U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23376948

Date: DEC. 20, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a construction contractor, seeks to permanently employ the Beneficiary as a project manager in the United States under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer. 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 sustain the appeal.

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Workers, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U. S. employer has been doing business for at least one year. See 8 C.F.R. § 204.5(j)(3).

The Director denied the petition based on a finding that the Petitioner did not establish that it has the required qualifying relationship with the Beneficiary's 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 (a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See* section 203(b)(1)(C) of the Act.

On appeal, the Petitioner maintains that the submitted evidence demonstrates it has a qualifying affiliate relationship with the Beneficiary's foreign employer based on common indirect ownership by the same parent company. The regulation at 8 C.F.R. § 204.5(j)(2)(A) defines affiliate as one of two subsidiaries both of which are owned and controlled by the same parent or individual. The term "subsidiary" means 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; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity. 8 C.F.R. § 204.5(j)(2).

The Beneficiary worked abroad for [redacted], and is currently employed by the Petitioner in the United States as an L-1A intracompany transferee. The Petitioner has consistently explained that it has an affiliate relationship with the Beneficiary's foreign employer based on common, indirect ownership by the same parent company, [redacted]. Specifically, the Petitioner provided evidence that [redacted] owns 100% of the shares of [redacted] the entity that employed the Beneficiary in Canada. In addition, the Petitioner provided evidence that [redacted] wholly owns [redacted] a U.S. company which wholly owns [redacted] which in turn owns 100% of the Petitioner.[1]

In finding that the Petitioner did not establish a qualifying relationship with the Beneficiary's employer abroad, the Director misinterpreted documentation pertaining to the ownership composition of two of the above entities. The Director cited entries on IRS Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business, with regard to the ownership of [redacted], erroneously concluding that the foreign parent did not wholly own the company as claimed. The Director also disregarded evidence establishing that the Petitioner was wholly-owned by [redacted] and concluded that the evidence of record did not establish the requisite ownership structures to establish a qualifying affiliate relationship.

On appeal, the Petitioner acknowledges the confusion caused by the complex corporate relationship between the Petitioner and the Beneficiary's foreign employer, and provides a detailed outline and explanation of the claimed affiliate relationship. The Petitioner highlights relevant facts and portions of documents that sufficiently refute the Director's concerns in the denial, noting that IRS Form 5472 is required to be filed when a foreign entity owns a minimum of 25% of voting power or total stock value of a U.S. corporation, consistent with its previous claim that the parent company, based in Canada, owns 100% of [redacted] The Petitioner also highlights documents establishing

[1] The Petitioner's articles of incorporation demonstrate that it is authorized to issue 1,000 shares of common stock. The record is supported by documentary evidence establishing that to date, only 100 shares have been issued, and all of those shares are owned by [redacted]

its ownership composition and supporting its claim that it is a wholly-owned subsidiary of [redacted]

A petitioner must establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. In this case, we conclude that the Petitioner's evidence is credible and sufficient to meet this standard. The record demonstrates that [redacted] and the Petitioner are subsidiaries of [redacted] because it directly or indirectly owns more than half of each entity and has control of both entities. Since both the Petitioner and the foreign employer are subsidiaries that are owned and controlled by the same parent, they are affiliates according to the definition at 8 C.F.R. § 204.5(j)(2)(A).

The Petitioner has established, by a preponderance of the evidence, that it has a qualifying affiliate relationship with [redacted] through their shared ownership and control by [redacted] The Petitioner has therefore overcome the only stated ground for denial of the petition.

ORDER: The appeal is sustained.