U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22972475

Date: NOV. 17, 2022

Appeal of California Service Center Decision

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

The Petitioner, described as a transportation and logistics company, seeks to temporarily employ the Beneficiary in the United States as its president 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 Beneficiary will be employed in the United States in a managerial or executive capacity; (2) the Beneficiary has been employed abroad in a qualifying capacity; (2) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; and (4) the Beneficiary was employed abroad for at least one continuous year during the three years preceding the filing of the petition or the Beneficiary's entry into the United States to work for the Petitioner. 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.

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).

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 Petitioner's initial filing included the following claims regarding company ownership:

- The Beneficiary is the sole owner of a business abroad, comparable to a sole proprietorship, that bears his name;
- The Beneficiary owns 55% of the petitioning U.S. entity; and
- [redacted] owns the other 45% of the petitioning entity.

The Petitioner asserted that the two businesses are affiliates, as defined at 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*), based on the Beneficiary's ownership and control of both companies.

The Director issued a request for evidence, instructing the Petitioner to submit additional evidence of ownership, such as tax returns, equity certificates and ledger, and the Petitioner's "current operating agreement and articles of organization . . . , listing the names of members and the type and percentage of membership interests issued by the U.S. entity."

In response, the Petitioner stated that the Beneficiary "initially obtained an ownership interest in the US entity on June 5, 2017." The Petitioner submitted a copy of a Certificate of Amendment, executed on May 26, 2017 and filed on June 5, 2017, indicating that the Beneficiary purchased a 50% interest in the petitioning entity with an "Initial Capital Contribution" of $149,000.[1] The 50% interest shown on the 2017 certificate, filed with the State of Texas, does not match the Petitioner's current claim that the Beneficiary owns 55% of the company. The Petitioner did not explain the discrepancy.

The Petitioner also submitted a copy of its 2021 IRS Form 1120, U.S. Corporation Income Tax Return. Schedule G of that form, Information on Certain Persons Owning the Corporation's Voting Stock, indicates that [redacted] owns 100% of the Petitioner's voting stock.

The Director denied the petition, stating that the Petitioner had not documented the Beneficiary's purchase of a 55% interest in the company. The Director also concluded that the Petitioner had not shown the shared ownership and control necessary to establish that the Petitioner is an affiliate of the

[1] A list of wire transfers indicates that the Beneficiary had invested only $3000 in the petitioning company as of the date on the Certificate of Amendment; he did not complete the $149,000 investment until February 2018.

Beneficiary's business in Mexico. The Director noted that the 2021 tax return identified [redacted] as the sole owner of the petitioning entity.

On appeal, the Petitioner asserts that the tax return "was based on outdated information." The Petitioner submits a new copy of IRS Form 1120, Schedule G, showing the 55-45 ownership split that the Petitioner initially claimed.

The Petitioner correctly observes that a tax return is not, by itself, conclusive evidence of ownership. Nevertheless, the Petitioner submitted the document for consideration, and it was appropriate for the Director to note any discrepancies between that document and other materials in the record.[2]

The Petitioner asserts that it had submitted "volumes of evidence that establishes ownership of the US entity." But that evidence is inconsistent. In addition to the Petitioner's claims of a 55-45 ownership split, the Petitioner has submitted copies of a state filing describing the Beneficiary as half owner of the petitioning entity and a tax return naming [redacted] as the sole owner. It is the Petitioner's burden to resolve this discrepancy with objective, independent evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner asserts that it had previously submitted a "virtual mountain of evidence" of the Beneficiary's ownership and control of the petitioning entity. Most of the documents described on appeal concern financial transactions. The only identified document that specifically refers to a 55-45 ownership split is a limited partnership (LP) agreement submitted with the initial filing. That document, however, is deficient for several reasons.

The Petitioner is a limited liability company (LLC), not an LP. The terms are not interchangeable. The LP agreement is dated July 15, 2020, more than four years after the petitioning entity was registered with the State of Texas as an LLC in March 2016. For both of these reasons, the 2020 LP agreement cannot be the instrument that brought the Petitioner into existence as an LLC in 2016. The LP agreement does not indicate that the assets of the existing LLC would be subsumed into a newly formed LP; the Petitioner continues to include the initials "LLC" in its name.

The 2020 LP agreement indicates that the Beneficiary will hold a 55% interest, and [redacted] will hold the other 45%. As to how the partners would secure those interests, the document states: "The Partners will make an initial contribution to the Limited Partnership as follows," but the spaces that follow are blank. Also blank is the deadline for submitting the payments. Both the Beneficiary and [redacted] initialed the incomplete page.

The LP agreement acknowledges the need to "file" the agreement, but the Petitioner has not shown that it filed this LP agreement with the State of Texas. The Petitioner has not established that the LP agreement has any legal force, or explained the purpose or effect of a 2020 LP agreement with respect to an LLC that has existed since 2016.

[2] We note that, although the appeal includes a revised Schedule G, the Petitioner does not establish that it actually filed that form with the Internal Revenue Service or otherwise demonstrate that the new form has more credibility or evidentiary weight than the earlier version of Schedule G.

Given the issues described above, the 2020 limited partnership agreement is not persuasive evidence that the Beneficiary holds a 55% interest in the petitioning LLC. The discrepancies undermine the evidentiary weight of the LP agreement, and the Petitioner has cited no other documentary evidence that specifies a 55-45 ownership split. The Petitioner has not shown that any of its filings with the State of Texas or the Internal Revenue Service specify a 55-45 ownership split.

Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. at 591. Here, the record contains several other discrepancies and inconsistencies. For example:

- [redacted] calls himself the Petitioner's "logistics manager" in correspondence, but an organizational chart and business plan submitted with the petition in December 2021 refer to him as a "driver." An updated organizational chart submitted in March 2022 does not include [redacted]s name or show any logistics manager.
- The Form I-129 petition and business plan in the record refer to the Petitioner as a "Transportation and Logistics" company, but the 2021 income tax return in the record indicates that the Petitioner is a "used car dealer" engaged in "retail trade." The type of business activity is material to the petition because the nature of the business affects the company's staffing needs and organizational structure.
- The Form I-129 petition indicates that the Petitioner had three employees at the time of filing, a number consistent with pay receipts in the record. But a business plan submitted at the same time referred to six employees. When the Director asked for evidence that the Petitioner employed all six individuals, the Petitioner responded with a new organizational chart naming several different employees and job titles. The Petitioner claimed that "the business plan doesn't state that six employees are currently employed," but rather represents "the plan for the first year." This explanation is not consistent with the business plan. The business plan repeatedly stated that the Petitioner "has already hired" a general manager, a dispatcher, an accountant, a safety specialist, and two drivers, all identified specifically by name. The "plan for the first year" referred to several *additional* planned hires.

Given the conflicting information and discrepancies in the record, the Petitioner has not met its burden of proof to establish, by a preponderance of the evidence, that the Beneficiary's foreign employer and the petitioning entity are affiliates through shared ownership and control.

Because the issue of the qualifying relationship is sufficient to decide the outcome of the appeal, we reserve the remaining issues.[3]

We will dismiss the appeal for the above stated reasons.

ORDER: The appeal is dismissed.

[3] *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).