U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24993083

Date: FEB. 8, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a Canadian entity that provides fund advising services, seeks to temporarily employ the Beneficiary as vice president of its New York branch office 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.[1]

The Director of the Texas Service Center denied the petition. The Director observed that a support letter was provided with the petition and a Securities and Exchange Commission document was provided in response to a request for evidence (RFE), highlighting the Petitioner's declaration that the U.S. branch office is not a registered legal entity. The Director determined that the Petitioner did not provide sufficient evidence of the foreign entity's ownership and control of the U.S. branch office and therefore concluded that the Petitioner did not establish the existence of the requisite qualifying relationship between it and the Beneficiary's foreign employer.

On appeal, the Petitioner disputes the denial, asserting that it previously submitted evidence establishing the nature of the Petitioner's relationship with the foreign employer and demonstrating that by virtue of owning and controlling its Canadian subsidiary, the foreign employer, where the Beneficiary was previously employed, also owns and controls the Canadian subsidiary's New York branch office where the Beneficiary seeks be employed under an approved petition. *See* 8 C.F.R. § 214.2(l)(1)(ii)(J) and (K) (for the definitions of branch and subsidiary, respectively).

The Petitioner also acknowledges and addresses an error in its RFE response statement. Namely, the Petitioner claims that it inadvertently omitted the word "separate" which was intended to precede the phrase "legal entity," thus resulting in an incorrect reference to the U.S. branch as "not a legal entity" as opposed to "not a *separate* legal entity," as intended. The Petitioner explains that, indeed, it is a

[1] 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.*

"separate legal entity" and resubmits multiple previously submitted documents in support of this claim. Such documents include evidence of the Petitioner's formation in Canada and its filing of a 2020 Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, which shows that the Petitioner declared earnings and paid taxes in the United States. The record shows that in addition to these documents, the Petitioner also previously submitted other material evidence, such as its quarterly New York State tax returns, a 2020 lease agreement for office space it leased and continues to lease in New York City, and evidence of its ownership by [redacted] the foreign entity where the Beneficiary was previously employed.

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 conclude that the record contains sufficient evidence establishing that the Petitioner has a U.S. branch office through which it carries on business in the United States and that the Petitioner also has a qualifying relationship with the foreign entity that previously employed the Beneficiary. In light of such evidence, we conclude that the Petitioner has met its burden of proof and we will therefore sustain the appeal.

ORDER: The appeal is sustained.