U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10750336

Date: SEPT. 29, 2020

Appeal of California Service Center Decision

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

The Petitioner seeks to employ the Beneficiary as its chief executive officer (CEO) under the L-1A nonimmigrant visa classification for intracompany managers and executives. *See* section 1101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the required qualifying relationship between itself and the Beneficiary's foreign employer. The Director also found the record insufficient to establish the Beneficiary's employment abroad in the claimed executive capacity or the Petitioner's ability to support the Beneficiary in the same claimed capacity in the United States.

The Petitioner bears the burden of establishing 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. L-1A MANAGERS AND EXECUTIVES

An L-1A petitioner must demonstrate that, in the three years before a petition's filing, the petitioner or a parent, branch, affiliate, or subsidiary employed a beneficiary abroad for at least one continuous year in a full-time capacity that was also managerial, executive, or involved specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(i), (ii), (iv). A petitioner must also establish a beneficiary's qualifications for an offered position, and his or her proposed U.S. employment in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii), (iv).

II. NEW OFFICE

On the L Supplement to Form I-129, the Petitioner identified itself as a "new office." The term refers to an organization that has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). "Doing business" means "the regular, systematic, and continuous provision of goods or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

If a petitioner seeks permission for a foreign national to open or otherwise work at a new office, U.S. Citizenship and Immigration Services (USCIS) may grant the initial petition for only one year.

8 C.F.R. § 214.2(l)(7)(i)(A)(*3*). Unlike other L-1A petitioners, a prospective new-office employer need not demonstrate its ability to support a beneficiary in a managerial or executive capacity until the end of the initial one-year period. 8 C.F.R. § 214.2(l)(3)(v)(C).

Based on the Petitioner's indication on the Form I-129 supplement, the Director treated the Petitioner as a new office. In response to the Director's written request for additional evidence (RFE), however, the CEO of the Petitioner's purported parent asserted that the Petitioner had been doing business in the United States for more than one year. The CEO stated: "This is not a new office petition." Also, on appeal, the Petitioner requests the petition's approval for more than one year.

Although denying that it is a new office, the Petitioner has not demonstrated that it was doing business in the United States since October 24, 2018, one year before the petition's filing. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility "at the time of filing"). Copies of bank records, financial statements, invoices, a lease, and a letter of intent from a prospective client indicate that the company did not begin doing business until 2019. We will therefore treat the Petitioner as a new office as it indicated on the Form I-129 supplement.

III. EMPLOYMENT ABROAD

The term "executive capacity" means employment that "primarily" involved: 1) directing the management of an organization or a major component or function of it; 2) establishing the goals and policies of the organization, component, or function; 3) exercising wide latitude in discretionary decision-making; and 4) receiving 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; 8 C.F.R. § 214.2(l)(1)(ii)(C).

The job duties of an executive must meet all four elements of the definition of the term "executive capacity." A petitioner must also demonstrate that a foreign national *primarily* performed executive duties, as opposed to operational tasks. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).[1]

In determining the executive nature of a foreign position, USCIS considers descriptions of the job duties. The Agency also considers: the organizational structure and nature of the foreign business; the existence of other employees who relieved a beneficiary from performing operational tasks; the job duties of subordinate employees; and other factors that affected a beneficiary's business role abroad.

[1] Unlike this case, *Family* involved an immigrant visa petition for a multinational executive. *See* section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). The job duties of both nonimmigrant L-1A executives and immigrant multinational executives, however, must meet the same definition of the term "executive capacity." *See* section 101(a)(44)(B) of the Act (defining the term "executive capacity"); *also compare* 8 C.F.R. § 214.2(l)(ii)(C) *with* 8 C.F.R. § 204.5(j)(2) (providing the same definition of the term for L-1A and multinational executives).

The Petitioner states that its purported Russian parent has employed the Beneficiary as "Chief Financial Officer [CFO] and Commercial Director" since October 2017.[2] The foreign entity reportedly employs more than 25 people. Like the Petitioner, the company distributes and sells multimedia, information technology equipment used for business, educational, and government presentations.

The Petitioner states that, as commercial director/CFO, the Beneficiary directed the finance and marketing departments of the purported Russian parent, reporting directly to his fellow company founders. He reportedly spent the following percentages of time performing the following duties:

- 15%. Coordinating company budgets with the finance director.
- 10%. Negotiating agreements with suppliers and key customers.
- 10%. Developing work regulations in the marketing and finance departments.
- 5%. Approving large payments to suppliers.
- 5%. Coordinate deferrals of payments for large strategic contracts.
- 20%. Aligning marketing strategy and budget.
- 5%. Approving hiring of new employees for departments.
- 10%. Training department heads on strategic issues and communication with other managers.
- 10%. Working with board of directors. Reporting on performance of finance and marketing departments.
- 10%. Expanding and coordinating the company's general development strategy at meetings with senior officials.

