U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21283701

Date: AUG. 5, 2022

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner operates a preschool facility and seeks to temporarily employ the Beneficiary as a general manager. This is the company's first nonimmigrant filing for the Beneficiary, and the Petitioner requests her L-1A classification as a manager. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition and dismissed the Petitioner's following joint motions to reopen and reconsider. After affirming the Director's decision on appeal, *see In re: 15241480* (AAO Apr. 8, 2021), we dismissed the company's additional joint motions. We agreed with the Director that the Petitioner did not establish its claimed qualifying relationship to the Beneficiary's foreign employer as a subsidiary. We reserved opinion on the Director's other finding that insufficient evidence supported the Petitioner's proposed employment of the Beneficiary in a managerial capacity.

The matter returns to us on the Petitioner's joint motions to reopen and reconsider. The company bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon review, we will dismiss the motions.

I. MOTION CRITERIA

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate that our prior decision misapplied law or U.S. Citizenship and Immigration Service policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that meet these requirements and establish a petition's approvability.

II. THE CLAIMED, QUALIFYING RELATIONSHIP

The Petitioner, a California corporation, claims that its new motions establish the Beneficiary's former employer in China as its parent company. The Petitioner contends that the Chinese entity wholly owns

[redacted] another California corporation, that, in turn, owns 51% of the Petitioner. The term "subsidiary" includes a corporation that a parent indirectly owns and controls more than half of. 8 C.F.R. § 214.2(l)(1)(ii)(K). Our prior decisions, however, found that the Petitioner established the ownership of neither itself nor [redacted]

To support the purported parent-subsidiary relationship between the Beneficiary's foreign employer and [redacted] the Petitioner's prior evidence included: a copy of a certificate for one million shares of [redacted] stock in the name of the Chinese entity; a Chinese investment certificate that also indicates the foreign employer's ownership of one million shares of [redacted] stock; and bank documentation indicating the foreign entity's payment of $2 million to [redacted] near the time of the stock's issuance. On motion, the Petitioner's submission includes a copy of [redacted] articles of incorporation, stating the company's authorization to issue up to one million shares of stock. With the evidence regarding the number of authorized shares, the Petitioner has now demonstrated that the Beneficiary's foreign employer wholly owns [redacted]

Regarding [redacted] purported majority ownership of the Petitioner, the Petitioner submits a declaration from its founder/president, describing the company's ownership since its incorporation in 2015. She states that [redacted] and [redacted] initially held all one million shares of the Petitioner's outstanding stock. In September 2018, [redacted] reportedly transferred 653,061 of its 900,000 shares to the founder/president. That left her with 65.3% of the Petitioner's shares, [redacted] with 24.7%, and [redacted] with 10%. That same month, the Petitioner agreed to make Brighten its majority owner. The Petitioner's founder/president said the company agreed to issue 1,040,087 additional shares of stock and sell them to [redacted] That would leave [redacted] with 51% of the Petitioner's total of 2,040,087 outstanding shares, the founder/president with 32%, [redacted] with 12.1%, and [redacted] with 4.9%.

As the Petitioner acknowledges, however, its articles of incorporation authorized it to issue only one million shares of stock. Thus, when it agreed in September 2018 to sell [redacted] an additional 1,040,087 shares, the Petitioner appears to have lacked authority to issue the additional shares. *See* Cal. Corp. Code § 202(f) (requiring articles of incorporation authorizing one class of shares to state "the total number of shares which the corporation is authorized to issue").

The Petitioner blames the overissue of stock on prior counsel, whom the company says also served as its corporate counsel. But the Petitioner argues that California law allowed it to "cure" the overissue. *See* Cal. Com. Code § 8210(a) (stating that "an overissue does not occur if appropriate action has cured the overissue"). The Petitioner submits documentation indicating that, in March 2020, its shareholders amended the company's articles of incorporation, authorizing it to issue up to five million shares of stock. Thus, the company argues that, under Cal. Com. Code § 8210(a), it cured the overissue of stock, and [redacted] validly holds 51% of the Petitioner's shares.

