U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27519074

Date: JUNE 22, 2023

Appeal of California Service Center Decision

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

The Petitioner, an information technology (IT) company, seeks to temporarily employ the Beneficiary as its director of strategy and IT 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 California Service Center denied the petition, concluding that the record did not establish that: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary will be employed in the United States in a managerial or executive capacity; and (3) the Beneficiary has been employed abroad in a managerial or executive capacity. The matter is now before us on appeal. 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 dismiss the appeal.

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).

II. ANALYSIS

The Director determined that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer. We agree, as explained below.

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).

Parent means a legal entity that has subsidiaries. 8 C.F.R. § 214.2(l)(1)(ii)(I). 8 C.F.R. § 214.2(l)(1)(ii)(J). *Subsidiary* means a firm, corporation, or other legal entity of which a parent has an ownership interest and controls the entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). *Affiliate* means (1) 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).

Ownership and control are the factors that determine whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). Ownership refers to the direct or indirect legal right of possession of an entity's assets 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.

Materials in the record refer to the Petitioner's employer in Colombia as a subsidiary of the petitioning U.S. employer. Documents in the record, including the Petitioner's tax returns and letters from the foreign entity's auditor and the Petitioner's accountant, indicate the following proportions of share ownership, with shareholders identified by their initials:

Foreign entity:

A.A.J.	51.98%
A.H.G.	48.02%

The petitioning U.S. entity:

S.X.D.H.	36%
S.L.V.C.	32%
C.D.H.	32%

These figures do not show any shared ownership between the two companies.

Because the stated ownership percentages do not establish any shared ownership between the two companies, the Director requested additional evidence to establish the ownership and control of each. In response, the Petitioner asserted that it is "owned by individuals or affiliates of the foreign company," because its plurality owner, S.X.D.H., is the daughter of A.H.G. and the spouse of A.A.J.,

who own the foreign company. These facts establish a relationship between S.X.D.H. and the owners of the foreign company, but they do not establish a relationship between the companies themselves.

The Director denied the petition, in part because the Petitioner had not shown that the same individuals own and control both the foreign entity and the petitioning U.S. entity.

On appeal, the Petitioner states: "We have taken swift action and amended our Florida Profit Corporation Annual Report to reflect that [A.H.G.] holds 25% of the company and serves as our Senior VP [vice president] for Sales. We believe this satisfies the necessary relationship requirement."

The Petitioner submits copies of new share certificates and the minutes of a shareholder meeting, indicating that A.H.G. has been added as a shareholder of the U.S. company, which is now held by four individuals, each with a 25% share. The minutes also refer to the foreign company as "an investor" in the U.S. company, but the document provides no further details. As noted, the Petitioner previously claimed that the foreign company was the Petitioner's "subsidiary." The minutes are undated, but the share certificates are dated March 1, 2023, several weeks after the Director denied the petition on February 10, 2023.

A petitioner must meet all eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). The new ownership structure did not exist at the time of filing, or even at the time of denial. The Petitioner's existing shareholders transferred some of their shares after the denial date in an attempt to overcome an already-decided ground of ineligibility. This late change to the Petitioner's ownership structure does not show that the Director's decision was in error at the time of that decision.

Even then, the new ownership structure does not establish a qualifying relationship between the two companies, because A.H.G. is a minority shareholder of both entities and the Petitioner has not established that A.H.G. controls both entities. A.H.G.'s 48% share of the foreign company and 25% share of the U.S. company does not facially establish the shared ownership and control necessary to demonstrate a qualifying relationship between the two companies.

At the time the Petitioner filed the petition, certain shareholders of the two companies were related either by blood or by marriage, but these relationships between shareholders did not establish a qualifying relationship between the two companies, which are legal entities separate from their shareholders.

For the reasons discussed above, the Petitioner has not established that it is a parent, subsidiary, affiliate, or branch of the foreign entity that has employed the Beneficiary. Because the Petitioner has not established that a qualifying relationship existed between the two companies at the time of filing, and continues to exist, the petition cannot be approved.

The above conclusion, by itself, determines the outcome of the appeal. Detailed discussion of the remaining grounds for denial, concerning the nature of the Beneficiary's positions both abroad and in the United States, cannot change that outcome. Therefore, we reserve argument on those issues.[1]

III. CONCLUSION

The Petitioner has not established a qualifying relationship between the petitioning U.S. entity and the Beneficiary's employer abroad. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).