U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25426567

Date: MAR. 31, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, part of a hotel organization, seeks to permanently employ the Beneficiary as a director of catering and events under the first preference immigrant classification for multinational managers or executives. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska 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 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 petitioning United States employer must establish 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 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).

From 2015 to 2019, the Beneficiary was director of events for [redacted] in Canada. She then entered the United States as an L-1A nonimmigrant to work at the [redacted]

The Petitioner described the claimed qualifying relationship between the entities in the United States and Canada: [redacted] manages and operates [redacted] controls and operates [redacted]. . . . These properties are ultimately managed and controlled by [the petitioning entity], a company ultimately owned by [redacted]

As a publicly traded company, [redacted] files Form 10-K annual reports with the Securities and Exchange Commission. The Petitioner submitted excerpts from the list of subsidiaries from [redacted] 2020 Form 10-K. The Petitioner stated that this list shows that the Petitioner "directly manages and controls both [redacted] But the submitted portions of the list do not name individual hotels, nor do they identify [redacted] The only named entity in Canada is [redacted] which the Petitioner did not identify as part of [redacted] chain of ownership. Therefore, the partial list of subsidiaries does not establish a qualifying relationship between the Beneficiary's two employers.

[redacted] Form 10-K for 2020, submitted with the petition, indicates that while over 6400 hotels bear the names of various [redacted] directly owns or leases only 61 hotels worldwide, only one of which is in North America, and none are in the United States. Over 5600 of the branded properties are listed as "Franchised." [redacted] stated on its Form 10-K: "We do not own, manage or operate franchised properties and do not employ the individuals working at these locations." Apart from franchised properties, [redacted] operates 715 properties "under management contracts for the benefit of third parties who either own or lease the hotels." This arrangement indicates that not all [redacted] branded hotels share a qualifying relationship through [redacted]

The Director requested evidence to show a qualifying relationship between the Petitioner and [redacted] In response, the Petitioner stated that [redacted] "manages [redacted] operates [redacted] and repeated the assertion that [redacted] is a wholly-owned subsidiary of [redacted] The Petitioner submitted three documents, which the Petitioner described as follows:

- 2013 Management Agreement for [redacted] demonstrating that [redacted] Canada Managed LP served as Manager and [redacted] serves as Operator;
- Assignment of Manager of Canadian Properties as of 07/1/2014, demonstrating that the properties managed by [redacted] Canada Managed LP were transferred to [redacted] and
- List of current [redacted] subsidiaries from most recently filed 10-K.

The Director denied the petition, stating that the submitted evidence "does not include details of the management agreement between [redacted] and the properties that was [sic] assigned."

On appeal, the Petitioner attributes the denial to "a misunderstanding of the provided evidence" and asserts that the Director did not sufficiently consider the management agreement in the record, and that the various documents, taken together, establish a qualifying relationship between [redacted] and the Petitioner. We agree with this assertion with respect to misunderstanding the evidence, but nevertheless we do not agree that the Petitioner has established the Beneficiary's eligibility, because the record does not establish that [redacted] was the Beneficiary's employer in Canada.

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

As discussed below, documents in the record show that a [redacted] subsidiary has a considerable degree of *control* over [redacted] but not *ownership* of that hotel.

A 2006 management agreement refers to a "Franchise License Agreement," indicating that [redacted] is a franchisee, and not an [redacted]-owned property. The agreement indicates that the owner of [redacted] hired an [redacted] subsidiary to manage the hotel. Parties to that agreement have since changed, but the Petitioner maintains, on appeal, that the 2006 agreement remains in effect. Since 2013, the owner of the hotel has been [redacted] Since 2014, [redacted] has served as the manager.

The more complete subsidiary list identifies both [redacted] and the Petitioner as subsidiaries of [redacted] and therefore it establishes a qualifying relationship between [redacted] and the Petitioner. But the petitioning U.S. employer must have a qualifying relationship with the "legal entity by which the alien was employed overseas." 8 C.F.R. § 204.5(j)(3)(i)(C). Here, the Petitioner's evidence shows that [redacted] was not the Beneficiary's employer in Canada.

Paragraph 4.05 of the 2006 management agreement includes the following clauses:

> 4.05.1
> . . . For clarity, *all employees are employees of the Owner* or the Owner's Affiliate, except the General Manager, regional director of finance and area director of sales and marketing/director of business development, who are employed by the Manager at Owner's expense. . . .
>
> 4.05.2
> All employees of the Hotel, except the [three positions named above], shall be employees of the Owner or Owner's Affiliate and will be managed by the Manager,

and all Compensation of such employees shall be paid by the Owner or Owner's Affiliate at the direction of the Manager. . . .

. . . .

4.05.6
. . . For certainty, Manager shall not make any contributions to the [employee] Benefit Plans, and *the Manager is not an employer of Hotel Personnel* (other than the [three named positions]) *for any purpose*.

(Emphasis added.) The Petitioner does not claim that the Beneficiary worked at [redacted] as general manager, regional director of finance, or area director of sales and marketing/director of business development. Therefore, the terms of the agreement lead us to conclude that [redacted] (the "Owner") was the Beneficiary's employer from 2015 to 2019, and [redacted] (the "Manager") was "not [her] employer . . . for any purpose." Consistent with these terms, copies of the Beneficiary's pay statements in the record identify her "Employer" as [redacted] [operating as] [redacted]

8 C.F.R. § 204.5(j)(3)(i)(C) requires a qualifying relationship between the prospective U.S. employer and the legal entity that employed the beneficiary abroad. The evidence in the record identifies the Beneficiary's employer abroad as [redacted] with which the Petitioner has neither claimed nor demonstrated a qualifying relationship.

Materials in the record raise an additional related question. The Form 10-K in the record indicates that [redacted] does not directly own or lease any properties in the United States; rather, it manages 208 independently owned properties and has franchise agreements with 4,967 more. The Form 10-K also stipulates that [redacted] "do[es] not employ the individuals working at [franchised] locations." This language leaves open the question of whether [redacted] employs the individuals working at the U.S. properties that it manages. On the petition form, the Petitioner claims 75,000 U.S. employees. But, as noted above, the only management agreement in the record stipulates that most of the staff at one managed property (in Canada, not the United States) are not [redacted] employees "for any purpose." Therefore, the question arises as to whether the Beneficiary is, and would remain, a [redacted] employee at the [redacted] The record does not identify the owner of the hotel in [redacted] nor does it include a copy of any management agreement between that owner and any entity within the [redacted] organization.

III. CONCLUSION

The record identifies the Beneficiary's employer in Canada as [redacted] and the Petitioner has not established that it has a qualifying relationship with [redacted] Therefore, we will dismiss the appeal.

ORDER: The appeal is dismissed.