



**U.S. Citizenship
and Immigration
Services**

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

In Re: 19324333

Date: JUNE 24, 2022

Appeal of California Service Center Decision

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

The Petitioner, a home cleaning company, seeks to temporarily employ the Beneficiary as president and chief executive officer (CEO) of its new office¹ 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: (1) the employer qualifies as a new office; (2) the Petitioner has secured sufficient physical premises to house the new office; (3) the Beneficiary was continuously employed on a full-time basis for at least one year by a qualifying employer before she entered the United States; and (4) the Beneficiary was employed abroad in a managerial or executive capacity. 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, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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 also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

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. BURDEN OF PROOF AND CREDIBILITY

Before we discuss details of the petition, we make the general observation that the burden of proof lies with the Petitioner, and therefore the Petitioner's assertions must be both corroborated and credible. By signing the petition form, the Petitioner acknowledged that its claims are subject to verification, and certified under penalty of perjury that the information in the petition and its supporting documents is "complete, true, and correct."

An immigrant petition can be approved only upon a determination that the facts claimed in that petition are true. *See* section 204(b) of the Act, 8 U.S.C. § 1154(b). A petitioner must establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375- 76 (AAO 2010). In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Where there are contradictions or discrepancies in the record, the Petitioner must resolve those inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Before she entered the United States, the Beneficiary worked for [REDACTED] in Dubai, United Arab Emirates (UAE). The Petitioner's initial submission, however, contains several unexplained references to Kenya:

- On page 26 of Form I-129, the Petitioner identified its parent company as [REDACTED] (KENYA);
- A cover letter accompanying the initial filing, signed by the Petitioner's attorney, indicated that the Beneficiary "functioned in an Executive position as Proprietor/CEO for [REDACTED] (Kenya)";
- The Petitioner's printed letterhead identifies the company as "A US Subsidiary of [REDACTED] Kenya";
- A letter printed under that letterhead calls [REDACTED] a "Kenya Company" and repeatedly shows the word "(Kenya)" in parentheses after the name of the foreign company; and
- A "Membership Shares" certificate identifies "[REDACTED] (Kenya)" as the Petitioner's sole shareholder.

In a notice of intent to dismiss and request for evidence (NOID/RFE), we asked the Petitioner to clarify and explain its references to Kenya. In response, the Petitioner states: "There is no presence in Kenya. Please consider this as harmless error on our part." The Petitioner does not explain how or why it erroneously added the word "Kenya" to the foreign entity's name on several different documents. An erroneous reference to Kenya is not material on its own, but repeated errors raise larger doubts about overall reliability, accuracy, and credibility when a particular claim relies entirely or primarily on the Petitioner's unsupported statements.

Documentation regarding the ownership of [redacted] consistently indicates that the Beneficiary owns half the company's shares, and [redacted] owns the other half. This ownership structure appears in a letter submitted with the petition in 2020, signed by the Beneficiary's spouse, and in UAE government filings as recently as 2022, as shown in the Petitioner's response to the NOID/RFE. But in that same response, the Petitioner states that "[redacted] passed away in 2013." The Petitioner contends that [redacted] death gave the Beneficiary "complete control and ownership" of [redacted] as the "surviving partner."

The Petitioner asserts that the ownership of [redacted] is not material to the petition, but here again is the larger issue of the credibility and reliability of statements by officials of the company. The Petitioner does not explain why [redacted] continues to name [redacted] as the company's half-owner in government filings, nine years after his death.

Furthermore, a submitted probate notice published in *The Kenya Gazette* in April 2021 does not show that [redacted] shares passed to the Beneficiary; rather, it indicates that [redacted] died "intestate," meaning without a will. The Petitioner does not document any transfer of ownership or cite any applicable provision of law to show that the Beneficiary assumed [redacted] shares in the company.

The Civil Works Company Agreement that created [redacted] in 2011, and which described the company as a partnership between the Beneficiary and [redacted] does not state that the surviving partner assumes the shares of the deceased partner if one partner dies. Rather, Article 13C of the Agreement states that the "[i]nsolvency or withdrawal of [the] second partner" would result in the "Company's Dissolution." This provision is especially significant when viewed in the context of recent UAE government filings in which [redacted] continues to actively certify that [redacted] owns 50% of the company's shares. There is no indication that [redacted] has disclosed [redacted] death to the relevant UAE authorities.

The Petitioner is a limited liability company (LLC), with "members" instead of "owners" or "shareholders." The Beneficiary asserted that she and her spouse were the LLC's original members, and that they transferred their membership interest to [redacted] in January 2019. The Petitioner's initial submission included a certificate of LLC membership shares, numbered "01," indicating that [redacted] (Kenya) owns "100% units of the [petitioning] limited liability company." The certificate in the record is not a photocopy; the foreign entity's name and the Beneficiary's signature have both been handwritten directly onto the certificate in the record. The date "this 19th day of July 2020" was printed onto the certificate, but the "2020" has been crossed out and "2019" added by hand.

In the NOID/RFE, we stated that the handwritten alterations to the certificate suggested "the certificate was prepared in 2020 and then backdated." In response, the Petitioner does not directly address these concerns or explain why the document was altered in the manner described. Instead, the Petitioner submits what it calls an "amended share certificate," numbered 001 and dated January 14, 2020, nearly two and a half years before its submission in June 2022. The new certificate is not, itself, marked as being amended or backdated. The submission of a newly created certificate, backdated to 2020, reinforces rather than resolves our stated concern that the previous version of the certificate was not

accurately dated. The Petitioner has not resolved the questions about the origin of these documents and the reasons for the alterations and backdating.

