U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24663806

Date: APR. 26, 2023

Appeal of California Service Center Decision

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

The Petitioner intends to sell accounting software and seeks to employ the Beneficiary temporarily as "CEO" of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. 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, concluding that the Petitioner: 1) offered to compensate the Beneficiary at a rate that would violate the minimum wage requirements in the Fair Labor Standards Act; 2) did not establish that a qualifying relationship exists between the Petitioner and the Beneficiary's employer abroad; and 3) did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of the petition's approval. 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 because the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's employer abroad.[2] Although the Director acknowledged the Petitioner's claim that it and the Beneficiary's employer abroad are affiliates, she pointed to an inconsistency in the record regarding the par value of the Petitioner's stock and, more importantly, noted that the evidence regarding the foreign entity's ownership was deficient and did not establish that the Beneficiary's claimed ownership of 45% of the foreign entity's shares represented a majority ownership. The Director concluded that because the Beneficiary owned a majority of the Petitioner's stock but owned less than a majority of the foreign entity's stock, the two entities are not owned and controlled by the same subsidiary or individual and thus they do not have an affiliate relationship. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L) (defining the term "affiliate").

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[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.

[2] To establish a "qualifying relationship," the 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* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the two remaining 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). Further, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Petitioner provides the foreign entity's "Shareholders Registration Book" which shows that eight shareholders transferred their respective ownership shares – collectively totaling 533 shares. The registry book also shows that the Beneficiary and two other shareholders currently hold a total of 500 shares, of which 225 shares were issued to the Beneficiary and 225 shares to [redacted] in 2002, and another 50 shares – 33 shares in a 1992 transfer and 17 shares in a 2002 transfer – were issued to [redacted] In sum, the registry book shows that 533 shares were surrendered by their original owners while 500 shares were issued to the Beneficiary and the two individuals listed above. Although the registry book contains a field titled "Date of transaction," it is unclear whether field represents the date of the original issue or the date of the transfer. Further, because the registry book does not disclose the recipient(s) of the transferred shares, it is unclear whether the shares were transferred to the three individuals who now collectively own 500 shares; if so, it is unclear what transpired of the 33 remaining shares from the 533 shares that were transferred by the original eight shareholders, since the Beneficiary and the two other shareholders are shown as owners of 500 shares. The Petitioner must resolve this ambiguity with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The above anomaly aside, however, the Petitioner does not claim, nor does the record contain evidence showing that the Beneficiary is the foreign entity's majority shareholder. Rather, the Petitioner indicates on appeal that a "meeting will be held" regarding the foreign entity's issuance of shares based on the Beneficiary's understanding that to satisfy eligibility requirements and "in order to accept all this work visa procedure," the Beneficiary "must be the majority shareholder." We note, however, that eligibility must be established based on facts and circumstances that existed at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). In other words, any attempt made after the filing of this petition to make changes to either entity's ownership to form an affiliate relationship between the Petitioner and the Beneficiary's employer will not result in the Petitioner demonstrating that it met all eligibility requirements *at the time of filing*. *Id.* Because the Petitioner did not establish that it and the foreign entity were affiliates at the time of filing, it is not eligible for the immigration benefit sought in this matter.

ORDER: The appeal is dismissed.