U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24706846

Date: APR. 7, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1B Manager or Executive)

The Petitioner, a software company, seeks to temporarily employ the Beneficiary as a subject matter expert in data and voice integration under the L-1B nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer, and that the Beneficiary possesses specialized knowledge; has been employed abroad as a manager, executive, or in a specialized knowledge capacity; and will be employed in the United States in a specialized knowledge capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for the L-1B 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 specialized knowledge 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).

II. ANALYSIS

The Director determined that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer. We agree.

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 at 8 C.F.R. § 214.2(l)(1)(ii) defines the various terms relevant to a qualifying relationship. Essentially, a parent is a legal entity that has subsidiaries. 8 C.F.R. § 214.2(l)(1)(ii)(I). A subsidiary is a legal entity wholly or partly owned and controlled by a parent. 8 C.F.R. § 214.2(l)(1)(ii)(K). The term "affiliates" could mean (*1*) subsidiaries owned and controlled by the same parent or individual, or (*2*) legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(1)(ii)(L).

Control may be "de jure" by reason of ownership of more than 50 percent of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).[1] In situations where a petitioner provides documentation of a qualifying relationship based on control through possession of proxy votes, the petitioner must show that the proxy votes are irrevocable from the time of filing through the time of adjudication. A petitioner must also provide evidence that the qualifying relationship will continue to exist until the beneficiary becomes a lawful permanent resident. *See generally* 2 *USCIS Policy Manual* L.6(A)(1), https://www.uscis.gov/policy-manual (discussing petitioner requirements applicable to nonimmigrant petitions for intracompany transferees).

The Petitioner refers to itself as the "parent," and to the Beneficiary's foreign employer as its "subsidiary." The Petitioner asserts on appeal that the Director misunderstood the relationship between the Petitioner and the Beneficiary's foreign employer, and erroneously relied on the definition of an "affiliate" rather than the definition of a "subsidiary." The record does not support the Petitioner's argument. The Petitioner has not established that it owns the foreign employer. Rather, the record shows that individuals own both companies, in the following proportions:

Owner's initials	U.S. Petitioner	Foreign employer
A.B.B.	33.3334%	17.4604%
D.V.I.	33.3333%	17.4603%
J.C.T.	33.3333%	17.4603%
V.V.K.	—	47.619%

The Petitioner asserted that it is the foreign entity's parent, because "[t]he three owners of the U.S. [Petitioner] own a majority of the foreign subsidiary." Those individuals *personally* own parts of the

[1] In *Matter of Hughes*, proxy voting was raised in the context of control separate from majority ownership; however, control may also be obtained in other types of binding voting arrangements, such as through specific voting provisions in equity holder agreements, voting trusts, etc.

foreign company. The petitioning corporation, itself, does not own any part of the foreign entity. Under the regulatory definitions, a subsidiary cannot have more than one parent, and several shareholders do not collectively constitute a parent.

In a request for evidence (RFE), the Director observed that the two entities do not have the same owners. The Director stated: "The regulations do not permit grouping of some select individual owners together in order to establish a majority share."

In response, the Petitioner stated: "We specifically stipulated that [the Petitioner] was the parent company and [the foreign entity] was the foreign subsidiary." A corporation is a legal entity separate and distinct from its owners, whether individually or collectively. The petitioning corporation itself does not hold any ownership interest in the foreign company, and therefore it cannot be considered the foreign entity's "parent" as the Petitioner asserts.

The Petitioner cited an unpublished appellate decision from 1993, in which we stated: "where persons own different amounts of shares in parent and affiliate, but vote in majority block by agreement, the parent/affiliate relationship would be approved because there is no danger of one group controlling the foreign entity and another the U.S. entity." The Petitioner asserted that, as in the 1993 decision, its "shareholders . . . vote together in any issue dealing with" the foreign entity.

In response to the RFE, the Petitioner submitted a "Shareholder Voting Agreement," in which its three shareholders "agree that [they] will vote [their] shares unanimously as a majority voting block" of the foreign entity. A petitioner must meet all eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The agreement is undated, and the Petitioner did not submit evidence to show that the agreement was in effect when the Petitioner filed its petition. If the Petitioner created the newly submitted agreement after the Director issued the RFE, then the agreement would not retroactively establish eligibility at the time of filing. Also, the agreement does not specify which of the shareholders would prevail if their opinions were to differ about a particular vote.

Furthermore, the Petitioner did not submit a corresponding voting agreement for the petitioning U.S. entity. Without such an agreement, the three shareholders do not unanimously control the petitioning entity. A *tendency* for the three shareholders to vote unanimously is not sufficient in this regard. Without a binding agreement, any one of the shareholders could be the minority vote on any given issue.

The Director denied the petition, citing three reasons that the voting agreement is not sufficient. First, the Petitioner did not "show that the proxy votes are irrevocable from the time of filing the L-1 petition through the time of adjudication. Second, one or more equity holders must irrevocably grant the ability to vote their equity to one individual equity holder, not a group." Third, "the Shareholder Voting Agreement is not dated, as such, we cannot determine if this agreement existed at the time of filing."

On appeal, the Petitioner does not address these three issues. Instead, the Petitioner states: "even though we filed the petition as the parent company of the foreign subsidiary . . . , the [Director] insisted on using the definition of 'affiliate,' thus ignoring the clear evidence of ownership and control of the foreign entity."

The Petitioner, as a legal entity distinct from its shareholders, has no ownership interest in the foreign company and therefore cannot be considered the parent of the foreign entity.

The foreign company has four individual owners. One of those individuals owns nearly half of the foreign entity, but has no ownership stake in the petitioning U.S. entity. The three other owners each own a third of the U.S. entity, but only about a sixth of the foreign entity. Therefore, the two entities are not "owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity."

Regarding the 1993 appellate decision that the Petitioner cited, the Director stated that the "decision is not precedent or binding." On appeal, the Petitioner states that the cited decision was "directly on point," and that "U.S. entities should be entitled to equal protection under the law and, therefore, should be able to rely on and achieve the same decision from USCIS [U.S. Citizenship and Immigration Services] as prior companies did."

With respect to the Petitioner's assertion that every appellate decision should be binding on future cases, the regulation at 8 C.F.R. § 103.3(c) provides that an appellate decision may only be designated as binding precedent "upon approval of the Attorney General." We lack the authority to bypass this process. Furthermore, the record relating to the 1993 decision is not before us, and the short quotation that the Petitioner provided does not establish that the two cases are similar enough to warrant the same outcome.

III. CONCLUSION

We will dismiss the appeal because the Petitioner has not established that it has a qualifying relationship with the Beneficiary's foreign employer. Because this issue is sufficient, by itself, to determine the outcome of the appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the other stated grounds for denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is 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).

ORDER: The appeal is dismissed.