The Petitioner also submitted organizational charts and more detailed job duties. The initial organizational chart shows the Beneficiary's direct supervision of four Russian employees: the directors of the finance and marketing departments; an accountant; and a "marketologist." A chart in the Petitioner's updated business plan, however, indicates that the finance director supervises the accountant, while the marketing director oversees the marketologist.

The Director found that the Petitioner did not demonstrate the Beneficiary's employment in Russia as more than a first-line supervisor. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (stating that "a managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor"). Descriptions of the job duties of the Beneficiary's subordinates indicate that the finance and marketing directors each supervised an employee. Also, as previously indicated, the parent's most recent organizational chart indicates the directors' supervision of employees. The Petitioner, however, has not explained why the first organizational chart shows the Beneficiary's direct supervision of four employees, but the most recent indicates his supervision of two workers. It's therefore unclear how many employees the Beneficiary supervised during his claimed one-year period of continuous employment abroad. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with

[2] The record does not establish whether the Beneficiary's foreign job title of "CFO and Commercial Director" refers to one position or two. For purposes of this decision, we will assume the title refers to one position. In any future filings in this matter, however, the Petitioner must explain the Beneficiary's foreign job title. If the title refers to two, separate positions, the Petitioner must describe the job duties of both positions and indicate the Beneficiary's periods of employment or time spent in each position.

independent, objective evidence pointing to where the truth lies). Thus, as the Director found, the Petitioner has not demonstrated the Beneficiary's service abroad as more than a first-line supervisor.

We also agree with the Director that descriptions of the Beneficiary's foreign job duties do not demonstrate his employment in the claimed executive capacity. The more detailed job duties provided by the Petitioner indicate that the Beneficiary primarily managed operational tasks, as opposed to performing executive-level duties. For example, the record indicates that the Beneficiary coordinated the following activities of the finance department: payment of invoices issued by contractors; payment of salaries and bonuses to employees; credit facilities and payment deferrals for customers; business processes and automation; interaction between finance employees and other departments; supplier and customer negotiations; recruitment of accountants; tax payment; and communication with banks. The record does not indicate the Beneficiary's primary focus on long-range, executive-level duties such as establishing financial goals and policies. *See Matter of Church Scientology Int'l* at 604 (stating that "the employee's duties must be primarily at the managerial or executive level"). The record therefore does not establish the Beneficiary's foreign employment in the claimed executive capacity.

In addition, although unaddressed by the Director, the record does not demonstrate the Beneficiary's full-time employment by the purported foreign parent for at least one continuous year before the petition's filing on October 24, 2019. As previously indicated, the Petitioner asserts the Beneficiary's employment by the Russian entity since October 2017. In his RFE response letter, however, the entity's CEO stated the Beneficiary's work as CEO/owner of another apparently unrelated company from 2014 to 2018. The Petitioner's updated business plan and the Beneficiary's resume also state his employment with the other company. Neither the CEO's letter, the updated business plan, nor the resume indicates for how long the Beneficiary worked for the other company in 2018. But, if the other company employed him beyond October 24, 2018, he would not have worked at least one continuous year abroad for the purported Russian parent before the petition's filing.

Also, the Beneficiary's employment by the other unrelated company from 2014 to 2018 overlaps his purported work at the Russian entity since October 2017. The discrepancy casts doubt on his claimed continuous, full-time employment by the Russian company. The Petitioner provided copies of the Beneficiary's employment agreement with the Russian entity and his Russian income tax returns from 2017 through 2019. The documents indicate the Beneficiary's employment by the Petitioner's purported parent since October 2017. But the Petitioner has not explained how its foreign parent employed him full-time for at least one continuous year while he apparently, simultaneously worked a portion of that period for the other company. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record). Thus, in any future filings in this matter, the Petitioner must explain the inconsistencies in the Beneficiary's foreign employment history and demonstrate his possession of at least one year of continuous, full-time foreign employment by the Petitioner's purported parent in the three years before the petition's filing.

The record does not establish the Beneficiary's required employment abroad in the claimed executive capacity. We will therefore affirm the petition's denial.

IV. QUALIFYING RELATIONSHIP

A petitioner must demonstrate a "qualifying relationship" between itself and a beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(3)(i). The relationship must match "exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate, or subsidiary." 8 C.F.R. § 214.2(l)(1)(ii)(G)(*1*) (defining the term "qualifying relationship").

Here, the Petitioner asserts itself as a subsidiary of the Beneficiary's foreign employer in Russia. A "subsidiary" includes "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." 8 C.F.R. § 214.2(l)(1)(ii)(K). Ownership means the direct or indirect legal right of possession of the assets of an entity with full power and authority to control. *Matter of Church Scientology Int'l*, 19 I&N Dec. at 595. Control refers to the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Id.*

The Director concluded that "the evidence submitted was insufficient to demonstrate a qualifying relationship at the time of filing." We must therefore determine whether the evidence established the purported parent's ownership and control of the Petitioner as of the petition's filing on October 24, 2019.

