U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28158068

Date: DEC. 12, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, a cellphone and accessories retailer, seeks to permanently employ the Beneficiary as its general manager under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in a managerial or executive capacity.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's foreign employer or that the Beneficiary would be employed in a managerial or executive capacity in the United States. 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

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 Worker, 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).

II. ANALYSIS

The Director denied the petition based, in part, on a finding that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer.

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. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(C).

The regulation and case law confirm that 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.[1] In the context of this visa petition, 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.[2]

The Petitioner was incorporated in the State of Illinois on [redacted], 2021, and its articles of incorporation indicate that 100 shares of common stock have been issued. According to Schedule K-1 appended to the Petitioner's 2021 Form 1120-S, U.S. Income Tax Return for an S Corporation, the Beneficiary held all 100 shares in the company, both at the beginning and at the end of the year, and is its sole owner. Form 1125-E, Compensation of Officers, further indicates that the Beneficiary owns 100% of the petitioning U.S. company. The record does not contain copies of the Petitioner's stock certificates, stock ledger, or other primary evidence of its ownership.

Although it claims to have a qualifying relationship with [redacted], the Beneficiary's foreign employer, the record does not show the common ownership necessary to establish a qualifying relationship between the two companies. The Petitioner submitted a "Renewal of Registration Certificate" for the foreign entity, identifying [redacted] as the "Employer" and indicating that the company's registration certificate under the Telangana Shops and Establishment Act was renewed through December 31, 2019. The Petitioner also submitted an undated business plan indicating that [redacted] is the foreign entity's owner, and will serve as a silent partner of the Petitioner. The business plan further indicates that the Petitioner "is a partnership business owned by [redacted]."[3] We note, however, that the business plan is not an instrument of ownership, and the registration certificate's delegation of [redacted] as the "employer" is likewise insufficient to demonstrate who owns and controls the foreign entity.

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[1] *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).

[2] *Matter of Church Scientology Int'l*, 19 I&N Dec. at 595.

[3] We note numerous discrepancies regarding the spelling of these individuals' names throughout the record. For example, the registration certificate states [redacted] whereas the business plan states [redacted] and [redacted] Similarly, the business plan uses the names [redacted] and [redacted] interchangeably.

The Director denied the petition, based in part on the determination that the Petitioner had not submitted persuasive documentary evidence to show a qualifying relationship between the two entities. On appeal, the Petitioner asserts that the Director's decision is erroneous, and claims that the Petitioner has the requisite qualifying relationship with the foreign entity. In support of this assertion, the Petitioner submits a copy of a partnership agreement between [redacted] and [redacted] dated [redacted], 2021, a labour department "acknowledgement" identifying [redacted] as the foreign entity's employer, and the foreign entity's organizational chart and list of employees.

Upon review, we find the Petitioner's assertions unpersuasive. The record indicates that the Petitioner was incorporated in [redacted] 2021, and filed a U.S. tax return for the calendar year 2021 as an S Corporation. Schedule K-1 appended to the Form 1120-S indicates that the Beneficiary was the Petitioner's sole owner both at the beginning and the end of the year, and the line marked "Shareholder's number of shares" indicates that the Beneficiary held all 100 of the shares issued. Further, Form 1125-E also states that the Beneficiary owned 100% of the Petitioner.

While we acknowledge the Petitioner's claim that it is a 50/50 partnership held by [redacted] and [redacted], its articles of incorporation and IRS documentation demonstrate that the Petitioner is an S Corporation. To qualify for S corporation status, a corporation may "have only allowable shareholders," and such shareholders may "not be partnerships, corporations or non-resident alien shareholders." *See S Corporations*, https://www.irs.gov/businesses/small-businesses-self-employed/s-corporations. The Petitioner's assertion that it is owned by a partnership is contradicted by its articles of incorporation and Form 1120-S, and appears to be without merit based on the provisions governing S Corporations that prohibit partnerships from being shareholders. Moreover, the partnership agreement indicates that [redacted] resides in India, and therefore would not be considered an "allowable shareholder" as he appears to be a "non-resident alien shareholder" under the IRS guidance. The Petitioner has submitted conflicting information regarding its ownership, and has not resolved these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The burden of proof is on the Petitioner to establish, by a preponderance of evidence, that it meets all eligibility requirements, including a qualifying relationship with the Beneficiary's foreign employer. The record does not contain copies of stock certificates, stock ledgers, or other primary evidence of ownership for either the Petitioner or the foreign entity. Based on this lack of evidence, and the unresolved discrepancies noted above, the Petitioner has not supported its claim that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer.

III. CONCLUSION

The Petitioner has not met its burden of proof to establish a qualifying relationship with the employer abroad. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its arguments regarding whether the Beneficiary will be employed in a managerial or executive capacity in the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is 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).

ORDER: The appeal is dismissed.