U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21125647

Date: AUG. 8, 2022

Appeal of California Service Center Decision

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

The Petitioner, which intends to import and sell kitchen and bathroom cabinets and fixtures, seeks to temporarily employ the Beneficiary as chief executive officer of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. 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 record did not establish, as required, that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

[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.

II. QUALIFYING RELATIONSHIP

The Director determined 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., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The regulation and case law confirm that ownership and control are the factors that must be examined in determining 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). 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. *Matter of Church Scientology Int'l*, 19 I&N Dec. at 595.

The Beneficiary is the vice general manager at [redacted] which sells various components of electronic devices. The Petitioner asserted that it is "100% owned and controlled" by [redacted] The Petitioner stated that [redacted] was unable to directly invest in the petitioning entity because of Chinese government restrictions on overseas investment, and therefore "the foreign parent company wired ¥8,000,000 to [the Beneficiary's] personal bank account at [redacted] Bank. [The Beneficiary] then wired a total of $400,500 . . . to the U.S. subsidiary's account . . . in six installments . . . as the foreign parent company's initial capital injection."

A receipt from [redacted] Bank of China indicates that [redacted] wired ¥8 million (roughly US$1.14 million) to the Beneficiary's account at [redacted] Bank on August 12, 2020. Bank documents show that the Beneficiary transferred funds from two different U.S. bank accounts to the Petitioner:

Date	Amount	Source bank
September 10, 2020	$3000	Bank of America
December 3, 2020	50,000	HSBC
December 3, 2020	97,500	HSBC
December 3, 2020	100,000	HSBC
April 8, 2021	100,000	Bank of America
April 21, 2021	50,000	Bank of America
Total	400,500	

The Petitioner did not submit a bank statement for April 2021, instead submitting a "Balance Summary" showing a bank balance of $400,370 as of April 18, 2021.

The Petitioner's December 2020 bank statement also reflects two significant deposits from other sources: $99,975 from [redacted] and $50,000 from [redacted]

A share certificate, numbered "1" and dated August 6, 2020, indicates that [redacted] owns 1,000,000 shares of the petitioning entity. An accompanying stock transfer ledger indicates that [redacted] purchased the shares for $400,500; the ledger does not reflect any other transactions or the issuance of any other certificates.[2]

In a request for evidence, the Director stated that the initial evidence "does not establish that [redacted] has invested any money into the U.S. business, or that it has any ownership or control rights in the U.S. business." The Director requested additional evidence to establish [redacted] ownership and control of the petitioning U.S. employer. The Director stated that such evidence "may include, but is not limited to," documentation such as the Petitioner "current bylaws and articles of incorporation . . . listing the type and amount of stock authorized to be issued."

The Director noted that the Petitioner had not submitted any evidence to support its claims that [redacted] was unable to transfer funds directly to the Petitioner. The Director also observed that the Petitioner had received significant, and unexplained, sums from [redacted] and [redacted] in December 2020.

In response, the Petitioner stated:

> Since November 2016, the People's Republic of China (PRC) has been increasing its scrutiny of outbound direct investments (ODI) made by PRC companies. Consistent with that trend, the PRC formalized the regulatory pathway for ODI transaction approval on August 18, 2017, by issuing the *Opinions on Further Guiding and Regulating Outboundjiquan* [*sic*] *Investment* (the *Guiding Opinions*). . . . Under the Guiding Opinions, [t]he ODI transactions are required to be "approved" by PRC regulators, which involves a higher level of scrutiny and a longer review process than the that typically "registration" [*sic*] with PRC regulators.
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> Furthermore . . . , many "informal" scrutiny and restrictions are also imposed by state officials in order to discourage and create more hinders [*sic*] to ODI. . . .
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> Under such strong formal and "informal" scrutiny, it is extremely hard for private companies to get ODI "approval" from [the] Chinese government.

In immigration proceedings, the law of a foreign country is a question of fact which must be proven if a petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973).

To support its assertions about Chinese currency controls, the Petitioner submitted copies of online articles and blog posts. These materials do not show that [redacted] $400,000 investment in the petitioning entity would have been subject to new restrictions.

[2] The Director stated, in the denial notice, that the share certificate and ledger "cannot be found in the initial filing," but both documents are present in the record.

All the articles are from 2016 and 2017, several years before the establishment of the petitioning entity in the United States. A 2016 article from Allen & Overy's website states: "It is rumored that the restrictions on ODI will remain in place until September 2017." The Petitioner does not submit evidence to show that the restrictions remained in place in 2020 and 2021.

Furthermore, the articles reported stricter government scrutiny over only certain types of outbound investments, such as investments valued at US$10 billion or more, and investments in a foreign subsidiary that is substantially larger than the Chinese company making the investment. The Petitioner did not address these categories or explain how the Petitioner falls into any of them.