When viewed in the aggregate, these discrepancies and anomalies, for which the Petitioner has not provided a satisfactory explanation, diminish the weight we afford to claims and assertions for which the Petitioner has not provided verifiable, independent supporting evidence.

III. CONTINUOUS EMPLOYMENT ABROAD

A new office petition for a manager or executive must include evidence of at least one continuous year of full-time employment abroad, in a managerial or executive capacity, with a qualifying organization within the three years preceding the filing of the petition. 8 C.F.R. § 214.2(l)(3)(iii) and (v)(B).

The Petitioner has initially stated that the Beneficiary “functioned in an Executive position as Proprietor/CEO for [REDACTED] (Kenya).” An undated organizational chart names 20 workers in the following positions at the foreign entity:

- The Beneficiary (title not stated)
- Office Manager (the Beneficiary’s spouse)
- 2 drivers
- 2 field supervisors
- 14 cleaning technicians (7 under each supervisor)

The record, however, does not show that the foreign company paid all 20 individuals named on the chart. An “Establishment Statement” from Dubai indicates that the company paid 16 workers during September, October, and November of 2019. Most of these workers were contractors rather than employees; a staffing agency provided 13 workers as of June 2019, and 9 in January 2020.

Noting that the Petitioner had not established the extent of the Beneficiary’s employment with the foreign entity, the Director asked the Petitioner for documentary evidence such as copies of the Beneficiary’s payroll or personnel records. In response, the Petitioner submitted “Salary Certificates,” showing the digitally reproduced signature of the Beneficiary’s spouse, indicating that the foreign entity paid the Beneficiary 30,000 dirham per month between November 2018 and October 2019. A separate document dated October 29, 2020, also called a salary certificate and showing the same digitally reproduced signature, indicates that the Beneficiary “has worked with this company since 2010.”

The Director found the salary certificates to be insufficient. We agree. The certificates are not corroborated by first-hand evidence of payment to the Beneficiary. Also, there is no evidence that the dates on the monthly certificates are accurate. This is a concern because (1) the Petitioner has submitted other backdated evidence, and (2) in many respects, the monthly certificates dated 2018-2019 are very similar to the October 2020 certificate that was created for the specific purpose of responding to the Director’s request for evidence, in much the same way that the Petitioner created a new member certificate in 2022, but dated it January 2020.

Also, the salary certificates each identify the Beneficiary’s spouse as [REDACTED] “Operations Manager.” But other materials, submitted at the same time, do not show the Beneficiary’s spouse as [REDACTED]

operations manager. An organizational chart does not show an operations manager, and an employee roster identifies the Beneficiary's spouse as a "Light Vehicle Driver."

Furthermore, we note that the U.S. and foreign entities have roughly the same number of claimed employees, and pay statements issued to the Petitioner's claimed U.S. managerial staff all reflect part-time employment, never exceeding 96 hours per month (about 24 hours per week). This information does not suggest that a cleaning company of that size requires full-time management.

The Beneficiary's part-ownership of a cleaning company in Dubai does not establish or imply continuous, full-time employment there. The lack of demonstrably contemporaneous payroll documentation for the Beneficiary, when it does exist for other workers at the company, means that the Petitioner has not met its burden of proof in this regard.

The above determination, by itself, determines the outcome of this proceeding and warrants dismissal of the appeal. Detailed discussion of the remaining grounds for denial cannot change the outcome of this appeal. Therefore, we reserve those other issues.²

IV. ADDITIONAL ISSUE

Beyond the issues raised in the Director's decision, another issue bears mentioning. To establish a "qualifying relationship" between the Petitioner and the Beneficiary's foreign employer 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).

State filings in the record show that the Beneficiary and her spouse were the Petitioner's original managing members when the LLC was formed in 2018. In January 2020, the petitioning LLC filed a Certificate of Amendment with the State of Texas, removing the Beneficiary and her spouse as managing members and designating [REDACTED] as the sole managing member.

Furthermore, we advised the Petitioner in the NOID/RFE that Texas's searchable government database of business information³ includes information from a 2021 Texas Franchise Tax Public Information Report (PIR) listing the Beneficiary's spouse, not [REDACTED] as the only identified managing member of the petitioning LLC. This information appears to indicate that [REDACTED] is no longer a member of the petitioning LLC, and therefore the Petitioner is no longer a subsidiary of [REDACTED].

In response, the Petitioner submits a printout of Texas Comptroller of Public Accounts Form 05-102, used to file a PIR. The form identifies [REDACTED] as the Petitioner's managing member. This submission does not fully address the above concerns. The form is dated May 31, 2022, several months after we issued the NOID/RFE. The Petitioner does not explain why this information is different from the 2021

² *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

³ The database is available at <https://mycpa.cpa.state.tx.us/coa/Index.html>.

PIR information shown on Texas's website.⁴ If the qualifying relationship was interrupted, its subsequent restoration would not remedy the issue. A petitioner must establish eligibility at the time of filing the petition, and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

Because the Petitioner has provided changing and conflicting information to government bodies regarding the membership (and thus the ownership and control) of the petitioning LLC, we cannot conclude that the Petitioner has met its burden of proof with regard to its qualifying relationship to in the UAE.

ORDER: The appeal is dismissed.

⁴ The Petitioner indirectly acknowledged this change on the 2022 PIR form. The form includes the instruction: "○ Blacken circle if there are currently no changes from previous year." By not blackening the circle, the Petitioner indicated that the 2022 PIR includes changes from the previous year. No change is identified except for the managing member information.