The petitioning corporation submitted copies of stock certificates, dated December 18, 2018, and a stock ledger. The documents indicate that, by the petition's filing, the Beneficiary's foreign employer owned 5,101, or 51.01%, of the U.S. company's 10,000 shares. The documents show that three people - including the Beneficiary - owned the Petitioner's remaining 4,899 shares in equal amounts of 1,633 shares, or 16.33% each.

Copies of "stock purchase agreements," also dated December 18, 2018, indicate that the Petitioner issued the stock certificates to the Russian company and the three individual investors upon their promises to pay for their shares within one year of the agreements' date. The Petitioner submitted bank records indicating the Beneficiary's payment for his shares on October 17, 2019, and the Russian company's payment for its shares the following day. Thus, the Beneficiary and the Russian company paid for their shares within the one-year period specified in their stock purchase agreements and before this petition's filing. The record, however, indicates that the other two individual investors did not pay for their shares until January 13, 2020, after the one-year period specified in the stock purchase agreements and after this petition's filing.[3]

Because of their untimely stock payments, the record does not establish the other two individual investors as owners of the Petitioner. The evidence appears to demonstrate the validity of the stock certificates of the Beneficiary and his foreign employer. But the record indicates additional irregularities in the Petitioner's issuance of its stock.

As previously indicated, the stock certificates show the Petitioner's issuance of 5,101 shares to the Beneficiary's foreign employer and 1,633 shares to each of the three individual investors. The

[3] The Director found that the record did not establish payment by the third individual investor. The record, however, contains documentation of a wire transfer from the investor to the Petitioner's account in the required amount.

Petitioner's articles of incorporation, however, authorized the issuance of only 1,000 shares. The Petitioner is incorporated in Florida, and the stock purchase agreements indicate their governance by that state's law. Under Florida law, "any issue of stock by a corporation in excess of the amount prescribed in its articles of incorporation is *ultra vires* and the stock so issued is void." *Wolfson v. Cary*, 488 So.2d 864, 868 (Fla. Dist. Ct. App. 1986) (citations omitted).

In its RFE response, the Petitioner provided evidence of its amendment of its articles of incorporation to allow the company's issuance of 10,000 shares of stock. A "corporate resolution" signed by the Beneficiary in his role as the Petitioner's president describes the original listing of 1,000 shares of authorized stock in the articles of incorporation as a typographical error. The resolution states that, as indicated on the stock certificates, the Petitioner originally intended to authorize its issuance of 10,000 shares of stock.

Florida law, however, distinguishes between amendments to articles of incorporation, which change, add, or delete provisions in articles of incorporation, and articles of correction, which correct errors in corporate filings. *Compare* Fla. Stat. § 607.1001(1) *with* Fla Stat. § 607.0124. Because the Petitioner amended rather than corrected its articles of incorporation, the record does not establish the claimed typographical error in the articles.

Also, even if the Petitioner amended its articles of incorporation to correct an error, the company did not file the amendment with state authorities until January 2020, more than a year after the stock's issuance. *See* Fla. Dept. of State, Div. of Corps., "Search Records," https://dos.myflorida.com/sunbiz/search/ (last visited Sept. 11, 2020). The record does not establish the retroactive application of the amendment to the Petitioner's stock issuance. In addition, because the number of shares listed on the stock certificates exceed the limitation of 1,000 then specified in the articles of incorporation, the record does not establish the validity of the stock certificates of the Beneficiary and his foreign employer. *See* section 291 of the Act (stating that a petitioner bears the burden of proof).

Because of the unresolved questions regarding the Petitioner's stock issuance, the company has not demonstrated the validity of its stock certificates and the claimed subsidiary-parent relationship between itself and the Beneficiary's foreign employer. The record therefore does not establish the claimed qualifying relationship between the Petitioner and the Beneficiary's foreign employer. [4]

V. ABILITY TO SUPPORT AN EXECUTIVE POSITION

Our affirmations of the prior, two denial grounds resolve this appeal. We therefore decline to review the Director's third conclusion that the Petitioner did not demonstrate its ability to support an executive-level position. Rather, we will reserve the Petitioner's appellate arguments on this issue. *See INS v Bagamasbad*, 429 U.S. 24, 25 (1976) (holding that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also*

[4] Before issuing an adverse decision, USCIS must notify a petitioner of derogatory information of which the business is unaware and afford it an opportunity to respond. 8 C.F.R. § 103.2(b)(16)(i). The Director did not notify the Petitioner of its issuance of more stock than authorized by its articles of incorporation. But the Petitioner's filing of the amendment to the articles and its inclusion of a copy of that amendment in its RFE response indicate the company's awareness of the issue. We may therefore affirm the petition's denial on this ground based on the Petitioner's excessive stock issuance.

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 did not otherwise qualify for the requested benefit).

VI. CONCLUSION

The Petitioner has not established a qualifying relationship between itself and the Beneficiary's foreign employer or the Beneficiary's employment abroad in the claimed executive capacity. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.