The Director denied the petition, concluding that the Petitioner had "not demonstrated that the foreign entity was restricted or prohibited from directly investing in the U.S. entity," and had "not provided evidence that the foreign company deposited funds into the beneficiary's bank account for the sole purpose of investing in the U.S. entity." The Director added that the bank documents show incoming wire transfers from other companies in China.

On appeal, the Petitioner repeats prior assertions about investment restrictions. The Director addressed those claims in the denial notice, concluding that the submitted supporting evidence did not show that [redacted] was prohibited or prevented from directly investing in the petitioning entity. The Petitioner, on appeal, does not address the Director's concerns. Instead, the Petitioner cites the same third-party articles and blog posts from 2016 and 2017.

Also on appeal, the Petitioner submits copies of its bylaws and a shareholder agreement. The Petitioner does not explain why it did not submit these documents in response to the RFE, when the Director specifically requested copies of corporate governance documents relating to ownership and control of the company. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.[3]

Furthermore, review of the bank documents previously submitted by the Petitioner reveals a serious and unexplained issue. As noted above, the Petitioner initially submitted a "Balance Summary" dated April 18, 2021, showing the Petitioner's account held $400,370 on that date. The Petitioner's response to the RFE included the April 2021 statement from the Petitioner's account with [redacted] Bank. That statement shows that the account received two transfers from the Beneficiary, but returned the funds within days. The account received $100,000 on April 13, which it then sent out by international wire transfer in the Beneficiary's name on April 20; and it received $50,000 on April 22, which it

[3] The Petitioner cites *Larita-Martinez v. INS*, 220 F.3d 1092, 1096 (9th Cir. 2000) to argue that evidence submitted on appeal must be reviewed as part of the record of proceeding, but that case involved a deportation proceeding. The Petitioner has not shown that the case applies more broadly to administrative proceedings involving benefit requests.

transferred back out, again in the Beneficiary's name, on April 28. The beginning balance shown on the statement, $300,370 as of April 1, is the same as the ending balance as of April 30. The Petitioner highlighted the two outgoing transactions in yellow ink, adding the handwritten annotation "Installment of Capital Injection," but the Petitioner did not explain how *outgoing* wire transfers – clearly labeled as "Debits" and "Subtractions" on the statement – amount to "Capital Injection" *into* the company. The Petitioner did not show what became of the $150,000 after the Petitioner sent the wire transfers in late April 2021. This is a significant material issue because the purported stock transfer ledger indicates that [redacted] paid $400,500 for its shares in the petitioning entity, but the Petitioner returned almost half that amount about a week after receiving it.

The appeal includes a chronology of the various bank transactions which, the Petitioner asserts, illustrate [redacted] transfer of funds to the Petitioner. This chronology omits the two outgoing transfers in April 2021. This substantial, unexplained, and initially undisclosed outflow of nearly half of the Petitioner's startup capital raises serious questions that the record does not answer. Any documents or evidence that do not take this outflow into account, and rely on the assumption that all the incoming funds remained with the Petitioner, are

Further questions arise from two third-party deposits into the Petitioner's account – $99,975 from [redacted] and $50,000 from [redacted] There is no indication that the Petitioner has reached a stage of being able to provide goods or services in the United States, and therefore there is no reason to believe that these deposits represent payments for such goods or services. We cannot rule out that these payments – made several months after the date on the stock transfer ledger – were made to purchase shares in the company. The burden is on the Petitioner to establish that these entities sent nearly $150,000 to the Petitioner for reasons unrelated to purchasing shares or equity in the company.

Apart from the unexplained purpose of these incoming transfers, the bank documentation shows that the Petitioner's bank account in the United States was able to accept transfers of nearly $100,000 from businesses – not private individuals – in China. The Petitioner has not explained why [redacted] and [redacted] were able to send money directly to the Petitioner but [redacted] was not able to send sums of comparable size.

Upon review of the record, we conclude that the Petitioner has not met its burden of proof to establish that it has a qualifying relationship with the foreign entity. For this reason, we will dismiss the appeal.

III. ADDITIONAL ISSUE

Beyond the Director's decision, review of the record shows another issue of concern. A petitioner filing a new office petition must submit evidence to show that is has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

The Petitioner submitted copies of lease agreements, indicating that the Petitioner leased office space in [redacted] California, for $1400 per month beginning in May 2021, and warehouse space in [redacted] California, for $2200 per month beginning in December 2020. The Petitioner submitted photographs purporting to show the office space and warehouse space. But the Petitioner's bank statements from December 2020 through August 2021 do not show a continuing pattern of outgoing checks or payments corresponding to the stated monthly rental rates.

In the absence of evidence of monthly rent payments, the Petitioner has not met its burden to establish that it had secured sufficient physical premises for its new office, including warehouse space to store $90,000 worth of inventory that the Petitioner claims to have purchased. For this additional reason, the record as it now stands does not support approval of the petition.

ORDER: The appeal is dismissed.