The Petitioner, however, does not provide legal authority to support its interpretation of Cal. Com. Code § 8210(a). The California Supreme Court has held that overissued stock is void and confers no rights. *See Tulare Savs. Bank v. Talbot*, 131 Cal. 45, 48 (Cal. 1900); *see also Scovill v. Thayer*, 105 U.S. 143, 148 (1881) (stating that "it is well settled that a corporation has no implied power to change the amount of its capital as prescribed in its charter"). California's highest court has yet to interpret Cal. Com. Code § 8210(a).

Outside of California, we can find only one published case addressing the issue, and the decision does not favor the Petitioner. In a case involving provisions identical to Cal. Com. Code § 8210, the Superior Court of Pennsylvania ruled that a company's amendment of its articles of incorporation did not cure its prior overissue of stock. *See Barter v. Diodoardo*, 771 A.2d 835 (Pa. Super. Ct. 2001). The Pennsylvania court ruled that the provisions of § 8210 indicate their application only when parties dispute the validity of overissued securities. *Id.* at 482. The general rule holds that, despite the presence of defects, innocent purchasers for value obtain valid securities. *Id.* Like the issuing corporation in *Barter*, the Petitioner has neither denied the validity of [redacted] shares nor refused to honor them. Thus, without a dispute, the provisions of § 8210 may not apply.

Also, California and Pennsylvania share another identical provision barring validation of a security containing a "defect [which] involves a violation of a constitutional provision." Cal. Com. Code § 8202(b)(1). The Pennsylvania court found that such a constitutional violation arguably occurs upon the issuance of unauthorized stock. *Barter*, 771 A.2d at 843. Further, the court approvingly cited the Delaware Supreme Court's holding that a later-filed amendment to articles of incorporation cannot cure an overissue. *Id.* (citing *Waggoner v. Laster*, 581 A.2d 1127, 1137 (Del. 1990)). The Delaware court stated:

> We are unable to see how the amendment could make stock valid that was invalid because issued without any authority from the State. Such an amendment might cure certain irregularities, imperfections, and defects in a stock issue that is authorized . . ., but it does not seem to us that it can possibly relate back and validate a stock that was issued without any corporate authority.

Id. Thus, the Petitioner has not demonstrated its claimed curing of the overissue of stock.

Additionally, California law generally requires issuance of a corporation's stock "by the board [of directors]." Cal. Corp. Code § 409(a)(1). Shareholders may issue stock "if the articles [of incorporation] so provide." *Id.* The Petitioner demonstrates authorization for the increase in the company's total shares with a copy of a shareholder resolution. The company's articles of incorporation, however, do not specifically allow shareholders to issue stock. *See* Cal. Sec'y of State, "Business Search," https://bizfileonline.sos.ca.gov/search/business. Thus, contrary to Cal. Corp. Code § 409(a)(1), the record lacks evidence that the Petitioner's directors authorized the issuance of the additional shares to [redacted] For this additional reason, the record does not establish [redacted] purported majority ownership of the Petitioner.

Further, a petitioner must establish eligibility "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1). The Petitioner has not demonstrated that [redacted] owned most of the Petitioner's stock at the time of the petition's filing in February 2019. Even if the Petitioner correctly interprets Cal. Com. Code § 8210(a) and the authorization of the company's shareholders sufficed to issue the additional shares to [redacted] evidence shows that the issuance did not occur until March 2020, more than a year after the petition's filing. The record lacks evidence that the purported curing of overissued stock under Cal. Com. Code § 8210(a) would apply retroactively to the petition's filing date or before. The record therefore does not establish [redacted] as the Petitioner's majority shareholder at the time of the petition's filing.

III. CONCLUSION

For the foregoing reasons, the Petitioner has not demonstrated the claimed, qualifying relationship between the company and the Beneficiary's foreign employer. Thus, the Petitioner's motions do not establish the petition's approvability.[1]

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] We will continue to reserve opinion on the Director's other denial ground: the finding of insufficient evidence of the Beneficiary's proposed employment in the claimed managerial capacity. *See, e.g., Bagamasbad v INS*, 429 U.S. 24, 25 (1976) (stating that agencies need not decide issues unnecessary to the results they reach).