U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28522094

Date: OCT. 4, 2023

Appeal of California Service Center Decision

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

The Petitioner intends to operate as an information technology company and seeks to employ the Beneficiary as chief executive officer of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. 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 Petitioner did not establish that it has a qualifying relationship with the Beneficiary's employer abroad.[2] The matter is now before us on appeal.

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.

In denying the petition, the Director concluded that the Petitioner does not have a qualifying relationship with the Beneficiary's foreign employer because the two entities are not similarly owned and controlled. The Director determined that while the Petitioner has two shareholders with one owning the majority of the shares, the foreign entity has four shareholders with no majority

[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.

[2] 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 that the entities are 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").

shareholder.[3] The Director concluded that these respective ownership breakdowns do not result in an affiliate relationship, which requires the Petitioner to demonstrate either that: (1) the Petitioner and the foreign entity are owned and controlled by the same parent or individual, or (2) the two entities are owned and controlled by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L). Also, while the Director acknowledged the Petitioner's submission of its own bank account statements as well as those of the Beneficiary, the Director deemed the record to be lacking in evidence of capital contributions made towards the purchase of the Petitioner's shares by its majority shareholder or towards the purchase of the foreign entity by its listed shareholders.

On appeal, the Petitioner claims that it has "submitted proof of the capital contributions made by the [q]ualifying [f]oreign [e]ntity to the U[.]S[.] company." However, the Petitioner references details pertaining to a capital contribution that was previously made by the Beneficiary and was acknowledged in the Director's decision. Not only does the record contains no evidence in support of the Petitioner's claim that a "qualifying foreign entity" made capital contributions, but that claim is wholly inconsistent with the Petitioner's original statements and previously submitted stock certificates identifying the Beneficiary and [redacted] as the Petitioner's only two shareholders. The record contains no evidence, nor has the Petitioner offered evidence on appeal to show capital contributions originating from [redacted] Petitioner's majority stockholder,[4] and no evidence of contributions made by the foreign entity's listed shareholders towards their respective purchases of that entity's stock.

The Petitioner also argues that it has a qualifying relationship with the Beneficiary's foreign employer, basing this claim largely on the assertion that the same two individuals – the Beneficiary and [redacted] – are part of the foreign entity's and the Petitioner's respective ownership schemes. The Petitioner focuses on the total shares owned by these two individuals, asserting that together, they own the majority of both entities. However, the Petitioner cites no precedent case law and no USCIS policy or regulation that allows a combination of individual shareholders to claim majority ownership, unless the group members have been shown to be legally bound together as a unit within the company by voting agreements or proxies.

To demonstrate that an affiliate relationship exists between the Petitioner and the foreign entity, the record must show that the two entities have common ownership and control. Control may be "*de jure*" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "*de facto*" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289, 293 (Comm'r 1982). Here, however, the Petitioner has not established that it and the foreign entity are commonly owned and controlled. As previously noted, the Petitioner is owned by the Beneficiary and [redacted] with the latter owning a majority of the Petitioner's issued shares. Although both individuals also own shares in the foreign entity, they

[3] The Petitioner's two shareholders include the Beneficiary with 40% of the stock and [redacted] with 60%. The foreign entity has four shareholders with the Beneficiary owning 32.3%, [redacted] and one other shareholder each owning 31.35%, and a fourth shareholders owning the remaining 5%. The record contains ownership documents that corroborate these respective ownership breakdowns.

[4] The record contains the Beneficiary's bank statement showing [redacted] made an internet transfer of $1816.06 to the Beneficiary's account, but no evidence was provided to establish that this amount accounts for [redacted] purchase of the Petitioner's stock.

account for only two of the foreign entity's four total shareholders with no shareholder owning a majority of the shares.

On appeal, the Petitioner highlights Clause 14 of the foreign entity's Articles of Incorporation, asserting that this clause establishes "[p]ower and authority to dispose of and direct the disposition of the assets of the [foreign] company." We note that the phrase "the members shall" is repeated several times throughout this clause, which contains no language indicating that the foreign entity's control is subject to voting proxies or agreements that would establish [redacted] as controlling the foreign entity, despite his ownership of less than a majority of that entity's stock. In other words, while the record indicates that [redacted] owns a majority of and controls the Petitioner, the same cannot be said of his role with respect to the foreign entity, which has four total minority owners with no one owner or group of owners controlling that entity by virtue of voting proxies or agreements to vote in concert.

In light of the deficiencies described above, we agree with the Director's determination that the Petitioner and the foreign entity are not owned and controlled by the same individual or individuals and thus they are not affiliates under the regulatory definition. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L). Despite disputing the Director's decision, the Petitioner has not provided evidence to overcome the Director's findings and establish that it has a qualifying relationship with the Beneficiary's foreign employer. And although the Petitioner claims that it has "submitted proof of the capital contributions made by the [q]ualifying [f]oreign [e]ntity to the U[.]S[.] company," it references details that pertain to capital contributions previously made by the Beneficiary, which the Director acknowledged in the denial. The record contains no evidence in support of the Petitioner's claim that the foreign entity made capital contributions, a claim that is wholly inconsistent with the Petitioner's original statements and previously submitted stock certificates identifying the Beneficiary and [redacted] as the Petitioner's only two shareholders. As noted by the Director, the record contains no evidence, nor has the Petitioner offered evidence on appeal to show capital contributions originating from [redacted] Petitioner's majority stockholder,[5] and no evidence of contributions made by the foreign entity's listed shareholders towards their respective purchases of that entity's stock.

Accordingly, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

ORDER: The appeal is dismissed.

[5] The record contains the Beneficiary's bank statement showing [redacted] made an internet transfer of $1816.06 to the Beneficiary's account, but no evidence was provided to establish that this amount accounts for [redacted] purchase of the Petitioner's stock.