be acting as a first-line supervisor of professionals. Rather it maintains that the previously submitted evidence demonstrates that the general manager position is responsible for directly managing subordinate supervisors who, in turn, manage the lower-level restaurant staff. The record supports this claim.

Upon *de novo* review, we conclude that the Petitioner established by a preponderance of the evidence that the Beneficiary has been employed abroad and would be employed in the United States in a managerial capacity. Specifically, the record establishes that, as general manager, the Beneficiary more likely than not has performed and would perform the higher-level functions described at section 101(a)(44)(A)(i)-(iv) of the Act. Further, the Petitioner provided sufficient relevant probative evidence to show that both companies have the staffing and structure in place to relieve him from significant involvement in the day-to-day non-managerial activities associated with operating a restaurant, such that he has allocated, and would allocate, his time primarily to qualifying managerial responsibilities.

Accordingly, we withdraw SCOPS' determination that the Petitioner did not demonstrate that the Beneficiary was employed abroad, and would be employed in the United States, in a managerial capacity, as well as its finding that the Beneficiary is not qualified to perform the intended services in the United States.

B. One Year of Employment Abroad

SCOPS also denied the petition, in part, based on a determination that the Petitioner did not provide evidence that the Beneficiary has at least one continuous year of full-time employment with its claimed foreign affiliate within the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii).

The Petitioner has consistently stated that its claimed Brazilian affiliate employed the Beneficiary as its general manager from August 2017 until December 2023. The Petitioner filed the petition on January 7, 2025, and therefore must document the Beneficiary accrued a continuous year of full-time employment with the foreign entity in the three years preceding that date. In its decision, SCOPS emphasized that the Petitioner's and foreign entity's statements alone were insufficient and observed that the Petitioner provided payroll documentation for a period of only six months (July 2022 through December 2022). SCOPS concluded the Petitioner did not meet its burden to show that the Beneficiary had the required one year of full-time employment abroad.

On appeal, the Petitioner submits additional payroll records from the first half of 2022 which are sufficient to demonstrate that the Beneficiary accrued at least one continuous year of employment with the foreign entity in the three years preceding the filing of the petition.

However, to satisfy the evidentiary requirement at 8 C.F.R. § 214.2(l)(3)(iii), the Petitioner must show that the Beneficiary's employment abroad was with "a qualifying organization." Although not addressed by SCOPS in its request for evidence or decision, the record as presently constituted does not demonstrate the required qualifying relationship between the Petitioner and the Beneficiary's foreign employer. Accordingly, we will remand this matter for further consideration and entry of a new decision.

C. Qualifying Relationship

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").

The Petitioner claims that it has an affiliate relationship with the Beneficiary's foreign employer, [redacted], which does business as [redacted]. For purposes of the L-1 classification, "affiliate" means (1) one of two entities legal entities 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, with each individual owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(1)(ii)(L).

Regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists. *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. USCIS considers ownership of more than 50 percent of an organization as evidence of de jure control; however, it is possible for an owner with less than 50 percent interest to exercise de facto control over an organization. *See Matter of Hughes*, 18 I&N Dec. 289; *see generally* 2 *USCIS Policy Manual* L.5, https://www.uscis.gov/policy-manual.

Here, the Petitioner asserts that both entities are owned and controlled by the same individual, M-R-B-. As evidence of its ownership, the Petitioner provided copies of its limited liability company operating agreement and membership certificates. This evidence is sufficient to demonstrate that M-R-B- owns a 56 percent interest in the U.S. company and thus exercises de jure control.

Although the Petitioner asserts that M-R-B- has the requisite ownership and control over [redacted], the record does not support its claim. The Petitioner states that M-R-B- indirectly owns [redacted] through his wholly owned Brazilian company, [redacted]. To document [redacted] ownership, the Petitioner provided a copy of its "1st Amendment to the Articles of Incorporation" dated [redacted] 2023, which shows that it has six owners. According to this document, [redacted] owns only 25% of [redacted] An equal 25% ownership interest is held by [redacted] while the remaining shares are owned by

another company and three individuals. The articles of incorporation for [redacted] specify that the managers of the company are [redacted] (represented by F-M-F-) and C-S-S-, one of the individual shareholders.

Based on this evidence, the record does not establish that M-R-B- exercises de jure or de facto control over [redacted] based on his indirect 25 percent ownership of the company. The Petitioner states that the chain of restaurants to which both the Petitioner and [redacted] belong was established by M-R-B- in Brazil in 2003, and that both restaurants operate under the same name, but the record lacks evidence that M-R-B- exercises the requisite control over the foreign entity. Absent such evidence, the record does not demonstrate the existence of a qualifying relationship between the Petitioner and the Beneficiary's foreign employer.

Because SCOPS did not raise this issue in its RFE or decision, the matter is being remanded for further consideration. SCOPS should advise the Petitioner of the deficiencies discussed above in a new RFE or notice of intent to deny and allow it an opportunity to submit additional evidence prior to issuing a new decision.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.