U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 21581399

Date: AUG. 22, 2022

Appeal of California Service Center Decision

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

Planning to establish a new business in the United States, the Petitioner sought to temporarily employ the Beneficiary as general manager of a convenience store.[1] The company requested her classification under the L-1A nonimmigrant visa category as an intracompany transferee who would work in a managerial or executive capacity. *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. On appeal, the Petitioner submits additional evidence. It asserts that the Director erred in concluding that it did not establish: 1) the sufficiency of its physical premises; 2) its ability to support a manager or executive within a year of the petition's approval; 3) the Beneficiary's employment abroad for at least one of the three years preceding the petition's filing; and 4) the claimed executive nature of her foreign work.

The Petitioner 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 *de novo* review, we find that the Petitioner has not demonstrated the Beneficiary's employment abroad for at least one of the three years preceding the petition's filing. We will therefore affirm the Director's decision and dismiss the appeal.

## I. L-1A PETITIONS FOR "NEW OFFICES"

If seeking to employ noncitizens at organizations that have been doing business in the United States for less than one year, L-1A petitioners must meet special requirements. 8 C.F.R. § 214.2(l)(3)(v). The petitioners must demonstrate that:

- They have secured "sufficient physical premises;"

[1] On appeal, the Petitioner states its intent to operate a beauty salon, rather than a convenience store. A petitioner, however, must establish eligibility for a requested benefit "at the time of filing." 8 C.F.R. § 103.2(b)(1). Also, a petitioner may not materially change a filing "in an effort to make an apparently deficient petition conform to [agency] requirements." *Matter of Izummi*, 22 I&N Dec. 169, 175 (AAO 1998). We will therefore disregard the Petitioner's apparent new business plan.

- The beneficiaries worked overseas for parents, branches, subsidiaries, or affiliates of the prospective employers in executive or managerial capacities for at least one continuous year in the three years preceding the petitions' filings; and
- Within one year of the petitions' approvals, the new U.S. businesses will likely support executive or managerial positions.

*Id.*

## II. ONE YEAR OF EMPLOYMENT ABROAD

The Petitioner claims that its affiliate employed the Beneficiary in India in an executive capacity as vice president, from January 2017 until the petition's filing in January 2020. In response to the Director's request for additional evidence, the company submitted a copy of the Beneficiary's purported most recent payroll record from the foreign entity.

We agree with the Director that the Petitioner has not established the Beneficiary's employment for at least one of the three years preceding the petition's filing. *See* 8 C.F.R. § 214.2(l)(3)(v)(B). The payroll record from the foreign entity indicates the business's employment of the Beneficiary from April 1, 2020 to April 30, 2020. That period occurred after the petition's filing and reflects only one month of work. The record therefore lacks sufficient evidence corroborating at least one continuous year of foreign employment by the Beneficiary during the three-year period preceding the petition's filing.

On appeal, the Petitioner argues that the Director overlooked evidence of the purported executive nature of the Beneficiary's work abroad. But the company does not address the Director's finding regarding the length of her purported employment in India. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (stating that administrative agencies may dismiss an appeal based on an issue that a director raised but a party did not address).

Also, unaddressed by the Director, U.S. Citizenship and Immigration Services (USCIS) records indicate that the Beneficiary has remained in the United States since her last admission in June 2017. Periods spent in the United States do not count as foreign employment. 8 C.F.R. § 214.2(l)(1)(ii)(A) (defining the term "intracompany transferee"). Thus, USCIS records show that, from the start of the three-year period preceding the petition's filing until entering the United States in June 2017, the Beneficiary could not have gained more than about six months of employment abroad. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies). In any future filing in this matter, the Petitioner must submit independent, objective evidence that, between January 2017 and January 2020, its purported affiliate employed the Beneficiary abroad for at least one continuous year.

The Petitioner has not demonstrated the Beneficiary's purported employment abroad for at least one continuous year. We will therefore affirm the petition's denial and dismiss the appeal.

As this issue resolves the appeal, we need not review the claimed executive nature of the Beneficiary's foreign employment or the Director's other denial grounds. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that administrative agencies need not "make findings on issues the decision of which

is unnecessary to the results they reach"). Rather, we will reserve consideration of the other issues, determining them if and when needed.

## III. THE QUALIFYING RELATIONSHIP

Also unaddressed by the Director, the Petitioner did not demonstrate the required qualifying relationship between it and the Beneficiary's purported foreign employer. The Petitioner claims that its president - the Beneficiary's father - wholly owns it and her foreign employer, making the entities affiliates. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*) (defining the term "affiliate" to include "[o]ne of two subsidiaries both of which are owned and controlled by the same . . . individual").

But copies of Indian tax records and a "consent letter" from the Beneficiary's parents describe the foreign business as a sole proprietorship owned by the Beneficiary's paternal grandfather. The documents identify him, rather than her father, as the business's proprietor. Thus, contrary to the Petitioner's claim, the record does not establish the Beneficiary's father as the sole owner of her purported foreign employer.

The record also does not demonstrate that the Beneficiary's father wholly owns the Petitioner. The company, an Alabama corporation authorized to issue 10,000 shares of stock, points to a copy of its bylaws. The document contains the purported signature of the Beneficiary's father as company president and describes him as having a "100% interest" in the corporation.

USCIS, however, generally requires "primary evidence" if available. 1 *USCIS Policy Manual* E.(6)(B). Primary evidence means evidence that on its own proves an eligibility requirement. *Id.* Bylaws of an Alabama corporation address the business's management and the regulation of the corporation's affairs. Ala. Code § 10A-2-2.06. But bylaws do not document the ownership of an Alabama corporation's stock. Rather, the Petitioner's bylaws require it to issue stock certificates to shareholders and to record any share transfers "upon the stock transfer books of the corporation." Bylaws of [Petitioner], Arts. 3.1, 3.2. Therefore, to demonstrate that the Beneficiary's father wholly owns the Petitioner, the company must submit copies of its stock certificate(s) and/or pages of its stock transfer books. Because the record lacks such documentation, the company has not sufficiently established the Beneficiary's father as its sole shareholder. *See Delta Talent LLC v. Wolf*, 448 F.Supp.3d 644, 653 (W.D. Tex. 2020) (stating that, to determine the total number of shares issued, the exact number issued to a shareholder, and the later percentage of ownership and its effect on corporate control, USCIS must examine a corporation's stock certificates, ledgers, registries, minutes of relevant shareholder meetings, and potentially other documents).

For the foregoing reasons, the Petitioner has not demonstrated that the Beneficiary's father wholly owns and controls it or her purported foreign employer. Thus, in any future filing in this matter, the Petitioner must submit independent, objective evidence of the claimed qualifying affiliation.

## IV. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's employment abroad for at least one continuous year during the three years preceding the petition's filing. We will therefore affirm the petition's denial.

**ORDER:** The appeal is dismissed.